# EXHIBIT

# A

**Declaration of Stephen Marvin Brown, Director, Immigration Legal Services, HIAS**

1. I, Stephen Marvin Brown, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct. If called as a witness, I could and would testify as follows.

2. I am an attorney, licensed to practice law in Virginia and the District of Columbia since 2010 and 2012, respectively. I am also admitted to practice before the U.S. District Court for the Eastern District of Virginia, since 2023. I have spent my entire legal career providing immigration legal services at various nonprofits in the Washington, D.C., region.

3. I joined HIAS as Supervising Attorney in 2019 and was later promoted to Managing Attorney, and then again to my current role as Director, Immigration Legal Services, where I oversee HIAS's immigration legal services programming in HIAS's headquarters offices in Silver Spring, MD and in New York City. Throughout my time at HIAS, I have represented individuals before the Executive Office for Immigration Review (EOIR), including before the Immigration Courts and the Board of Immigration Appeals (BIA), and in affirmative asylum cases before U.S. Citizenship and Immigration Services (USCIS), as well as in other forms of family- and humanitarian-based immigration relief. I have also filed complaints in U.S. District Court for writs of mandamus under the Administrative Procedure Act for immigrant clients facing protracted delays in their immigration matters.

4. I am writing to address the harm that HIAS will suffer due to the new Rule issued by the Executive Office for Immigration Review (EOIR) entitled "Appellate Procedures for the Board of Immigration Appeals." 91 Fed. Reg. 5,267 (Feb. 6, 2026).

**HIAS's Mission and Scope**

5. HIAS is a global, faith-based nonprofit organization which, working with the organized American Jewish community, is dedicated to ensuring that the world's forcibly displaced people find welcome, safety and freedom. Founded more than 120 years ago as the Hebrew Immigrant Aid Society, HIAS is the oldest refugee organization in the world. Our mission draws upon our Jewish values and history to provide vital services to refugees, asylum seekers, and other forcibly displaced and stateless persons around the world and advocate for their fundamental rights so they can rebuild their lives.

6. Today, HIAS operates offices in 11 countries, including the U.S., supporting refugees and other forcibly displaced persons with services to ensure legal protection, economic inclusion, protection from gender-based violence and access to mental health services.

7. In the United States, HIAS is perhaps most well-known as one of nine non-profit organizations, called Resettlement Agencies, that were designated by the federal government to implement the refugee resettlement program through cooperative agreements with the U.S. Department of State and U.S. Department of Health and Human Services.

8. In addition, HIAS has also been providing *pro bono* immigration and asylum legal services in the U.S. for more than 50 years. HIAS Immigration Legal Services includes six attorneys, two paralegals, and a Department of Justice (DOJ) Accredited Representative, and provides direct legal representation to asylum seekers, asylees, refugees, and other forcibly displaced

persons in a wide range of humanitarian- and family-based immigration relief. HIAS's Pro Bono and Partnerships team is comprised of three attorneys, and the program recruits, trains, and mentors volunteer attorneys across the U.S. to provide pro bono representation to immigrants seeking humanitarian legal relief, including asylum seekers, asylees, and refugees. HIAS immigration legal services provides all services *pro bono* and HIAS clientele fall below 200% of the national poverty line and have expressed fear of return to their native countries. Currently, we primarily serve clients who reside in Maryland, Virginia, Washington, D.C., and New York City and its immediate surrounding counties.

9. Providing representation to clients at risk of removal is a core component of HIAS's Immigration Legal Services program because the need for pro bono legal representation in this venue is vast; the outcomes of these proceedings often involve life or death consequences; the laws at play and the proceedings themselves are highly complex; and the clients we serve are those in the community least able to afford to pay for attorneys to represent them in these proceedings. In addition, most HIAS clients have no- or limited-English comprehension, which makes navigating removal proceedings even more difficult for them. HIAS provides all of our services to our clients in languages that they understand through the use of staff with language fluency in the languages that clients speak, or through the use of interpreters.

10. Since 2025, HIAS's Immigration Legal Services program has served at least 76 clients in removal proceedings. In addition, we have represented twelve clients before the BIA since 2025. These include appeals for clients we represented before the Immigration Court, as well as clients whom we did not represent at the immigration court who either had another attorney or proceeded *pro se*. HIAS Immigration Legal Services currently represents approximately 412 clients between our New York and Silver Spring offices. Roughly one-third of these clients are currently, or were previously, in removal proceedings before EOIR. The number of HIAS clients facing removal proceedings fluctuates for various reasons, but given current immigration enforcement trends, I expect more of HIAS's clients to face removal proceedings in the coming years.

11. HIAS currently does not typically provide representation to our clients before federal circuit courts of appeal. HIAS filed a petition for review with a circuit court of appeal on only one occasion since I started working at HIAS in 2019. In that case, we partnered with a volunteer pro bono attorney because our staff did not have the experience or licensure required to practice before that court. On the handful of other occasions where HIAS clients sought to appeal their case to the court of appeal, my team has had to refer those clients to other organizations or attorneys because we had neither the experience nor the capacity to handle those matters.

***The IFR Would Harm HIAS, its Staff, and its Clients***

12. This IFR results in an inability for HIAS to perform our core services and meet financial deliverables and grant requirements to program funders. This rule makes it exceedingly difficult for our small team to be able to intake a new client in need of an attorney to file an appeal to the BIA where HIAS did not represent the client at the Immigration Court level, for example. In addition, many federal, state, and local funders expressly forbid use of those funds in federal court proceedings against the federal government, such as HIAS funding

from the Office for Refugee Resettlement. The rule's reduced timeframes for filing appeals and submitting briefs to the BIA also makes it exceedingly difficult for HIAS to support clients *pro se.*

***The IFR Would Complicate HIAS's Immigration Legal Services Program by Requiring Attorneys to Perform Substantially More Work that is Not Covered by Existing Grants, and Frustrating Attorneys' Ability to Take on Certain Matters***

13. HIAS's funding and staffing strategy has always contemplated the Immigration Court system and applicable regulations as they have existed for decades. Based on the existing system, HIAS has had little need to develop a federal appellate practice because less than 1% of HIAS cases ever ended up reaching that level. This new rule, however, upends this system and would funnel cases to federal circuit courts at a pace never before seen.

14. The provisions of the proposed rule, combined with other laws and policies, would essentially result in exponential numbers of HIAS clients appealing their immigration cases to the federal circuit courts of appeal to obtain meaningful judicial review. To continue to serve our clients at the same level we have done for decades, and to do so competently and zealously, HIAS would need to develop a robust federal appellate litigation practice from scratch. Currently, only two of the nine ILS attorneys are licensed to practice before any federal circuit court of appeal. HIAS would face significant financial costs to pay for staff admission to federal circuit courts of appeal and to train them to the level of competency required under attorney ethics rules to practice before these courts, or to hire new staff with those admissions and competencies. In addition to the financial costs, representing clients before circuit courts of appeal would force HIAS Immigration Legal Services staff to divert their time and energy from our historical work of representing clients before immigration courts and USCIS, to instead representing clients in appeals before federal circuit courts.

15. Diverting our staff's time to representing clients before federal circuit courts of appeal would also result in other pitfalls for HIAS, including our ability to meet the requirements of our funders. For example, HIAS currently receives a grant from Montgomery County, Maryland, to represent county residents in immigration court proceedings, including the BIA. Deliverables for that funding are predicated on a very different system than the one envisioned by the new rule. However, because petitions for review before circuit courts of appeal are not covered under the Montgomery County grant, HIAS would be at odds with its mission to provide continuous legal services to our clients under that grant because we would no longer have funding to be able to effectively represent these clients in their matters.

16. In addition, HIAS provides some limited legal assistance for clients otherwise proceeding *pro se* in immigration court, such as assisting a client with preparing and filing their application for asylum, or filing motions with the Court. This is a limited part of our work but one that we have expanded a bit in the past year. With this rule, however, HIAS will be less able to provide limited scope support, because in order to adequately and comprehensively appeal a denied asylum application, as well as to meet new, shortened deadlines, an attorney would need to be in the courtroom to see for themselves what happened. Immigration Courts rarely deliver copies of the digital audio recordings of proceedings (DAR) for attorneys to review in

a timely fashion, and it is even less likely that attorneys would be able to receive notice of an asylum denial, request a copy of the DAR, review it, and prepare a comprehensive Notice of Appeal by the new deadline. Thus, HIAS's assistance to *pro se* individuals is effectively going to come to an end.

***The IFR's Shortened Ten-Day Deadline to File Notices of Appeal Imposes a Substantial Burden on HIAS Attorneys and Clients***

17. Under this rule, HIAS will have to file Notices of Appeal within ten calendar days of an IJ's decision in all non-asylum cases, as well as in any asylum matter where the IJ found the client barred from asylum under 8 USC §1158(a)(2) – i.e. one-year filing deadline, prior applications, and pretermission based on a safe third country agreement. 91 Fed. Reg. 5,270.

18. A ten-day deadline to file a notice of appeal before the BIA would be extraordinarily difficult for HIAS attorneys to comply with. To begin with, it is worth noting that we have several clients whose cases and appeals have been pending before EOIR, and the BIA specifically, for many years already. The Immigration Court only became digitized within the last few years. We still have several cases pending before the Immigration Courts that are not electronic (ECAS) cases. In those cases, we would only receive an IJ's decision if we are present in court when the IJ issues a decision, or we would receive the IJ's decision via USPS. USPS often takes a week to deliver court papers to our offices. In these non-ECAS cases, it is entirely possible that HIAS or the client would not even receive the IJ's decision to be able to file a notice of appeal before the appeal period has expired due to mailing delays.

19. For our ECAS cases, IJ decisions, including decisions on motions such as DHS motions to pretermit, or reserved written decisions after an individual hearing, are unpredictable and can arrive at any time. Under the timeframe provided by the new rule, HIAS would need to ensure staff capacity to be able to prepare and file a notice of appeal in a large percentage of cases with pending motions and decisions, *just in case* an IJ issues an adverse decision. Needing to preserve staff capacity to be able to urgently prepare and file appeals would mean that we would have less capacity to devote to other work, meaning that we would either need to serve fewer clients or provide fewer services to our existing clients. Alternatively, we would have to hire more staff or contract with other attorneys to meet the acute need. Both of these options would result in HIAS facing greater financial costs in staff time to accomplish the same work that it is accomplishing now.

20. An additional challenge that HIAS will face in meeting the ten-day appeal deadline is the increased cost of filing appeals. In the summer of 2025, Congress passed the One Big Beautiful Bill Act, which increased the cost for filing most appeals with the BIA by over ten times, from $100 to $1,010. *See* Pub. L. No. 119-21, 139 Stat. 376-77 (2025) (codified as amended at 8 U.S.C. 1812(d)(2)). For many of HIAS's clients, this shortened timeframe presents an even greater challenge to paying this fee, because they will now have less time to gather more than ten times as much money necessary to pay the filing fee for their appeal. New BIA precedent also presumes that a represented client is not indigent, *Matter of Garcia Martinez*, 29 I. & N. Dec. 169, 171 (BIA 2025), and although HIAS clients are, by the

limitations for eligibility for our representation, low-income, they are now unlikely to be granted a fee waiver for the filing fee for their appeal. Under the new rule, a client who is paid bi-monthly may not even receive a paycheck by the time their notice of appeal is due, whereas under current circumstances they will have received at least one, if not two, paychecks before their notice of appeal is due.

21. Even under the best of circumstances in the current system, thirty days is not much time to prepare a strong notice of appeal, particularly for cases in which HIAS did not represent the respondent at the Immigration Court level. As an initial matter, filing an appeal requires a proper review of the record at the immigration court level and an understanding of the decision and reasons behind an Immigration Judge's decision. Often times, Immigration Judge oral decisions are not easy to understand or follow. For example, a common reason for appealing an immigration judge's denial of an asylum application is because an immigration judge may have conflated two or more separate elements for asylum, such as the persecution and nexus requirements. We must then try to parse out if the immigration judge is denying because they found no proof of persecution or because there was no nexus. In other words, just understanding what the Immigration Judge's ruling was is often not a straightforward task. To shorten the appeal period to ten days means that HIAS attorneys have less capacity to file comprehensive, strong notices of appeal and would need to cover all possibilities, and consequently, the risk of a client's appeal being summarily dismissed under this rule increases.

22. Two HIAS client examples illustrate this point. In 2020, I consulted with a prospective client who, two weeks earlier, had his asylum application denied and was ordered removed by the Immigration Judge. This client was represented by a non-HIAS attorney at the Immigration Court. To fully consider whether I could take on his case for appeal, I had to 1) request and obtain a copy of his file from his attorney, 2) request, obtain, and listen to the digital audio recording of the individual hearing, 3) research the standards of review at the BIA for overturning an Immigration Judge's factual findings, and 4) draft the notice of appeal with the client, and 5) file the notice of appeal (at the time the appeal could not be filed online, and the case remains a non-ECAS case to this day). I could not have done all of this within ten days; working diligently, we filed the notice of appeal on the 27th day of the thirty-day appeal period.

23. In another case, in November 2025, a client who had proceeded *pro se* before the immigration judge had her application for asylum denied and was ordered removed. The Court twice rejected my requests for the recording of the individual hearing because I had not entered my appearance as the attorney of record at the trial level. The client had to request the recording herself, though she did not speak English. She submitted that request in November 2025, just three days after the individual hearing had taken place, and as of the time of this filing, to my knowledge, she still has not received the recording. As a result, we had to file the notice of appeal on the thirtieth day of the appeal period, based on her best recollection and understanding of the immigration judge's decision. The Immigration Court system as it currently stands is not well suited to support *pro se* individuals filing appeals; it would be even less responsive where the deadline is only ten days instead of thirty.

24. Our team generally allocates our work based on scheduled court dates and anticipated deadlines – for example, if a client has an individual hearing on x date, we ensure that our team does not have other conflicting or competing deadlines during the thirty-day period after that hearing, in case an adverse decision is issued and the attorney needs to prepare a notice of appeal. If the timeframe is shortened to ten days, our team will be unable to approach our work in this same way. Previously, it was viable for an attorney to litigate two defensive asylum cases only a few days apart because that attorney would have thirty days to file any appeals; under this new rule, that attorney would only have ten days to file an appeal, during which time that attorney is also preparing to litigate a second case. In that way, the work can multiply exponentially when the timeframe to act is shortened. Making matters worse, even if HIAS had less capacity to file a client's appeal, the shortened deadline would make it nearly impossible for a client to find alternative counsel; the result is that it would be impractical, and perhaps unethical, for HIAS to decline to file an appeal for an existing client, and would thus force us into a potential conflict between our ethical obligations and our capacity limits.

25. The shortened timeline for submitting an appeal would also have a catastrophic effect on our ability to serve clients with limited-scope legal services. We open our public intake line for prospective clients only one day a month because we receive far more calls from people seeking assistance than we have capacity to represent. For potential clients who proceeded before the IJ *pro se* or with another attorney, and who are seeking representation in filing an appeal to the BIA, our current once-per-month intake schedule has been sufficient to connect with a prospective client to prepare and submit an appeal by the thirty-day deadline. But under the new ten-day filing deadline, most potential clients would likely not reach us in time for us to assist them. To adequately serve this client base, HIAS would need to change our intake procedure, which would have cascading effects on our ability to serve our existing clients. For example, if we held intakes once per week rather than once per month, our staff would spend four times as much time consulting with prospective clients; that time would otherwise have been spent serving existing clients.

26. This rule also will lead to substantial confusion for our attorneys considering representation of a client who previously proceeded before the immigration court *pro se.* To start, simply understanding what the deadline for filing an appeal is will be a challenge under this new rule. It is often difficult to get a full, accurate, and comprehensive accounting of the IJ's decision by simply asking a *pro se* respondent. A client may not understand the nuance of the basis of an IJ's adverse decision. For these clients, our practice usually is to request audio recordings from the Immigration Court of the individual hearing or other relevant hearing in that client's case so that we may listen to the proceedings ourselves to understand what the IJ's decision and rationale was and to determine the proper next steps. In the past, we were able to receive these recordings relatively quickly, but that has not been the case more recently. Now, we are often unable to obtain recordings of the immigration court proceedings within thirty days, let alone ten days. Under the new rule, HIAS lawyers are not likely to have all of the information necessary to be able to competently file an appeal for a new client in time. If HIAS lawyers are only able to rely on the client's non-technical understanding of the IJ's decision, attorneys cannot reliably discern whether the client's appeal is due in ten days or in thirty days. To be safe, then, HIAS attorneys would need to presume that all

potential appeal clients face a ten-day filing deadline, which would artificially co-opt our calendars and capacity, leading to cascading effects on our capacity to work on other clients' cases.

27. As a nonprofit, HIAS receives more requests for help than we have capacity to serve. Our staff must carefully consider which cases to take on, and one factor in that analysis usually includes a determination about how likely we are to affect the outcome of the case. If we cannot effectively determine a potential client's filing deadline, it would likely factor negatively against representation, meaning we will likely have to turn people away needlessly due to impending or indiscernible filing deadlines, which runs contrary to our mission.

28. Failing to meet deadlines, or counseling a respondent incorrectly on applicable deadlines, impacts not only the respondents and HIAS as an organization, but it carries potentially severe consequences for HIAS attorneys as well as the volunteer attorneys we mentor. If HIAS attorneys incorrectly advise a potential client about a filing deadline, it may constitute legal malpractice and could lead to discipline. Thus, the rule also creates a chilling effect for attorneys contemplating assisting respondents on appeals. An attorney will be less willing to risk their law license by attempting to provide legal advice or representation with an incomplete accounting of the appeal record because of our duties of candor to the tribunal, zealous representation, and competence.

***The IFR's Presumption in Favor of Summary Dismissals Imposes an Undue Burden on HIAS and its Clients***

29. The rule also creates a presumption that any appeal be summarily dismissed without review unless a majority of the BIA votes to accept the appeal within ten days of filing the notice of appeal. 91 Fed. Reg. at 5,268.

30. HIAS's BIA appellate practice exists to ensure proper review of immigration court proceedings. Being able to seek review of decisions of Immigration Judges from a higher authority is critical for keeping Immigration Judges accountable to the law. With this rule's new presumption that any appeal can be summarily dismissed without meaningful review, however, our ability to ensure accountability is limited. Immigration Judges are, in fact, employees of the Department of Justice who can and have been fired because of decisions they make in cases before them. They face pressure from their employer to adjudicate cases quickly, including pressure to pretermit asylum cases whenever possible. Given that the BIA will no longer serve as a critical check on the conduct of immigration judges, we anticipate increasing numbers of cases will require federal court review. For several reasons, this will harm HIAS.

31. To ensure that our clients receive due process and proper review of their trial-level proceedings, HIAS will need to develop a circuit court appellate practice. Historically, we have focused on administrative law practice. HIAS would have to incur considerable cost and expense to develop a circuit court appellate practice, including the cost of attorney admissions in relevant jurisdictions and the requisite training and mentorship required to

ensure attorneys are competent to practice there, or adding staff with those admissions and competencies. In addition, as noted above, many of our grants fund us to engage in specific types of work, and do not allow us to bill time to practice in federal courts. To engage in this work, HIAS will have to expend its own unrestricted funds, or identify and bid for new grant opportunities, to develop this practice. Thus, the rule's rapid funneling of cases from the Immigration Court to federal appellate courts will cause HIAS to incur significant costs and work.

32. But even in spite of those costs, developing such an appellate practice would not simply replace current BIA practice because circuit court of appeal review is not the same as, and thus is not a replacement for, meaningful BIA review. There are important differences between the legal frameworks for appeals at the BIA and appeals at federal circuit courts. For example, the Immigration and Nationality Act limits federal circuit courts' jurisdiction to hear appeals regarding denials of discretionary forms of relief a client might pursue in removal proceedings aside from asylum, such as adjustments of status, cancellation of removal, and waivers of grounds of inadmissibility. 8 U.S.C. § 1252(a)(2)(B). Under this new rule, however, the BIA may summarily dismiss appeals regarding these forms of relief without ever considering the appeal on the merits, thus denying our clients any review at all of immigration judge decisions in these matters. In addition, the standards of review of factual and legal issues differ between the BIA and federal circuit courts, such that an appeal to the BIA is substantially different from an appeal to a federal circuit court. In this sense, by presuming that appeals should be summarily dismissed, the rule effectively deprives HIAS clients of meaningful appellate administrative review and thus a meaningful check on the immigration judges before whom they appear.

33. Additionally, the presumption in favor of summary dismissals means that more of our clients will have been ordered removed by the BIA with a final order of removal, and they will need to seek appellate review from the circuit courts without the benefit of an automatic stay of that removal order. In addition to preparing the petition for review, HIAS attorneys would also urgently need to request stays of removal from the federal courts, which are not granted automatically and in many, if not most, cases are often denied. Our work, then, would involve helping clients pursue their appeals, avoid removal while that appeal proceeds, and if they are removed from the US, helping them return to the US if their appeal is successful. This would mark a stark departure from our current appellate practice before the BIA, where removal orders from the Immigration Judge are automatically stayed on appeal.

34. Because the new rule effectively requires clients to seek appellate review from circuit courts, it imposes additional financial costs on the client to obtain due process and meaningful review of their case, so many will opt not to appeal simply because of the cost and not because of the merits of their case. Clients will have to pay $1010 to appeal their case to the BIA. If their appeal is summarily dismissed without consideration of the merits, the BIA still keeps that $1010 and the client will then have to pay to have circuit courts consider their appeal. In the Fourth Circuit Court of Appeals, where HIAS is headquartered, a respondent would then have only 30 days to file a petition for review, at an additional cost to the client of $600. Our clients are low-income and facing these exorbitant costs within these timeframes would constitute a substantial hardship to them. The BIA has issued a precedent finding that

a respondent—simply because they are represented by an attorney—is presumed to be ineligible for a fee waiver. *Matter of Garcia Martinez*, 29 I. & N. Dec. at 171. And while a client can request to proceed *in forma pauperis* before circuit courts of appeal, such requests are not guaranteed to be approved. Thus, to obtain meaningful review of a client's claim, the client must either incur substantially more cost than currently required, or attempt to have the fees excused, which is not guaranteed.

35. The existing systems for processing appeals, combined with this new presumption in favor of summary dismissals, gives us low confidence that the BIA will accept any of our clients' appeals for review. As it exists now, the BIA, split into panels and single judges rather than en banc, takes years to process existing cases. It's unlikely that the full en banc BIA will have the capacity to fairly consider all filed appeals for acceptance under this new rule within the anticipated ten-day timeline to vote to accept an appeal. Instead, we expect to see summary dismissals of appeals simply because time for consideration of the appeals by the BIA ran out before the BIA ever had a chance to read a page of the notice of appeal.

36. However, should the BIA indeed actually meaningfully review and vote en banc on every single appeal filed before it, this will likely be the only thing the BIA will do. The backlog of cases at the BIA, including several HIAS clients that have been pending for more than four years, would never be ruled on, and presumably the same is true for any appeal the BIA votes to accept. The cost to HIAS of cases endlessly pending on appeal is significant – HIAS owes a duty to keep these clients informed of the progress of their case, and ancillary matters often come up while an appeal is pending that HIAS will need to address, such as applications for work authorization renewals, changes of address if a client moves, and addressing stale briefing.

37. Finally, this new rule for summary dismissal would operate on top of EOIR's current policy and precedent for pretermitting asylum applications before the case is ever considered on the merits. Thus, a case pretermitted by the Immigration Court could then be summarily dismissed by the BIA, and a respondent will have completed removal proceedings without their claim for protection ever getting a full and fair consideration. HIAS attorneys must nonetheless prepare these cases for consideration on the merits, as the pretermission might not occur until the day of the individual hearing where the case is set to be tried. Attorneys will then have to prepare a notice of appeal to the maximum of our abilities, just for that appeal to also never get so much as a skim by the BIA before it is summarily dismissed. The rule, therefore, imposes significant costs on HIAS in representing clients in removal proceedings.

***The IFR's Shift to a Simultaneous Briefing Schedule will Frustrate HIAS's Ability to Zealously Represent Clients Seeking Appeal***

38. This rule also will change the way that legal arguments and briefs are submitted to the BIA. The new rule provides only twenty days for parties to simultaneously submit briefs, and will not allow reply briefs unless the BIA expressly permits it. 91 Fed. Reg. at 5,277. The rule also disavows extensions except under severely limited and irrelevant circumstances. *Id.* This

change, coupled with the change regarding summary dismissals, will cause substantial hardship to HIAS and our clients.

39. Currently, filing a notice of appeal in a client's case is relatively simple. If we represented the respondent at the trial level and were present to receive the IJ's oral decision, we can fairly easily note the errors of law, fact, or discretion in the IJ's decision, and expect a briefing schedule to be set for a later date. Historically, setting a briefing schedule for a later date has provided ample time for attorneys to comprehensively articulate the grounds for the appeal. However, this rule's changes to the briefing processes will make the appeal process substantially more complicated.

40. To start, because the new rule sets as the default that an appeal should be summarily dismissed unless the BIA en banc votes to accept it within ten days of filing the appeal, an attorney will need to prepare their client's notice of appeal much more comprehensively than current practice requires. Under the new rule, to survive summary dismissal, an attorney will likely need to submit a notice of appeal along with comprehensive legal arguments to ensure that the issues we seek to appeal are sufficiently articulated so that the BIA may be more likely to vote en banc to accept the appeal for consideration on the merits. The rule also does not articulate what factors the BIA will consider that favor accepting an appeal, and so HIAS attorneys will have to simply guess what might entice the BIA to accept its appeal. The simple act of filing the notice of appeal will become more onerous for attorneys, and with less time to do it given the ten-day deadline to file the notice of appeal.

41. In addition, currently, an appeal at the BIA can last many years. Controlling law can, and often does, change between the time a notice of appeal is filed and when a briefing schedule is finally issued. For that reason, it is usually unadvisable to fully brief an appeal at the time of filing, but rather, to wait for the briefing schedule because presumably the caselaw will be current between the time of filing the brief and when the BIA decides the appeal. Having to fully brief a matter at the notice of appeal stage may unnecessarily duplicate attorneys' work; if the matter ends up pending for a long time before a briefing schedule is issued, there is a high probability the attorney will need to update their research and draft new legal arguments by the time a briefing schedule is received.

42. For any appeal that survives summary dismissal, under the new rule, the BIA will issue a briefing schedule and hearing transcripts, and provide attorneys only twenty days to submit their brief. As noted earlier, where the transcript and briefing schedule are issued by mail and not electronically, delays in mailing time impinge on our twenty-day briefing period, so attorneys will also have less time to prepare legal briefs in those cases. In addition, the issuance of briefing schedules is entirely unpredictable. In the past, upon receipt of a BIA briefing schedule, I had to urgently prioritize the BIA matter over all other pending work to submit the BIA brief by the deadline. However, the BIA has historically been more accommodating to attorneys with competing client priorities and has extended the briefing schedule rather readily, either as a matter of course or for good cause shown. This rule would not diminish the existing unpredictability around when the briefing schedules are issued, but by curtailing the availability of an extension, would increase the pressure on attorneys to be able to accommodate a significant amount of work in an extremely short time period.

43. Even in cases where HIAS attorneys are present and represent clients before the Immigration Court, and therefore have an understanding of the legal issues to address on appeal, a significant portion of the legal work involved in submitting a brief to the BIA cannot be completed until we have received the hearing transcript, because properly preparing a BIA brief involves citing to the record and the transcript. An inflexible twenty-day deadline impinges on an attorney's ability to properly execute a legal brief that properly cites the record and provide their client with the zealous representation that attorney ethics require.

44. Despite the numerous problems addressed with the extraordinarily short briefing schedule deadlines envisioned in the new rule, the rule compounds this problem by disfavoring requests for extensions of the briefing schedule. The rule provides only one exception for an extension that refers to "battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances." 91 Fed. Reg. 5,273. There exists no exception based on needs of the attorney who, for the most part, is the relevant party in the appellate process. Historically, an extension could be granted for good cause shown; the most common reasons for requesting or contemplating requesting an extension have been for 1) receiving the briefing schedule at a time that the attorney is unable to properly respond due to illness, previously-scheduled vacation, competing deadlines, etc., or 2) delays in receiving or failure to receive the transcript. Showing good cause for an extension is common across state, federal, and other administrative courts alike; it is a professional courtesy. Under this rule, however, none of the aforementioned reasons are sufficient to extend a briefing deadline. The reasons for not allowing these extensions are incomprehensible given that, currently, BIA appeals are often pending for four or more years, and the delay is not attributable to an attorney's request for an extension. It is wholly unreasonable to expect an attorney to maintain the flexibility in their schedule for four or more years in order to accommodate an unexpected, urgent legal briefing necessary for a pending BIA appeal, and to submit it within twenty days of issuance of the briefing schedule.

45. Finally, the new rule eliminates the ability to submit a reply brief in response to another party's brief unless the BIA expressly permits it. Reply briefs allow the parties to more comprehensively address the legal issues on appeal and to fully develop the record in the event that an appeal to a circuit court is necessary. The concurrent briefing schedule will result in poorly briefed appeals before the BIA, which will, in turn, create less comprehensive records for review by circuit courts should cases require an appeal there. A very real possibility exists that, under this rule and in conjunction with other laws and policies, cases will go up and down from the immigration court to the circuit courts of appeal multiple times, with each appeal necessitating payment of the applicable filing fees and work expended by an attorney, because the record is not ripe for review. The system that this rule will create is one that is inefficient for everyone involved.

I, Stephen Marvin Brown, declare under penalty of perjury that the information contained in this declaration is true and correct to the best of my knowledge.

Stephen Marvin Brown

February 24, 2026
Date

# EXHIBIT

# B

**DECLARATION OF ZOEY JONES, BROOKLYN DEFENDER SERVICES**

I, Zoey Jones, declare under perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. My name is Zoey Jones. I am an Associate Director of the Immigration Practice at Brooklyn Defender Services ("BDS"), located in Brooklyn, New York.

2. I am licensed to practice law in New York, the Southern District of New York, the Eastern District of New York, the U.S. Courts of Appeals for the Second, Third, Fifth, and Ninth Circuits, and the U.S. Supreme Court.

3. I have worked with the BDS Immigration Practice since 2014. I began as an immigration staff attorney, then became a supervising attorney specializing in immigration appeals, and then became an Associate Director in October 2025. In my current role, among many other things, I represent people directly before the Board of Immigration Appeals ("BIA") and the federal circuit courts of appeals and supervise staff attorneys providing representation before the BIA and circuit courts.

4. This declaration is based on my personal knowledge, gathered through review of records, my own experiences, supervision of my team, and coordination with the other leaders of BDS's Immigration Practice.

## I. The Brooklyn Defender Services' Immigration Practice

5. BDS is a full-service public defender 501(c)(3) organization that provides outstanding representation and advocacy free of cost to people facing loss of freedom, family separation, and other serious legal harms by the government. For more than 25 years, BDS has worked in and out of court to protect and uphold the rights of people and to change laws and systems that perpetuate injustice and inequality. Across two offices, in Brooklyn, NY and Queens, NY, BDS represents low-income New Yorkers in over 40,000 criminal, family, civil, and immigration proceedings each year. Our work is focused on the intersection of the legal systems that disproportionately impact Black and brown people living below the poverty level. BDS also provides a wide range of additional services for our clients, including civil legal advocacy, assistance with the educational needs of our clients or their children, housing advocacy, and benefits advocacy. Our staff consists of specialized attorneys, social workers, investigators, paralegals, and administrative staff who are experts in their individual fields.

6. The BDS Immigration Practice's main purpose is to advance access to legal representation and lawful status for low-income noncitizens as they navigate legal systems in order for them to stabilize their immigration status and remain in the community with their family and loved ones.

7. BDS's Immigration Practice has advised or represented 6,000 clients in approximately 10,500 immigration matters, including removal defense and affirmative applications, since the inception of the Immigration Practice in 2009.

8. More specifically, the BDS Immigration Practice represents detained and non-detained individuals in applications for immigration status and relief, both in removal proceedings and affirmatively before the United States Citizenship and Immigration Services ("USCIS"). This includes: family-based petitions and green card applications; relief for victims of domestic violence, trafficking, and other crimes; asylum, withholding of removal under the Immigration and Nationality Act, and withholding and deferral of removal under the Convention Against Torture ("CAT"); applications for special immigrant juvenile status ("SIJS"); applications for deferred action for childhood arrivals ("DACA"); applications for temporary protected status ("TPS"); and applications for naturalization.

9. BDS's Immigration Practice consists of 80 staff members, including attorneys, BIA accredited representatives, law clerks, support staff, and social workers.

10. The Immigration Practice depends on public and private funding sources to provide representation for immigration cases. Several funding sources require a certain number of removal defense cases and complex affirmative applications per year at a fixed cost per case.

11. In addition, through the National Qualified Representation Program ("NQRP"), BDS's Immigration Practice is appointed to represent people who are not mentally competent to represent themselves in their immigration proceedings because of a serious mental disorder. As an NQRP provider, BDS is funded to accept a certain portion of cases for people deemed mentally incompetent and represent them in immigration court and through the BIA appeal stage.

12. The BDS Immigration Practice maintains an active BIA appeals practice. From 2021 to present, BDS filed approximately 104 appeals of Immigration Judge ("IJ") merits or motion to reopen decisions and approximately 34 appeals of IJ custody (*i.e.,* motion for release on bond) decisions before the BIA. BDS has approximately 67 appeals currently pending before the BIA (60 merits or motion to reopen appeals and 7 custody appeals).

## II. The Amended EOIR Regulations Will Irreparably Harm BDS and the People We Represent

13. The new BIA procedures proposed by the Rule amending the regulations of the Executive Office for Immigration Review ("EOIR"), *Appellate Procedures for the Board of Immigration Appeals*, 91 Fed. Reg. 5267 (Feb. 6, 2026) (the "Rule"), will harm BDS's core function of providing legal services to low-income people who are residents of the New York-area. The Rule will also impose increased financial, resource, and staffing burdens on BDS.

14. The Department of Justice issued only a 30-day notice of the new rule, *see id.* at 5267, and it failed to follow standard rule-making procedures, which deprived BDS of sharing meaningful public comment for the agency's consideration. BDS has regularly commented on relevant federal immigration rulemaking.

15. The totality of the Rule will irreparably harm BDS and the people we represent, including, *inter alia*, through the following changes made by the Rule: (1) eliminating substantive review of most BIA appeals; (2) curtailing the period to file a notice of appeal in most cases; (3) curtailing the BIA briefing schedule; and (4) eliminating briefing extensions, reply briefs, and consecutive briefing.

16. Taken as a whole, the Rule will significantly harm BDS's Immigration Practice and its core services as explained below. It will force BDS to devote more resources to fewer cases, meaning we will serve fewer clients, which will have an adverse impact on funding. The Rule requires the litigation of more time-intensive BIA appeals on an unnecessarily expedited appeal period and more Petitions for Review ("PFR") at the circuit courts of appeals to pursue substantive appellate review no longer available at the BIA, which will task our limited staff, supervision, and training resources.

### *A. The Rule Will Result in Summary Dismissal of Appeals the BIA Would Have Otherwise Sustained*

17. The Rule's summary dismissal process creates the likelihood that most BDS appeals of IJ merits decisions—of which BDS previously prevailed in more than half—will now be summarily dismissed.

18. Of the approximately 104 merits appeals BDS has filed since 2021, the BIA has sustained 23 (issuing a final decision in 1 case and remanding in 22) and dismissed 22. Of the remaining BDS appeals, BDS withdrew as counsel in one, withdrew 13 prior to decision, and 45 are still pending.[1]

19. In this same period, DHS filed approximately 18 appeals of IJ decisions in BDS cases. Of those, the BIA has sustained nine (issuing a final decision in four cases and remanding in five) and dismissed two. Of the remaining DHS appeals, DHS withdrew one prior to decision and six are still pending.

20. These numbers demonstrate that the BIA detects IJ errors in a majority of BDS merits cases it reviews.

21. The Rule's summary dismissal process will severely curtail BDS's ability to obtain BIA review of such IJ errors by prohibiting the BIA from setting a briefing schedule and reviewing the record in most cases, instead mandating that all cases be summarily dismissed unless a single BIA member recommends the case for review and a majority of permanent members vote to review. *See* 91 Fed. Reg. at 5270–71.

22. Agency regulations separately provide that "en banc proceedings are not favored, and shall ordinarily be ordered only where necessary to address an issue of particular importance or to secure or maintain consistency of the Board's decisions." 8 C.F.R. § 1003.1(a)(5); *see also* BIA Practice Manual § 1.3 ("By regulation, en banc proceedings are not favored."). It is not clear whether the Rule intends this standard apply to determine when Board members will refer notices of appeal for en banc vote, or some

[1] BDS does not currently have complete immigration appeals data from years preceding 2021.

other standard. That ambiguity in itself makes it nearly impossible to accurately counsel clients about the likelihood of review by the BIA, and requires our attorneys to do more work in preparing notices of appeal. If they do apply the en banc standard, BIA members will be strictly limited in which cases they may refer for en banc review and, in effect, only those cases presenting an issue of particular concern or decisional consistency will receive substantive review under the Rule. In the history of BDS's Immigration Practice, the BIA has never found it appropriate to order en banc review on any BDS case.

### *B. The Rule Will Increase the Number of PFRs BDS Must File—Imposing Greater Resource and Financial Burdens on BDS—and Will Increase the Likelihood of Wrongful Deportations While PFRs Are Pending*

23. The Rule's summary dismissal process will increase the number of PFRs BDS must file to obtain correction of IJ errors, the number of filing fees BDS must pay or seek to have waived, and the number of motions for stays of removal BDS must file to prevent removal of clients while their PFRs are pending. This will impose additional resource, staffing, and financial burdens on BDS and will increase the likelihood that noncitizens are wrongfully deported while seeking review of erroneous IJ decisions.

24. As described above, during the past five years the BIA sustained approximately half of BDS's merits appeals but, under the Rule, a majority of these appeals will now be summarily dismissed, *see supra* ¶¶ 20–21, requiring BDS to petition for review before a circuit court to obtain substantive review of claims and correction of IJ errors—a more costly and resource intensive process.

25. PFRs are not free. The current PFR filing fee is $600 in the Second and Third Circuits where BDS generally litigates. BDS's immigration clients, however, are all low income or indigent and can almost never afford this filing fee. While fee waivers may be obtained if a motion to proceed in forma pauperis ("IFP") is granted, in the Second Circuit, IFP motions are only granted where the movant "makes a showing of likely merit as to each issue the appellant intends to present on appeal." Second Circuit Local Rule 24.1.[2] Accordingly, BDS will not only be required to file a significantly greater number of PFRs, but also will have to choose between either paying $600 per PFR out of pocket or expending considerable labor resources to brief the merits of the issues on appeal at the very preliminary IFP stage. Both of these options tax BDS resources. If the 23 BDS BIA appeals granted since 2021 had instead been summarily dismissed, this would have required BDS to either litigate 23 IFP motions or pay $13,800 in filing fees—a significant added financial burden for a nonprofit organization.

26. Further, noncitizens may not be removed during the pendency of a BIA appeal because their removal order is not considered final. An order of removal only becomes final at the expiration of the appeals period or, if either party appeals to the BIA, upon a final merits decision by the BIA. When the BIA summarily dismisses a noncitizen's merits appeal, however, that decision constitutes a final order of removal that empowers ICE

[2] In comparison, obtaining a BIA fee waiver only requires a signed affidavit from the noncitizen.

to immediately deport the noncitizen. *See* 91 Fed. Reg. at 5271. Neither the existing regulation nor the Rule provide any mechanism through which noncitizens may request an agency stay of their removal while appealing a summary dismissal order to a circuit court of appeals. The Rule therefore creates a substantial likelihood that noncitizens will be removed from the United States even where they intend to file a PFR, or have filed a PFR, to challenge erroneous IJ decisions and pursue immigration relief or status for which they are eligible.

27. If a noncitizen files a PFR, they may file a motion for a stay of removal before the circuit court as well. Obtaining a stay of removal from a circuit court, however, requires meeting various legal standards, including showing a likelihood of success on the merits of the PFR, that the noncitizen will experience irreparable harm if a stay is not granted, and that the stay will not substantially injure the other parties interested in the proceedings and is in the public interest. *See Nken v. Holder*, 556 U.S. 418, 434 (2009). Preparing a stay motion thus requires lengthy briefing and extensive labor.

28. BDS has no full-time PFR attorneys and instead relies entirely on additional work done by a small number of experienced staff with considerable other responsibilities. In addition, BDS relies on extensive collaboration with law school clinics and pro bono co-counsel from private law firms to litigate PFRs.

29. Because of the additional labor required to litigate PFRs—including IFP and stay motions—the Rule would task BDS's limited supervision and staff resources to pursue substantive appellate review no longer available at the BIA. And BDS would have to train additional attorneys to litigate PFRs. BDS does not currently have funding to hire additional immigration staff.

30. Moreover, if the Rule takes effect, BDS will not be able to file PFRs in every case summarily dismissed by the BIA or even in a majority of cases subject to summary dismissal where the client has a valid claim that the IJ erred. The Rule will therefore result in the deportation of BDS clients who are eligible for immigration relief and status based on IJ decisions that contain legal and factual errors.

### *C. The Rule Will Impose an Unnecessarily Truncated Appeal Deadline*

31. The Rule's changes shortening the deadline for filing a Notice of Appeal ("NOA") to 10 days will further disrupt and burden BDS's Immigration Practice. *See* 91 Fed. Reg. at 5272.

32. The 10-day appeal deadline will make it significantly more difficult for BDS attorneys to undertake all necessary tasks before filing an adequate NOA. A number of ethical, substantive, and logistical tasks are necessary to prepare and file an NOA, including reviewing the IJ decision, counseling the client concerning the advantages and disadvantages of appeal, providing the client with time to consider their decision, conducting recent legal research, and drafting and obtaining supervisor review of the NOA. In addition, as the application for a fee waiver is due with the NOA, the attorney

must also prepare the fee waiver application and obtain the client's signature on the fee waiver application.

33. The burdens created by the new 10-day deadline are aggravated for detained appeals, where attorney-client communications are severely limited. Generally, confidential legal phone or video calls are not available with individuals held in DHS detention on a same-day basis and frequently cannot be accommodated for two to four days from the date the attorney submits the request to the detention facility. Thus, there is usually a delay of several days before an attorney can communicate with a detained client about the possibility of pursuing a BIA appeal. Moreover, scheduled calls are often not effectuated by DHS, are cancelled at the last minute, or do not go forward due to malfunctioning of the detention facility's communications technology, creating even further delay in attorney-client communication.

34. In-person communication with detained clients is equally difficult and often impossible due to highly limited attorney visitation hours and the fact that DHS transfers a majority of BDS detained clients outside of New York City, including to jails in New Jersey, Pennsylvania, Indiana, Louisiana, and California.

35. Additionally, BDS's detained clients generally cannot pay the $1,030 BIA filing fee. Applications for fee waivers must be filed concurrently with the NOA. *See* 8 C.F.R. § 1003.3(a)(1) ("An appeal is not properly filed unless it is received at the Board, along with all required documents, fees or fee waiver requests, and proof of service, within the time specified in the governing sections of this chapter."); BIA Practice Manual § 2.3(c) (requiring that a BIA "appeal package" include fee payment or an application for fee waiver).[3] Fee waiver applications require an "affidavit" that must "be signed by the respondent, not the respondent's attorney or representative of record." *See* Form EOIR-26A, Fee Waiver Request.[4] But where in-person visitation is not possible, simply obtaining a detained client's signature on the fee waiver application often requires more than ten days due to the time required to mail documents to and from jails located around the country and delays in jail staff delivery of mail to detainees.

36. The 10-day appeal period also does not provide BDS attorneys with sufficient time to draft the NOA itself. The burdens of the 10-day appeal period are exacerbated by the Rule's summary dismissal provision discussed *supra* § II.A, *infra* § II.D. The Rule will require that BDS attorneys set forth in detail all legal arguments in the NOA to avoid waiver of any appellate issues. In addition to briefing the issues on appeal, the Rule will effectively impose the additional burden of establishing, in the NOA, that the case should be considered for substantive review. It is not clear what standard the BIA member who reviews the NOA will apply to determine whether to refer a case to the en banc Board for a vote on whether to review the case substantively. This standard could be the one applied in other en banc review by the Board, *supra* ¶ 22; the factors "an issue of particular importance" or is necessary "to secure or maintain consistency of the Board's decisions," 8 C.F.R. § 1003.1(a)(5); or some other unknown standard.

[3] *Available at* https://www.justice.gov/eoir/policy-manual-eoir/part-III/bia/chapter-2-3.
[4] *Available at* https://www.justice.gov/eoir/page/file/1237856/dl.

The 10-day deadline simply does not provide sufficient time for BDS attorneys to adequately brief these issues.

37. Finally, the 10-day deadline is effectively shorter for cases in which the immigration court has not created an electronic record. While notices of appeal for newer immigration court cases can be filed electronically through the immigration court's electronic filing system ("ECAS"), there is no electronic record for most older cases, and BIA filings must therefore be done by mail. Because the BIA follows the "mailbox" rule, under which documents are not considered filed until they are *received*—regardless of the date of mailing or any error on the part of the delivery company—NOAs and fee waivers in paper cases must be finalized and mailed in fewer than 10 days.

### *D. The Rule Will Impose an Unworkable Issue Preservation Requirement for Notices of Appeal, Particularly In Light of the 10-day Appeals Period*

38. The Rule's new provision that any issue not raised in an NOA is waived will further burden BDS staff and frustrate BDS's provision of services and resources. *See* 91 Fed. Reg. at 5278. Under governing regulations, an NOA filed with the BIA triggers the BIA to issue the transcript of the immigration court's record and set a briefing schedule. Currently, NOAs are generally filed with a summary of the issues for appeal and a statement that they reserve the right to include additional issues in the brief after they have reviewed the transcript. Many IJ decisions are issued orally at hearings and are not available in written form until the BIA receives the NOA and issues the transcript along with the briefing schedule. Similarly, there is no written record of the removal proceedings until the BIA issues the transcript.

39. If *all* issues must be exhaustively listed in the NOA, however, BDS attorneys will be forced to determine those issues without the benefit of a transcript of the IJ's oral decision or the written record of the removal proceedings. To ensure that no issues are missed, attorneys will be required to listen to the digital audio recording ("DAR") of the oral decision and removal proceedings, a task more cumbersome, time-intensive, and less accurate than reviewing the written transcript.

40. Furthermore, quickly obtaining the DAR is also not always possible. For electronic cases, the DAR may be downloaded from ECAS. However, in cases for which there is no electronic record, the DAR must be requested from the immigration court by letter or email and sometimes is not provided for several weeks, making it impossible to review by the 10-day NOA deadline.

41. In either case, obliging BDS attorneys to obtain and listen to the entire DAR in order to preserve all possible appellate issues on the NOA within 10 days of the IJ decision is not realistic or responsible, as it will significantly increase the amount of work and time it takes an attorney to prepare an NOA.

42. Moreover, as the Rule allows for summary dismissals with no production of transcripts, it will also make the litigation of PFRs and related IFP motions more difficult since there will be no record of the proceeding and, in some cases, no written decision.

### *E. The Rule Will Impose an Unworkable Briefing Schedule*

43. The changes in briefing timelines, *see* 91 Fed. Reg. at 5272–73, will also have a significant deleterious impact on the time and resources required to prepare cases on appeal for BDS staff, as BDS's Immigration Practice has an active docket of both immigration court and BIA cases. These provisions fail to consider the practical reality of practicing before the BIA.

44. The Rule's shortened briefing schedule, including the restrictions on briefing extensions, does not consider that hearing transcripts—necessary to prepare the appellate brief—are not accessible until the transcripts are created and sent with the notice of briefing schedule. *See supra* ¶ 38. BDS staff rely heavily on hearing transcripts when writing their appellate briefs to ensure accuracy and completeness because hearing transcripts contain important evidence to be cited in the appeal. Although an attorney can familiarize themselves with the proceedings by listening to the DAR, briefing before the BIA requires citations to the official transcript, not the DAR. Moreover, as noted above, obtaining and listening to the DAR is a more time-consuming and less precise process than reviewing the transcript. *See supra* ¶ 39. Additionally, BDS's BIA appeals are often litigated by a different attorney than the attorney who handled the proceedings before the IJ, including by pro bono attorneys from BDS' partner law firms and law school clinic students, who are even more reliant on the written transcript of proceedings to detect legal and factual errors in the IJ's decision.

45. As a practical matter, given the significant caseload carried by staff, BDS is highly reliant on extensions of the current 21-day briefing schedule and requests at least one extension of 21 days in nearly every BIA appeal, which is routinely granted.

46. Drafting a BIA appeal brief not only requires reviewing the IJ's decision and the transcript of the proceedings but also reviewing extensive evidentiary records that frequently relate to applications for multiple forms of relief from removal and conducting legal research.

47. Drafting a BIA brief also involves summarizing this extensive factual record and distilling a notoriously complex area of law. A review of BIA merits briefs filed by BDS in 2025 shows that the average brief was 23.6 pages long.

48. The overall shortened period for BIA appeals—including the shortened appeal deadline, shortened briefing deadline, and the limitation on briefing extensions—would make it significantly more difficult for BDS staff to draft ethically responsible BIA briefs while maintaining their current caseload and intake schedule, and would therefore require that BDS take on fewer new clients.

49. Over the past five years, BDS has obtained pro bono law firm co-counsel on about 18 BIA appeals. In each of these cases, pro bono co-counsel has served as the primary drafter of the BIA brief. These co-counseling arrangements allow BDS to leverage its resources to represent more low income and indigent individuals in immigration appeals. The overall shortened period for BIA appeals under the Rule, however, will mean that BDS will generally no longer be able to coordinate and co-counsel with *pro bono* partners. As mentioned above, pro bono partners usually do not represent the noncitizen at the immigration court-level and are generally not immigration law specialists. This will further reduce the number of new clients BDS can represent.

### *F. The Rule Will Curtail Noncitizens' Ability to Respond to DHS' Claims*

50. The Rule's implementation of a simultaneous briefing schedule for non-detained removal cases and its restriction on filing reply briefs, will harm the people BDS represents. *See* 91 Fed. Reg. at 5272–73. When combined with the Rules' severe limitation on reply briefs, the imposition of concurrent briefing deprives BDS attorneys and our clients of a fair opportunity to identify factual and legal misstatements by DHS, and counter the arguments made by DHS.

Date: February 25, 2026

*/s/ Zoey Jones*

Zoey Jones, Esq.

# EXHIBIT

# C

**DECLARATION OF LISA KOOP**
**NATIONAL IMMIGRANT JUSTICE CENTER**

*I, Lisa Koop, make the following declaration based on my personal knowledge and declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct.*

1. I am the national director of legal services at the National Immigrant Justice Center (NIJC), where I have worked since 2006. NIJC is a nonprofit organization that provides direct legal services to and advocates for immigrants through policy reform, impact litigation, and public education. Since its founding more than four decades ago, NIJC has blended individual client advocacy with broad-based systemic change.

2. I am writing to address the substantive harm that NIJC will experience because of an upcoming Interim Final Rule from the Executive Office for Immigration Review (EOIR) entitled, Appellate Procedures for the Board of Immigration Appeals 91 Fed. Reg. 5,267 (Feb. 6, 2026) (hereinafter, "the Rule"). The Rule, which is set to take effect on March 9, 2026, will have serious, negative impacts on NIJC's core business of providing full legal representation to people appearing in immigration court, before the Board of Immigration Appeals (BIA), and before the Federal Circuit Courts of Appeals.

## My Professional Background and Role at NIJC

3. Prior to joining NIJC, I worked as a clinical fellow at the Notre Dame Law School Immigration Clinic, where I taught and supervised students in immigration cases. When I was in law school, I held immigration-related positions at Farmworker Legal Services in Michigan; the United Nations High Commissioner for Refugees in Washington, D.C.; the Immigrant and Refugee Appellate Center in Washington, D.C.; and the Asociación Pro Derechos Humanos (Association for Human Rights) in Lima, Peru. Before law school, from 1999 to 2001, I was a paralegal at the South Texas Pro Bono Asylum Representation Project, a project of the American Bar Association. There, I presented Know Your Rights Presentations to adults and children in immigration custody and worked with detained immigrants seeking asylum and other forms of immigration relief.

4. At NIJC, I direct our legal services teams who appear before the Executive Office for Immigration Review (EOIR) and United States Immigration and Citizenship Services (USCIS). I represent clients in all levels of removal proceedings, including before the BIA and in federal courts. I also train and supervise NIJC staff and pro bono attorneys handling a wide variety of immigration matters.

## NIJC's Core Services

5. NIJC's mission is to establish and defend the legal rights of immigrants regardless of background and transform the immigration system to one that affords equal opportunity for all. NIJC's vision is that immigrants have the opportunity to gain the rights and privileges of living in the United States through a humane and just immigration process.

6. To that end, NIJC provides high quality immigration legal services for as many low-income individuals and families as it can possibly reach. NIJC achieves this effort through various forms of representation.

7. For many cases, NIJC provides full legal representation directly to the clients, including through the appeals processes before the BIA and federal courts. In other circumstances, NIJC provides full legal representation in partnership with pro bono attorneys. In those circumstances, NIJC forms an attorney-client relationship with the individual noncitizen and provides ongoing assistance to the pro bono attorney partner.

8. NIJC's legal services model also includes more limited forms of service. For instance, we provide *pro se* support via our Immigration Court Helpdesk (ICH) to people who are appearing without counsel at the Chicago and Indianapolis immigration courts. NIJC's ICH in Chicago was federally funded until early 2025, when the Trump Administration cancelled that funding. NIJC has privately fundraised to establish the ICH in Indianapolis and to keep the ICH in Chicago running despite federal funding cuts. The Chicago ICH also receives funding from the state of Illinois. About 14 NIJC staff members are assigned to these two ICH programs at varying levels of fulltime equivalency, and NIJC has received multiple state and private foundation grants to ensure their ongoing operation.

9. And though NIJC is no longer part of the Legal Orientation Program (LOP), which historically provided support to detained individuals through Government funding, NIJC maintains a robust detention project. Most of the work done in that project is full legal representation, but we also provide Know Your Rights programming in one detention center in Indiana. NIJC regularly visits and provides legal services in additional detention centers in Indiana and Kentucky. Because there are no detention centers in Illinois, much of the detention project's work is in support of people who are detained all over the country. For example, an NIJC attorney recently attended an in-person hearing at an ICE detention center in Kay County, Oklahoma. NIJC regularly visits and provides legal services to individuals at three detention centers in and around Laredo, Texas.

10. NIJC also does *pro se* and limited representation clinics, where the goal is to provide individuals with information about their rights and obligations going forward and to help them take the next step in their immigration process by, for example, helping them move to change venue in immigration courts, to file a *pro se* notice of appeal with the BIA, or file an application with USCIS.

11. NIJC handles a wide array of matters before USCIS, including for example U-Visas, Special Immigrant Juvenile status (SIJS), Deferred Action for Childhood Arrivals (DACA), and Temporary Protected Status (TPS). For many years now, NIJC's core priority has been representing people in a defensive posture before EOIR, particularly for asylum and related claims. NIJC made this shift on our protection-based teams to account for the fact that other organizations may be fully equipped to serve people appearing before USCIS but were less likely to have the expertise that NIJC has to address the complexities that arise in defensive cases before EOIR.

12. NIJC maintains a staff of more than 160 people who advance this core work and support NIJC's mission. NIJC maintains a formal presence in Chicago, Illinois; Washington, D.C.; San Diego, California; and Goshen and Indianapolis, Indiana. NIJC also has a number of remote legal services staff members, including in Colorado, Iowa, Texas, New York, Minnesota, California, and Michigan.

13. In 2025, NIJC provided legal services to more than 10,000 individuals and supported more than 8,200 noncitizens in their immigration cases, including removal defense cases.

14. NIJC's direct-representation work is divided into teams, with some teams focusing on a particular venue (e.g. NIJC's detention project), other teams focusing on a particular population (e.g. the Children's Protection Project, Counter Trafficking Project, and LGBTQ Immigrant Rights Initiative), and other teams focusing on certain remedies (e.g. NIJC's Asylum Project). NIJC also accepts cases through the National Qualified Representative Program (NQRP), an EOIR program which provides appointed counsel before the immigration courts and the BIA to individuals deemed incompetent to represent themselves.

15. As is most relevant to the subject matter of this Rule, in 2025 NIJC's direct representation teams represented more than 88 individuals in their cases before the BIA. Many individuals who sought our services before the BIA were *pro se* in the immigration court and often they were detained in detention centers around the country. In addition, when NIJC provides representation at the BIA to a previously *pro se* person, that work routinely includes either a concurrent motion to reopen or motion to remand. In 2025, we filed more than six such motions.

16. In addition, among the 10,000 individuals that NIJC served in 2025, more than 6,000 of those were adults seeking *pro se* assistance through our KYR sessions and via our ICH. *Pro se* participants often ask how to represent themselves on appeal, how to file a motion to the BIA, or about how to overcome a prior removal order. For example, in 2025, our ICH team helped 13 people file their own *pro se* appeals to the BIA, work which will become more difficult and sometimes impossible because of the Rule's changes in timelines.

17. A significant portion of NIJC's federal litigation practice is devoted to appellate representation through petitions for review, which typically begin with the denial of immigration relief at the BIA. In 2025, NIJC was counsel on more than 55 circuit court appeals, having identified the cases from NIJC's own direct representation projects or outside sources. One key factor in deciding whether a federal appeal is viable is the degree to which issues were preserved before the BIA, which will become more challenging in light of this Rule. Another factor is capacity to staff the more resource-intensive federal court cases.

18. Pro bono attorneys are central to NIJC's model. NIJC maintains a panel of more than 2,600 pro bono attorneys. Pro bono attorneys are central to NIJC's goal of ensuring

access to counsel to as many people as possible. Most of the attorneys in NIJC's pro bono pool work at large law firms and are not subject matter experts on immigration. They therefore require time to familiarize themselves with cases and procedures before they are able to proceed with substantive representation. This Rule will largely eliminate access to substantive appeals processes at the BIA, but for the few who will be able to receive representation, reliance on a pro bono model within the Rule's new timeline will become extremely difficult. Indeed, NIJC has already cancelled one pilot pro bono project before the BIA in anticipation of this Rule.

**The Rule Irreparably Harms NIJC and Our Clients**

19. The Rule completely upends NIJC's practice at the BIA. These changes will cause drastic injustices and inefficiencies, and they will eliminate many clients' ability to seek relief from removal for which they are otherwise eligible. The result will be the removal of many individuals who would otherwise qualify to remain in the United States. For NIJC, the Rule will make NIJC's core service of legal representation substantially more difficult and in many cases altogether impossible.

20. The Department of Justice issued only a 30-day notice of the new rule, and it failed to follow standard rule-making procedures, thus depriving NIJC and similar organizations of sharing meaningful public comment for the agency's consideration.

21. The Rule contains numerous substantive changes, all of which will adversely impact NIJC's programming. The Rule (1) allows for summary dismissal of most appeals, (2) reduces the timeline for filing a notice of appeal in most cases, (3) shortens the briefing schedule for cases that do go forward, (4) establishes unrealistic case completion timelines, and (5) inserts a "vice chairman," an unconfirmed political appointee, into a newly created oversight process.

22. The human toll of these changes is hard to overstate. Curtailing due process in this manner and further politicizing the EOIR guarantees that NIJC will be less able to help our clients to sufficiently present their defenses to removal, and for many the result will be summary removal. These changes will prevent NIJC from performing core services, as discussed in greater detail below.

*Summary Dismissals*

23. Under the Rule, appeals will be summarily dismissed unless a majority of permanent BIA members vote en banc to accept the case for review. 91 Fed. Reg. at 5,268. A single member may refer the case for an en banc vote, and the vote must take place within 10 days of the filing date of the appeal, which means that if the referral happens on day 9, the vote must occur the following day. *Id.* This change effectively eliminates the review of appeals on the merits.

24. The rule further states that dismissal orders pursuant to 8 C.F.R. § 1003.1(d)(2) shall constitute the final decision of the board and that such dismissal "shall be effectuated" by written order no later than 15 days after the appeal is filed. 91 Fed. Reg. at 5,277.

25. This change will have multiple negative impacts. First, the structure of the process incentivizes inaction by the BIA. The only way a case will get full review is if a single Board member submits it for a vote, and that vote promptly takes place. But if no referral for a vote occurs, or no vote occurs within the required time period, the case is *automatically* dismissed. The Rule provides that "the Board shall vote en banc on whether to accept the appeal no later than 10 days after the appeal is filed. If the Board fails to vote en banc within that time, the appeal shall be deemed to have been summarily dismissed." 91 Fed. Reg. 5,277 (quoting new 8 C.F.R. 1003.1(d)(2)(ii)).

26. The result is that many, likely most, cases will receive a sort of "pocket" dismissal resulting from the assigned Board member failing to refer the case in the required timeline or from remaining Board members failing to vote in the required timeline.

27. NIJC's own experience illustrates the likelihood of this problem. Our staff regularly submit filings to the BIA that remain unadjudicated for periods that long exceed this timeline, even initial filings like motions to waive the filing fee or motions for a 21-day extension of time to file a brief on the merits. It is our routine experience that these administrative motions are not adjudicated within 10 days. It therefore stands to reason that there is no way the Board would be able to actually engage in a process of referring cases for consideration on this timeline, particularly when inaction simply eliminates the task from a busy Board member's "to-do" list.

28. Second, though the preamble to the Rule claims that this change "would not change any existing understandings" regarding the circuit court appeal timeline or process, that is inaccurate. 91 Fed. Reg. at 5,271. At best, it shifts the cost of creating a certified transcript to the noncitizen. At worst, it prevents appeals to the circuit courts altogether. The Rule says that the "Department intends that the Immigration Judge's decision become the final agency decision for purposes of Federal court review," *id.*, but under the Rule that decision may never become available to the noncitizen. It is NIJC's experience that the vast majority of IJ decisions are provided orally, with only a summary paper order that does not include the IJ's reasoning. The IFR contemplates receiving the record from the immigration court only for cases that are "not summarily dismissed" and states the transcript is only available upon setting a briefing schedule. 91 Fed. Reg. at 5,277-78. This means the Department no longer intends to produce transcripts, including the transcript of the oral decision of the immigration judge. The INA *requires* a noncitizen to file a copy of the removal order, which typically includes the IJ decision, to file a petition for review in the circuit courts. 8 U.S.C. § 1252(c)(1). This change will make it harder for NIJC to represent people before the circuit courts because we will not have the IJ decision to review or file with the PFR. It will also make preparation of a stay of removal, which is generally necessary for a circuit court case on behalf of a detained person, much more difficult if not impossible to prepare since the stay must include

substantive legal argument about the appeal and such argument will be difficult to make without reviewing the IJ decision.

29. Third, though the Department says that this dismissal rule "will allow the Board to focus on appeals with particularly novel or complex legal questions," 91 Fed. Reg. at 5,271, that is transparently false. Under the Rule, dismissal will be based on the filing of the Notice of Appeal and not based on any subsequent briefing. Unless the Notice of Appeal accurately and completely identifies all "novel or complex" issues—a process that the Rule makes unfeasible by shortening the timeline for filing such a notice, as discussed below—there will be no way for the Board to even *know* if they are dismissing an appeal that presents complex or novel issues before they do so.

30. Nor does the Rule provide any guidance as to which cases will be prioritized for BIA review. This puts attorneys in an impossible position of having to rapidly file robust Notices of Appeal that fully present legal arguments even in the absence of complete information, in order to maximize the chances that their client's case will not be summarily dismissed.

31. In NIJC's experience, some of the cases where BIA review is most critical are those cases involving a person who appeared *pro se* before the IJ. These individuals often lack the knowledge, ability, or access to evidence and resources that would enable them to fully present their claims to the judge. The result is that judges are more prone to miss complex or novel issues or make legal mistakes in cases where a person lacks counsel before the immigration court. Rather than enabling the Board to focus on these cases, the new dismissal policy all but guarantees that such issues will never surface.

32. Furthermore, the rule suggests that litigants whose appeals are summarily dismissed "may proceed to file a petition for review with a federal court within 30 days of that dismissal," see INA 242(b)(1), 8 U.S.C. 1252(b)(1). This suggestion fails to acknowledge jurisdictional bars present in 8 U.S.C. § 1252 that will prevent any judicial review for certain litigants.

33. The risk of summary dismissal poses substantial new hurdles to NIJC's core work. If the Rule takes effect, NIJC's attorneys will have to put significantly more work—hours more—into preparing just the *notice* of appeal. That is because the decision on dismissal will be based exclusively on the information provided in the notice without the benefit of having a full record of proceedings to review. NIJC may now have to attach record evidence and fully explain legal arguments in the notice, challenges that are exacerbated by the new filing deadlines, discussed below.

34. That approach represents a significant departure from NIJC's standard practice. Currently, NIJC attorneys reserve the right to raise additional points of appeal upon review of the transcript. Under the Rule, even where we reserve the right to say more, we may never get the opportunity to do so. Additional work will be required during hearings as NIJC attorneys and our pro bono partners will need to take more robust notes—essentially creating informal transcripts in real time—to preserve the ability to identify

and raise appealable issues in the notice of appeal. In some instances, attorneys may be able to download the digital audio recording of a hearing after the fact, but there too, the attorney would be tasked with hours of review in preparation for the notice of appeal to detect and raise all appealable issues without the benefit of a written transcript or IJ decision. In cases where the individual was *pro se* before the immigration court and NIJC seeks to represent them on appeal, attorneys will need to rely on the respondent's recollection of the oral decision, or would need to spend precious time and resources pursuing a recording from the immigration court, which they are not guaranteed to receive in 10 days' time. *Pro se* individuals seeking to appeal without a lawyer usually will not be able to undertake any of these extra labor- and time-intensive steps to prepare complete notices of appeal.

*Timeline for Filing Notice of Appeal*

35. The Rule drastically shortens the timeline for seeking appellate review before the Board, reducing the general filing deadline of the Notice of Appeal from 30 days to 10 days except for certain asylum cases. 91 Fed. Reg. at 5,270. Specifically, the 10-day filing deadline will apply to all non-asylum cases and also to asylum denials based on grounds enumerated in 8 U.S.C. § 1158(a)(2), which covers denials of the right to seek asylum based on (1) failure to meet the one-year filing deadline, (2) having previously been denied asylum, and (3) the lack of need for asylum based in the availability of protection in a "Safe Third Country." 91 Fed. Reg. at 5,272.

36. The Rule suggests that *pro se* litigants in this posture "have already had time to obtain counsel for their proceedings before the IJ," and that, if summarily dismissed, may file a petition for review with a federal court within 30 days of the dismissal. *Id.* Here too, there are myriad problems with the Department's approach.

37. Start with the cases where the 10-day deadline clearly applies. The Rule overlooks the substantial challenges that such a deadline would impose. For example, appeals to the Board are now subject to a $1,030 filing fee, a $920 increase from late 2025. NIJC's representation generally does not cover associated filing fees, so a client will need some time to come up with this substantial amount of money. And doing so while also having to grapple with the substantial likelihood that the case will be dismissed (and that the $1,030 will thus be lost) is a decision that will likely require multiple conversations with an attorney, the client, and the client's loved ones. The Rule also overlooks the ethical bind this will impose on counsel. As mentioned above, even where a person was fortunate enough to have counsel before the IJ, it may not be possible for that counsel to help the client reach an informed decision on an appeal in 10 days and also execute a detailed notice of appeal, which will now be necessary to prevent summarily dismissal.

38. The Rule also overlooks the hardship this 10-day deadline imposes for detained, mentally ill, and *pro se* individuals. Where a client is detained, the ability to request and receive permission for confidential legal calls to conduct this client counseling is extremely limited. Attorney calls are often scheduled days or weeks out (if at all), cancelled without notice, dropped, or not provided in a confidential space. Under these conditions, having

ten days to make complex and consequential decisions about whether and how to appeal is unambiguously insufficient.

39. Additionally, NIJC is regularly appointed counsel to individuals whom IJs have determined are not competent to represent themselves before the Department. Many of these individuals require extra time to understand the nature and consequences of removal proceedings, as well as their rights in removal proceedings. The immigration court often recognizes this barrier and provides more generous deadlines in cases where individuals are found incompetent. For example, the process of obtaining a signature for a fee waiver request from someone struggling with the symptoms of severe mental illness can often take much longer because of memory or comprehension issues. FMore complex counseling about the merits of a BIA appeal would take even longer. The IFR provides no such recognition that 10 days is not sufficient in these cases.

40. For a person who was previously *pro se*, it is unlikely that NIJC could even review the case in the 10-day filing window. Due to the demand for our services, most of our programs have a wait time of a week or more for an intake appointment. If this Rule takes effect, NIJC will have to either completely change how we prioritize intakes or face the likelihood that we would not be able to help a person in this posture at all.

41. This change will also place a substantial, additional burden on our federal court practice because we will need to assess cases for likelihood of success in a petition for review in that same 10-day window. Even now, NIJC tries to give clients a tentative recommendation about our willingness to pursue a federal court appeal before asking the client to take on the substantial expenditure (and potential for additional prolonged detention) associated with filing an appeal to the Board. NIJC's litigation team reviews cases, currently, once per week. That timeline will no longer be possible if this 10-day deadline takes effect.

42. NIJC does not file appeals—at the BIA or in the Circuit Courts—without confidence the appeal can prevail on its merit. But because of this 10-day deadline, we will have insufficient time and information to make fully informed appellate decisions and recommendations. We will be placed in the position of proceeding on appeals with incomplete information or losing the right to appeal on behalf of our clients altogether.

43. Even the Rule's carve out for certain asylum cases from the 10-day deadline poses significant problems. The Rule makes this carve out, purportedly, to comply with the statute, but it does not account for how these claims are adjudicated in practice. For example, the Rule makes no mention that two of the three asylum provisions that remain subject to the 10-day deadline are subject to an exception for changed or extraordinary circumstances. 8 U.S.C. § 1158(a)(2)(D). That assessment comes, in almost all cases, at a hearing on the merits of the individual asylum claim, alongside the other elements that are subject to the 30-day appeal deadline. In addition, a person subject to the one-year deadline or the bar to asylum for a prior application would still qualify for withholding of removal and protection under the Convention Against Torture (CAT), which are also adjudicated alongside the merits of an individual's asylum application. The result is that,

in most cases, factors that are subject to the 10-day deadline will be adjudicated alongside issues that are subject to the 30-day deadline.

44. This ambiguity is consequential. Attorneys and clients will be required to determine what deadline applies, even when a decision includes mixed reasoning. And though the Rule's preamble makes it clear that, in the Department's view, BIA appellate review is not available as of right, 91 Fed. Reg. 5,271, there is a real risk that ambiguity in an IJ's oral decision could result in a later finding of a waived or untimely appeal.

45. Though this kind of problem will exist in *all* cases, it will be particularly problematic for a *pro se* person who comes to NIJC's ICH for help with the process of perfecting an appeal to the Board. In those cases, NIJC's staff will not have been present in the courtroom to know what reasoning the judge offered, and most of those cases do not result in written decisions. That means the ICH staff will be forced to explain and advise on the deadline based on incomplete information. As a result, even for asylum seekers, it is likely that NIJC will feel compelled to encourage *all people* to meet the 10-day deadline even if it is possible that their case could qualify for the 30-day deadline.

46. The regulation could also result in different deadlines for parties appealing the same case to the Board. For example, if a lawful permanent resident is charged as removable due to a criminal conviction, they may have strong legal basis to argue that they are not removable in the first instance, but also seek asylum as a backup. Should the IJ find them removable but grant asylum, they could face a 10-day deadline to appeal the finding of removability, while DHS would have a 30-day deadline to appeal the asylum grant. NIJC would face significant difficulty counseling a client in this situation. If a client would have a final grant of asylum, then they may determine that it is not worth the significant appeal fee to challenge the removability decision only to have it likely summarily dismissed before DHS's appeal deadline would have expired. But if they waive their right to appeal, and DHS is successful in its appeal from the asylum grant, then the client would have potentially abandoned arguments that they should retain their permanent resident status.

47. In sum, these changes in filing a Notice of Appeal will impact NIJC's ability to perform core services because staff will be burdened with determining proper deadlines for asylum cases, and clients and NIJC staff will have insufficient time to make informed appellate decisions.

*Expedited Briefing Schedules*

48. The Rule impacts briefing before the BIA in four ways. (1) If a case is not summarily dismissed, the Rule requires briefing within 20 days of the Board setting the schedule. 91 Fed. Reg. at 5,272. (2) The Rule mandates both parties file their briefs simultaneously. *Id.* (3) The Rule eliminates reply briefs unless requested by the Board. *Id.* (4) The Rule allows extensions of the briefing schedule in limited circumstances. *Id.* Each of these changes will disrupt NIJC's core work of providing legal representation to clients appearing before EOIR.

49. Even before this Rule, the timeline for BIA representation was uncomfortably tight. Given NIJC's mission to serve as many noncitizens as possible, NIJC attorneys do not generally maintain excess capacity to comply with BIA briefing schedules that arrive at unpredictable times. NIJC worked diligently to overcome these issues for existing clients, despite the barriers. The Rule exacerbates existing issues and decreases the already-limited time we will have to prepare appeals.

50. First, one notable problem with the Rule is that it does not actually contain a provision whereby an individual or counsel would be informed that a case *had been* accepted for appellate review. The only indication we will have that a client's case was *not* dismissed is if the timeline to do so passes without notice from the Board. But reliance on this factor to ascertain whether a case has been accepted for merit-based review is likely inappropriate given the substantial backlog and routine failure of the Board to meet case completion timelines to date. The result of this, and the shortened timeline for review, means that NIJC attorneys will need to begin working on appeal briefs *without knowing if the brief will be accepted.* Given the substantial amount of work NIJC attorneys undertake in the service of our mission, the need to prepare a potentially moot brief that will not be considered by the Board will displace other critical work NIJC seeks to complete for the immigrant communities we serve.

51. This ambiguity, coupled with the limits on briefing extensions, also means that we will likely be unable to place BIA cases with pro bono attorneys, and even in cases where a firm represented a client before the IJ, the firm may be unable to continue pro bono representation on this unreasonable new timeline.

52. Moreover, in many of NIJC's cases, we begin our representation in the first instance at the BIA. For those individuals who were *pro se* before the IJ and trying to obtain counsel for a BIA appeal, the Rule will make it nearly impossible for NIJC to represent them. In these cases involving previously *pro se* people, even in cases with electronic records, new counsel is not able to see the audio recordings before the IJ, which often means they do not have access to the IJ's decision.

53. Because most IJ decisions are oral, our first glimpse at the I decision for a person who was previously *pro se* would be with the briefing schedule. Even under the Rule's case completion guidelines, the timing for issuing a briefing schedule will remain unknown and arbitrary: it can take weeks, or months. This uncertainty will make it impossible for staff to budget their time to accommodate BIA briefing. Moreover, for a previously *pro se* person, it is unlikely that NIJC would even be able to decide to accept a case involving a previously *pro se* person before this 20-day clock is already ticking because the recordings of the hearings, including oral decisions, are not provided as a matter of course. On top of the legal research and writing, NIJC staff will likely need to interview the noncitizen to try to ascertain what happened before the IJ more fully, all within 20 days.

54. To exacerbate matters further, because the IFR eliminates extensions except in extraordinary circumstances, counsel will have effectively no chance to extend this deadline, regardless of other case obligations (which are significant). And the IFR's definition of extraordinary circumstances makes sense only for *pro se* individuals. The Rule "authorizes extensions in cases of exceptional circumstances, as defined by section 240(e)(1) of the INA, 8 U.S.C. § 1229a(e)(1), which in turn defines that term to refer to "exceptional circumstances (such as battery or extreme cruelty to the [noncitizen] or any child or parent of the [noncitizen], serious illness of the [noncitizen], or serious illness or death of the spouse, child, or parent of the [noncitizen]." 91 Fed. Reg. 5,273. In other words, by the plain language of the Rule, exceptional circumstances *of the attorney* are not sufficient to warrant an extension of the briefing schedule. Where the extension is likely needed to allow for high-quality briefing addressing legal questions concerning an already-existing record, the circumstances of the client are at most minimally relevant to the extension.

55. That change poses a real hardship on NIJC and our pro bono partners. If an NIJC attorney or pro bono attorney accepts a case for BIA representation and is out of the office for medical leave or a vacation during the unpredictable time set by the briefing schedule, there will be no way to get more time.

56. This timeline will pose great hurdles for NIJC's pro bono model. Previously, NIJC routinely relied on pro bono attorneys for BIA representation as a means of maximizing NIJC's limited resources. This timeline will be impossible for a pro bono attorney who is generally unfamiliar with immigration law and must spend additional time and receive additional mentoring from NIJC to become familiar with the law. Even for experienced pro bono attorneys, the process of going through a law firm's conflict and case initiation process will make this new timeline, with no available extensions, impossible.

57. All told, this Rule will drastically limit NIJC's ability to accept BIA appeals, which will in turn impact our ability to ensure that noncitizens get a fair day in court, whether or not they win their cases. This change will also impair NIJC's ability to pursue federal court appeals. When issues are unexhausted in BIA briefing, undeveloped, or otherwise not preserved, as they necessarily will be due to the impediments discussed above, our ability to file federal court challenges will be hindered.

58. Because NIJC will be less able to accept these cases, our *pro se* programs will face additional burdens. These programs are not designed to provide lengthy, substantive advice on how to present arguments on appeal. NIJC will have to develop new practice advisories to address the timing for appeals and will also have to develop more robust materials for *pro se* litigants who will be left to represent themselves. NIJC's staff will have to spend considerably more time with *pro se* litigants to explain the appeal process.

59. The impact of this change on noncitizens is obvious. As of 2021, about 10% of appeals filed with the Board were on behalf of *pro se* individuals.[1] In other words, it is already

[1] EOIR Adjudication Statistics, (Oct. 2021) at 40, https://perma.cc/N3L5-55JD.

difficult to appeal without counsel. By shortening the timeframe to file an appeal and then further shortening the briefing schedule for the few cases that are accepted, the Rule will force more noncitizens to seek to appeal *pro se*.

60. Notably, even though the Rule's automatic-dismissal provision will make the briefing schedule issues moot in most circumstances, this change will likely have a serious impact on one particular category of cases: circumstances where DHS is the appealing party. Though the Rule does not openly acknowledge this fact, it is clear that DHS appeals are more likely to be deemed as presenting substantial issues and thus receive review[2] In those cases, even where NIJC's clients or *pro se* individuals are granted relief, these changes to the briefing process will be extremely onerous.

61. The Rule's transition to concurrent briefing and the elimination of most reply briefs is likewise problematic. Requiring a concurrent briefing schedule unnecessarily complicates the briefing without any efficiency gains. In recent years, the government has filed many more BIA appeals. NIJC will now have to speculate about the arguments the government will make based on the limited and often incomplete information included in the notice of appeal and write a brief without knowing the extent of the arguments. And because NIJC cannot file reply briefs unless the Board explicitly requests it, we will be forced to dedicate even more time into a single brief, which will create significant inefficiencies in our briefing process. These burdens will diminish the number of cases we are able to take. Concurrent briefing also deprives the BIA of a fulsome exploration of the legal issues raised by the parties. By eliminating consecutive briefing and reply briefs, the Rule denies the Board the benefit of the exchange of arguments by the parties, which often narrows and clarifies the issues to be decided. While concurrent briefing has been the practice for detained appeals, where a noncitizen is facing ongoing deprivation of liberty while awaiting adjudication of the appeal, there is no corresponding justification in non-detained appeals for the loss of a crucial component of the adversarial process on which our courts generally rely.

62. These changes to briefing schedules will not make the BIA more efficient. As mentioned, even under this Rule, it will likely take months for the cases that do receive full merits consideration to be completed. After we file our briefs, our clients' appeals are likely to remain pending for, at minimum, months. Denying noncitizens a reasonable opportunity to write their briefs has no rational relationship to the time it will then take the BIA to decide those cases. Trimming off a few weeks at the briefing stage of the appellate process hurts noncitizens and makes no meaningful improvement to the efficiency of the overall system.

63. As mentioned, the change drastically limits the appeals NIJC staff will be able to work on, and the number of cases NIJC will be able to place with pro bono attorneys, which

[2] *See* National Immigration Project, Trump 2.0 BIA/AG Precedent Decisions (Feb. 2026), https://nipnlg.org/sites/default/files/2026-02/BIA-Decisions-Trump-2.0.pdf (finding nearly all of the published opinions issued by the agency since President Trump's second term began have favored DHS).

will result in a hinderance to NIJC's ability to meet its mission of providing legal services to as many noncitizens as possible in order to create more fairness in the immigration system.

*Case Completion Deadlines*

64. In addition to the issues above, the Rule imposes mandatory case completion deadlines for the BIA. 91 Fed. Reg. at 5,277. Cases assigned to a single Board member must be decided within 90 days of completion of the record, and cases assigned to a three-member panel must be decided within 180 days. *Id.* If a dissenting judge fails to write an opinion, in the required timeline, the decision will go forward without the dissent. *Id.*

65. If an appeal is not adjudicated on time, the rule *requires* the Board chairman to assume control of the case or refer it to the Attorney General for final resolution. The Rule says, "In those cases where the panel is unable to issue a decision within the established time limits, the Chairman *shall* either self-assign the case or assign the case to a Vice Chairman for final decision within 14 days or *shall* refer the case to the Attorney General for decision." 91 Fed. Reg. at 5,277 (quoting 8 C.F.R. § 1003.1(e)(8)(ii) (emphasis added)). This approach presents numerous problems.

66. First, this provision will make it impossible for Board members to clear their existing backlog of longstanding cases because they will be compelled to meet this rushed timeline on new cases. As of July 31, 2025, there are more than 3.7 million cases pending at the BIA. *See Adjudication Statistics,* EOIR (July 2025) 1 Pending New Receipts and Total Completions. In recognition of the fact that this Rule "represents a notable procedural change" the Department has committed to imposing the Rule's deadlines prospectively. 91 Fed. Reg. at 5,271. As new case completion deadlines place substantial time pressure on Board members to complete new cases, the inevitable result will be that other cases will languish.

67. Old cases languishing at the Board has a significant impact on NIJC. Long pending cases represent a substantial burden to NIJC's operations. When a staff member has a large caseload of fully briefed but undecided cases, it becomes difficult for them to take on new work because—even though the substantive work of those cases may be complete—they have an ongoing obligation to stay in touch with the client and help them with ancillary matters. Much of NIJC's direct funding for case work is based on acceptance and filing of *new* matters. Changes like this one, which promise to leave long-pending cases on our docket for years more, only exacerbate our ability to take on new cases, which in turn will impact our funding and operations.

68. Second, there is no evidence that mandatory referral of pending cases to the chairperson or a vice chairperson will expedite resolution of pending matters. To the contrary it is likely the transfer of the backlog to a much smaller number of people will have an adverse impact on NIJC because the result is likely to be either rushed adjudication by Board members which will inevitably lead to errors, prolonged delay as the cases are

automatically transferred, or summary dismissal without meaningful review by the chairperson or vice chairperson.

69. The Rule's apparent response to this concern is that cases referred to the chairperson or a vice chairperson must also be adjudicated within 14 days after that referral. But it is unclear how it will be possible to complete cases in this timeframe, at least not without a substantial sacrifice of due process. This aspect of the Rule will only apply to cases where the Board has already agreed en banc that the case qualifies for adjudication on the merits and where that consideration has been pending for 90 or 180 days. Despite these signals that a case is in fact significant, the Rule unilaterally and mandatorily puts adjudication on a 14-day timeline in the hands of a single person who will not have prior familiarity with it. This is not a recipe for informed decision-making.

70. These changes interfere with NIJC's core work. NIJC is focused on providing full and fair representation to people before EOIR. Rushed decisions by Board Members, the chairperson, or a vice chairperson on the one hand versus prolonged wait times on the other hand both impede that work.

71. Finally, it is worth noting that there is significant reason to be concerned with respect to the placement of adjudication authority with the chairperson or a vice chairperson. Until recently, Board membership was relatively stable from one administration to the next. This role, however, is political in nature. NIJC has significant concerns with placing the adjudication authority in the hands of a politically appointed administrator who has not been trained on immigration law (who may not even be a lawyer) and who has multiple competing obligations that will make resolution of cases harder to prioritize.

*Other Miscellaneous Rule Changes*

72. Finally, the Rule contains numerous other changes that will impair NIJC's ability to do our core work, frustrate our mission, and make it difficult to receive certain funding.

73. For example, the Rule eliminates the requirement that judges continue to review transcripts of oral decisions before adjudication of the appeal. 91 Fed. Reg. at 5,269. This seemingly minor change eliminates an important safeguard that exists in the system to ensure that the record for appellate review—whether at the Board or at a circuit court—is accurate. Though this safeguard does not come into play in all cases, when it is necessary, it is vital because appellate review cannot occur if there is not a record of the proceedings below for the appeals body to review.

74. The Rule also removes "two provisions that authorize the Chief Appellate Immigration Judge to either extend adjudication deadlines in particular cases or to hold cases based on a pending, potentially impactful action, either a new binding case decision or a new regulatory action." 91 Fed. Reg. 5,274. As to the former, the Rule says the reasoning "has no clear underlying rationale consistent with principles of good government and effective adjudication." *Id*. As to the latter, the Rule states that such delay authority is inefficient and puts too much authority in the hands of the Chief Appellate IJ. Both are wrong.

75. As to the second provision, eliminating the Board's authority to hold a case pending resolution of an appeal, including even a pending Supreme Court case, presents substantial inefficiencies and will create new work for NIJC. We will have to expend time and monetary resources to pursue petitions for review of cases or filing motions to reopen based on changes in law. For detained individuals, we will also have to seek a stay of removal at the circuit court of appeals, and potentially even at the Supreme Court. All this work—and the accompanying judicial resources necessary to address these filings—could be avoided. None of this is grounded in efficiency. Rather, it appears to be based on the notion that many noncitizens will receive removal orders and be removed before an opportunity to vindicate their rights based on intervening case law arises.

76. Eliminating the Chief Appellate Immigration Judge's authority to extend adjudication deadlines is nothing more than a means of taking adjudicative authority out of the hands of one person—the chief judge whose job is not as closely linked to the political administration—and putting that authority in the hands of the chairperson, a political actor who will have to decide (or dismiss) cases within 14 days after they are automatically referred to him. In making this change, the Rule is clearly prioritizing speed over fairness.

77. Finally, the Rule limits EOIR's termination authority in most cases other than those involving unaccompanied immigrant children. 91 Fed. Reg. 5,277. This change, again, is not a reflection of the Department's purported efficiency goal. For example, the Rule explicitly prohibits termination of asylum cases to allow those cases to be resolved in the affirmative process, before USCIS. But affirmative proceedings, particularly where they can clearly resolve the issues that exist in a case, are far less resource intensive for the Government and for the noncitizen's counsel alike. Prohibiting the removal of certain cases from a defensive docket even when they can be more efficiently handled on an affirmative one illustrates that the Department is not interested in efficiency as it claims but instead on maximizing the speedy denial of claims.

**Overarching Harms to NIJC's Operations**

78. In addition to the harms to core services described above, the Rule will result in the following cumulative harms.

79. First, the Rule will require NIJC to devote more resources to fewer cases, meaning we will serve fewer clients. There are a few reasons for this impact. First, the fact that most cases will be dismissed automatically means NIJC attorneys will have to devote substantially more time at the front end, often in a 10-day window, to give each case its best possible chance of being considered for full merits review. Without any guidance as to what kinds of issues will receive this treatment, NIJC attorneys will have to do this extra work for all clients. From there, NIJC will invariably need to file substantially more federal appeals as the BIA summarily dismisses appeals without meaningful review. Generally, petitions for review require more resources than BIA appeals. There are some programs, like the NQRP program for representation of people who are not competent to

represent themselves, where the funding for representation does not cover federal court representation. The increase in federal court work will require substantial involvement by other NIJC teams, whose core work will also be diminished by this rule.

80. The timelines that apply to briefing on cases that do get selected for full merits review will also require NIJC to take on fewer cases. Because we cannot know when those briefing schedules will come and because we will have fewer than three weeks to complete them with no realistic option for extensions or pro bono placement, NIJC staff—overall—will be more limited in appellate representation capacity because we will have to preserve capacity amongst staff to address briefing in an unknown timeframe.

81. As mentioned, changes that impair NIJC's ability to serve a high volume of clients will have an adverse impact on funding. NIJC's funding comes from various sources, including private foundations and local (state or county) governments. NIJC routinely reports on the number of individuals we serve, and many funding sources require us to commit to specific numbers of "deliverables," which is generally measured by the number of people we serve. Other funders likewise make decisions regarding the renewal of grants based on performance metrics like the number of clients represented. The Rule jeopardizes these funding streams because NIJC will be unable to represent as many clients and will face various hurdles to avoid summary dismissals.

82. Second, the Rule will drastically impair NIJC's ability to place cases with pro bono attorneys. As mentioned above, the Rule will make appellate representation significantly more compressed, complicated, and burdensome. By eliminating guaranteed consideration of the case on the merits, appellate representation will become simultaneously more complicated and less appealing. The speed and the lack of guaranteed consideration will make it harder to convince pro bono attorneys to take on cases, and it will increase the work that NIJC must do to mentor these cases when they are placed with pro bono partners. Indeed, NIJC has already cancelled a proposed pro bono pilot program in anticipation of this Rule. The project was intended to facilitate access to pro bono representation for asylum seekers whose cases were pretermitted by an IJ without a decision on the merits of their asylum applications. With the shortened window of appeal on the horizon, we determined the time it will take for respondents to contact the pro bono counsel and the counsel to schedule time to prepare and file the notice of appeal would be too short under the 10-day appeal deadline. NIJC and its partner suspended the project before we ever started it.

83. Third, the Rule will burden NIJC's *pro se* services. For example, the different timelines for different kinds of cases will make it much more difficult to advise a person on the process for completing a *pro se* notice of appeal to the Board. The task of completing a notice of appeal is now much weightier, because it could be the only chance a person gets to convince the Board to consider their case. Because of the substantially compressed timeline, we will need to increase our staff devoted to providing *pro se* services just to continue serving the same number of people.

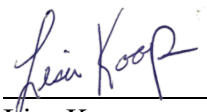
84. Fourth, though the Rule does not directly address motions to remand, it effectively eliminates this important tool used by NIJC to serve previously *pro se* individuals. In the past, motions to remand have been critical for NIJC to build a full record for a previously *pro se,* usually detained, person. For example, we have filed motions to remand to alert the agency to medical conditions that a person could not assert while detained. The timeline for adjudication at the Board all-but guarantees that such efforts will become practically impossible.

85. Fifth, because of the summary dismissal provisions, the Rule converts the BIA into little more than a $1030 tax on accessing the federal courts of appeals, where cases will also be subject to a $600 filing fee. NIJC is focused on serving indigent clients, and this change impairs that core work by making the process of accessing justice financially out of reach for many. It also puts NIJC attorneys in a complex ethical bind: The only way to preserve access to federal court appellate review, which by its nature presents a harder path to victory for clients, is through exhaustion at the Board, which will be largely pointless. And though we continue to have substantial success in getting motions to proceed in forma pauperis granted in the circuit courts, the BIA has begun routinely denying fee waivers, making the financial implications of this process for NIJC's indigent clients particularly pronounced.

86. Finally, and most fundamentally, the Rule undermines the very core of NIJC's work to advance its mission of ensuring that all immigrants receive a fair day in court. NIJC is interested in ensuring that immigrants—whether or not they prevail on their applications for relief—receive notice and a fair opportunity to be heard, as due process and the Immigration and Nationality Act require. By cutting off previously available procedural protections and some substantive avenues to relief, this Rule undermines that work.

87. In sum, these measures significantly curtail the due process rights of NIJC's clients, and harm NIJC's mission of safeguarding those very same due process rights. These changes are made in the purported name of efficiency and finality when, in many ways, they will make the system less efficient. Any purported efficiency "gains" will come at the cost of removing noncitizens who would otherwise qualify for an immigration remedy that Congress created, which would allow them to remain in the United States.

Executed on February 25, 2026 in Goshen, Indiana.



Lisa Koop
National Director of Legal Services
National Immigrant Justice Center
110 E. Washington St., Goshen, IN 46528
111 W. Jackson Blvd, Suite 800, Chicago, IL 60604
Phone: (312) 660-1321
lkoop@immigrantjustice.org

# EXHIBIT

# D

**DECLARATION OF AIMEE MAYER-SALINS**
**MANAGING APPEALS ATTORNEY, DETAINED ADULTS PROGRAM**
**FOR AMICA CENTER FOR IMMIGRANT RIGHTS**

*I, Aimee Mayer-Salins, make the following statements on behalf of Amica Center for Immigrant Rights. I certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C. § 1746.*

Our Organization

1. My name is Aimee Mayer-Salins, and I am the Managing Appeals Attorney for the Detained Adults Program at Amica Center for Immigrant Rights (Amica Center). Amica Center is based in Washington, D.C., and provides legal services to immigrants across the United States. Our mission is to confront the impact that the unjust immigration system has on our clients and communities through direct legal representation, know your rights programs, pro se support, impact litigation, education, and client-centered advocacy.

2. After our start as a project within the Washington Lawyers Committee for Civil Rights and Urban Affairs, Amica Center became an independent non-profit in 1999. Over the decades, our geographic footprint has expanded from representing people solely in the Capital Region to working with clients from the Capital Region detained throughout the country.

3. The Executive Office for Immigration Review's (EOIR) interim final rule (IFR) for Appellate Procedures for the Board of Immigration Appeals (BIA) would without a doubt result in a significantly reduced ability to perform core Amica Center services, including representing clients, taking new cases, and supporting pro se litigants.

4. Our BIA practice cuts across all three of our core programs, most notably our Detained Adult Program (DAP) and Immigration Impact Lab (Lab), but also our Detained Unaccompanied Children (DUCs) program.

5. DAP represents detained immigrants before the immigration courts, the BIA, federal district courts, and the federal circuit courts; provides robust mentoring to pro bono attorneys we match with detained immigrants; and conducts know your rights programs about the Immigration Court, the BIA, and the general deportation process so that individuals can make more informed decisions about their cases.

6. Lab specializes in appellate and impact litigation, bringing cases to effect widespread positive change for immigrants. A portion of Lab's work is representing clients before the BIA, in addition to mentoring and co-counseling BIA appeals with pro bono attorneys.

Our Work on BIA and Circuit Court Appeals

7. The lion's share of Amica Center's overall work is supporting people in a defensive posture before EOIR, either through full representation or pro se support. In our organization of roughly 120 staff, approximately 110 of our employees do client-facing work. In calendar year 2025, Amica Center represented approximately 820 clients who were in active removal proceedings. We focus on representing people who are currently detained in ICE or Office of Refugee Resettlement custody. Over the past two years, Amica Center has represented approximately 200 clients before the BIA, the vast majority of whom are detained. We currently have 19 open petitions for review (PFR) before the circuit courts. In addition, we provide Know Your Rights presentations, pro se packets, and other resources addressing BIA appeals and PFRs to support the many detained noncitizens forced to proceed without counsel in immigration proceedings.

8. At Amica Center, most attorneys currently spend 25 to 35 hours on a BIA appeal, though this varies depending on the complexity of the case, the makeup of the record, the experience of the attorney, the attorney's familiarity with the particular issues on appeal, and whether a reply brief is necessary due to DHS misstating the facts of the case or the law.

9. A BIA appeal is substantially less work for staff than a PFR. A BIA appeal typically requires a short notice of appeal form, a fee waiver request form, and one brief that is 30 pages or less. The notice of appeal form is a three-page form mostly consisting of questions that can be answered by checking a box; it requires a short statement of the reasons for appeal but is designed to be very quick and easy to complete. The fee waiver form, which requires a signature from the noncitizen, is a two-page form detailing expenses and income. The brief is directed at adjudicators who are familiar with immigration law and is limited to issues within the agency's purview. Moreover, there generally are few jurisdictional barriers or other hurdles that need to be briefed beyond the substantive issues at play in the appeal. There also is an automatic stay in effect during a merits appeal, so staff do not need to worry about monitoring an imminent removal during the course of the appeal and working with the agency to try to prevent removal. A BIA appeal accordingly requires much less research and drafting time from our staff in comparison to a PFR.

10. A PFR, on the other hand, is a much more complex endeavor. When all is said and done, hundreds of hours of staff time can go into one PFR. First, staff must assess the viability of a PFR. In addition to the immigration law knowledge required, this assessment requires an in-depth understanding of constantly shifting jurisdictional bars, venue considerations, timeliness issues, and circuit court procedure. At present, most of our staff do not have this in-depth knowledge of jurisdictional bars, venue considerations,

timeliness issues, and circuit court procedure. Instead, a small cohort of attorneys handles this initial assessment, and significant training time would therefore be needed to increase the number of staff who can complete an initial assessment.

11. Once Amica Center determines a PFR is viable, we counsel a client on their chances of success and likely prolonged detention during the pendency of the PFR and any proceedings on remand. If the client decides to move forward, preparation of the initial filings for the PFR is a hefty task that includes the PFR itself, an in forma pauperis motion, corporate disclosure statements, entries of appearance, and case docketing sheets. In addition to these documents and because we represent detained individuals, in nearly all of our cases, we must file a motion for a stay of removal. Amica Center must often move for a stay on an emergency basis while staff plead with ICE for information regarding when a client might be removed. Stay motions require staff to understand circuit court local rules as well as substantive legal requirements to be granted a stay. Because one of the prongs that the circuit courts consider is the likelihood of success on the merits, staff must also put together a robust argument about the substance of their appeal on a very condensed time frame.

12. All of this happens before the circuit court orders any briefing. In a typical PFR, there will be a detailed opening brief and a reply brief, plus responses to any government motions. These briefs all require much more research and drafting time from our staff than a BIA brief would since (1) staff must write the briefs for judges who are generalists and less well-versed in immigration, (2) staff are often analogizing to other areas of law with which the judges may be more familiar but with which our staff are not as familiar, (3) the briefs are typically longer and more involved than agency level briefing, and (4) staff must address numerous hurdles that are not present at the BIA level, such as issues involving venue, timeliness, and jurisdiction.

13. Then there is oral argument preparation. In the circuits where we most often practice, the courts order oral argument in nearly all counseled immigration cases. This is a huge contrast from the BIA, which almost never schedules oral argument. Preparing for oral argument is an enormous time investment. Staff preparing for oral argument, particularly if they are new to oral argument, will often spend 25–35 hours on this aspect of the case alone.

14. Additionally, staff who are new to circuit court appeals need to learn the rules of appellate procedure, the local rules and standing orders, how to use the ECF system, how to format briefs differently, and for some circuit courts, printing and binding, all with very little paralegal support.

15. All of this means that supervising attorneys and managers also spend a lot of time on tasks like helping junior staff strategize, reviewing draft briefs, and mooting attorneys. This also means PFRs take a lot of time away from other managerial and supervisory duties.

16. While Amica Center maintains a robust PFR practice focused on cases with strategic impact, our organization faces barriers to expanding services to more of our clients who might benefit from petitioning for review.

17. Our 8 Lab attorneys are trained to litigate PFRs and have PFR experience, but the vast majority of Amica Center's attorneys work within DUCs or DAP. DAP maintains an appeals squad — a rotating professional development opportunity for appellate skills — that currently includes 5 employees. DAP has approximately 10 employees who have worked on at least one PFR, most of whom have worked on no more than two PFRs. DAP has not expanded PFR training beyond our 5-person appeals squad due to competing needs to meet grant deliverables and represent clients at the agency level. Similarly, very few of DAP's paralegals have been trained to support on circuit court level work.

Our Funding

18. In addition, some of DAP's grants do not permit us to bill for federal court representation, for example, our National Qualified Representative Program (NQRP), which serves individuals designated incompetent by an Immigrant Judge (IJ). Historically, NQRP cases have often been reversed on appeal because IJs receive very little training on disability law or mental illness. Currently, if Amica Center pursues a PFR for an NQRP client, such work would usually be unfunded, although we can sometimes, in relatively rare situations, find a grant from a private foundation. Though other grants do allow for billing with PFRs, taking a PFR makes it much harder to meet grant deliverables. For example, our grant from the Maryland Legal Services Corporation — which counts deliverables by matter (a particular application or advocacy step taken by the legal representative) — requires our largest bucket of deliverables to be representation in administrative proceedings.

19. Generally, our grants do not function in the way that hourly billing may function at a law firm. Amica Center's grants are either structured based on the number of separate matters or the number of individuals served. For those structured by number of matters, PFRs are an inefficient way of meeting deliverables because they require much more attorney time compared to a matter that does not require multiple briefs and motions, as well as a likely oral argument. In comparison, some of our other tasks that qualify as a matter, such as an Employment Authorization Document application or a release request, take up significantly less time. A PFR is one of the "heftier" lifts in our practice in terms of time required, particularly attorney time.

20. For grants based on people served, it is very difficult to justify PFRs. While our grant funding from the D.C. government allows for PFRs, it generally incentivizes taking on more clients. In order to meet our grant deliverables, we must prioritize serving 3 separate clients in agency level proceedings over representing a single client in proceedings before the IJ, then the BIA, and then a circuit court. The attorney admissions fees required for each attorney to practice in each federal court exacerbate this disincentive.

21. One result of this IFR is that Amica Center will be pressured to pursue more PFRs to protect our clients' rights. In theory, Amica Center would be able to handle more PFRs, but doing so would come at the cost of serving fewer clients overall. Amica Center would need to either find additional funders or hope existing funders are willing to adjust deliverables. Of course, if this IFR did not go into effect, new funding could instead be allocated to expanding services rather than accommodating new rules at the BIA.

Pro Se Litigants

22. The IFR renders BIA appeals, and by consequence PFRs, impossible for detained individuals proceeding pro se. As ignored by the IFR, detained people have no access to the internet or EOIR Courts and Appeals System (ECAS) online filing. They also have no way to listen to the Digital Audio Recording (DAR) of their hearings or the IJ's oral decision. At most of the detention facilities we serve, it takes more than 10 days for a detained person to receive a piece of mail (including a written decision from an Immigration Judge), let alone to fill out a Notice of Appeal (NOA) and mail it back to the BIA in time.

23. Under the IFR, a pro se detained individual would not even know about a written decision from an IJ before the appeal window closes. For oral decisions, if a pro se litigant — on the same day as their merits hearing — miraculously drafts and sends an NOA on the same day of the oral decision, the NOA would frequently not arrive at the BIA on time. This miraculous scenario presumes that the pro se litigant is functionally literate; speaks English; does not have disabilities that prevent them from filling out the NOA without accommodations; can convince the detention facility staff to give them a copy of the necessary forms; and can pay for an envelope and postage from their remaining commissary fund. Even if all of these things were to occur, overwhelmed facility staff must timely take the prison mail to the USPS box or office and USPS must deliver the mail in a timely manner. For a detained individual with counsel, Amica Center frequently sees mail take 10–14 days to be *received* by the client. For nearly all pro se, detained litigants, the NOA would not be timely received by the BIA.

24. Although the IFR allows a 30-day NOA deadline for certain asylum appeals, it is unclear how the mixed deadlines for asylum appeals would work in practice. Nearly all asylum appeals have multiple issues at play or a simultaneous appeal of other claims, such as

withholding of removal, Convention Against Torture protection, or cancellation of removal. Even if the IFR were to clarify which deadline controls for appeals involving multiple issues or forms of relief, it would nonetheless be difficult for pro se litigants to understand the different deadlines. To ensure a timely appeal, or to bypass any errors in the BIA clerk's office regarding appeal deadlines, Amica Center would advise pro se litigants, and even litigants with counsel, to simply assume the deadline is 10 days in all cases.

25. The effect of the IFR on nearly all pro se individuals is that the IJ is the only decision-maker who will consider their case. The practical effect — given that the current administration has fired experienced IJs in favor of "deportation judges" and exerted enormous pressure on IJs to rule against clients regardless of the facts of their case or even the applicable law — is that pro se litigants will never receive any kind of due process. Most pro se individuals, upon learning this, would choose a stipulated deportation instead of languishing in harsh detention conditions with no hope of a neutral arbiter.

New Representation

26. Prior to this IFR, an individual who proceeded pro se before an IJ had slim chances of securing an attorney before the BIA. Amica Center's waitlist, for example, is quite long, and outside of Amica Center, attorneys are also in short supply. If this IFR goes into effect, it would be nearly impossible for an attorney who did not represent the client during IJ-level proceedings to take on representation before the BIA.

27. In the IFR's permitted time period, an attorney would have no meaningful way of knowing what happened before the IJ. The attorney, therefore, would not be able to competently represent their client on appeal. Due to funding changes, Amica Center now less frequently represents a client before the BIA without having represented that client before the IJ. Regardless, when Amica Center *is* retained to represent a new client at the BIA stage, the assigned attorney must take several steps to access the recording of the proceedings before the IJ, which are critical to the preparation of a NOA. Digital Audio Recordings (DARs) can only be downloaded from ECAS by the attorney of record. A newly-retained attorney must first procure a signed EOIR-59 form (Certification and Release of Records) and then negotiate with EOIR staff over releasing the DAR with an EOIR-59 alone. Court staff will typically instruct practitioners to download the DAR from ECAS, and practitioners usually must repeatedly explain doing so requires entering an appearance, which EOIR does not permit for completed cases absent a motion or the appeal itself.

28. This compressed timeline is particularly challenging given that an NOA can no longer be bare bones since under the IFR, only a very small portion of appeals under the IFR would receive an opportunity for briefing. In addition, due to the significant need and because DAP only has 3 intake paralegals, the wait time for an intake with Amica Center is often

more than 10 days. This means that Amica Center likely would not learn about the case before the appeal deadline has passed.

Case Management

29. Even for cases where Amica Center provided representation at the immigration court level, the IFR creates serious hurdles to case management for staff. As is, Amica Center often asks for a 21-day briefing extension because of competing case deadlines or pre-planned leave. Requesting an extension is crucial to competent and zealous representation as well as preserving Amica Center's limited resources. Attorneys and paralegals must review the record below, meet with and counsel the client, research the law, draft the NOA packet and briefs, receive supervisor feedback, and finalize the filing. Our staff also receives competing deadlines from federal courts, immigration courts, or even the BIA itself. Although the IFR allows for extensions based on the illness or death of the client or a family member, it does not provide for any extensions based on attorney illness. For litigants with representation, attorneys carry primary responsibility for the filing.

30. Given the constraints on consulting with detained clients, Amica Center would need to overhaul our appeals procedures to a more resource-intensive model to make appeals to the BIA and therefore a circuit court feasible. To start, prior to a client's merits hearing or receipt of the IJ's decision, staff will need to know whether a client would like to appeal. Staff would also need to know in advance if a client would like to appeal any pretermission, given that some IJs grant motions to pretermit so quickly there is not necessarily interceding time to consult with the client. When a client is detained, an attorney must schedule calls through the facility, and many facilities have very limited availability for attorney calls due to overcrowding and insufficient staffing. Securing a private call with a client frequently takes a week or more.

31. Amica Center attorneys would need to start preparing appeal packets before a client has an individual hearing. Simply securing a client signature on a fee waiver form often takes more than 10 days when a client is detained. Once the IJ issues a decision, staff would need to set aside all other work to prepare a robust NOA since very few BIA cases would include an opportunity for briefing. Staff would also need to immediately start preparing for a PFR given that the IFR provides for summary dismissal within 15 days. This is particularly important given that ICE is now often removing individuals within days of a BIA decision. For example, in a recent case, the BIA dismissed an appeal on January 21, 2026. Because the case involved a paper ROP, the decision was mailed out that day but did not promptly arrive at Amica Center offices. Amica Center staff only knew a decision had been issued due to regular case status checks using the automated case information system. The client was removed to Honduras on February 3, 2026, before Amica Center staff had seen the actual agency decision.

32. These changes in procedures will require significant training for staff, especially staff who have less experience with circuit courts. Because staff are responsible for more than one case, it would be a significant hardship to balance competing government-created emergencies across the organization. For third country removals, attorneys often have only hours to respond, and if DHS files a motion to pretermit, an IJ may grant the motion within a day. It would be impossible to meet our grant deliverables if we dramatically reduced caseloads or constantly reassigned cases to attorneys unfamiliar with the procedural history so that an attorney could address the series of emergencies this IFR creates.

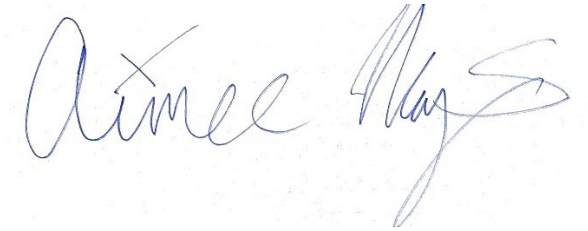
33. If the IFR goes into effect, Amica Center will no longer be able to place BIA appeals with pro bono attorneys. There would not be enough time for our organization to identify a firm and for a firm to staff the matter, run conflict checks, and review basic training on BIA practice. There certainly would be no time to complete the appeal work itself.

34. The IFR would also impact DUCs clients both directly and indirectly. In addition to the challenges posed by quick and potentially summary dismissals at the BIA in our child clients' own cases, children also face dire consequences when their parent or caregiver is unable to access meaningful due process for their own protection claims. A child who is eligible for Special Immigrant Juvenile Status (SIJS), for example, may be unable to seek protection from abuse, abandonment, or neglect if the parent or caregiver in whose care they are living is ordered removed after losing their own immigration case. We commonly see children whose parents, particularly mothers, have strong asylum or other protection-based claims based on the same domestic violence that caused the child to flee their home country nonetheless be unable to obtain pro bono or low bono legal assistance and forced to move forward pro se. Despite having strong claims, caregivers in this situation rarely win their cases and may be forced to make seemingly impossible choices involving separation from their children. Not only is this situation retraumatizing for children who once again fear not only for their own safety and stability but also potential separation from their caregivers, it can functionally prevent children from accessing the legal protections to which they are entitled.

35. This IFR would be devastating to Amica Center's mission to confront the impact that the unjust immigration system has on our clients and communities, and to Amica Center's current and future clients. Litigants who are detained, children, proceeding pro se, have disabilities, speak rare languages, or have minimal schooling will be disproportionately impacted. With the current administration's firing of BIA judges, few of our clients had hope of due process before the BIA. Now, with the IFR, merits review before the BIA would be non-existent for nearly all of our clients. Moreover, these changes will cause extreme prejudice to our clients and drain organizational resources. The IFR would nullify virtually any benefit the BIA could provide our clients while simultaneously weaponizing its authority with a domino effect on our IJ and circuit court litigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 24th of February 2026, in Newton, Massachusetts.



Aimee Mayer-Salins
Managing Appeals Attorney
Detained Adult Program
Amica Center for Immigrant Rights
1025 Connecticut Ave NW Ste. 701
Washington, DC 20036
Tel: (202) 790-8493
Fax: (202) 331-3341
aimee@amicacenter.org

# EXHIBIT

# E

**DECLARATION OF LAURA ST. JOHN,**
**FLORENCE IMMIGRANT & REFUGEE RIGHTS PROJECT**

1. I, Laura St. John, make the following declaration based on my personal knowledge and declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct.

2. I am the legal director of the Florence Immigrant & Refugee Rights Project ("Florence Project" or "FIRRP"). I have practiced as an immigration attorney with FIRRP since March 2011.

3. Founded in 1989, FIRRP is a non-profit organization dedicated to providing free legal and social services to the thousands of adults and children in immigration custody in Arizona. As the only such organization in Arizona serving people in immigration detention, our vision is to ensure that every person facing removal proceedings has access to counsel, understands their rights, and is treated fairly and humanely.

4. I am writing to address the substantive harm that FIRRP will experience because of a new Rule issued by the Executive Office for Immigration Review (EOIR), Appellate Procedures for the Board of Immigration Appeals, 91 Fed. Reg. 5267 (issued Feb. 6, 2026; effective date March 9, 2026) (hereinafter, "the Rule").

**My Professional Background and Role at the Florence Project**

5. I have practiced as an immigration attorney in Arizona with FIRRP for nearly fifteen years. I have worked as staff attorney, managing attorney, and legal director at FIRRP, in all roles providing free legal services to adults who are facing removal and detained in Immigration and Customs Enforcement ("ICE") custody in Florence and Eloy, Arizona. I have served as legal director since December 2015.

6. As legal director, I manage FIRRP's legal advocacy and our appellate practice before the Board of Immigration Appeals ("BIA") and Ninth Circuit Court of Appeals. With others, I also supervise staff and direct the provision of services across our children, adult, and social service programs. I work particularly closely with our programs serving detained adults, mentoring staff in cases that raise complex or novel issues in the areas of asylum, withholding of removal, and Convention Against Torture protections; representing individuals with serious mental illness; the intersection between criminal and immigration law; and major due process violations.

7. FIRRP is also widely known for developing resources specifically targeted to assist *pro se* respondents in immigration proceedings. Florence Project *pro se* guides are distributed in detention centers throughout the country. In my role as legal director, I oversee staff and contractors working to update and develop these materials.

8. I also provide support to train and supervise Florence Project staff and pro bono attorneys handling a wide variety of immigration matters. Additionally, from January 2017 through

January 2020, I served the Ninth Circuit Court of Appeals as an Appellate Lawyer Representative. In that role, I began to serve as an immigration mentor to pro bono attorneys before the Ninth Circuit. I also helped develop a pilot pro bono program to supplement the Court's traditional pro bono program by expanding pro bono placement opportunities with skilled immigration practitioners. Such a pilot was necessary because of both the complexities of immigration law and the high rate of non-representation of immigration petitioners. I have also served on the Ninth Circuit's *Pro Se* Committee, which works to improve access to justice for parties proceeding *pro se*.

**Florence Project's Mission and Scope**

9. FIRRP's mission is to provide free legal and social services to detained adults and unaccompanied children facing immigration removal proceedings in Arizona. With no public defender system in immigration removal proceedings, the vast majority – between approximately 69% to 86% of all detained noncitizens nationally – go unrepresented in immigration court. [1] FIRRP works to address this inequity both locally and nationally. FIRRP's vision is to ensure that all immigrants facing removal have access to counsel, understand their rights under the law, and are treated fairly and humanely.

10. To that end, FIRRP provides high quality immigration legal services and education to thousands of people in DHS custody in Arizona every year. Despite the termination of the Legal Orientation Program (LOP), a program previously funded by EOIR, FIRRP legal staff provide Know Your Rights legal presentations and conduct individualized orientation, education, and pro bono screening for detained individuals under provisions allowing for such legal services in the Performance Based National Detention Standards ("PBNDS"). Our attorneys also annually represent hundreds of clients who are held in isolated detention centers in Eloy and Florence, Arizona before the EOIR and the BIA.

[1] The ground-breaking 2015 report on access to counsel in immigration court by Ingrid Eagly and Steven Shafer established that, nationally, 86% of detained individuals went without counsel. *See* Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Pa. L. Rev. 1, at 8 (2015), https://scholarship.law.upenn.edu/penn_law_review/vol164/iss1/2. A follow up report also from Eagly, Shafer, and Renee Mouton found some increases in representation rates among detained people nationally, but notes that many of these figures were due to the increase in publicly funded representation projects (which do not exist in Arizona) and decreased numbers of people who complete their immigration cases while detained, as is the norm now. *See* Ingrid V. Eagly, Steven Shafer, & Renee Moulton, *Access to Counsel in Immigration Court Revisited*, 111 Iowa L. Rev. 1, at 26 and 28 (2023), ILR-111-Eagly. In addition, since approximately 2019, there have been significant questions as to the declining integrity of the data that EOIR is making publicly available regarding immigration courts, which includes the data sets used to determine representation rates. *See* Alison Griffith, *Disturbing Lack of Transparency Implicates Government Data Reliability*, AILA Blog (Nov. 15, 2019), https://www.aila.org/blog/disturbing-lack-of-transparency-implicates-government-data-reliability/. Finally, since the beginning of 2025, the number of detained immigrants nationally has increased from roughly 30,000 in 2015 to nearly 65,000 (with some reports showing up to 80,000) in 2025. *See* Immigration Detention Expansion in Trump's Second Term, American Immigration Counsel (Jan. 2026), available at: immigration-detention-report.pdf. We too have seen an increase in adults in detention in Arizona, but due to limited funding, FIRRP is unable to increase our staff to keep pace with the increased demand for representation of detained individuals and, indeed, has actually had to cut our staff as a result of the elimination of federally funded legal programs like the Legal Orientation Program.

11. FIRRP also has a pro bono program that places dozens of cases with volunteer attorneys before the immigration court, BIA, and the Ninth Circuit Court of Appeals. In recent years, FIRRP has placed on average between 30 to 50 matters with volunteer attorneys, with approximately one-quarter of those cases or more involving appeals before the BIA.

12. Finally, since 2017 FIRRP has provided legal education, accompaniment, and direct representation to migrants in Nogales, Mexico. We expanded that program in 2020 due to Arizona's inclusion in the so-called Migration Protection Protocols ("MPP") and other shifts in border policy. The vast majority of individuals we encountered who were enrolled in the MPP faced unique due process complications litigating their claims from Mexico, with a significant number needing support with appeals and motions to reopen or remand. In January 2025, the Trump administration announced its intent to restart the MPP and ongoing discussions with the Mexican Government regarding reinstatement of that program suggest that a restart may be imminent.

13. FIRRP has a staff of more than 130 people, including attorneys, social workers, and support staff. They are dedicated to FIRRP's core work of providing legal and social services to the thousands of detained adults and children facing removal in Arizona. Our staff are based in Phoenix, Tucson, and Florence, Arizona. FIRRP attorneys also serve as appointed counsel for individuals deemed mentally incompetent to represent themselves in removal proceedings, maintaining a caseload of about one hundred such cases.

14. In 2024, the last year for which we have complete data, FIRRP provided legal services, including legal orientation and education, to more than 12,500 people. In 2025, FIRRP clients were nationals of over 80 countries and spoke more than 35 languages. With such a broad client base consisting almost entirely of detained individuals subject to proceedings before EOIR and the BIA, this Rule will result in an inability to perform FIRRP's core services and will have a tremendously detrimental impact on the people we serve.

**Florence Project's Core Service Areas**

15. FIRRP's core services are dedicated to providing free, direct legal and social services for detained adults and children in Arizona. There is no public defender in immigration courts and few detained people can afford or access private counsel. Thus, since our founding in 1989 FIRRP's core work has focused on two dual central goals. First, FIRRP provides critical legal education and orientation services for people who are detained and do not have counsel. This includes Know Your Rights (KYR) presentations, workshops diving deeper into forms of legal relief, creation of *pro se* resources to support individuals without counsel, and individualized *pro se* support and orientation to those without counsel. Simultaneously, FIRRP is committed ensuring that people in detention have the opportunity to be represented by an attorney, regardless of their ability to locate or pay private counsel. As such, FIRRP attorneys directly represent both children and adults who are detained and facing deportation in their removal proceedings before EOIR and the BIA. This second goal of access to full representation for all also means that one of FIRRP's related core functions is to facilitate representation of detained adults and

children by pro bono attorneys, by recruiting, training, and mentoring external pro bono attorneys. In total, 90 to 95% of FIRRP's core work is focused on removal defense and related matters before EOIR and the BIA; where our work focuses on relief before United States Citizenship and Immigration Services (USCIS) it is always on behalf of a person who has or had concurrently pending proceedings before EOIR. The remaining 5-10% of our legal practice is focused on supporting clients with legal services and representation in federal court litigation on immigration related matters before the Ninth Circuit and petitions for a writ of habeas corpus and other immigration related federal litigation. A very small portion of our time is devoted to other forms of national immigration advocacy.

16. To understand the depth to which the Rule will interfere with FIRRP's core services, it is important to understand FIRRP's basic organizational structure. FIRRP has four broad programmatic areas each tasked with providing direct legal services to our clients: the Adult Program, the Children's Program, the Integrated Social Services Program, and the Advocacy Program.

17. The Children's Program focuses on children who either are detained in ORR custody or long-term foster care while facing removal proceedings or were previously detained in ORR custody prior to being reunified with sponsors. Although the unaccompanied children we serve may qualify for relief that they must pursue before USCIS, they simultaneously face removal in immigration courts. In 2024, the Children's Program served over 10,000 unaccompanied children in Arizona, providing full representation to over 1,000 unaccompanied minors. The Children's Program includes a team dedicated to placing these cases with external pro bono attorneys, including for BIA appeals.

18. The Adult Program primarily serves adults who are detained in ICE custody in the three immigration detention centers located in Florence and Eloy, Arizona. Individuals in these detention centers attend hearings in these remote facilities or by video with Immigration Judges (IJs) all over the country. In 2024, the Adult Program provided free legal services to nearly 2,500 adults in ICE custody, including full representation to nearly 300 adults facing removal, more than 100 of whom had been deemed mentally incompetent to represent themselves due to a serious mental health condition. FIRRP attorneys are appointed in this later set of cases by EOIR to serve as a qualified representative under the federal National Qualified Representative Program ("NQRP") and pursuant to the permanent injunction in the *Franco-Gonzalez* litigation. [2] The Adult Program has the following cohorts.

    a. *Pro Se* Cohort: Legal staff in the *pro se* cohort offer legal orientation and education services as well as other forms of *pro se* support to individuals who do

[2] *Franco-Gonzalez v. Holder*, No. CV 10-02211 DMG, 2013 WL 8115423 (C.D. Cal. Apr. 23, 2013) (mandating appointment of a qualified representative for any noncitizen who is unrepresented, detained in ICE custody in Arizona, California, or Washington, and who an IJ finds to be mentally incompetent to represent themselves as a reasonable accommodation under Section 504 of the Rehabilitation Act). The NQRP is a federal program that emerged after the *Franco* permanent injunction that extended the accommodation of a qualified representative beyond the geographic scope of the *Franco* injunction.

not have counsel while facing removal from while in ICE custody. This includes providing group KYRs; one-on-one education in immigration law and procedure, including appellate procedure; *pro se* workshops on various forms of relief; assistance gathering, understanding, and translating documents, including assistance interpreting and understanding forms related to the BIA appeal process; and developing and distributing specialized *pro se* guides.

b. Direct Representation Cohort: The direct representation cohort provides free, in-house representation to detained individuals in defensive removal proceedings, including BIA appeals. This cohort also does a limited amount of non-detained full representation, but only for individuals who were previously detained where FIRRP was appointed as representation under *Franco-Gonzalez* or the NQRP.

c. Pro Bono Team: FIRRP's Adult Pro Bono Team places and mentors cases with outside pro bono counsel. Because there are relatively few pro bono resources in Arizona, FIRRP has a long history of cultivating pro bono resources from national pools to help support on BIA appeals. This not only serves to maximize the pool of pro bonos available for representation – serving FIRRP's core work and mission – but also helps mitigate the legal and due process errors that arise when so many individuals with valid legal claims must go forward in their removal proceedings *pro se*. In 2025, more than one-third of the cases our adult pro bono team placed and mentored were BIA appeals.

d. Border Action Team: This cohort delivers legal services and orientation to migrants in Mexico. The core work of the team reflects FIRRP's broader core work of providing legal education and orientation to ensure people understand their rights, have access to counsel, and are treated fairly and humanely in our immigration system. This team provides education and orientation services, as well as technical assistance to people who are at the border seeking information regarding immigration procedures. When MPP was active, the Border Action Team had to support individuals with BIA appeals arising from that program.

19. The Integrated Social Services Program works closely with the Adult and Children's Programs to provide critical trauma-informed case management. FIRRP social workers focus on needs assessment and service planning; provide critical support to legal teams in developing a trauma-informed approach to their legal cases; and provide specialized services to help FIRRP identify and provide ongoing support to clients who are experiencing serious mental health conditions. Because most clients struggle with the experience of detention, our social workers support clients with psychoeducation and trainings on situation specific coping mechanisms. They also train and support FIRRP legal staff on how to work with suicidal clients or clients experiencing serious mental health conditions.

20. The Advocacy Program works closely with legal and social services staff across FIRRP's program areas. Staff in the advocacy program support FIRRP's mission and vision by representing clients in strategic federal court litigation, including petitions for review

("PFRs") before the Ninth Circuit Court, BIA appeals of particularly high importance, potential impact, or complexity, and strategic district court litigation, including petitions for writ of habeas corpus and other immigration related district court litigation. Additionally, the Advocacy Program supports legal programs by mentoring and providing technical support to staff on cases that raise particularly complex or novel legal issues, particularly when such cases are on appeal to the BIA. Currently, FIRRP has just two attorneys who specialize in representing cases in PFRs before the Ninth Circuit.

21. Across programs, FIRRP attorneys routinely provide legal services to individuals who are pursuing appeals before the BIA, including both full representation and *pro se* orientation and support. FIRRP attorneys routinely represent dozens of clients before the BIA and provided *pro se* support to many more individuals pursuing BIA appeals. In addition, while numbers fluctuate from year to year, FIRRP's pro bono teams can place and mentor anywhere from 5 to more than 30 BIA appeals per year; 12 such cases were placed in 2025. A significant number of the BIA appeals we place involve individuals who were previously *pro se* before the immigration court.

22. For individuals pursuing *pro se* appeals, FIRRP explains appellate procedure, helps people file notices of appeal, prepares *pro se* motions, including motions for fee waivers, and explains the content of transcripts or written decisions from the IJ to help people understand their options. This service is particularly critical when individuals speak a language other than English or are not literate. This work also includes helping *pro se* respondents navigate and manage complications that arise due to delays in mail processing that routinely arise for detained individuals.

23. In sum, all of the work described above is centered around helping people have full and fair access to a meaningful process before EOIR, including before the BIA. The Rule fundamentally and directly interferes with that core work. It effectively eliminates access to appellate merits review for large swaths of respondents, particularly detained *pro se* respondents, and it undermines the basic principles of due process that require adjudicatory bodies to provide individualized, full and fair consideration to the claims before. Because the Rule anticipates default summary dismissal of all appeals without full, individualized consideration on the merits, it places an increased burden on FIRRP staff to try to do more in initial Notice of Appeal filings in much less time. For those cases that do get full briefing, the Rule also limits our capacity to support on appellate briefs to the BIA. The timelines created by the Rule – from the deeply reduced Notice of Appeal period, to the extremely abbreviated review, to the dramatic reduction of extension requests in those few cases where briefing is allowed – will require significant shifting of resources and training and, ultimately, will inevitably result in FIRRP being able to help fewer people.

**The BIA Rule Irreparably Harms FIRRP and Our Clients**

24. EOIR's new Rule will cause irreparable harm to FIRRP's ability to perform our core services by fundamentally interfering with our ability to provide meaningful free legal and social services to detained adults and children facing removal proceedings who want

to seek appeal of an IJ decision. The Rule fundamentally alters BIA procedures in ways that severely undermines fundamental fairness and access to counsel, thus directly interfering with FIRRP's core work.

25. In addition to harming our staff and our ability to conduct our core work, the Rule will inevitably cause massive injustices and will result in the wrongful removal of individuals who otherwise would be eligible for relief or protection. Nowhere will this Rule do more harm or be more prejudicial than towards detained *pro se* litigants who FIRRP serves. It will create a massive increase in the need for rapid technical assistance to *pro se* individuals attempting to appeal an IJ decision, which in turn will place great strain on both FIRRP's staff and those we serve. It will also fundamentally alter FIRRP's ability to even place and mentor BIA appeals with external pro bono counsel, almost to the point that such placement will become impossible. Finally, even at its least punitive scenario, for individuals who have already retained highly experienced and committed FIRRP in-house counsel, who continue to represent their clients after the IJ decision, the Rule creates massive barriers for FIRRP counsel to adequately prepare and competently present complex appellate arguments.

26. Additionally, the Rule forces FIRRP to fundamentally reorient our core work regarding appellate practice to substantially increase capacity to seek review before the Ninth Circuit to be able to respond to the anticipated significant increase in PFRs that will inevitably be necessary if this rule takes effect. On the whole, this Rule will result in major disruption to FIRRP's core services.

*Truncated 30 Day Comment Window*

27. EOIR issued the Rule as an interim final rule on February 6, 2026, effective March 9. That brief implementation delay is not sufficient to allow meaningful engagement through notice and comment. FIRRP has specialized knowledge and expertise in these matters but was not given an opportunity to provide that expertise prior to the Rule's implementation. FIRRP is attempting to prepare a comment to the Rule in which we hope to be able to raise the substantial due process concerns that the Rule presents, but the decision to present the Rule as an IFR means that our comment will not be considered at all before the Rule takes effect. Given this limited utility and the abbreviated timeline, FIRRP remains unsure whether drafting a thorough comment will be feasible.

28. Even a brief review of this Rule, however, makes it clear that EOIR's consideration of critical facts about realities on the ground has been woefully inadequate. For example, in justifying the decision to dramatically shorten the notice of appeal window from 30-days to only 10-days, the Rule relies on the 2021 introduction of an electronic filing system. Yet the Rule does not acknowledge that there are tens of thousands of people detained in ICE custody who do not have any access to e-filing or the internet and still very much rely on mail systems that suffer from serious delays. Indeed, there are only 17 mentions throughout the rule and its justifications of the words "detain", "detention", or "custody" – 9 of those pertain to the Rule's decision to eliminate staggered briefing for non-detained cases, 7 are about the Board's processing of custody appeals, and 1 relates to the

duty to complete biometrics for detained individuals. None engages with the impact this rule will have on detained immigrants facing deportation and for organizations like FIRRP that are representing them.

29. For the purposes of "streamlining procedures" and clearing the "lengthy appeal backlog," this Rule unjustifiably curtails due process and access to counsel while further politicizing and undermining the legitimacy of the BIA. For many, the Rule will result in wrongful removal without a meaningful opportunity to be heard. As an organization whose core work is dedicated to providing legal services to countermand that very result, the Rule's disregard for the importance of meaningful access to careful individualized review of judicial decisions cuts at the core of our work.

30. The Rule will create these results based on numerous substantive changes, all of which will adversely impact FIRRP's core services, as discussed in turn below.

*Cutting the Notice of Appeal Window From 30-Days to 10-Days*

31. One of the major changes in the Rule drastically shortens the filing deadline for a Notice of Appeal from 30 to 10 days after the IJ issues a final order in most cases. This change will wreak havoc on detained people's ability to appeal an adverse IJ decision and result in wrongful removals without any meaningful appellate review. This portion of the Rule will result in massive due process violations, particularly for detained *pro se* respondents who will be unable to meet the BIA's new filing deadline due to the myriad logistical barriers created by ICE's conditions of confinement. Additionally, the 10-day filing deadline, particularly when considered with other changes to BIA processing, will dramatically undermine access to counsel in BIA appeals by making it significantly more difficult to find or retain appellate counsel on the truncated timelines all while exponentially increasing the amount of work needed in that 10-day period.

32. To the extent that the Rule applies the 10-day period to some, but not all denials of asylum, the Rule is also likely to cause a great deal of confusion, particularly for *pro se* individuals who will have increased difficulty understanding when they have 30 days, or just 10-days, to appeal. The Rule applies the 10-day deadline to only a subset of reasons for an asylum denial, those listed under 8 U.S.C. § 1158(a)(2)(A), (B), and (C). All other asylum denials, in theory, should receive a 30-day filing window. This is going to create a great deal of confusion for at least two major reasons:

33. First, the Rule states that §1158(a)(2)(A) applies to denials of asylum "where the [noncitizen] may be removed to a country other than their country of nationality pursuant to a bilateral or multilateral agreement commonly referred to as an Asylum Cooperative Agreement (ACA)." 91 Fed. Reg. 5272. That is not what § 1158(a)(2)(A) says; that section refers to "Safe Third Country Agreements," which are bilateral or multilateral agreements for removal to a country other than the country of the noncitizen's nationality, but only if the person's life or freedom would not be threatened there based on one of the five protected grounds for asylum and "where the individual would have access to a full and fair procedure for determining a claim of asylum or equivalent

temporary protection." 8 U.S.C. § 1158(a)(2)(A). Whether an ACA actually meets the statutory definition to qualify as a Safe Third Country Agreement under § 1158(a)(2)(A) is subject to active federal litigation in *U.T., et. al. v. Bondi*, 1:20-cv-00116-EGS (D. D.C.). Additionally, there are very real factual questions on the ground whether many of the current countries that have ACAs factually meet these standards – countries like Uganda, Guatemala, and Honduras to name a few, which are countries that are certainly not known respecting human rights or strong asylum systems.

34. Second, the Rule does not address how a party is to proceed in filing a Notice of Appeal when an IJ denied asylum, but also other forms of relief like withholding of removal and/or CAT. These denials typically occur together is because all three use the same application form and are generally considered as alternatives to one another. But withholding of removal and CAT protection are distinct, mandatory forms of protection. And because they are not subject to the Rule's rationale for exempting certain asylum denials from the new 10-day rule, it stands to reason that denials of these forms of relief are subject to the 10-day filing deadline. So, which timeline for the Notice of Appeal applies if the asylum denial was for a ground not listed in §1158(a)(2)(A), (B), or (C), and withholding and CAT were also denied? Does the individual get 30-days to appeal, or just 10? As a lawyer with 15 years of experience in immigration law and appellate practice, it is unclear from the text of the Rule how the BIA will treat such situations. As such, I and others at FIRRP will likely need to proceed in the manner most protective, advising all litigants to file in the 10-day window. The statutory requirement of a 30-day window to file a notice of appeal in asylum cases (except those noted by the Rule) will be effectively invalidated in most cases given how common it is to see asylum denials accompanied by denials of withholding of removal and/or CAT as well.

35. These are just two examples of the unworkability of the Rule, and the burdens such problems will cause.

36. The shift from 30 to 10 days to file a Notice of Appeal will directly undermine FIRRP's core services by asking staff across our programs to do more in less time with unpredictable timelines for when an IJ decision will be issued and little to no notice in the case of *pro se* individuals. This will substantially reduce our ability to provide free legal support to people, reducing our overall numbers and efficacy.

37. It will also require us to create new *pro se* materials and systems for responding to essentially every potential appeal as an urgent matter, contributing to staff burn-out. It will sow additional confusion and a sense of hopelessness among our clients. And it will fundamentally undermine our core mission-critical work providing legal services and education to ensure that people have access to counsel, understand their rights, and are treated fairly and humanely in their immigration proceedings.

38. The reduction of the Notice of Appeal window will arguably cause the most severe harm to the detained, *pro se* individuals that FIRRP serves and will significantly strain FIRRP's core services providing education and targeted *pro se* support to people representing themselves before the BIA. Sadly, for most detained *pro se* individuals, it

will be extremely difficult if not impossible for them to navigate submitting a Notice of Appeal to the BIA in only 10 days due to the myriad barriers that arise because of detention and the nature of navigating a complex legal system pro se.

39. First, as noted *supra*, EOIR's shift to a 10-day filing period from the 30-day filing window is premised on the assertion that a 30-day deadline is unnecessary because the ability to file electronically "remov[es] concerns related to mail delays and the restrictions business hours create to meet filing deadlines." This assertion ignores the fact that people detained in ICE custody generally, and certainly in Arizona, do not have access to internet or e-filing and still must rely on mail to deliver documents to the EOIR or the BIA, including the Notice of Appeal.

40. While all new cases theoretically have transitioned into the EOIR Courts and Appeals System ("ECAS"), there are two important limitations on who use ECAS. First, some cases pre-date the creation of ECAS, and in these cases e-filing remains unavailable. FIRRP represents a number of clients in pre-ECAS cases. Second, is the case of detained, *pro se* respondents. Although EOIR creates an ECAS portal for *pro se* cases, without access to the internet or the ECAS website and without the ability to navigate in English through a complex website that requires multifactor authentication, a detained *pro se* respondent will not be able to access this portal.

41. In the ICE detention centers FIRRP serves, detained individuals only have access to computers in the law library and those are limited to only a handful of computers per detention facility. Law library access is limited, at best an hour or less a day, and FIRRP staff have heard numerous complaints for years about individuals being denied access for myriad reasons. Even if a person can use a computer in the law library, it typically has no internet at all or extremely limited access to only certain websites. Based on information our clients report to FIRRP staff, the ECAS portal is not useable from computers in the facilities FIRRP serves.

42. ICE detention centers in Arizona now also have a small number of tablets available to detained individuals in their housing units. These tablets function on extremely restrictive controls, again, preventing users from accessing the internet generally and strictly limiting which websites and materials can be accessed. Again, based on the information FIRRP clients report, the tablets in the Eloy and Florence ICE facilities do not allow detained individuals to access their ECAS portals.

43. Moreover, even if ICE were to modify controls to allow detained *pro se* individuals to access ECAS, and even if DHS were to mandate internet access in all detention centers, detained individuals would not be able to do the multifactor authentication ECAS requires without access to a phone or personal email. Also, there is still no mechanism in detention for someone to scan or upload a document to ECAS as is necessary to actually e-file a document like the Notice of Appeal. Notably, both the Notice of Appeal and the BIA fee waiver form require wet ink signatures, which means that these forms cannot be prepared wholly on the computer and directly e-filed. The ability to upload these

documents, as well as supporting documents, will also become outright necessary given the Rule's provision calling for the summary dismissal of most cases, discussed below.

44. Currently, because there is no way for detained *pro se* individuals to upload or e-file documents through ECAS, FIRRP staff in the *pro se* cohort often help detained *pro se* individuals file time-sensitive documents. For the immigration courts, FIRRP can do this by hand delivering the document. That is impossible at the BIA, which is in Virginia. While same-day filing services exist, they are expensive and require scanning and emailing capacity. A detained *pro se* person could not access them, and FIRRP is not able to pay for that service or undertake the extra work that would be necessary to facilitate such a filing. Similarly, courier and other guaranteed mail services are costly and largely inaccessible for people who are detained. As such, even if our *pro se* cohort were able to regularly timely identify who needs support filing a notice of appeal, the process of actually meeting with the individual, informing them of the process, and helping them with the process would be out of reach.

45. The lack of access to ECAS also poses a barrier for *pro se* individuals who want to appeal because they may not have access to exhibits, briefs, or even the IJ decision, which necessarily limits ones' ability to prepare a thorough Notice of Appeal.

46. Additionally, many IJs issue oral decisions, so our *pro se* cohort will not be able to see a written decision at all unless or until transcripts are created by the BIA when they issue a briefing schedule (something that likely will no longer happen in most cases. ECAS allows those with access to listen to the Digital Audio Recording ("DAR") of the IJ's oral decision. This, however, is not available to detained *pro se* individuals, despite the fact that perhaps more than most, a *pro se* person will need to review and listen multiple times to the oral decision in order to understand it. Without access to ECAS, there is no clear way for a *pro se* individual to access the DAR, which will severely undermine their ability to prepare a Notice of Appeal that will be adequate to convince the BIA of the need for full briefing. Even with support from FIRRP staff, the lack of access to the DAR is a serious impediment to providing meaningful orientation and assistance to *pro se* individuals with their Notice of Appeal, as our staff were not at the hearing for the oral decision and cannot explain what we do not know. While FIRRP staff can and do obtain permission from *pro se* individuals to request a copy of the DAR from the EOIR, getting authorizations signed and actually receiving the DAR from EOIR typically takes 1 to 3 days, which would be critical time lost given the 10-day filing deadline.

47. Given the lack of internet access or systems to allow detained *pro se* individuals to e-file, mail remains the primary way detained *pro se* individuals must file documents with the agency, including the Notice of Appeal. However, mail in Arizona's ICE detention facilities will create significant obstacles to complying with a 10-day filing deadline for *pro se* detained individuals. Mail distribution and collection in Arizona's ICE detention facilities is often remarkably slow. FIRRP clients routinely report a 2 to 5 day delay in receiving mail, including mail from the immigration court, which, again, is located in the same detention center as the individual receiving the mail. Thus, even at the outset, it would be completely unsurprising under the Rule for a *pro se* individual to lose 2-5 days

of their 10-day filing window simply waiting to even receive the IJ's written decision if there is a written decision, if a written decision was issued. Unfortunately, our clients also report similar delays in mail processing for mail leaving the facility, and outgoing mail often has multi-day delays. For this reason, and because the BIA does not follow the mailbox rule, even with the 30-day filing window, FIRRP staff routinely warn *pro se* respondents to send any documents they intend to submit to the BIA ideally at least one week in advance of any deadline in order to try to avoid missing a filing deadline due to delays in the outgoing mail from the ICE facility.

48. Unfortunately, the BIA is also the source of significant mail-related delays in individuals' cases. For several years, FIRRP staff have noted significant delays of 3-to-7-day delays in the BIA mail room processing incoming mail. For example, in one case a Notice of Appeal had proof of receipt that showed that the BIA received the filing on the last day of the 30-day filing deadline, but the BIA did not process and enter that filing into their computer system until a full week, 7-days, later at which point the BIA backdated the Notice of Appeal showing its timely receipt. However, in that 7-day window, there was no indication of a pending BIA appeal or stay of removal and ICE began to actively attempt to remove the individual. While FIRRP and the *pro bono* attorney in that case were able learn of ICE's attempts to deport the client and advocate to halt the removal using evidence showing the timely receipt of the Notice of Appeal, these are options that simply are not available to most *pro se* individuals.

49. As the example above demonstrates, these type of mail processing delays can easily have devastating consequences for detained noncitizens either where a Notice of Appeal does not arrive within the appeal window, through no fault of the detained individual, or when a properly and timely filed Notice of Appeal is simply not processed by the BIA in a timely way. As a result, a Notice of Appeal and automatic stay of removal does not appear in information sharing systems, leaving a detained *pro se* individual at serious risk of wrongful removal and at the mercy of ICE.

50. In part because of these delays, when mailing filings to the BIA in cases we represent, FIRRP staff generally either pay extra pay for a same-day hand-delivery service to the BIA or ensure that any filing is mailed well in advance of any deadline and sent via a trackable postage service that confirms in writing the date, time, and place of delivery. FIRRP can pay for this type of delivery for *pro se* individuals on a limited basis, but given limited resources, it would create a substantial financial burden to assist with tracked or same-day filing for every *pro se* individual who wants to appeal to the BIA. Yet, between the normal 2-5 day facility mail delay to receive the IJ's decision and a possible 3-7 day delay for the BIA to accept and process mailed filings, detained *pro se* individuals are left with little to no time to actually prepare and timely file a Notice of Appeal in this Rule's 10-day window.

51. Remarkably, this is not the end of the logistical hurdles that detained *pro se* individuals will face under the Rule's 10-day filing deadline. Another barrier that many detained *pro se* individuals face is lack of language access. The BIA Notice of Appeal form is only available in English and must be submitted in English, but most people in ICE custody

are not primarily English speakers. Still, there are few to no resources to help individuals translate and understand documents in detention. In 2025, FIRRP worked with individuals who spoke more than 35 languages. Such individuals need additional support and assistance to translate documents before filing a Notice of Appeal, which takes yet more time from the truncated 10-day filing window. FIRRP's *pro se* cohort routinely assist individuals who need help understanding forms or documents that are provided only in English. Documents that often require translation or explanation for non-English speakers in the early appellate process include the Notice of Appeal form, the fee waiver form, and the IJ's decision in their case if the judge issued only a written decision, in which case the judge's decision and reasoning for it are routinely never provided to a *pro se* respondent in a language they understand. FIRRP's *pro se* cohort are often called upon for translation and orientation assistance in cases where *pro se* non-English speakers or non-literate individuals need help understanding what a judge's written decision says. The abbreviated 10-day appeal filing deadline, combined with the increased need for detailed and thorough reasons for appeal in that Notice of Appeal will compound so as to require significantly more urgent, time-intensive *pro se* support for individuals who want to appeal, particularly for those who lack the language and/or literacy skills to be able to prepare their Notice of Appeal without assistance. Needing to do more to support *pro se* individuals with their appeals in a shorter timeframe will cause significant strain on FIRRP's limited resources, will require more visits to detention to respond to urgent requests that are likely to interfere with other parts of FIRRP's mission critical work providing the full range of legal services needed for individuals before the EOIR.

52. Finally, by slashing this appellate filing deadline by two-thirds, the Rule will also interfere with access to counsel. Communication barriers in ICE custody – expensive phone systems that don't provide for private legal calls, remote locations where many private attorneys cannot or will not conduct in-person legal visits, and slow and at times costly mail systems – already combine to make access to counsel more difficult for people who are detained than those who are not. The imposition of a 10-day filing deadline for appeals further undermines access to counsel because will prevent *pro se* individuals from reaching an attorney for appellate representation, let alone retain them in time for said attorney to understand the appellate issues and file a Notice of Appeal, before the 10-day deadline has passed. As it is, in the current system with a 30-day Notice of Appeal window, FIRRP routinely finds that *pro se* individuals are unable to find private counsel to represent them on appeal within the full 30-days and need to rely on FIRRP's orientation support to understand how to file their Notice of Appeal *pro se*. This happens to people who were *pro se* before the EOIR, but also to those who had counsel before the IJ, but no longer have counsel on appeal either because their prior attorney does not have an appellate practice, because the detained individual ran out of funds to pay an attorney, or because the individual wanted new representation having been unsatisfied with counsel's performance before the IJ. Whatever the reason, for those individuals who lack counsel for an appeal, the 10 days allotted to file a Notice of Appeal under the Rule, is simply not long enough for most anyone who is detained to identify, connect with, and hire counsel to assist with the appellate process. This lack of counsel is made exponentially more harmful given other portions of this rule that eliminate briefing in most cases; the Notice of Appeal now not only must be done much more quickly, but

also must be completed in a much more detailed and thorough way since the Notice of Appeal is now the only document that a party can submit to try to win an opportunity at full briefing and an appeal on the merits.

53. The Rule further undermines access to counsel because the Notice of Appeal 10-day filing deadline will largely destroy FIRRP's ability to place BIA appeals with pro bono counsel. FIRRP has a robust screening process for pro bono placements to ensure that cases are well-vetted and issues are well-identified for pro bono attorneys, many of whom have little to no background in immigration law. For a BIA appeal, typically it takes FIRRP's pro bono teams, who also maintain their own representation caseloads, minimally one to two weeks from initially learning of a potential case to conduct the necessary due diligence, which involves meeting with the individual and requesting and reviewing documents such as the IJ decision, exhibits, and the DAR to assess the case for potential pro bono placement. Once the screening process is complete, the case is referred to potential pro bono counsel(s) who then also need time to review the referral and documents provided, vet the referral through any pro bono procedures their firm may have in place, conduct conflicts check, and in some cases take steps required to obtain clearance to enter the ICE detention facilities. In total, the post referral process often takes anywhere from two weeks to a full month before a placement match can be confirmed. As such, even with the current 30-day Notice of Appeal window, FIRRP's pro bono team must support individuals *pro se* through filing of the Notice of Appeal because many firms cannot complete their review process before the 30-day filing window passes.

54. Many pro bono attorneys come from firm backgrounds and do not practice immigration law as a matter of course. In FIRRP's experience, such pro bonos deeply value having time to move through the firms' established processes before taking a case. As with all attorneys, they are strongly committed to their duty to provide competent representation and the Rule's procedures and timelines create severe constraints on an attorney's ability to zealously and competently represent a client, and therefore, the Rule creates very real potential ethical concerns for pro bono attorneys who want to help people by representing them, but feel unable to do so on the extremely abbreviated timeframes allowed. Unfortunately, the Rule's proposed timelines and elimination of the opportunity to do full briefing on the merits in most cases are just the sort of procedures that will cause the vast majority of pro bono attorneys to feel uncomfortable, unable to competently proceed, and ultimately unwilling to take on a BIA appeal if this Rule should take effect.

55. For FIRRP attorneys who directly represent individuals, the reduction from 30 to 10 days to file a Notice of Appeal also undermines core work by reducing overall capacity to represent clients and potentially forcing FIRRP to take on fewer clients. At the outset, while FIRRP direct representation attorneys often follow cases we represent below before the IJ to the BIA, in many situations a FIRRP direct representation attorney may first receive a request or referral for representation or learn about a potential client when that individual has already completed their hearings before the immigration court and are looking to appeal. In such a case, FIRRP attorneys will face many of the same challenges described for other pro bono attorneys. Roughly, the expected process for taking on a

new client at the appellate stage would entail, at a minim, the following steps – all of which must now be completed in a scant 10-days:

(a) At the outset, the referral or initial request for services from a detained individual may not come in on the exact day of the IJ decision. Indeed, days can be lost before we are even aware a prospective client needs help on an appeal. Additionally, there will be at least 1 day delay between getting a referral and scheduling an initial meeting with a potential client because all three ICE facilities in Arizona require a minimum of 24-hour notice in order to conduct a telephone or video legal visit and two of the three – both the Eloy Detention Center and Central Arizona Florence Correctional Complex – require at least 24-hour notice for any in-person visit as well.

(b) Once we learn of a referral or request for services, FIRRP typically conducts intakes for new potential clients immediately after a group Know Your Rights presentation, as such presentations can help people understand legal options and streamline the intake process. However, currently, due to loss of federal funding for these educational services under the now terminated Legal Orientation Program, FIRRP has been forced to reduce the frequency of our group presentations from weekly presentations in all facilities, to every-other-week, alternating between the Florence facilities and the Eloy facility. Given that not all requests for services can wait for 7 to 10 days to happen after the next Know Your Rights presentation, FIRRP has had to create a system for urgent intakes with both *pro se* and direct representation cohort staff supporting by conducting urgent intakes. However, because by their nature these urgent intakes are unpredictable and require immediate action, there are not always staff available to conduct an urgent intake.

(c) Once the referral is received and an intake scheduled, FIRRP legal staff meet with potential clients to screen the basic issues and, if the case is one in which FIRRP plans to potentially offer full representation, to get information needed to run conflict checks and get signatures on releases that are needed to obtain copies of records that FIRRP will need to assess the viability of an appeal.

(d) Then, before entering an appearance, FIRRP staff much request key records from the EOIR, because without an full entry of appearance, the attorney still cannot access ECAS for the client. Records requested from EOIR are typically produced one to three days after they are requested. While requesting and reviewing these records can take several days, attorneys have a duty to provide competent representation, which requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation and this duty is no less present in consultations with prospective clients. As such, ethically, FIRRP must review at least key record documents, such as the IJ decision and critical evidence or briefing, before counseling a client or potential client regarding their options for appeal or entering on a such a case. However, this Rule leaves very little time for such due diligence.

(e) Once records are received, again to perform competently, a FIRRP attorney must review the records to issue spot potential appellate arguments. This requires preliminary research as well to understand and be able to competently assess the relative strength of potential claims of legal error.

(f) At this point, assuming there are appealable legal issues and FIRRP is able to take the case, a FIRRP attorney must conduct a second visit with the potential client to actually enter into a retainer agreement and get client signatures on other necessary forms to file the appeal, such as the declaration in support of the fee waiver request form EOIR 26A which requires the client's wet-ink signature on the declaration portion of the form that cannot be substituted by counsel's signature (or alternatively, the attorney must coordinate with the client's family to make payment of the $1030 BIA appeal filing fee).
(g) Only once these steps are done could a FIRRP attorney actually prepare the Notice of Appeal and file it through ECAS.

56. Unsurprisingly, the due diligence process described above often takes more than 10 days. As such, this deadline will frustrate FIRRP's ability to represent individuals in their BIA appeals. Even if accelerated to the maximum extent, it is difficult to imagine a scenario where such review takes less than at least 5 days. This would mean that, if FIRRP takes a case on appeal to the BIA that we did not represent before the IJ, that attorney would be left with, at best, half of the 10-days available to actually prepare the Notice of Appeal, get necessary client signatures, and ensure the Notice of Appeal is timely filed.

57. Even setting aside all of the above necessary administrative steps, 10 days is an unreasonably short period of time for an attorney to competently prepare a Notice of Appeal that is sufficiently detailed and thorough under this Rule. This is in large part because of the unique ways that the 10-day filing deadline portion of the Rule interacts with the presumption of summary dismissal without briefing in most cases. Again, in order to competently prepare the Notice of Appeal, an attorney must have reviewed the IJ decision as well as any relevant records, including evidence and recordings of hearings because transcripts will not be available at this stage since the BIA only issues transcripts if or when a briefing schedule is set. This requires an attorney to listen to full length hearings, perhaps multiple times, and take detailed notes on potential legal errors – a time-consuming endeavor. If there is no written decision, an attorney must also carefully listen to the IJ oral decision, which often requires multiple listens and possibly partial transcription of key portions of the decision. Once that due diligence review is complete, the attorney can complete the Notice of Appeal.

58. While on its face the form seems deceptively simple, the Notice of Appeal is in fact an extremely high-stakes document that now requires exceptional detail and attention because the Rule creates a default assumption in favor of summary dismissal without briefing in most cases unless the *en banc* BIA votes to have full briefing. The Notice of Appeal will now require a much more detailed and thorough statement of the errors in the case, akin to full legal brief with citations both to the record and caselaw. Any other approach will likely result in a default summary dismissal and risk potential exhaustion issues if or when a PFR to the Court of Appeals becomes necessary. Notably, this high-stakes detailed presentation of the legal issues presented in an appeal must be completed without transcripts, which the BIA only issues once a briefing schedule is set.

59. Importantly, like all attorneys, FIRRP attorneys do not and cannot only represent one client at a time. That means that they will necessarily have other work to be done for other clients, other hearings and other deadlines, that likely can and will come up in the 10-day appellate window under this Rule. The truncated 10-day deadline creates substantial tension for attorneys trying manage various client and case demands. By drastically cutting the Notice of Appeal window, the Rule inherently creates increased urgency to file the Notice of Appeal quickly at the same time it requires a higher level of detail and thoroughness than ever required before. FIRRP will be able to represent fewer clients overall, which directly undermines FIRRP's core work and mission.

60. Meanwhile, unlike a private attorney or firm, when a FIRRP attorney declines representation to an individual in detention, more often than not, that decision will in fact create more work for other parts of our organization since FIRRP's other core, mission critical work is to provide legal orientation and support those who do not have counsel.

61. The 10-day Notice of Appeal filing deadline also strains our mental health caseload under the NQRP and *Franco*. More than others, many of our clients with serious mental health conditions need time to process information and may require multiple visits to repeat and explain the outcome of proceedings for them to understand what options exist regarding potential appeals and the pros and cons of those options. Additionally, for some of our clients with serious mental health conditions, the stress and trauma of their individual hearing or of receiving a negative decision from the IJ can throw their mental condition into further dysregulation, which at times can cause dysregulation. At times this can cause an increase of symptoms that can interfere with their ability to process new information or even interfere with our ability to meet with our clients, which often occurs when a client with serious mental health conditions is placed into a heightened medical watch for suicidality or a similar sudden increase in severe mental health symptoms. A 10-day appeal window will be simply impractical in many of these cases.

62. While rules vary slightly from state to state, legal rules for professional responsibility generally dictate that the decision about whether to file an appeal – a decision about whether to exercise a substantial right – is the type of decision that properly belongs to the client. Moreover, ethics rules regarding working with clients with diminished capacity also dictate that, to the extent reasonably possible, attorneys must maintain an ordinary attorney-client relationship with a client who has decision making limitations or diminished capacity. Some state bars allow an attorney to take protective actions if the attorney reasonably believes that the client with diminished capacity is at risk of serious physical, financial, or other harm unless action is taken. However, other jurisdictions, like California, take an approach that is more protective of the autonomy of the client and substantially narrow the circumstances in which it is ethically permissible for an attorney to take protective action if that action would entail sharing any privileged or confidential information or substituting the attorney's judgement for the clients. FIRRP attorneys are barred in a variety of jurisdictions across the country, as immigration law is a federal practice and any state bar licensure is acceptable for practice. As such, FIRRP attorneys must be aware of and follow ethical rules in the state of their license as well as Arizona where they practice. Together this all means that FIRRP attorneys who are serving as

counsel in our NQRP and *Franco* docket must still go through all of the steps for assessing whether an appeal is viable and discuss the options with the client to allow the client to make an informed decision regarding whether to appeal, but with clients experiencing serious mental health conditions, these conversations not only often require more time and consideration, but also may implicate serious ethical questions that could take time to resolve, time that this Rule fails to contemplate.

63. The tightness of this 10-day filing deadline truly creates a no-win situation in terms of access to justice. Indeed, I fear that the true purpose of slashing this filing deadline may be precisely to prevent people from being able to access the appellate process; how else can reducing the initial Notice of Appeal deadline help clear an existing backlog? But a procedural rule that seeks to halt access to the only forum for judicial review – one necessary to meet administrative exhaustion requirements for any possible federal court review – amounts to a gross violation of due process and it cuts to the very core of FIRRP's work providing direct legal services and fighting for a system in which people have access to counsel, understand their rights, and are treated fairly and humanely.

*Default Presumption of Summary Dismissal Without Further Briefing for Most Cases*

64. Beyond cutting the Notice of Appeal window, the Rule also states that "the default will be summary dismissal" in all cases that come before it "unless a majority of current Board members vote to consider the appeal on the merits." It further mandates that "such dismissals will occur quickly – within 15 days of filing the appeal." 91 Fed. Reg. 5270. The Rule does not create any procedure for production of transcripts or briefing by either party prior to the default dismissal being applied. Put another way, under the Rule, the default presumption is that all appeals lose automatically without briefing or meaningful review within 15 days of being filed, and the only way to avoid that fate is for the BIA to vote, *en banc,* that the case is worthy of further review on the merits.

65. The Rule's new procedures obviously undermine the very nature of appellate review by refusing to provide any meaningful individualized review of the IJ decision in all but a very select few cases. The Rule acknowledges and apparently accepts the fact that this move to default summary dismissal completely changes the BIA's role as an appellate adjudicatory body, stating "the Department has reconsidered the Board's role as an appellate tribunal." *Id*. What the Rule fails to address though are the obvious ways in which summarily dismissing without providing parties any meaningful, individualized opportunity to be heard is a fundamental violation of due process.

66. Further undermining any meaningful access to due process, the Rule also fails to consider or provide any mechanism to provide appellants access to critical documents necessary to meaningfully obtain review of proceedings below. Specifically, the Rule fails to provide a method to provide parties transcripts of proceedings or transcripts of the IJ decision if the decision was issued orally, as many are. Under old BIA procedures, the transcripts, including written transcription of the IJ's oral decision in cases where there was no written decision, are all provided only upon the setting of a briefing deadline. However,

now, with no briefing deadline set in the majority of cases, there will also be no transcripts of proceedings available nor a written version of the IJ's oral decision available to parties at any point prior to the appeal being decided in most cases. This fundamentally interferes with individuals' ability to identify appellate issues and present legal arguments to the Board. As addressed at length *supra*, access to audio recordings of proceedings fail as a substitute for actual transcripts of proceedings because (a) detained *pro se* litigants cannot access the DAR (the digital audio recordings) at all because they do not have access to ECAS, (b) attorneys cannot access the DAR via ECAS unless or until they've already entered their appearance, something many attorneys may not be comfortable doing until they have at least some chance to review the record and understand the issues on appeal, which they cannot learn without listening to the DAR or getting transcripts, and (c) even for attorneys who have access to the DAR, listening to an audio recording of proceedings is extremely time-consuming – taking as long as the hearings themselves typically and often longer as key portions may need to be re-listened to several times and/or partially transcribed in order to be able to craft legal arguments based on what occurred. For these reasons, the DAR cannot be considered a viable alternative to provision of transcripts, yet under the Rule the vast majority of parties will nonetheless go through the entire appellate process without being provide transcripts of the proceedings below or of the IJ oral decision, which is extremely common in immigration court and the way most IJ decisions are issued in Arizona's detained docket.

67. Despite the significant ways in which failure to produce transcripts and transcriptions of the IJ's oral decision impact the appellate process, the Rule fails to grapple with how lack of access to this information will impact appealing parties. The Rule only mentions transcriptions in sections revoking an IJ's ability to review transcriptions of their oral decisions for errors before such transcripts are released. Interestingly, the Rule notes that "EOIR already has a procedure for the parties to address defective or inaccurate transcripts on appeal," 91 Fed. Reg. 5273 (citing the EOIR policy manual), but fails to address or even acknowledge that it is impossible to correct a transcript, when the agency never provides a transcript in the first place. Neither the practice manual nor the Rule envision any mechanism to allow parties to request that transcripts be provided or request an extension of the 15-day window for the BIA to summarily dismissals so as to allow for transcription to take place. Of course, if there are indeed errors or problems with the record below, be it the recordings of proceedings or the IJ's oral decision, an appellant must notice them in the DAR and raise them proactively in the Notice of Appeal, otherwise it appears highly unlikely that a BIA panel member will do the searching review of the DAR themselves to learn of the error.

68. In a further violation of due process, the little guidance the Board gives as to which cases merit an *en banc* vote for full appellate review is limited to only those cases that present "particularly novel or complex legal questions." 91 Fed. Reg. 5271. This limited guidance does two things, both of which create serious due process concerns. First, limiting *en banc* review to only those cases that raise particularly complex or novel issues creates increased pressure on individuals seeking appellate review to identify and frame their appeals as being novel or particularly complex in their original Notice of Appeal – a document which again must be prepared and filed in only 10-days without access to

transcripts of the proceedings and with the many other practical limitations delineated above. Second, it rejects out of hand the appellate body's traditional role of correcting judicial error, leaving such correction of fundamental errors instead entirely to the also back-logged federal Courts of Appeal.

69. While they may not be the most "novel" or "complex" issues, a significant portion of the BIA appeals that FIRRP attorneys handle deal with basic, critical legal error by the IJ that requires remand. For example, FIRRP staff have assisted individuals on BIA appeals based around the IJ's decision to order someone removed without ever accepting or considering an application for removal, errors that should be obvious and readily remanded. In one case, an IJ determined that a person who was detained, *pro se* and spoke only a rare West African language that no one else in detention spoke had abandoned his application for asylum because, despite expressing a clear fear of return to his home country, the detained individual was unable to find someone who could help him translate and fill our his asylum application in English in the few weeks that the IJ gave to prepare the application. In another case, an IJ similarly found an application abandoned after a detained, *pro se* non-citizen left several pages of his application in his cell in the detention center. Rather than grant a 20-minute continuance to allow this *pro se* individual to return to his cell, retrieve the missing pages, and come back to court, the IJ instead found that the applicant who was present with a mostly complete application for asylum had abandoned his application and ordered removal. In other cases, IJ's have briefly questioned *pro se* respondents to assess the basic gist of an asylum claim and then ordered removal without ever providing the *pro se* individual with an application for asylum to file at all. Each of these examples demonstrate statutory, regulatory, and constitutional due process errors by the IJs involved that require remand. Yet, sadly the above issues are not particularly complex or novel, and under the Rule, each likely would have been summarily dismissed rather than correcting an IJ's clear legal error.

70. Similarly, although our unaccompanied children clients have historically not needed to file appeals as regularly as our adult clients, we are increasingly seeing a need for appeals for some of the most vulnerable unaccompanied children we serve. FIRRP routinely helps children who qualify seek Special Immigrant Juvenile Status ("SIJS"), a process that entails representing children first in state dependency proceedings, where a dependency judge makes factual findings regarding a child who is abandoned, abused, or neglected, and then before USCIS, where the petition for SIJS (the Form I-360) is adjudicated. This occurs concurrently with EOIR removal proceedings for these children. Unfortunately, appeals are increasingly becoming necessary for children who have approved SIJS applications – meaning all parties agree they are children who have been abused, abandoned, or neglected. The issue arises because for years visa backlogs have become common for children who have approved SIJS applications because of caps on how many adjustments may happen in any given year. This means that children must wait until a visa becomes available for them to complete their adjustment process before the IJ. However, in Arizona, IJs are more routinely denying continuances and requests for administrative closure while the parties wait for a visa to become available. As a result, unaccompanied children who are undisputedly abandoned, abused, or neglected in their home country, can be ordered removed by the IJ even despite their SIJS application

having been approved by USCIS simply because visa backlogs are delaying immediate adjustment to permanent resident status. SIJS is not a form of relief children can pursue from abroad, so these removal orders effectively deny children the statutory protections that Congress specifically created for them in recognition of their particularly vulnerable status. FIRRP helps these children both appeal to the BIA, and also seek remand before the BIA when a visa date becomes current.

71. The harm that occurs from failing to correct IJ's who routinely commit clear legal error goes well beyond any single individual appeal, because IJs hear hundreds of cases each year and routine errors can violate the rights of many, even if only relatively few decide to appeal. The appellate process traditionally is one designed first and foremost to review decisions and correct errors to improve overall adjudication of immigration hearings. Unfortunately, this Rule rejects the core role of correcting legal errors. Previously, where an IJ made consistent legal errors, the BIA would correct them, and sometimes, if the errors were persistent enough, an IJ may be asked to undergo additional training – this happened at least once that I can recall. One Arizona IJ had so many cases remanded for basic procedural errors – at least six known cases remanded in one month – that the EOIR elected to briefly remove that IJ from the docket and conduct additional training before having her take cases again. However, under the current Rule, it is highly unlikely that even an IJ with a pattern of obvious and correctable errors would come to the attention of the BIA, as these types of clear error are not particularly complex or novel and, as such, would likely be summarily dismissed rather than dealt with by the BIA.

72. Likewise, the failure to timely correct IJ errors has a particularly serious impact on FIRRP's direct representation under the NQRP and *Franco*. FIRRP frequently represents or works with *pro se* individuals at the BIA who require remand for additional hearings and findings on competency because there mental health condition was unflagged, unrecognized, or improperly addressed before the IJ.[3] Often these are cases where the IJs failed to conduct competency inquiries and ordered individuals removed despite clear indicia of incompetency. As envisioned in the *Franco-Gonzalez* settlement, remand is necessary anytime the BIA becomes aware of evidence of a serious mental health condition for the IJ to properly conduct a competency inquiry[4]. This Rule does not require the BIA even review such requests, and it does not appear that such remands would fit within the scope of the case types that the *en banc* court would vote to hear.

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[3] There is an established pattern in Arizona of significant delays and failures in DHS and EOIR appropriately identifying individuals who are members of the *Franco-Gonzalez* class, which means that a significant number of people require remand from the BIA for judicial competency procedures when missed or ignored evidence of mental health conditions are identified while on appeal. *See Franco-Gonzalez v. Wolf,* CV 10-2211-DMG (DTBx), Dkt. 1072, Order Granting Plaintiff's Motion for Leave to Conduct Limited Discovery to Establish Non-Compliance with Court Order (Jan. 10, 2020) (finding that "[t]he record before the Court is more than adequate to raise questions about potential ongoing noncompliance with the mandatory procedures [for identification of class members]" and citing to four examples from Arizona as evidence of said non-compliance).

[4] *See Franco-Gonzalez*, No. 10-cv-02211-DMG, 2014 WL 5475097 (C.D. Cal. Oct. 29, 2014) (mandating that the BIA remand the case to the IJ with instructions to apply the injunction procedures anytime documentary, medical, or other evidence indicating that individuals are potentially class members "comes to the [BIA's] attention.")

73. Additionally, while creating a default presumption in favor of summary dismissal in all but a select few cases, EOIR claims that this procedural change will not impact overall appellate rights and review because appealing parties may still file a Petition for Review (PFR) to the federal Courts of Appeals. As an organization that has a relatively robust Ninth Circuit Court of Appeals practice, I can state with conviction that the Rule fails to consider the substantial procedural as well as practical barriers that undermine EOIR's assumption that appealing parties under this Rule can still get full meaningful review through a PFR even after a summary dismissal without briefing.

74. First, there is the purely practical matter that filing a PFR is another procedural hurdle that non-citizens now must clear to obtain meaningful judicial review. As an initial matter, the lack of access to a written or transcribed IJ decision, which the Rule anticipates will be the sole expression of the agency's reasoning in the vast majority of cases, will prevent counseled and *pro se* individuals from complying with the statutory mandate to include the agency decision when filing a PFR. 8 U.S.C. § 1252(c)(1). The Rule does not address how access to review would be preserved under this new scheme.

75. Second, while the PFR itself is a simple document, for *pro se* individuals, the mere ask that they now file another appellate form mere days after they filed their Notice of Appeal to the BIA will be inherently confusing. The fact that this new appeal notice, a PFR, now must be filed with a totally different court, not affiliated or associated with the immigration courts will also be likely a source of confusion. Indeed, explaining the appellate process, the different levels of courts that can be involved in the U.S. immigration system, and what each can and cannot do is already an area that causes *pro se* individuals great confusion and that requires substantial orientation. It is likely that *pro se* individuals will be even more confused under this Rule because, to the extent there is a natural and logical flow to the appellate process, the fact that they must rush to file a Notice of Appeal to the BIA and then likely 15-days or less later then rush again to file a different appeal, a PFR, to a different court – the Courts of Appeal – with no other substantive work or decisions done in the interim will be extremely confusing and nonsensical to *pro se* individuals. While historically relatively few non-citizens required a full explanation of how to navigate PFR to a Federal Court of Appeals, as most cases were ultimately resolved before the agency, under the Rule, it is fair to assume that more people will now elect to attempt to seek review before the Courts of Appeals since there was no meaningful opportunity to present their case before the BIA. This will require significant resources from FIRRP's *pro se* cohort to explain the process, update and improve *pro se* materials, and orient and support individuals in the PFR process.

76. Third, an additional practical hurdle with real life-altering consequences is that when a party files a PFR to the Court of Appeals, the appealing party must also file various motions simultaneous with that PFR for it to be accepted and for it to potentially protect the person from removal. At a minimum, a PFR typically must be accompanied by either a filing fee or a Motion to Proceed in Forma Pauperis with the accompanying affidavit to be accepted. Individuals also must file a Motion for Stay of Removal in order to avoid being summarily removed while the PFR is pending.

77. Unlike appeals to the BIA, stays of removal are not automatic upon filing a PFR. Instead, Courts of Appeal apply the four-factor test from *Nken v. Holder*, 556 U.S. 418 (2009) to ascertain when a stay is necessary, balancing likelihood of the applicant to succeed on the merits of their legal claims, likelihood of irreparable harm to the applicant if a stay is not granted pending final adjudication, likelihood of substantial injury to the other interested party if a stay is granted, and the public interest. Meaning that not only must those who receive a summary dismissal from the BIA file a PFR with the appropriate Court of Appeals a mere 15-days or so after filing the original Notice of Appeal to the BIA, but they must also file a substantive motion for stay of removal that properly addresses and analyzes this four-factor. They must do this immediately upon the BIA's summary dismissal because, while non-citizens get 30-days to file a PFR from a final agency decision, there is no stay in place in that period. Thus, every day that an immigration removal order is final and not subject to a stay is a day that a person can be forcibly placed on a plane or bus and physically deported. The reality is that many people, particularly *pro se* individuals, will not have the legal wherewithal to know how to adequately prepare a Motion for Stay of Removal in such urgent circumstances. While the Ninth Circuit is somewhat of an outlier – granting a temporary stay of removal automatically upon filing of the Motion for Stay of Removal until that motion is adjudicated – in other Courts of Appeal there is no such protective rule. As such, in the Ninth Circuit, petitioners can supplement a more basic Motion for Stay of Removal while protected by the temporary stay, but in most jurisdictions in the U.S., that is not an option. The result is that people will face substantial barriers to be able to present compelling arguments needed to be granted a stay on such an abbreviated timeline and may not even have the practical means necessary to ensure that the Court of Appeals rule on a pending stay motion in an expedited manner that is often necessary to ensure the person is not deported while the motion is pending. Again, troublingly, I fear that this stay issue, which is unmentioned in the Rule, was at best a gross oversight or at worst the unspoken goal – to design a system that facilitates the physical removal of as many people as possible as quickly as possible in the midst of confusing appellate procedures that never allow for meaningful, individualize review. Regardless of whether that was the intent of this Rule or not, that is what will occur.

78. Fourth, as a practical matter it is unclear what documents or information will be properly before the Court of Appeals in a PFR from a summary dismissal by the BIA under the Rule. Again, here, the lack of transcripts, or even a transcribed version of the IJ's oral decision, is a significant barrier to meaningful review by the Court of Appeals. Typically, when a PFR is filed, the first thing the Court of Appeals orders is production of the Certified Administrative Record "CAR" which includes the record of proceedings before the EOIR and the BIA, typically including the BIA's decision, appeal briefs, transcripts, IJ decision below, and any briefs, motions, or evidence filed before the IJ. In any case decided by summary dismissal, though, the transcripts – which may include transcripts of the IJ's oral decision – will not have been created as part of the BIA's appellate process. Because Courts of Appeal are generally limited in their review to what was before the agency, it is unclear whether transcripts would be provided as part of the CAR for a PFR.

79. Fifth, there is also the issue of exhaustion. Exhaustion is generally required before a party may raise an argument in a PFR to the Court of Appeals. *See* 8 U.S.C. § 1252(d). For cases summarily dismissal within 15-days of appeal, the only document available in which a party may have made any arguments for exhaustion purposes is the Notice of Appeal itself. Indeed, the Rule states that any argument not raised in the Notice of Appeal will be deemed waived. As noted *supra*, this puts exceptional pressure on the Notice of Appeal to capture any and all arguments that a party may want to raise on appeal.

80. Each of these hurdles will most likely effectively block meaningful appellate review for *pro se* individuals, particularly detained *pro se* individuals entirely. Moreover, the reality is that many of the obstacles listed above cannot be adequately ameliorated by counsel.

81. Appellate practice before the federal Courts of Appeal is an entirely different beast than practice before the immigration court, or even the BIA. Compared to the routine trial practice at the immigration court level where many practitioners do not always file pre-hearing briefs or engage in robust written motions practice, appellate practice before the Court of Appeals requires much more refined legal writing skills and issue spotting. Also, while both practices require deep expertise in immigration law, appellate practice before the Court of Appeals also mandates a robust knowledge of administrative law and appellate practice including familiarity with the Federal Rules of Appellate Procedure, a deep understanding of how to identify and apply the appropriate standard of review, fluency in the nuance of administrative law in appellate practice, a firm grasp of time sensitive motions practice particularly relating to stays of removal, and skills needed to present a compelling appellate oral argument when requested by the Court. Thus, appellate practice before the federal Court of Appeals requires a different skill set, expertise, and workflow than trial practice in immigration court. Attorneys also must be admitted for practice specifically before the relevant Court of Appeals, unlike immigration practice which requires an attorney to be barred in any state in the United States. Likely for these reasons, in my experience in Arizona as well as serving as an Appellate Lawyer Representative to the Ninth Circuit Court of Appeals, many if not most immigration attorneys do not have a significant or any appellate practice before the Ninth Circuit Court of Appeals and often are woefully underprepared to engage in the level of appellate practice that Court expects from those who practice before it. FIRRP routinely receives requests from individuals who were previously represented by counsel before the agency, but whose counsel does not practice before the Court of Appeals and cannot continue on their case in a PFR. It is only reasonable to expect that this Rule will further increase the number of people who will be seeking assistance with PFRs to the Ninth Circuit given that the Rule's default dismissal will make Courts of Appeal the only forum in which a non-citizen may seek meaningful review of an IJ's erroneous decision.

82. At FIRRP, we are proud to have invested in having an established practice before the Ninth Circuit. In recognition of the different skill sets, expertise, and workflow noted above, we staff our appellate practice with two full-time appellate attorneys who work almost exclusively on Ninth Circuit PFRs. Currently, our appellate attorneys offer continued representation before the Ninth Circuit for many FIRRP clients who wish to continue in a PFR after a negative BIA decision. We also take pro bono appointments

from the Ninth Circuit under a specialized pilot pro bono program specifically designed to try to increase quality representation for individuals in complex immigration matters, given the relative dearth of appellate practitioners who also have expertise in immigration law. In 2024, our team entered appearances in 30 new PFRs for individuals before the Ninth Circuit. However, two attorneys able to take approximately 30 new cases a year will nowhere near meet the need for representation in PFRs that this Rule will create. The massive increase in the number of PFRs that will be required under the Rule will interfere with FIRRPs current core work by shifting focus of our daily practice from being primarily before the agency – both EOIR and the BIA – to needing a much more significant presence before the Ninth Circuit Court of Appeals.

83. This Rule will also create additional burdens for FIRRP's *pro se* cohort. We will we have to dedicate substantial resources to updating and making serious modifications to our *pro se* materials, both explaining the new appellate process without any likely review before the BIA and the next-step PFR for those who want more fulsome review and explaining all of the motions, particularly the motion for stay of removal, that must be filed simultaneously with the PFR to the Ninth Circuit. Additionally, our *pro se* team will have to develop further expertise in Ninth Circuit practice and spend more time providing orientation to people pending before the federal Court of Appeals. This type of critical *pro se* support before the Ninth Circuit is unfunded and requires FIRRP to divert critical resources to safeguard the rights of the people we serve. This interferes with FIRRP's core work, which is and has historically been focused on primarily direct services before the immigration court and BIA.

84. Finally, it bears mentioning that many of the Courts of Appeal also have significant backlogs and administrative struggles associated with an increase in litigation around immigration matters, including both direct PFRs on immigration removal determinations as well as other forms of federal litigation around immigration matters. This Rule shifts the burden of conducting the most basic review of IJ decisions from the agency created for that purpose to an already over-burdened federal court system.

*Dramatically Limiting the Availability of Briefing Extensions Further Undermines Access to Counsel and Disproportionately Harms Detained Pro Se Respondents*

85. In those few cases where the *en banc* BIA votes to have briefing and a full review of a case, the Rule also makes various changes to how briefing is conducted which will undermine access to counsel, including arbitrarily reducing the normal briefing deadline from 21 days to 20 days after notice of briefing deadline is issued, requiring simultaneous briefing in all cases, and dramatically limiting when motions to extend briefing deadlines may be granted. Taken together, these three changes significantly undermine access to counsel even in cases that get full briefing and consideration before the BIA, which by definition under the Rule are those cases that raise particularly complex or novel issues.

86. While the changes from a 21-day to a 20-day briefing window, may appear minor, given their duty of competence, many pro bono attorneys are unwilling to take a BIA appeal unless or until basic information is available to assess the nature of the case and issues

presented. However, because transcripts are not available until a briefing deadline is set, it is very likely that most pro bonos would only begin to consider taking a case once the transcripts and deadline are known. It would be at that point that pro bono attorneys would conduct conflicts check and follow any internal firm processes for pro bono case acceptance. That process can often take one to two weeks at a minimum and, as such, severely limits how much time a pro bono realistically can work on the appellate brief. Additionally, because there is no clear timeline in which the BIA must issue the briefing deadline from the date of the Notice of Appeal, it is often somewhat unpredictable when the BIA will issue notice of the briefing deadline, making it difficult to plan workloads around when that notice may arrive.

87. These issues are compounded by the dramatic change to the standard for when a motion to extend briefing may be granted, limiting such extensions only to "exceptional circumstances, as that term is defined in 8 U.S.C. § 1229(e)(1)." 91 Fed. Reg. 5273. The cross-referenced section defining exceptional circumstances applies to what exceptional circumstances warrant recission of an *in absentia* removal order due to a non-citizen's failure to appear for their removal proceedings. The types of exceptional circumstances listed – "such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances" – do not naturally align with or make sense as the types of reasons an attorney may have for why a deadline extension is needed. There is no consideration whatsoever of other professional deadlines, which is key because of the BIA is entirely unpredictable regarding when it will issue a briefing deadline. There is also no consideration given to sickness or other major life events affecting the attorney directly. Under these circumstances, pro bono attorneys cannot reasonably expect motions for briefing extension to be granted, which will ultimately severely undermine FIRRP's ability to place even complex and novel BIA appeals that are set for briefing under the Rule with competent counsel.

88. Detained cases make up the vast majority of FIRRP's work and, as such, FIRRP attorneys already regularly brief matters on accelerated time-frames with simultaneous briefing schedules. Any further tightening of the appellate time-frame will seriously damage FIRRP's ability to directly represent individuals or place cases with *pro bonos*. Given the many competing demands on FIRRP staff at any given moment, uncertainty about when the BIA will set a briefing schedule and issue transcripts already makes it difficult to ensure that our attorneys will have the necessary time and resources to dedicate to an appeal. Indeed, reasonable briefing extensions create flexibility that allows FIRRP to regularly take appeals despite competing work responsibilities. By significantly reducing when briefing extensions will be permitted, this Rule will make appeals more time-intensive and onerous, while also eliminating much of the critical flexibility that FIRRP attorneys rely upon to competently manage a robust detained caseload. This ultimately will reduce how many people FIRRP can represent on appeal, interfering with FIRRP's core services of providing people with representation and legal services before the agency and undermining our mission of ensuring that every detained person has access to counsel and receives a fundamentally fair court process.

89. The Rule limiting briefing extensions will disproportionately harm detained *pro se* people. FIRRP offers legal orientation and *pro se* support to litigants drafting their own appeals. The vast majority of *pro se* noncitizens FIRRP serves are non-English speaking and in addition to the substantial language barriers, they overwhelmingly have severely limited access to law libraries, computers, and other resources that could potentially help them prepare briefs. Providing such individuals at most 20 days to prepare a full legal brief on issues that are, by the Rule's definition complex or novel, is unreasonable.

90. Moreover, in *pro se* cases selected for briefing, the same mailing delays and issues with lack of access to ECAS for *pro se* individuals will further undermine people's ability to meet briefing deadlines without extensions. First, any notice of briefing schedule sent to a detained *pro se* individual must be sent via mail, which suffer from regular delays in detention that will cut easily 3 to 7 days from the 20-day briefing window, as the deadline tolls from the date of the notice was mailed, not the date of receipt. Moreover, the same mail issues for outgoing mail described above will also further cut into the 20-day briefing window as *pro se* individuals still cannot use ECAS to upload their briefs and must rely on mail. Even before this Rule, *pro se* detained individuals were often left with very little time to prepare and file their briefs. Some of the most common requests FIRRP staff get regarding appeals is how to request a BIA briefing extension and for help mailing documents to the BIA because detention center mail is often too slow or uncertain to ensure that filings are timely received. However, under the Rule, briefing extensions will simply be unavailable to the majority of detained *pro se* individuals, since mail delays and conditions of confinement are highly unlikely to be found to be 'exceptionally unusual' as that term is defined in the Rule.

91. For the *pro se* cohort, appeals pose particular difficulties to providing group education and orientation due to the tight and unpredictable timelines for briefing deadlines and because language barriers are amplified by the appellate (written) format. As a result, many *pro se* individuals already struggle to file briefs that adequately raise legal issues without substantial support. Rather than remove barriers that prevent *pro se* noncitizens from filing briefs in cases that the Board has deemed complex or novel and, thus, worthy of full briefing, the Rule only increases the barriers. A 20-day briefing window with extremely limited grounds for briefing extensions will leave *pro se* detained noncitizens unable to timely file a brief, let alone one that thoroughly addresses the legal issues. In turn, this will create additional work and obstacles for FIRRP as we will have to scramble to assist *pro se* individuals on compressed timelines. FIRRP's *pro se* cohort staff will have to spend considerably more time with *pro se* litigants to explain the appeal process and, to support that pressing need, which will interfere with FIRRP's ability to conduct core-mission centered work of providing orientation and education legal and social services for as many people in ICE custody in Arizona as possible.

92. The Rule further harms our mission critical work because FIRRP actively pursues cases for appellate representation before the BIA not only to help individual clients win relief, but also to develop and preserve arguments for federal court appeals, since in many cases federal court intervention is necessary to clarify the law and to obtain relief for those we serve. The extent to which the record and legal issues were clearly developed before the

agency is a key factor that can determine whether a federal appeal is viable for placement before the Ninth Circuit with *pro bono* counsel through FIRRP. For *pro se* petitioners, it will determine whether the individual can avoid summary dismissal, obtain a stay, or have a chance to obtain counsel through the Ninth Circuit's *Pro Bono* Program. All of these things will become significantly more challenging in light of this Rule since the severe restriction on briefing extensions will make people less likely to be able to obtain counsel in the BIA appeal to adequately preserve the issues and will also undermine *pro se* individual's ability to try to quickly prepare briefs that preserve the issues themselves. This, in turn, will harm FIRRP because it creates additional burdens for our *pro se* cohort who not only will have additional pressure to help support *pro se* individuals prepare their briefing to the BIA, but will also have additional pressure to help *pro se* detained individuals develop arguments in the PFR and providing *pro se* support on Motions for Stay, for appointment of pro bono counsel, and any potential response to dispositive motions filed by the government before the Court of Appeal.

93. Between FIRRP's decreased capacity to take appellate cases in house, and the increased difficulty we will have identifying and placing cases with pro bono counsel, the Rule will leave even more detained noncitizens without counsel. Thus, this Rule will erode a program that FIRRP has spent decades building that provides potentially life-saving opportunities for representation to detained noncitizens. It will seriously undermine FIRRP's ability to do our core work of ensuring access to counsel and due process for the greatest number of detained noncitizens possible, while simultaneously drastically increasing the burden on our team to provide *pro se* support to those we cannot represent.

**Overall Harm of the Rule on FIRRP's Core Mission**

94. In addition to the harms to FIRRP's mission and services described above, the Rule will pose an overarching adverse impact on FIRRP as an organization.

95. First, the Rule will require us to devote more resources to fewer cases, meaning we will serve fewer clients. This reality fundamentally undermines FIRRP's core work ensuring that all people facing removal proceedings in Arizona have access to counsel and receive due process, including a full and fair opportunity to present their case. By creating so many new procedural barriers in the appellate process, this Rule does irreparable damage to the fundamental fairness of the BIA at great cost to the noncitizens who come before it and those who serve them. FIRRP was founded after an IJ in Arizona decried the plight of *pro se* asylum seekers who, detained in remote Arizona detention centers, struggled to navigate immigration court procedures even when they had viable claims for relief. As an organization rooted in protecting the due process rights of detained people, this Rule cuts at the heart of FIRRP's core and upends more than 30 years of our work.

96. This change will also negatively impact FIRRP's funding in a number of ways. FIRRP's funding comes from various sources including grants, donations, and federal sub-contracts for programs to provide orientation and representation to detained children as well as representation to those deemed mentally incompetent under the NQRP.

97. First, FIRRP routinely reports on the number of individuals we serve, and some funders make decisions regarding the renewal of funds based on performance metrics like the number of clients represented. Because this Rule will make it exponentially more complicated to be able to enter on appeals to the BIA, FIRRP will be able to enter appearances on fewer cases. Funders also consider the impact of our work, not only on the individual client but also on the overall immigrant community. For these funders, appellate representation—including at the BIA—is critical to ensuring that we are able to pursue appeals that are most likely to positively affect immigrant communities. The Rule jeopardizes these funding streams because we will be unable to represent as many clients and our clients will need to overcome myriad new hurdles to avoid deportation after summary dismissals of meritorious claims.

98. Second, because Arizona has daily bedspace for more than 3,000 adults and children in custody, any change that decreases representation puts significant strain on FIRRP's *pro se* support programs. As FIRRP attorneys and our pro bono partners must represent fewer cases, there will be a corresponding increase in demand for FIRRP's *pro se* services. FIRRP will likely need to increase staff resources devoted to providing *pro se* services to support the increased numbers of people without counsel. However, as noted above, these services recently lost government funding and already had to undergo reductions in staffing and changes to frequency of services as a result. Unless or until we can fund additional support, the increased demand for *pro se* support is likely to stretch our *pro se* cohort extremely thin and may force FIRRP to redirect resources for representation, our other core work, to *pro se* support. Ultimately, his will contribute significantly to staff burn-out and will also likely lead to many detained individuals not getting the standard of support the FIRRP traditionally has provided. It surely will require substantial additional fundraising to sustain these mission critical efforts.

99. Moreover, this Rule is one of dozens of other significant changes to immigration law and procedure in the last year. As a national leader in the creation of *pro se* guides and materials, FIRRP will need to divert substantial resources to amending existing guides to reflect changes and creating sample *pro se* templates and other materials to help *pro se* individuals navigate the Rule changes. Many of the changes we will need to make in response to this Rule will address the short deadlines that have been put into place by this Rule and the need to quickly file PFR's after dismissal of an appeal. These resources will need to include information about mail processes and other details that are specific to each detention center, because there is no universal process across DHS detention centers. As a result, our *pro se* guides will either become significantly more complex or be less useful to people who are not detained in Arizona. This will greatly interfere with our core work of providing *pro se* guides to people detained across the country, not just in Arizona where we have familiarity with the detention centers.

100. Third, the Rule also undermines FIRRP's contract to represent individuals found incompetent to represent themselves before the immigration court under *Franco-Gonzalez* and the NQRP. This contract provides a fixed budget based, in part, on how many new cases we accept each fiscal year. This Rule will negatively impact NQRP funding in several ways. First, the increased amount of rapid work needed for each

Notice of Appeal will decrease overall capacity, reducing our ability to accept new cases. Additionally, for the approximately one hundred cases FIRRP already represent, it will make representing our seriously mentally ill clients significantly more challenging, time, and resource intensive than these cases were when FIRRP negotiated our contract before the start of FY26. Second, the limitations on remand for additional factfinding, combined with the documented history in Arizona of DHS and EOIR's failure to properly and timely identify potential class members, will result in some incompetent noncitizens falling through the cracks and fewer noncitizens in Arizona being identified under *Franco* and appointed counsel. Finally, the NQRP contract funds representation before the BIA, but does not provide funding for representation on PFR's before the Ninth Circuit. Because this Rule will cause more of our clients' cases to be summarily dismissed without review, in order to reverse IJ errors in these cases, FIRRP will not only lose income that previously was provided for appeals to the BIA, but will also need to divert funds to provide representation to these clients at the Ninth Circuit.

101. The Rule will also drastically erode our pro bono program, which is central to our mission and vision to increase access to counsel and ensure due process for all persons in removal proceedings. Our pro bono program provides representation to a significant number of clients each year. As mentioned above, the Rule will make appellate representation drastically more complicated and burdensome, and in many cases completely unfeasible. The severely reduced notice of appeal window and the summary dismissal provisions will make pro bono representation for most cases simply impossible. Meanwhile, cutting reasonable briefing extensions will undermine FIRRP's ability to place BIA cases with pro bono attorneys even where briefing is granted. BIA cases are excellent opportunities to tap into larger, non-Arizona based legal markets for support since appeals do not require as much contact with the client or in-person hearings. If this Rule takes effect, we will not be able to place nearly any BIA appeals with pro bono attorneys, thus cutting off a significant source of pro bono support for the organization.

102. Internally, this Rule also complicates FIRRP's training for staff. Specifically, resources will have to be dedicated to educate and re-train staff on practice before EOIR in light of this new Rule. The Notices of Appeal will need to contain much more information, and as a result, our training materials will need to be overhauled. FIRRP will also need to train more staff on how to file PFR's and stay motions before the Ninth Circuit, because staff will need to work on those at the same time that they are drafting and filing the BIA Notice of Appeal, given the likelihood that any given notice of appeal will be summarily dismissed. This effort will require development of new and revised templates and sample language for notices as well as motions and briefs for staff and pro bono attorneys. In addition, it will require more resources dedicated to supervision to ensure that staff, interns, and pro bono attorneys are aware of and properly employing the new practices.

103. The Rule rewrites long-established immigration court and appellate practice and prizes speed over fairness and the Board's duty to adjudicate questions before it. It will now be more difficult for unrepresented noncitizens to obtain counsel, and more difficult to prevail on appeal. This greatly impacts our mission—due process and a fair day in court will be even more elusive for our clients. Our staff will face a significant increase in work

as we scramble to mitigate the worst of these consequences for these clients and, more and more of our clients will be ordered removed in violation of due process.

104. Our clients can see when a judicial system is stacked against them, and pervasive denials combined with harsh conditions of detention cause people to give up on meritorious cases. Seeing our clients lose hope and having meritorious cases unjustly denied or unnecessarily delayed is a major cause of staff burnout and turnover, which in turn hamper productivity and lead to significant lost costs as the staff we invest in leave earlier. FIRRP has worked extremely hard over the last decade to reduce staff turnover and changes like this Rule threaten to undo much of that good work.

105. Finally, I fear that this Rule will irreparably harm some of our client's physical and mental well-being. Many of the people we serve in Arizona's immigration detention centers and children's shelters have been traumatized before they were detained, and detention itself is traumatizing. Many of our clients tell us that they came to the U.S. thinking that here they would finally be heard, treated fairly, and protected, but the experience of immigration detention and going through a court system with convoluted rules—rules like this one that create bureaucratic hurdles that, in practice, are insurmountable barriers to those who are detained, do not have counsel, or both – shake people and their faith in the fairness of our institutions to their core. We often encounter clients who express that they feel like they are facing an impossible uphill battle. In the face of their Sisyphean task, sadly many clients become desperate. Some give up on their cases and accept removal to serious harm or death. Others develop severe mental health conditions or resort to self-harm.

106. This Rule is confusing, creates expectations on respondents that are unmoored from the reality of what is even logistically possible for people in detention, particularly *pro se* people in detention, to achieve, and forces people to choose between giving up on their case or the prolonged uncertainty of a lengthy petition for review before the Courts of Appeals. Based on my experience working with individuals with serious mental health conditions and detained individuals who expressed suicidal ideation, this Rule checks many of the boxes that could lead our clients to feel desperate or hopeless and place them at risk of possible harm. This harms not only our clients, but our social workers and other staff who seek to support them.

107. In sum, this Rule will significantly curtail FIRRP clients' due process rights and directly interfere with our core, mission driven work safeguarding those rights, providing access to counsel, and ensuring fair and humane treatment for people facing removal in Arizona.

Laura St. John, Legal Director
Florence Immigrant & Refugee Rights Project
P.O. Box 86299
Tucson, AZ 85754

# EXHIBIT

# F

February 25, 2026

Submitted via: https://www.regulations.gov/commenton/EOIR-2026-0001-0001

Jamee E. Comans
Acting Assistant Director, Office of Policy
Executive Office for Immigration Review
United States Department of Justice
5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

**Re**: **Comment from Former Appellate Immigration Judges in Opposition to RIN 1125-AB37/EOIR Docket No. EOIR-26-AB37**

Dear Acting Assistant Director Comans:

We are fourteen former Appellate Immigration Judges ("AIJs") and Temporary Appellate Immigration Judges ("TAIJs"),[1] each of whom served on the Board of Immigration Appeals ("BIA" or "Board") between 2015 and 2025.[2] We submit this comment to the United States Department of Justice ("DOJ" or "Department"), Executive Office for Immigration Review ("EOIR") in response and opposition to the Interim Final Rule ("IFR") issued by the DOJ/EOIR on February 6, 2026. *See* 91 Fed. Reg. 5267 (Feb. 6, 2026).

We call on DOJ/EOIR to withdraw the IFR in its entirety in order to preserve the integrity of the administrative appeals process and avoid violating the provision of the Immigration and Nationality Act ("INA") that characterizes an administrative appeal as a "remed[y]." 8 U.S.C. § 1252(d)(1). The existence of a meaningful administrative appeal has long served as an important means of securing due process for noncitizens in removal proceedings and as a crucial avenue to correct the errors that inevitably arise as Immigration Judges adjudicate hundreds of thousands of cases each year.

[1] Temporary Appellate Immigration Judges are "immigration judges, retired Board members, retired immigration judges, and administrative law judges employed within, or retired from, EOIR," or "senior EOIR attorneys with at least ten years of experience in the field of immigration law," who are appointed by the Attorney General "to serve as temporary Board members for renewable terms not to exceed six months." 8 C.F.R. § 1003.1(a)(4). As such, TAIJs have extensive knowledge of and experience in immigration law.

[2] The Background material concerning the Interim Final Rule criticizes the management and caseload of the Board during this time period as a justification for "reconsider[ing] the Board's role as an appellate tribunal." 91 Fed. Reg. 5267, 5270 (Feb. 6, 2026). Some former AIJ and TAIJ signatories to this comment served during a portion of this timeframe, whereas other signatories served during this timeframe and before it as well.

**A meaningful administrative appeal mechanism is essential to due process of law in immigration proceedings.**

*The role of briefing and meaningful review in our experience as Appellate Immigration Judges*

As former AIJs and TAIJs, we believe that parties in removal proceedings have a right to due process of law, including in the administrative appeals process. While courts have defined due process in various ways, we believe that a good working definition of due process is one which requires the parties be treated with "dignity, respect, courtesy, and fairness" throughout the proceeding, to include a full and fair process before a "neutral" adjudicator. *Matter of Y-S-L-C-*, 26 I. & N. Dec. 688, 690 (BIA 2015) (quoting *Cham v. Att'y Gen'l of the United States*, 423 F.3d 260, 271 (3d Cir. 2006)). Furthermore, the proceedings should not be so fundamentally unfair that a party is "prevented from reasonably presenting his case." *Freza v. U.S. Att'y Gen'l*, 49 F.4th 293, 298 (3d Cir. 2022); *see also Gutierrez v. Holder*, 662 F.3d 1083, 1091 (9th Cir. 2011) (same); *accord Okpala v. Whitaker*, 908 F.3d 965, 971 (5th Cir. 2018) (concluding that noncitizens have a right to due process in removal proceedings and that due process requires a "fair opportunity to be heard"). For purposes of an administrative appeal, a key component of due process is that the Board and the parties should have access to the full record for review, and the parties should have the opportunity to present briefs after reviewing the record to explain their arguments in every appeal. *See*, *e.g.*, *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 826-28 (9th Cir. 2003) (holding that a rebuttable presumption of prejudice attaches when a noncitizen's attorney fails to file an appellate brief to the Board on his or her behalf). Additionally, due process requires that the agency avoid creating unnecessary obstacles to fulfillment of the noncitizen's statutory right to counsel, which persists on appeal to the Board. *See* 8 U.S.C. § 1362.

In our aggregate service of approximately 70 years as appellate adjudicators, we caught and corrected thousands of significant errors by Immigration Judges because we were able to engage in full review of the record and receive briefing by the parties. These corrections were not mere scrivener's errors or administrative corrections; they either directly changed or were likely to change the ultimate outcome of the case. We also affirmed many decisions that were correct, after a careful review of the parties' concerns and after writing a decision that showed the parties were heard. Even when we did not agree with an appealing party's arguments, our decisions served the due process function of demonstrating the parties were heard and explaining why the law dictated a given outcome. We believe there is an inherent value to providing parties with a fair and fulsome review process, even when it does not change the outcome of the case.

Our experience directly demonstrates that the Department has provided misleading, or perhaps entirely false, statistics to support its contention that the administrative appeals process, as previously implemented, involved "potentially waiting for years for a Board decision that in the vast majority of cases would affirm the underlying Immigration Judge decision." 91 Fed. Reg. at 5270. Specifically, the Department supports this statement by claiming that "[b]etween October 1, 2023, and September 15, 2025, the Board sustained only 123 out of 55,065 case appeals (excluding interlocutory appeals, bond appeals, and appeals of motion to reopen decisions) on the merits." *Id*. at n.8. The Department thus concludes that "regardless of which party appeals, the Board generally agrees with the outcome of the decision below." *Id*. We

believe it is likely the Department has dramatically undercounted the number of appeals the Board sustained during this time period. Even more importantly, the Department has omitted thousands, if not tens of thousands, of cases that were remanded (and coded "REM") for further proceedings in light of an error, not merely for background checks or a new application for relief. A remand that identifies and requires correction of an error by the Immigration Judge is a substantive win for the appealing party, particularly because the Board is precluded from finding facts under nearly all circumstances in light of its governing regulations and standards of review, which require deference to Immigration Judges on factual issues.

First, our collective experience as AIJs and TAIJs is inconsistent with the Department's statement that only 123 appeals were sustained during the relevant time period. We posit this statistic may reflect the number of decisions that were given the specific decision code "SUS" (or "sustained") during that time period, but this likely reflects a dramatic undercount of the number of decisions that contained the language "the appeal is sustained" or otherwise indicated the appealing party prevailed. It is common for the Board to include language explicitly sustaining an appeal on its merits and *simultaneously* remanding the case for further processing or terminating proceedings, such that a search for decisions entered under the "SUS" code may not capture these decisions. *See*, *e.g.*, *Matter of Thakker*, 28 I. & N. Dec. 843, 849 (BIA 2024) (sustaining appeal and terminating removal proceedings); *Matter of H-C-R-C-*, 28 I. & N. Dec. 809, 814 (BIA 2024) (sustaining appeal, vacating Immigration Judge's decision, and remanding for further proceedings and entry of a new decision). Nonetheless, such decisions are, in fact, sustained appeals, and they reflect a victory by the appealing party on the substance of the case. Indeed, based on a review of the decisions accessible in the BIA's reading room, dated between October 1, 2023, and December 31, 2024, the Board sustained appeals in over 450 cases during that period, excluding the categories that the IFR excludes, even if it ultimately coded a lower number of those decisions as "SUS." *See* Attachment A.[3] Thus, over a shorter period of time than the period identified in footnote 8, the publicly available information demonstrates the Board sustained multiple times more appeals than it reported in the Background section of the IFR.

Even assuming, *arguendo*, that only 123 appeals were coded as "SUS" in the Board's systems during the quoted time period, it is incorrect to conclude from this that "the Board generally agrees with the outcome of the decision below" in cases where it remands to the Immigration Judge or terminates removal proceedings altogether. As examples of the purposes of remand, the Department cites "to update background checks or in response to an alien's request for a remand to seek a new form of relief." 91 Fed. Reg. 5270, n.8. However, as indicated above, this characterization dramatically minimizes the scope of thousands of cases that received a "REM" – or "remand" – code in the Board's tracking system during the relevant time period.

Consider a case where an Immigration Judge denied a noncitizen's application for asylum because he thought the noncitizen filed the application after the one-year deadline, but granted withholding of removal under INA §241(b)(3). This outcome means that the Immigration Judge

[3] The spreadsheet of results in Attachment A includes data on appealing party, type of appeal, and file name (per the reading room convention) for each case involving a sustained appeal.

found all the statutory qualifications for asylum were met, except for the filing deadline: the noncitizen had a probability of persecution in the removal country on account of a protected ground. However, because withholding of removal – unlike asylum – is non-discretionary, if the Board disagreed with the Immigration Judge and believed the noncitizen met the one-year filing deadline, the Board would usually have to remand for the Immigration Judge to address discretion in the first instance, especially if it required fact-finding. This outcome has nothing to do with background checks or new relief, and it does not represent any agreement with the outcome of the decision below. Instead, this outcome reflects fundamental *disagreement* between the Immigration Judge and the Board about whether the noncitizen is eligible for asylum. *See also Matter of H-C-R-C-*, 28 I. & N. Dec. 809 (reversing the Immigration Judge's determination that rape of noncitizen in prison did not rise to the level of torture, concluding the Immigration Judge's statements during the hearing showed bias against the noncitizen, and remanding proceedings to a new Immigration Judge to address these and other deficiencies); *Matter of H.N. Ferreira*, 28 I. & N. Dec. 765 (BIA 2023) (holding that the Immigration Judge erred in failing to review the denial of a petition to remove conditions on residence and remanding with instructions for Immigration Judge to do so). But the outcome would result in a code of "REM," not "SUS," and would not be included in the data the Department used to reach its 123 number.

Similarly, if a noncitizen demonstrated on appeal that he or she received ineffective assistance of counsel before the Immigration Judge, and that this caused prejudice to the noncitizen's case, the result would have been a remand (code "REM") to correct a fundamental error that precluded due process during the proceedings below. But this outcome, too, would have escaped the Department's inventory of "SUS" codes in the IFR.

Even more fundamentally, the IFR mischaracterizes the nature of remands where the Board found someone warranted a grant of relief and remanded only for updated background checks and the entry of a final order granting an application. These would have been coded as "BCR," or background check remand, (not "SUS") and entered into the system as remands for much of the period denoted in footnote 8, until 8 C.F.R. § 1003.1(d)(6) went into effect and instituted the practice of background check "holds" under the "BCH" code. If an Immigration Judge denied an application for relief, and the Board reversed the decision entirely and granted relief, the decision would have been entered as "BCR" (not "SUS") and characterized as a remand. Such a decision would indicate fundamental *dis*agreement, not general agreement, with the Immigration Judge's conclusion, but would not be included in the 123 number provided by the Department. *See* Attachment B (containing Redacted Decision -357 (sustaining appeal, granting CAT protection, and remanding for security checks) and Redacted Decision -019 (sustaining appeal and remanding for security checks)).

The "TER" – or "termination" – code is another example of a case outcome that does not represent general agreement with the outcome of the decision below. For example, if an Immigration Judge orders removal, but during the appeal period, the noncitizen obtains a T visa (for victims of trafficking in persons), or an S or U visa (for individuals who have assisted law enforcement in investigating crimes), the Board *must* terminate the proceedings – meaning the noncitizen does not have an order of removal. *See* 8 C.F.R. § 1003.1(m)(i)(D)(4). Termination is also required for individuals in proceedings who become United States citizens, individuals against whom a charge of removability cannot be sustained under the law, and individuals for

whom "[f]undamentally fair proceedings are not possible" due to mental incompetence. 8 C.F.R. § 1003.1(m)(i)(A)-(C). Discretionary termination is permissible under other circumstances, including when the noncitizen has a pending application for certain forms of relief before United States Citizenship and Immigration Services ("USCIS"). *See* 8 C.F.R. § 1003.1(m)(ii). When an Immigration Judge orders removal, and the Board grants a motion to terminate on appeal, the outcome of the case at the administrative appellate level could not be more different than the outcome of the case at the Immigration Court level; one outcome involves an order of removal, and the other does not.

Finally, under *Matter of Avetisyan*, 25 I. & N. Dec. 688 (BIA 2012), and 8 C.F.R. § 1003.1(l)(1), if an AIJ administratively closes a case to allow the respondent to seek a form of status the Board cannot grant (coded as "ACR"), that decision does not reflect any position whatsoever concerning the Immigration Judge's decision about matters that are within EOIR's purview. An order by the Board administratively closing a case would not have been reflected in the 123 cases allegedly coded as "SUS" during the specified period, but would not have reflected general agreement with the decision of the Immigration Judge.

In sum, when we served as AIJs and TAIJs, we collectively issued thousands of decisions under each of the above-described codes that did not reflect agreement with the decisions of the Immigration Judges below. Again, we say this not to fault the Immigration Judges themselves (although we did at times, when warranted, identify significant errors in their decisions), but instead to demonstrate the statistic provided by the Department to support the IFR is fundamentally misleading, and its statement regarding the Board's general agreement with the Immigration Judge is patently false. Thus, the idea that the Board's review does not matter because it will almost always result in the affirmance of the Immigration Judge's order is empirically untrue.

Furthermore, in light of the stakes in removal proceedings, even a relatively small number of sustained appeals would be enough to retain a system of meaningful administrative appellate review. As previously explained, immigration proceedings very often involve serious matters of life and death, wherein a "bureaucratic mistake can have life-changing consequences." *Patel v. Garland*, 596 U.S. 328, 347 (2022) (Gorsuch, J. dissenting). Indeed, the outcome of these proceedings can mean the difference between life and death for noncitizens seeking asylum, withholding of removal, and protection under the regulations implementing the Convention Against Torture and for U.S. citizens and lawful permanent residents who would suffer exceptional and extremely unusual hardship if their noncitizen caregivers were removed. Even if 123 human beings were to suffer torture due to the IFR, or if the United States citizen or lawful permanent resident relatives of 123 noncitizens suffered exceptional and extremely unusual hardship because their parent or child was erroneously removed, that would be enough to warrant withdrawal of the IFR. From a different perspective, even if only a small number of asylum applicants represent "a danger to the community of the United States" based on a conviction for a particularly serious crime, that would warrant retaining a meaningful administrative appeals process, to ensure any Immigration Judge errors in applying this law would be identified and corrected. *See* 8 U.S.C. § 1158(b)(2)(A)(ii). In sum, it is critical for DOJ to demonstrate to the parties and the public that the agency has heard and fully considered the

parties' arguments, and cares about ultimately reaching a legally correct and just result, given these stakes.

Even where the majority of a 3-AIJ panel affirmed an IJ's decision, one judge often dissented, and our substantive dissents provided further insight in subsequent federal litigation. At times, the Office of Immigration Litigation (the government representative in federal court defending the Board's decisions) would seek remand to permit the Board to further address issues flagged by the dissenting AIJ. In other cases, a dissent might highlight an important issue in the case for the circuit court in a petition for review. For example, in *Matter of Khan*, 28 I. & N. Dec. 850 (BIA 2024), one AIJ issued a dissenting opinion expressing a different view from that of the majority about the proper outcome of the case under governing Ninth Circuit precedent, and about whether prior, potentially relevant Board caselaw regarding crimes involving moral turpitude warranted continued deference in light of *Loper Bright Enterprises, Inc. v. Raimundo*, 144 S. Ct. 2244 (2024). A petition for review of *Matter of Khan* is now pending in the Ninth Circuit Court of Appeals, and it has attracted briefing from numerous amici. *See Khan v. Bondi*, Ninth Cir. Case No. 24-7118; *see also Nkenglefac v. Garland*, 34 F.4th 422, 429 (5th Cir. 2022) (dissenting AIJ's rationale adopted by circuit in granting petition for review and remanding the matter). Similarly, the issuance of a dissent could demonstrate the validity of a habeas petitioner's argument in favor of release or a bond hearing during the pendency of a petition for review. For example, the District Court for the District of Colorado concluded that one petitioner was entitled to an individualized bond hearing at which the Government would bear the burden to show detention was warranted, in part because an AIJ's dissent indicated that the petitioner's claim for relief had "at least some merit." *Munoz-Ramirez v. Bondi et al.*, No. 25-CV-1002-RMR at 17 (D. Colo. May 5, 2025).

We want to be clear that our comment and opposition to the IFR is not intended as a criticism of the work Immigration Judges put into adjudicating their cases. Immigration Judges have especially large caseloads, spend nearly forty hours per week on the bench, and usually issue oral decisions at the end of each hearing. We recognize that even with the greatest level of diligence and attention to detail, some errors are inevitable in adjudicating this volume of cases. Administrative appeals are important ways to catch and correct these ordinary, but inevitable, errors without resorting to federal court review.

Relatedly, if federal court review does become necessary, meaningful review by the Board serves the important function of clarifying the issues at hand for circuit court judges. An administrative appeal allows appellate adjudicators to frame and articulate the rationale of a decision in a way that will make sense to a circuit court of appeals. This is true in large part because AIJs, unlike Immigration Judges, do not have the pressures of issuing an oral decision immediately after a hearing in a courtroom, in the space of just a few minutes. As AIJs, we had a staff of excellent attorney advisors and clerks available to assist with legal research and drafting decisions. We had access to Westlaw and LEXIS in our offices and time to research each case before we entered our final votes and issued our decisions. As a result of these safeguards, in addition to the parties' briefs, we caught issues that simply would not have been front-of-mind for even the most diligent Immigration Judges. In cases where our decisions resulted in petitions for review, we were able to explain and supplement the reasoning of the Immigration Judge, or to identify which bases of the Immigration Judge's decision were supportable under circuit law

and which were not. Thus, the Board served a valuable filtering function even in cases where the bottom-line outcome of our decision was the same as that of the Immigration Judge.

*The IFR will prevent appealing parties from meaningfully presenting their case to the Board.*

Having explained the importance of full record review and briefing in the run of appellate cases, we now address how the IFR does not merely hinder, but in fact fully precludes appealing parties from reasonably presenting their case.

First, there is no way to articulate all arguments or identify all potential errors without a full copy of the record and IJ decision in a Notice of Appeal that is due only 10 days after the IJ decision. Because the vast majority of cases will not go to briefing under the IFR, the Notice of Appeal will be the appealing party's only opportunity to articulate his or her arguments. When that filing is due only 10 days after the Immigration Judge's decision, the appealing party will not have access to the full transcript of the hearings or the documentary submissions in the case below. Indeed, it is unclear from the IFR whether a full copy of the IJ decision will be provided to the appealing party within the 10-day period, or whether the appellant will only have the order of removal (or in the case of a DHS appeal, the form order granting relief from removal). The IFR sets up an impossible system in which appealing parties will be unable to access crucial materials at the time the Notice of Appeal is due, but the Notice of Appeal will be the sole opportunity to articulate the party's arguments, and it must include all arguments with sufficient specificity to avoid summary dismissal.

From our perspective as former adjudicators, the IFR also forecloses meaningful appellate review because it strongly suggests the Board will not have access to the full record in order to review whether a case is appropriate for summary dismissal. *See* 8 C.F.R. § 1003.1(e)(8) (amending regulation to provide that only in cases not summarily dismissed that will there be "completion of the record on appeal, including any briefs, motions, or other submissions on appeal ..."). Without the full record, we as adjudicators would not have been able to determine with any degree of certainty whether the case truly presented a "novel" issue, which would remain inappropriate for summary dismissal even under the IFR. Nor would we have been able to check the accuracy of arguments such as whether a particular record of criminal conviction supported a finding of removability, whether an Immigration Judge misunderstood a noncitizen's testimony, or even whether the DHS presented evidence that the individual in proceedings was born outside the United States. Indeed, in some cases when we reviewed the transcript of proceedings, there were so many "indiscernible" notations that the testimony could not be fully understood, and there was no way to test the appealing party's claims. In those cases, remand was necessary to permit full development of the record. If a noncitizen presented arguments such as these on appeal, and if they were supported by the record, we would have regarded summary dismissal as highly inappropriate and potentially violative of the noncitizen's basic due process rights.

The above due process obstacles will be present in every case, even where the party evaluating whether to appeal has the same counsel from the moment the NTA is issued through the time the Immigration Judge issues a decision. Beyond these issues, however, noncitizens who appeared pro se before the Immigration Court, but who find counsel for the appeal, will have no

reasonable way to identify legal errors that may have occurred in the proceedings, or even to inform counsel about the basis of the Immigration Judge's decision. Counsel will not know what was in the record before the IJ and will have inadequate time to find out. For this category of noncitizens who were pro se before the IJ, the new system does not just impose additional hurdles; it categorically precludes them from obtaining meaningful appellate review.[4]

*The IFR ignores the established adverse effect it will have on federal circuit courts and the resulting inefficiencies it will cause at the federal courts and the Board.*

The IFR engages in revisionist history by ignoring the process by which Immigration Judges issue oral decisions immediately after an immigration hearing and the backlash that occurred from federal circuit courts from approximately 2002 to 2007, when the Board issued over 50 percent of its decisions as affirmances without opinion ("AWOs"). *See*, *e.g.*, *Zhen Li Iao v. Gonzales*, 400 F.3d 530 (7th Cir. 2005) (concluding that even when the courts of appeals understand that "unreasoned decisions" result from factors such as "caseload pressures," they are not "authorized to affirm" such decisions); *El Moraghy v. INS*, 331 F.3d 195 (1st Cir. 2003) (concluding that while AWOs were permitted, they were problematic when the Immigration Judge's decision lacked clear findings on credibility or the specific grounds for denial of relief). While the Board was able to reduce its backlog at that time of over 50,000 cases, this resulted in a rapid increase of appeals from the Board to the federal circuit courts because of the speed with which the Board issued AWOs as it reduced its backlog. The result was federal circuit courts reviewing a rapid increase in appeals from the Board and simultaneously, for the first time, the dictated oral decision of an immigration judge and a one-line AWO order from the Board, as opposed to a longer order from the Board explaining its reasoning for affirming some or all of the Immigration Judge's oral decision. This resulted in a large number of remands from the circuit courts and public criticism of the Board for not explaining its reasons for affirming what essentially is the first draft of a dictated oral decision that an Immigration Judge gives at the end of an immigration hearing, with no opportunity to revise or edit afterwards. By pushing the "raw" Immigration Judge oral decisions into the circuit courts for the first time without the benefit of a Board decision for the circuit court to review, the Department created an inefficiency in the adjudication ecosystem that required recalibration and a reduced use of AWOs, down to an average of only 3-4 percent of all issued decisions per year, in the years post 2005.

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[4] The IFR Background indicates many cases are subject to summary affirmance and dismissal already, *see* 91 Fed. Reg. at 5271-72 & n.16, but the pre-IFR regulatory regime permitted summary dismissal only in cases of untimely appeals and other procedural issues not relevant here, or when the appealing party does not identify errors by the Immigration Judge in its Notice of Appeal, or if the Board is satisfied "*from a review of the record*," that the appeal does not have an arguable basis in law or fact." 8 C.F.R. 1003.1(d)(2)(i) (emphasis added). Summary dismissal *after* record review is fundamentally different, from the perspective of due process, from summary dismissal before a party's claims can be tested by review of the record. Similarly, summary dismissal *after* providing the parties with a reasonable opportunity to state their case is fundamentally different from summary dismissal without an opportunity to be heard. *See Matter of Valencia*, 19 I. & N. Dec. 354 (BIA 1986) (summarily dismissing where Notice of Appeal was insufficiently specific and noncitizen filed no separate brief or request for oral argument). The IFR takes an already-streamlined process and strips it of all pretense to due process.

The IFR ignores the fact that the result of the Board summarily dismissing nearly all appeals will leave circuit courts in an even worse position than they were in in the early 2000s when the Board heavily used AWO orders. Circuit court judges will not have the benefit of the Board considering briefs from the parties on the merits of the appeals before them, or even have the briefs themselves (which at least exist in a case where the Board issues an AWO). In addition, a summary dismissal by the Board within 15 days of an appeal will cause a large number of PFRs to be filed even faster than AWOs were in the early 2000s, producing a much larger backlog in the federal courts over a much shorter time period. Add to this the fact that, as we observed in our work as AIJs, the quality of Immigration Judge oral decisions has diminished over the past ten years, not due to any fault of the individual Immigration Judges, but due to hiring practices undertaken by the Department beginning in 2016 to bring IJs onto the bench with little or no immigration law experience and to train them to issue much shorter and less comprehensive oral decisions than Immigration Judges had issued in the past. If federal circuit court judges were not happy with the quality of Immigration Judge oral decisions in the early 2000s, they will be in for quite a shock now if this IFR is allowed to go into effect.

This IFR will not result in efficiency, but will bog down the system with federal court remands demanding that the Board issue decisions indicating the reasons for the summary dismissal and adhering to due process under the INA and the Constitution. Even if prolonged detention causes some individuals to give up their statutory and constitutional rights to appeal because of unbearable detention conditions (which should not be the goal of a Department's regulation),[5] the IFR is likely to increase case backlogs at the Board and clog the federal court system. Therefore, while the Board's high caseload presents a real challenge, the IFR fails to address the problem even as it precludes the parties from receiving due process of law.

*The IFR transforms the filing fee for an appeal into nothing more than a tax collected by EOIR to permit access to federal court review.*

Finally, the fee structure for administrative appeals, which remains unchanged under the IFR, no longer bears any relationship to the work that the Board will perform, if nearly all of its decisions will be summary dismissals without meaningful review of an administrative record. The IFR forces noncitizens to pay $1030 for a foregone conclusion of summary dismissal in any non-novel case, no matter how grievous the error by the Immigration Judge. It is unclear how

[5] *See*, *e.g.*, "60 Violations in 50 Days: Inside ICE's Giant Detention Tent Facility at Ft. Bliss," *Washington Post*, Sep. 16, 2025, available at https://www.washingtonpost.com/business/2025/09/16/ice-detention-center-immigration-violations/ (last accessed Feb. 16, 2026); *Inside the Black Hole*, American Civil Liberties Union et al., August 2024, available at https://assets.aclu.org/live/uploads/2024/08/66c77c4848f4fc74670650f5_Inside-the-Black-Hole_Systemic-Human-Rights-Abuses-Against-Immigrants-Detained.pdf (last accessed Feb. 21, 2026); "Endless Nightmare," Physicians for Human Rights et al., February 2024, available at https://phr.org/wip-content/uploads/2024/02/PHR-REPORT-ICE-Solitary-Confinement-2024.pdf (last accessed Feb. 16, 2026).

such a cursory process could cost the government $1030, and the fee presents an obstacle that will often be insurmountable for noncitizens.

While fee waivers are available in theory, they are out of reach for the vast majority of appellants. Regardless of whether appellants qualify for fee waivers, the Board has explicitly held that "[f]ee waivers are the exception and should not be granted as a matter of routine." *Matter of Garcia-Martinez*, 29 I. & N. Dec. 169, 170 (BIA 2025). It has placed numerous other restrictions on fee waivers that are untethered from the terms of the regulations themselves and are not grounded in any published caselaw interpreting those regulations. *See id*. Indeed, in the context of motions to proceed *in forma pauperis*, federal courts focus exclusively on objective criteria of financial hardship, not on the overall proportion of motions that are granted or denied, and have emphasized that the party seeking leave to proceed *in forma pauperis* need not show that he or she is "absolutely destitute." *Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1307 (11th Cir. 2004); *see also Foster v. Cuyahoga Dep't of Health and Human Services*, 21 F. App'x 239, 240 (6th Cir. 2001) (noting focus on question of hardship). Thus, the vast majority of noncitizens who receive an adverse decision from an Immigration Judge will pay a four-figure sum to receive a summary dismissal from an administrative appellate body that did not review the record of proceedings below or provide the noncitizen with an opportunity to brief the case.

If the filing fee existed to fund the provision of meaningful review, it would bear some reasonable relationship to the purpose. However, the IFR, when read in context, effectively announces that the fee is intended solely as a gatekeeping function or tax the agency collects to allow noncitizens to access the PFR process.

**The IFR is ultra vires because it categorically precludes an appeal to the Board from functioning as a remedy in the vast majority of cases.**

The IFR Background section posits that it is permissible to turn the Board into an engine for generating summary dismissals because there is "no right to a merits adjudication of any appeal in the first instance." 91 Fed. Reg. at 5271. It greatly minimizes the role of the Board by claiming "the Board's appellate authorities have been delegated by the Attorney General and delineated by regulation, rather than by statute." 91 Fed. Reg. at 5268. In so concluding, the IFR relies on the fact that the INA mentions the Board only once, in order to define when an order of removal becomes final. *Id*. at 5268 n.2, 5271.

This argument fails to account for the full structure of the INA, and the central role the Board plays in allowing noncitizens to obtain meaningful review of Immigration Judge decisions at any level. That is, 8 U.S.C. § 1252(d)(1) provides that the courts of appeal may review a final order of removal "only if . . . the alien has exhausted all administrative remedies available to the alien as of right." The Supreme Court held that that this provision does not require a noncitizen to file a motion to reopen or reconsider a Board decision before obtaining judicial review, and instead, "the statutory scheme contemplates that [the noncitizen] immediately petition for judicial review of the Board's initial, prereconsideration decision." *Santos Zacaria v. Garland*, 598 U.S. 411, 419 (2023).

Following the Supreme Court's decision in *Santos-Zacaria*, multiple circuit courts of appeals have held that exhaustion of appeal to the Board is required in order to file a petition for review. *See*, *e.g.*, *Suate-Orellana v. Garland*, 101 F.4th 624 (9th Cir. 2024) (holding that exhaustion requirement is mandatory and must be enforced if raised, but issue exhaustion does not require use of precise terminology before the Board); *Tepas v. Garland*, 73 F.4th 408, 413 (4th Cir. 2023) (treating statutory exhaustion requirement as mandatory claims processing rule); *Ud Din v. Garland*, 72 F.4th 411, 419-20 (2d Cir. 2023) (concluding exhaustion requirement of 8 U.S.C. § 1252(d)(1) is mandatory where the government raises it); *see also Munoz de Zelaya v. Garland*, 80 F.4th 689, 694 (5th Cir. 2023) (declining to decide whether exhaustion requirement must be enforced if timely raised, but declining to reach unexhausted arguments).[6] The IFR does not withdraw from any intention to argue in favor of an administrative exhaustion requirement, but instead purports to retain that requirement, while making it effectively meaningless. *See* 91 Fed. Reg. at 5278 (providing in new 8 C.F.R. 1003.18(b)(3) that "[a]ny issue not raised in the Notice of Appeal from a Decision of an Immigration Judge (Form EOIR-26) shall be deemed waived"). The Department is therefore explicit in constructing the IFR as a meaningless and often impossible procedural hurdle to clear in order to obtain judicial review following near-inevitable summary dismissal. But if the Government wishes to continue to maintain that an appeal to the Board is required for exhaustion, it follows that the appeal must be a "remed[y]" that cannot be revoked at the whim of the Attorney General.

The plain language of the statute requires this interpretation. A remedy is "the means of enforcing a right or preventing or redressing a wrong; legal or equitable relief." *Remedy*, Black's Law Dictionary (12th ed. 2024). Therefore, the only permissible reading of the statute is that an administrative appeal to the Board must provide a reasonable opportunity for the appellant to enforce a right (e.g. the right to nondiscretionary termination or protection from removal) or redress a wrong (e.g. a legal or factual error by the Immigration Judge).

The IFR announces that BIA appeals will result in summary dismissal in any case that does not involve "novel" issues. 91 Fed. Reg. at 5270. This amounts to an explicit concession by the Department that even where the Immigration Judge errs and the appellant has a statutory right to relief, the appeal will be summarily dismissed. The Department has thus announced it will not provide appellants with any opportunity to recover their rights to nondiscretionary relief or to redress wrongs, including errors of law or fact by the Immigration Judge. This explicit and admitted deprivation of rights contravenes the statutory scheme that specifically characterizes an administrative appeal as a "remed[y]."[7] *See also Denko v. INS*, 351 F.3d 717 (6th Cir. 2003)

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[6] The circuits have issued inconsistent decisions on the specificity required of a noncitizen in order to exhaust a given issue before the Board. Similarly, the statute itself exempts nationality claims from any requirement of administrative issue exhaustion.

[7] As former AIJs who are aware of the life-and-death stakes in these cases, we believe it would have been an abdication of both our statutory and humanitarian duties to deliberately ignore legal and factual errors in the manner posited by this IFR. In this case, whether by Congressional intent or by happenstance of statutory construction, the "remed[y]" language in 8 U.S.C. § 1252(d)(1) codifies a duty to provide due process of law that also serves a moral function of affording basic dignity to noncitizens in proceedings.

(affirming constitutionality of BIA streamlining regulations because they are used only when certain criteria are met, including that "the result reached by the IJ is correct").

If an appeal to the Board is not a "remed[y]," but merely a cursory step through which a noncitizen must pass (and a four-figure tax that the noncitizen must pay) to obtain a summary dismissal, then the noncitizen should be able to skip the BIA appeal step entirely. On a practical level, eliminating the administrative appeal process entirely would save noncitizens $1030 plus attorneys' fees for this interim step, and would permit them to simply file a PFR of the Immigration Judge's decision. But as previously mentioned, the IFR does not propose skipping the BIA process entirely. Instead, the IFR deliberately and explicitly strips the administrative appeals process of any content and meaning as a "remed[y]," without accounting for the glaring inconsistency this creates with 8 U.S.C. § 1252(d)(1). Because the IFR as written is plainly ultra vires, it should be withdrawn.

**Conclusion**

In light of the foregoing, we former AIJs request that the Department withdraw the IFR and return to the regulatory scheme for appellate review that governed prior to February 6, 2026. Thank you for your consideration, and please do not hesitate to contact FormerAIJTAIJIFRComment2026@gmail.com for further information.

Sincerely,

Charles K. Adkins-Blanch
Deputy Chief Appellate Immigration Judge, 2013-2024
Appellate Immigration Judge, 2008-2013
Immigration Judge 2004-2008

Denise G. Brown
Appellate Immigration Judge, 2024-2025
Temporary Appellate Immigration Judge, 2021-2023

Katharine Clark
Appellate Immigration Judge, 2023-2025

John P. Crossett
Temporary Appellate Immigration Judge, 2018-2019, 2022-2024

John Guendelsberger
Appellate Immigration Judge, 1995-2003, 2007-2019

Edward F. Kelly
Appellate Immigration Judge, 2017-2021
Deputy Chief Immigration Judge, 2013-2017
Assistant Chief Immigration Judge, 2011-2013

Molly Kendall Clark
Appellate Immigration Judge, 2016-2019
Temporary Appellate Immigration Judge, 2008-2015

Megan E. Kludt
Appellate Immigration Judge, 2024-2025

Homero López, Jr.
Appellate Immigration Judge, 2024-2025

Margaret O'Herron
Temporary Appellate Immigration Judge, 2015-2017

S. Kathleen Pepper
Temporary Appellate Immigration Judge, 2020-2021, 2022-2024

Kathleen Reilly
Appellate Immigration Judge, 2024-2025
Immigration Judge, 2021-2024

Andrea A. Sáenz
Appellate Immigration Judge, 2021-2025

Daniel L. Swanwick
Temporary Appellate Immigration Judge, 2020

**Attachment A**

| Appeal ID | File Name | Appellant Identity | Type of Appeal | Include in Dataset | Notes |
|---|---|---|---|---|---|
| 5450327 | 1.29.23_Jena.pdf | Respondent | asylum, withholding of removal, CAT | Yes | |
| 5450280 | 1.3.24_Annandale.pdf | DHS | withholding of removal under CAT | Yes | |
| 5305435 | 1.5.24_El Paso.pdf | Applicant | withholding of removal under INA and CAT | Yes | |
| 5397654 | 1.5.24_NYC.pdf | DHS | asylum | Yes | |
| 5449129 | 1.8.24_Jena.pdf | Respondent | asylum, withholding of removal under INA, and CAT | Yes | |
| 5318113 | 1.9.24_York.pdf | Respondent | asylum, withholding of removal under INA, and CAT | Yes | |
| 5238487 | 1.10.24_Cleveland.pdf | Respondent | asylum, withholding of removal under INA, and CAT | Yes | |
| 5449715 | 1.11.24_Eloy.pdf | Respondent | asylum, withholding of removal under INA, and CAT | Yes | |
| 5456209 | 1.12.24_Batavia.pdf | DHS | withholding of removal under CAT | Yes | |
| 5281928 | 1.12.24_LA.pdf | DHS | termination of removal proceedings | Yes | |
| 5430892 | 1.12.24_LA_2.pdf | Respondent | asylum, withholding of removal under INA, and CAT | Yes | |
| 5349002 | 1.12.24_San Diego.pdf | Respondent | cancellation of removal under INA and voluntary departure under INA | Yes | |
| 5454804 | 1.17.24_SF.pdf | DHS | asylum, withholding of removal under INA | Yes | |
| 5450916 | 1.18.24_Atlanta.pdf | DHS | Findings of removeability | Yes | |
| 5267968 | 1.18.24_Boston.pdf | Respondent | asylum, withholding of removal under INA | Yes | |
| 5455708 | 1.18.24_Oakdale.pdf | Respondent | order of removal | Yes | |
| 5431974 | 1.22.24_Annandale.pdf | DHS | deferral of removal under CAT (DHS); determination of conviction of particularly serious crime (respondent) | Yes | |
| 5413785 | 1.23.24_San Diego.pdf | Respondent | withholding of removal under INA and CAT | Yes | |
| 5453174 | 1.24.24_KC.pdf | Respondent | asylum, withholding of removal under INA, and CAT | Yes | |
| 5393505 | 1.25.24_Miami.pdf | Respondent | order of removal | Yes | |
| 5338376 | 1.26.24_Detroit.pdf | DHS | asylum | Yes | |
| 5234613 | 1.26.24_Otay Mesa.pdf | Respondent | asylum | Yes | |
| 5236828 | 1.29.24_Detroit.pdf | DHS | cancellation of removal under INA | Yes | |
| 5452547 | 1.29.24_Oakdale.pdf | Respondent | deferral of removal under CAT | Yes | |
| 5440630 | 1.29.24_Tucson.pdf | DHS | termination of removal proceedings | Yes | |
| 5327964 | 1.31.24_Conroe.pdf | Respondent | asylum under INA, withholding of removal under INA, CAT | Yes | |
| 5258688 | 1.31.24_Phoenix.pdf | DHS | waiver of inadmissibility under INA (DHS); removability (respondent) | Yes | |
| 5424025 | 2.1.24_Boston.pdf | DHS | termination of removal proceedings | Yes | |
| 5446923 | 2.1.24_Conroe.pdf | DHS | adjustment of status under INA | Yes | |
| 5428180 | 2.5.24_Seattle.pdf | Respondent | asylum, withholding of removal, CAT | Yes | |
| 5255776 | 2.6.24_Hartford.pdf | Respondent | asylum under INA, withholding of removal under INA | Yes | |
| 5394833 | 2.6.24_SF.pdf | Respondent | asylum under INA, withholding of removal under INA, CAT | Yes | |
| 5271032 | 2.7.24_Batavia.pdf | Respondent | abandonment of applications for relief, order of removal | Yes | |
| 5436008 | 2.8.24_Jena.pdf | Respondent | asylum under INA, withholding of removal under INA, CAT | Yes | |
| 5256610 | 2.8.24_Seattle.pdf | DHS | adjustment of status under INA | Yes | |
| 5451381 | 2.9.24_Otero.pdf | Respondent | asylum, withholding of removal | Yes | |
| 5371569 | 2.13.24_Miami.pdf | DHS | vacating expedited removal order | Yes | |
| 5397721 | 2.14.24_NYC.pdf | Respondent | asylum under INA, withholding of removal under INA, CAT | Yes | |
| 5283763 | 2.15.24_Chicago.pdf | DHS | termination of removal proceedings | Yes | |
| 5449271 | 2.15.24_Laredo.pdf | Applicant | withholding of removal under INA, CAT | Yes | |
| 5410055 | 2.15.24_Miami.pdf | DHS | adjustment of status under Cuban Adjustment Act | Yes | |
| 5452547 | 2.20.24_Oakdale.pdf | Respondent | deferral of removal under CAT | Yes | |
| 5363416 | 2.21.24_Denver.pdf | DHS | cancellation of removal under INA | Yes | |
| 5368255 | 2.21.24_Miami.pdf | DHS | vacating expedited removal order | Yes | |
| 5452914 | 2.22.24_Annandale.pdf | Both | deferral of removal under CAT (DHS); deferral of removal under CAT (respondent) | Yes | |
| 5279836 | 2.22.24_Cleveland.pdf | Respondent | asylum under INA, withholding of removal under INA, CAT | Yes | |
| 5291695 | 2.22.24_LA.pdf | Respondent | asylum under INA, withholding of removal under INA, CAT | Yes | |
| 5391487 | 2.26.24_Seattle.pdf | Respondent | asylum under INA, withholding of removal under INA, CAT | Yes | |
| 5245363 | 2.28.24_Houston.pdf | Respondent | abandonment of applications for relief, order of removal | Yes | |
| 5460577 | 2.28.24_Newark.pdf | Respondent | asylum under INA, withholding of removal under INA, CAT | Yes | |
| 5293612 | 2.29.24_SF.pdf | DHS | termination of removal proceedings | Yes | |
| 5390150 | 2.29.24_Van Nuys.pdf | Respondent | motion to dismiss proceedings based on exercise of prosecutorial discretion | Yes | |
| 5454186 | 3.5.24_Florence.pdf | Respondent | Order of removal | Yes | |
| 5226528 | 3.6.24_El Paso.pdf | Respondents | Order of removal | Yes | |
| 5295631 | 3.7.24_Boston.pdf | Respondent | Denial of application for cancellation of removal under INA | Yes | |
| 5316886 | 3.7.24_Harlingen.pdf | Respondents | Denial of application for asylum under INA, and withholding of removal | Yes | |
| 5464899 | 3.7.24_Jena.pdf | Respondent | Denial of application for cancellation of removal for permanent residents under INA | Yes | |
| 5457695 | 3.8.24_Conroe.pdf | Respondent | Denial of application for asylum and withholding of removal | Yes | |
| 5462370 | 3.8.24_Dallas.pdf | Respondent | Order indicating withdrawal of application for asylum and withholding of removal under CAT | Yes | |
| 5258364 | 3.8.24_Houston.pdf | Respondent | Denial of application for withholding of removal under INA and CAT | Yes | |
| 5351168 | 3.11.24_Hartford.pdf | Respondents | Denial of application for cancellation of removal under INA | Yes | |
| 5435810 | 3.13.24_LA.pdf | Respondents | Grant of applications for asylum | Yes | |
| 5422627 | 3.14.24_Annandale.pdf | DHS | Grant of application for deferral of removal under CAT | Yes | |
| 5236792 | 3.14.24_Detroit.pdf | DHS | Grant of application for cancellation of removal under INA | Yes | |
| 5429865 | 3.14.24_Elizabeth.pdf | DHS | Grant of application for cancellation of removal under INA | Yes | |
| 5460298 | 3.14.24_Oakdale.pdf | Respondent | Order of removal | Yes | |
| 5458548 | 3.14.24_Pearsall.pdf | Applicant | Denial of application for withholding of removal under INA and CAT | Yes | |
| 5444914 | 3.15.24_Conroe.pdf | Respondent | Findings of removeability | Yes | |
| 5262453 | 3.15.24_Las Vegas.pdf | Respondent | Denial of applications for cancellation of removal and special rule cancellation of removal under INA | Yes | |
| 5400336 | 3.19.24_Boston.pdf | Respondents | Determination of removeability | Yes | |
| 5227445 | 3.20.24_Miami.pdf | Respondent | Order of removal | Yes | |
| 5452383 | 3.21.24_Laredo.pdf | Respondent | Denial of application for protection under CAT | Yes | |
| 5278241 | 3.22.24_Baltimore.pdf | Respondent | Denial of application for cancellation of removal under INA | Yes | |
| 5446847 | 3.22.24_Pearsall.pdf | DHS | Termination of removal proceedings | Yes | |
| 5247999 | 3.26.24_San Diego.pdf | DHS | Termination of removal proceedings | Yes | |
| 5362647 | 3.26.24_San Diego_2.pdf | Respondents | Denial of application for asylum under INA | Yes | |
| 5462726 | 3.28.24_Eloy.pdf | DHS | Grant of application for cancellation of removal under INA | Yes | |
| 5285483 | 3.28.24_Honolulu.pdf | Respondent | Denial of applications for asylum under the INA and CAT | Yes | |
| 5242659 | 3.28.24_NYC.pdf | DHS | Grant of applications for asylum under INA | Yes | |
| 5469544 | 3.28.24_Oakdale.pdf | Respondent | Order of removal | Yes | |
| 5463800 | 3.29.24_Chicago.pdf | DHS | Grant of application for cancellation of removal under INA | Yes | |
| 5391566 | 4.1.24_SF.pdf | Respondents | Denial of applications for aslyum | Yes | |
| 5203216 | 4.4.24_SF.pdf | Respondent | Denial of application for asylum under INA | Yes | |
| 5461346 | 4.5.24_Conroe.pdf | Respondent | Denial of application for asylum and withholding of removal under INA and CAT | Yes | |
| 5326654 | 4.5.24_Newark.pdf | Both | Grant of application for adjustment of status | Yes | |
| 5438909 | 4.5.24_NYC.pdf | Respondents | Denial of application for asylum and withholding of removal under INA and CAT | Yes | |

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| 5462265 | 4.5.24_Oakdale.pdf | Respondents | Application for asylum and withholding of removal under INA and CAT | Yes | |
| 5410767 | 4.8.24_LA.pdf | Respondent | Application for asylum and withholding of removal under INA | Yes | |
| 5465180 | 4.9.24_Otero.pdf | Applicant | Application for withholding of removal under INA and CAT | Yes | |
| 5457421 | 4.10.24_Chicago.pdf | DHS | Grant of applications for adjustment of status under INA | Yes | |
| 5364217 | 4.10.24_Cleveland.pdf | DHS | Termination of removal proceedings | Yes | |
| 5462569 | 4.11.24_Laredo.pdf | Respondent | Denial of the application for asylum and withholding of removal under INA | Yes | |
| 5464971 | 4.12.24_Oakdale.pdf | Respondent | Order of removal | Yes | |
| 5447931 | 4.12.24_SF.pdf | Respondents | Denial of application for asylum and withholding of removal under INA and CAT | Yes | |
| 5287244 | 4.15.24_Baltimore.pdf | Respondent | Denial of application for asylum and withholding of removal under INA and CAT | Yes | |
| 5446741 | 4.15.24_Van Nuys.pdf | Respondent | Denial of application for asylum and withholding of removal under INA and CAT | Yes | |
| 5462415 | 4.16.24_Aurora.pdf | Respondent | Denial of application for asylum and withholding of removal under INA and CAT | Yes | |
| 5456809 | 4.17.24_Annandale.pdf | DHS | Grant of application for asylum and withholding of removal under INA | Yes | |
| 5464664 | 4.18.24_Detroit.pdf | DHS | Grant of application for asylum under INA | Yes | |
| 5465038 | 4.18.24_Laredo.pdf | Respondent | Denial of application for asylum and withholding of removal under INA and CAT | Yes | |
| 5392018 | 4.19.24_SF.pdf | Respondents | Denial of application for asylum and withholding of removal under INA and CAT | Yes | |
| 5467634 | 4.22.24_Boston.pdf | Respondents | Denial of application for asylum and withholding of removal under INA and CAT | Yes | |
| 5434357 | 4.23.24_NYC.pdf | Respondents | Denial of application for asylum and withholding of removal under INA and CAT | Yes | |
| 5449817 | 4.23.24_Phoenix.pdf | DHS | Termination of proceedings based on pending adjustment status application | Yes | |
| 5320766 | 4.23.24_Tucson.pdf | Respondent | Denial of application for asylum and withholding of removal under INA and CAT | Yes | |
| 5469127 | 4.24.24_Florence.pdf | DHS | Grant of application for cancellation of removal under INA | Yes | |
| 5377336 | 4.25.24_Newark.pdf | Respondents | Denial of application for asylum and withholding of removal under INA and CAT | Yes | |
| 5468255 | 4.25.24_Oakdale.pdf | Respondent | Denial of application for asylum and withholding of removal under INA and CAT | Yes | |
| 5448325 | 4.26.24_SF.pdf | Respondents | Denial of application for asylum and withholding of removal under INA and CAT | Yes | |
| 5463962 | 4.29.24_Laredo.pdf | Respondent | Denial of application for asylum and withholding of removal under INA and CAT | Yes | |
| 5287559 | 4.30.24_Boston.pdf | DHS | Termination of removal proceedings | Yes | |
| 5291784 | 4.30.24_Memphis.pdf | Respondent | Denial of application for cancellation of removal | Yes | |
| 5458578 | 4.30.24_Miami.pdf | Respondents | Denial of application for asylum and withholding of removal under INA and CAT | Yes | |
| 5461472 | 5.10.24_Denver | DHS | Granted asylum | Yes | |
| 5305706 | 5.10.24_NOLA.pdf | Respondent | Denied cancellation of removal | Yes | |
| 5284280 | 5.14.24_SF.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5363905 | 5.16.24_Cleveland.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5474923 | 5.17.24_Oakdale.pdf | Respondent | Granting voluntary depature and waiver of appeal | Yes | |
| 5352154 | 5.17.24_Van Nuys.pdf | Respondent | Denied deferral of removal | Yes | |
| 5465733 | 5.2.24_Boston.pdf | Respondent | Denied deferral of removal | Yes | |
| 5358876 | 5.2.24_Denver.pdf | Respondent | Denied cancellation of removal | Yes | |
| 5272979 | 5.2.24_Miami.pdf | Respondent | Found respondent abandoned application for asylum | Yes | |
| 5467019 | 5.20.24_Boston.pdf | Respondent | Denied aslylum, withholding of removal | Yes | |
| 5472322 | 5.20.24_Los Fresnos.pdf | DHS | Granted CAT | Yes | |
| 5416895 | 5.20.24_Miami.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |
| 5469951 | 5.21.24_Conroe.pdf | Respondent | Denied deferral of removal | Yes | |
| 5472387 | 5.22.24_Annandale.pdf | DHS | Granted deferral of removal | Yes | |
| 5468251 | 5.22.24_Pearsall.pdf | Respondent | Denied cancellation of removal | Yes | |
| 5468982 | 5.23.24_Eloy.pdf | DHS | Granted cancellation of removal | Yes | |
| 5462366 | 5.24.24_Elizabeth.pdf | Respondent | Denied deferral of removal | Yes | |
| 5470416 | 5.29.24_Ft Snelling.pdf | Respondent | Granted deferral of removal under CAT | Yes | |
| 5465522 | 5.29.24_Lumpkin.pdf | DHS | Granted deferral of removal under CAT | Yes | |
| 5467286 | 5.30.24_Los Fresnos.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |
| 5473072 | 5.31.24_Annandale.pdf | DHS | Granted deferral of removal under CAT | Yes | |
| 5473117 | 5.31.24_Las Vegas.pdf | DHS | Granted asylum | Yes | |
| 5472263 | 5.31.24_Miami.pdf | DHS | Termination of removal proceedings | Yes | |
| 5294238 | 5.31.24_Phoenix.pdf | Respondent | Denied cancellation of removal | Yes | |
| 5390753 | 5.6.24_NYC.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |
| 5465851 | 5.7.24_Batavia.pdf | DHS | Granted CAT | Yes | |
| 5359739 | 5.9.24_Cleveland.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5475373 | 6.10.24_NYC.pdf | DHS | Granted asylum | Yes | |
| 5467934 | 6.12.24_Annandale.pdf | DHS | Granted CAT | Yes | |
| 5457074 | 6.12.24_Batavia.pdf | Respondent | Order of removal | Yes | |
| 5272785 | 6.12.24_Hartford.pdf | DHS | Granted cancellation of removal | Yes | |
| 5394543 | 6.12.24_LA.pdf | Respondent | Granted termination of removal proceedings | Yes | |
| 5297140 | 6.12.24_Tucson.pdf | Respondent | Denied cancellation of removal | Yes | |
| 5436268 | 6.13.24_Cleveland.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5475301 | 6.14.24_Las Vegas.pdf | DHS | Granted withholding of removal under CAT | Yes | |
| 5480200 | 6.17.24_Elizabeth.pdf | Respondent | Found claims abandoned | Yes | |
| 5398144 | 6.17.24_NYC.pdf | Respondent | Denied motion to continue | No | Interlocutory appeal |
| 5466877 | 6.17.24_SF.pdf | Respondent | Denied aslylum, withholding of removal | Yes | |
| 5267391 | 6.18.24_LA.pdf | DHS | Granted asylum | Yes | |
| 5267055 | 6.18.24_Memphis.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |
| 5471030 | 6.20.24_Boston.pdf | DHS | Granted adjustment of status | Yes | |
| 5351077 | 6.20.24_Charlotte.pdf | Respondent | Denied cancellation of removal | Yes | |
| 5438130 | 6.20.24_Laredo.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |
| 5298847 | 6.20.24_SF.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5230389 | 6.21.24_Louisville.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |
| 5279912 | 6.21.24_Miami.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5477436 | 6.25.24_Conroe.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |
| 5368929 | 6.26.24_Cleveland.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5248899 | 6.26.24_Houston.pdf | Respondent | Found removeable | Yes | |
| 5282642 | 6.26.24_Houston_2.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |
| 5363092 | 6.27.24_Cleveland.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5474145 | 6.27.24_Elizabeth.pdf | DHS | Granted withholding of removal | Yes | |
| 5470701 | 6.27.24_Laredo.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |

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|---|---|---|---|---|---|
| 5476624 | 6.28.24_Adelanto.pdf | DHS | Granted asylum | Yes | |
| 5353172 | 6.28.24_Baltimore.pdf | Respondent | Found removeable | Yes | |
| 5473543 | 6.28.24_Boston.pdf | DHS | Granted asylum | Yes | |
| 5440108 | 6.28.24_LA.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |
| 5418874 | 6.28.24_Newark.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |
| 5471155 | 6.28.24_SF.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |
| 5414154 | 6.5.24_SF.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |
| 5469800 | 6.6.24_Boston.pdf | Respondent | Denied motion to continue | No | Interlocutory appeal |
| 5402064 | 6.6.24_Miami.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |
| 5459153 | 6.6.24_Newark.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |
| 5463445 | 6.6.24_NYC.pdf | DHS | Granted asylum | Yes | |
| 5469522 | 6.7.24_Conroe.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |
| 5470009 | 6.7.24_Oakdale.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |
| 5480176 | 7.1.24_Florence.pdf | Respondent | Order of Removal | Yes | |
| 5314326 | 7.10.24_Aurora.pdf | DHS | Termination of Removal Proceedings | Yes | |
| 5408535 | 7.10.24_Detroit.pdf | Respondent | Asylum | Yes | |
| 5403429 | 7.11.24_Arlington.pdf | Respondent | Asylum | Yes | |
| 5475891 | 7.11.24_Los Fresnos.pdf | Respondent | Asylum | Yes | |
| 5476554 | 7.12.24_Elizabeth.pdf | DHS | Deferral of Removal | Yes | |
| 5286460 | 7.12.24_NYC.pdf | DHS | Termination of Removal Proceedings | Yes | |
| 5474699 | 7.12.24_Oakdale.pdf | Respondent | Asylum | Yes | |
| 5250660 | 7.12.24_San Diego.pdf | Respondent | Asylum | Yes | |
| 5287756 | 7.12.24_SF.pdf | Respondent | Asylum | Yes | |
| 5362590 | 7.17.24_Cleveland.pdf | DHS | Termination of Removal Proceedings | Yes | |
| 5477429 | 7.17.24_Florence.pdf | DHS | Termination of Removal Proceedings | Yes | |
| 5478534 | 7.17.24_Ft Snelling.pdf | Respondent | CAT | Yes | |
| 5392581 | 7.17.24_Seattle.pdf | Respondent | Asylum | Yes | |
| 5427612 | 7.17.24_Seattle_2.pdf | Respondent | Asylum | Yes | |
| 5473787 | 7.2.24_El Paso.pdf | Respondent | CAT | Yes | |
| 5423154 | 7.2.24_NYC.pdf | Respondent | Asylum | Yes | |
| 5273217 | 7.2.24_Phoenix.pdf | Respondent | Cancellation of Removal | Yes | |
| 5331921 | 7.22.24_Boston.pdf | Respondent | Asylum | Yes | |
| 5476589 | 7.22.24_Oakdale.pdf | Respondent | Order of Removal | Yes | |
| 5220748 | 7.22.24_SF.pdf | Respondent | Asylum | Yes | |
| 5355488 | 7.23.24_LA.pdf | Respondent | Order of Removal | Yes | |
| 5237841 | 7.25.24_LA.pdf | Respondent | Asylum | Yes | |
| 5476254 | 7.25.24_NYC.pdf | Respondent | Asylum | Yes | |
| 5364522 | 7.26.24_Cleveland.pdf | DHS | Termination of Removal Proceedings | Yes | |
| 5221119 | 7.26.24_NYC.pdf | Respondent | Asylum | Yes | |
| 5325818 | 7.29.24_Atlanta.pdf | Respondent | Asylum | Yes | |
| 5425629 | 7.29.24_NYC.pdf | Respondent | Asylum | Yes | |
| 5480822 | 7.3.24_Oakdale.pdf | DHS | Termination of Removal Proceedings | Yes | |
| 5472927 | 7.3.24_Otay Mesa.pdf | DHS | Asylum | Yes | |
| 5422020 | 7.3.24_Seattle.pdf | Respondent | Asylum | Yes | |
| 5476562 | 7.30.24_Conroe.pdf | Respondent | Asylum | Yes | |
| 5425052 | 7.31.24_Boston.pdf | DHS | Adjustment of Status | Yes | |
| 5475998 | 8.1.24_Oakdale.pdf | Respondent | Asylum | Yes | |
| 5480658 | 8.12.24_SF.pdf | DHS | Asylum | Yes | |
| 5488333 | 8.14.24_Otero.pdf | DHS | Deferral of Removal | Yes | |
| 5480556 | 8.15.24_NYC.pdf | DHS | Asylum | Yes | |
| 5407629 | 8.19.24_Cleveland.pdf | DHS | Termination of Removal Proceedings | Yes | |
| 5488266 | 8.20.24_Oakdale.pdf | DHS | Deferral of Removal | Yes | |
| 5477239 | 8.21.24_Newark.pdf | Respondent | Asylum | Yes | |
| 5450546 | 8.21.24_NYC.pdf | Respondent | Order of Removal | Yes | |
| 5366035 | 8.23.24_Cleveland.pdf | DHS | Termination of Removal Proceedings | Yes | |
| 5390053 | 8.23.24_NYC.pdf | DHS | Asylum | Yes | |
| 5343482 | 8.26.24_Charlotte.pdf | Respondent | Cancellation of Removal | Yes | |
| 5366771 | 8.26.24_Cleveland.pdf | DHS | Termination of Removal Proceedings | Yes | |
| 5451185 | 8.28.24_NYC.pdf | Respondent | Asylum | Yes | |
| 5365630 | 8.29.24_Cleveland.pdf | DHS | Termination of Removal Proceedings | Yes | |
| 5487296 | 8.29.24_Miami.pdf | DHS | CAT | Yes | |
| 5483905 | 8.30.24_Adelanto.pdf | Respondent | Asylum | Yes | |
| 5487229 | 8.30.24_Concord.pdf | DHS | Asylum | Yes | |
| 5348045 | 8.30.24_LA.pdf | DHS | Order of Removal | Yes | |
| 5480413 | 8.30.24_NYC.pdf | Respondent | Asylum | Yes | |
| 5283752 | 8.5.24_Chicago.pdf | DHS | Termination of Removal Proceedings | Yes | |
| 5366954 | 8.5.24_Cleveland.pdf | DHS | Termination of Removal Proceedings | Yes | |
| 5284300 | 8.7.24_SF.pdf | DHS | Termination of Removal Proceedings | Yes | |
| 5426506 | 8.9.24_Cleveland.pdf | DHS | Termination of Removal Proceedings | Yes | |
| 5459055 | 8.9.24_Florence.pdf | Respondent | Asylum | Yes | |
| 5478611 | 8.9.24_Ft Snelling.pdf | DHS | Cancellation of Removal | Yes | |
| 5428624 | 9.10.24_Chicago.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5458051 | 9.10.24_SF.pdf | DHS | Granted asylum | Yes | |
| 5437593 | 9.11.24_Cleveland.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5465478 | 9.11.24_Conroe.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5477385 | 9.11.24_SF.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5451498 | 9.11.24_Sterling.pdf | Respondent | Denied cancellation of removal | Yes | |
| 5409552 | 9.12.24_Cleveland.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5409554 | 9.12.24_Cleveland_2.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5429127 | 9.12.24_Cleveland_3.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5438131 | 9.12.24_Cleveland_4.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5483786 | 9.12.24_Elizabeth.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5425371 | 9.12.24_KC.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5460811 | 9.12.24_LA.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5469972 | 9.13.24_Eloy.pdf | DHS | Denied termination of grant of asylum | Yes | |
| 5482880 | 9.13.24_LA.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5347664 | 9.13.24_Omaha.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5431427 | 9.16.24_Cleveland.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5485497 | 9.16.24_Otay Mesa.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5408030 | 9.16.24_San Diego.pdf | Respondent | Denied cancellation of removal | Yes | |
| 5432118 | 9.17.24_Cleveland.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5351275 | 9.18.24_SF.pdf | Respondent | Denied asylum, wittholding of removal | Yes | |
| 5485450 | 9.18.24_Tacoma.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5476642 | 9.19.24_NYC.pdf | Respondent | Denied asylum, wittholding of removal | Yes | |
| 5484750 | 9.25.24_Lumpkin.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5486236 | 9.27.24_Newark.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |

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|---|---|---|---|---|---|
| 5487633 | 9.3.24_Conroe.pdf | Respondent | Order of Removal | Yes | |
| 5418952 | 9.30.24_Atlanta.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5490734 | 9.30.24_Aurora.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5411652 | 9.30.24_San Antonio.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5455454 | 9.30.24_Seattle.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5401414 | 9.5.24_San Diego.pdf | Respondent | Denied dismissal without prejudice | Yes | |
| 5274189 | 9.6.24_Batavia.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5440511 | 9.6.24_Boston.pdf | DHS | Granted asylum | Yes | |
| 5408077 | 9.6.24_San Antonio.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5297066 | 10.10.23_Jena.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5438603 | 10.10.23_Miami.pdf | Applicant | Denied wittholding of removal, CAT | Yes | |
| 5265555 | 10.10.23_Newark.pdf | Respondent | Denied application for adjustment of status | Yes | |
| 5273267 | 10.10.23_NYC.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5346081 | 10.11.24_Annandale.pdf | Respondent | Denied CAT | Yes | |
| 5220151 | 10.11.24_Dallas | Respondent | Order of Removal | Yes | |
| 5487385 | 10.11.24_Newark.pdf | DHS | Granted withholding of removal under CAT | Yes | |
| 5380743 | 10.11.24_NYC.pdf | Respondent | Denied asylum, wittholding of removal | Yes | |
| 5367538 | 10.11.24_SF.pdf | Respondent | Denied asylum, wittholding of removal | Yes | |
| 5244426 | 10.12.23_Buffalo.pdf | Respondent | Denied cancellation of removal | Yes | |
| 5262429 | 10.13.23_Miami.pdf | Respondent | Ineligible for waiver and adjustment of status | Yes | |
| 5239259 | 10.13.23_San Diego.pdf | Respondent | Order of Removal | Yes | |
| 5418111 | 10.15.24_Cleveland.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5488361 | 10.16.24_Miami.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5496257 | 10.16.24_Oakdale.pdf | DHS | Granted deferral of removal under CAT | Yes | |
| 5431677 | 10.17.24_Houston.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5488103 | 10.17.24_Las Vegas.pdf | Applicant | Denied wittholding of removal, CAT | Yes | |
| 5445976 | 10.18.23_Tacoma.pdf | Respondent | Pretermitting application for cancellation of removal | Yes | |
| 5417670 | 10.18.24_LA.pdf | Respondent | Denied asylum, wittholding of removal | Yes | |
| 5391790 | 10.18.24_Van Nuys.pdf | Respondent | Granted dismissal of proceedings | Yes | |
| 5229500 | 10.19.23_Boston.pdf | DHS | Granted asylum | Yes | |
| 5355349 | 10.19.23_Miami.pdf | DHS | Granted adjustment of status | Yes | |
| 5429139 | 10.2.24_Cleveland.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5478723 | 10.2.24_Lumpkin.pdf | DHS | Granted asylum | Yes | |
| 5433896 | 10.20.23_Aurora.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5270759 | 10.20.23_NYC.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5427326 | 10.23.23_Newark.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5268092 | 10.23.23_NYC.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5381148 | 10.23.23_SF.pdf | Respondent | Denied asylum | Yes | |
| 5438217 | 10.24.23_Baltimore.pdf | Respondent | Order of Removal | Yes | |
| 5438112 | 10.24.23_Lumpkin.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5440353 | 10.24.23_Otay Mesa.pdf | Respondent | Denied asylum but granted withholding of removal | Yes | |
| 5242810 | 10.24.24_Chicago.pdf | Respondent | Denied motion for continuance/deemed application for asylum abandoned | Yes | |
| 5407575 | 10.24.24_Cleveland.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5478723 | 10.24.24_Lumpkin.pdf | Respondent | Denied request for consideration of asylum eligibility | Yes | |
| 5422571 | 10.4.24_San Antonio.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5253143 | 10.5.23_Atlanta.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5434023 | 10.5.23_Newark.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5420820 | 10.5.23_Van Nuys.pdf | Respondent | Denied CAT | Yes | |
| 5439975 | 10.6.23_Cleveland.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5362585 | 10.7.24_Cleveland.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5473844 | 10.9.24_Chicago.pdf | DHS | Granted termination of removal proceedings | Yes | |
| 5271075 | 10.9.24_LA.pdf | Respondent | Denied asylum, wittholding of removal, CAT | Yes | |
| 5486109 | 10.25.24_Denver.pdf | DHS | asylum under INA | Yes | |
| 5433405 | 10.25.24_NYC.pdf | Respondent | asylum under INA, withholding of removal under INA, CAT | Yes | |
| 5489560 | 10.25.24_NYC_2.pdf | Respondent | removability, asylum under INA, withholding of removal under INA, CAT | Yes | |
| 5399035 | 10.25.24_Oakdale.pdf | Respondent | abandonment of applications for relief, order of removal | Yes | |
| 5491445 | 10.25.24_Oakdale_2.pdf | Respondent | removability, abandonment of applications for relief | Yes | |
| 5263557 | 10.25.23_Arlington.pdf | Respondent | removability, asylum under INA, withholding of removal under INA, CAT | Yes | |
| 5435176 | 10.25.23_Las Vegas.pdf | DHS | deferral of removal under CAT | Yes | |
| 5370385 | 10.25.23_Miami.pdf | DHS | vacating expedited removal order | Yes | |
| 5370386 | 10.25.23_Miami_2.pdf | DHS | vacating expedited removal order | Yes | |
| 5444334 | 10.26.23_Miami.pdf | DHS | removability, termination of removal proceedings | Yes | |
| 5392980 | 10.26.23_NYC.pdf | Respondent | asylum under INA, withholding of removal under INA, CAT | Yes | |
| 5440684 | 10.26.23_SF.pdf | Respondent | asylum under INA, withholding of removal under INA, CAT | Yes | |
| 5453042 | 10.28.24_Boston.pdf | Respondent | order of removal | Yes | |
| 5466454 | 10.30.24_San Antonio.pdf | DHS | termination of removal proceedings | Yes | |
| 5446647 | 10.30.23_Eloy.pdf | Respondent | asylum under INA, withholding of removal under INA, CAT | Yes | |
| 5385510 | 10.30.23_Harlingen.pdf | DHS | asylum under INA | Yes | |
| 5281230 | 10.30.23_KC.pdf | Respondent | denied motion to terminate proceedings | No | Interlocutory appeal |
| 5443005 | 10.30.23_Newark.pdf | Respondent | denied motion for continuance | No | Interlocutory appeal |
| 5383655 | 10.31.23_LA.pdf | DHS | asylum under INA | Yes | |
| 5370219 | 10.31.23_Miami.pdf | DHS | vacating expedited removal order | Yes | |
| 5495668 | 10.31.24_Conroe.pdf | Respondent | asylum under INA, withholding of removal under INA, CAT | Yes | |
| 5497191 | 10.31.24_Port Isabel.pdf | Respondent | asylum under INA | Yes | |
| 5286376 | 11.1.23_Portland.pdf | DHS | Grant of application for cancellation of removal under INA | Yes | |
| 5390886 | 11.1.24_Houston.pdf | Respondent | Dismissal of proceedings | Yes | |
| 5370220 | 11.2.23_Miami.pdf | DHS | Vacating the expedited removal order | Yes | |
| 5370274 | 11.2.23_Miami_2.pdf | DHS | Vacating the expedited removal order | Yes | |
| 5370407 | 11.2.23_Miami_3.pdf | DHS | Vacating the expedited removal order | Yes | |
| 5349093 | 11.2.23_Tucson.pdf | Applicant | Denial of applications for withholding of removal under INA and CAT | Yes | |
| 5402907 | 11.3.23_Miami.pdf | DHS | Grant of applications for adjustment of status under INA | Yes | |
| 5492431 | 11.5.24_Adelanto.pdf | Respondent | Denial of application for asylum and withholding of removal under INA and CAT | Yes | |
| 5483632 | 11.6.24_Boston.pdf | Respondents | Denial of application for asylum and withholding of removal under INA and CAT | Yes | |
| 5403595 | 11.6.24_San Antonio.pdf | DHS | Grant of motion to terminate removal proceedings | Yes | |
| 5447972 | 11.7.23_Lumpkin.pdf | DHS | Termination of removal proceedings | Yes | |
| 5418270 | 11.7.23_Miami.pdf | DHS | Grant of asylum | Yes | |
| 5436316 | 11.8.23_Ft Snelling.pdf | DHS | Denial of motion to terminate the grant of asylum | Yes | |
| 5340228 | 11.8.24_Ft Snelling.pdf | DHS | Grant of application for cancellation of removal under INA | Yes | |
| 5485580 | 11.8.24_Oakdale.pdf | Respondent | Denial of applications for asylum and withholding of removal under INA and CAT | Yes | |
| 5444237 | 11.13.23_Laredo.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |
| 5441979 | 11.13.24_Oakdale.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes | |
| 5298304 | 11.14.23_Adelanto.pdf | Respondent | Denied aslylum, withholding of removal | Yes | |

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|---|---|---|---|---|
| 5305005 | 11.14.23_SF.pdf | Respondent | Denied cancellation of removal | Yes |
| 5395584 | 11.15.23_Miami.pdf | DHS | Granted adjustment of status | Yes |
| 5492907 | 11.15.24_Adelanto.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes |
| 5305241 | 11.15.24_Boston.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes |
| 5492950 | 11.15.24_LA.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes |
| 5400298 | 11.16.23_Newark.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes |
| 5395584 | 11.17.23_Miami.pdf | DHS | Vacated removal order | Yes |
| 5370422 | 11.17.23_Miami_2.pdf | DHS | Vacated removal order | Yes |
| 5275698 | 11.17.23_NYC.pdf | Respondent | Denied aslylum, withholding of removal, CAT | Yes |
| 5424844 | 11.17.23_NYC_2.pdf | Respondent | Denied aslylum, withholding of removal | Yes |
| 5270002 | 11.18.24_Baltimore.pdf | Respondent | Order of Removal | Yes |
| 5336971 | 11.18.24_LA.pdf | Respondent | Cancellation of Removal | Yes |
| 5302792 | 11.18.24_NYC.pdf | Respondent | Asylum | Yes |
| 5499750 | 11.18.24_Pompano Beach.pdf | Respondent | Asylum | Yes |
| 5290072 | 11.19.24_Arlington.pdf | Respondent | Asylum | Yes |
| 5413522 | 11.19.24_Cleveland.pdf | DHS | Termination of Removal Proceedings | Yes |
| 5493497 | 11.19.24_Las Vegas.pdf | Respondent | Asylum | Yes |
| 5344048 | 11.20.23_Denver.pdf | DHS | Cancellation of Removal | Yes |
| 5368252 | 11.20.23_Miami.pdf | DHS | Order of Removal | Yes |
| 5369788 | 11.20.23_Miami_2.pdf | DHS | Order of Removal | Yes |
| 5370091 | 11.20.23_Miami_3.pdf | DHS | Order of Removal | Yes |
| 5370391 | 11.20.23_Miami_4.pdf | DHS | Order of Removal | Yes |
| 5370409 | 11.20.23_Miami_5.pdf | DHS | Order of Removal | Yes |
| 5370423 | 11.20.23_Miami_6.pdf | DHS | Order of Removal | Yes |
| 5370492 | 11.20.23_Miami_7.pdf | DHS | Order of Removal | Yes |
| 5371574 | 11.20.23_Miami_8.pdf | DHS | Order of Removal | Yes |
| 5411246 | 11.20.24_Cleveland.pdf | DHS | Termination of Removal Proceedings | Yes |
| 5493719 | 11.20.24_Elizabeth.pdf | Respondent | Asylum | Yes |
| 5251420 | 11.21.24_NYC.pdf | Respondent | Denied asylum and withholding of removal, CAT | Yes |
| 5444690 | 11.22.23_Laredo.pdf | DHS | Granted asylum of respondent | Yes |
| 5368353 | 11.22.23_Miami.pdf | DHS | Vacating expedited removal order | Yes |
| 5268016 | 11.22.23_Phoenix.pdf | DHS | Termination of removal proceedings | Yes |
| 5456205 | 11.22.24_Boston.pdf | Respondents | Denying application for asylum | Yes |
| 5381645 | 11.22.24_Seattle.pdf | Respondent | Denying application for asylum | Yes |
| 5424183 | 11.23.23_NYC.pdf | Respondents | Denying application for asylum and removal | Yes |
| 5386717 | 11.24.23_SF.pdf | Respondents | Denying application for asylum and removal | Yes |
| 5493592 | 11.25.24_Annandale.pdf | Respondent | Denying application for deferral of removal | Yes |
| 5435857 | 11.25.24_Cleveland.pdf | DHS | Termination of Removal Proceedings | Yes |
| 5496489 | 11.25.24_LA.pdf | Respondents | Applications for relief abandoned and ordered removed | Yes |
| 5469630 | 11.26.24_Boston.pdf | DHS | Granting application for asylum | Yes |
| 5269671 | 11.26.24_Imperial.pdf | Respondent | Denying application for asylum, CAT | Yes |
| 5413094 | 11.26.24_San Diego.pdf | Respondent | Termination of Removal Proceedings | Yes |
| 5372253 | 11.27.23_Miami.pdf | DHS | Vacating expedited removal order | Yes |
| 5432484 | 11.27.24_Cleveland.pdf | DHS | Termination of Removal Proceedings | Yes |
| 5420812 | 11.27.24_Cleveland_2.pdf | DHS | Termination of Removal Proceedings | Yes |
| 5489190 | 11.27.24_Elizabeth.pdf | DHS | Decision that respondent is not removable and termination of removal proceedings | Yes |
| 5369789 | 11.28.23_Miami.pdf | DHS | Expedited removal order | Yes |
| 5370221 | 11.28.23_Miami_2.pdf | DHS | Expedited removal order | Yes |
| 5371570 | 11.28.23 Miami_3.pdf | DHS | Expedited removal order | Yes |
| 5370015 | 11.29.23_Miami.pdf | DHS | Expedited removal order | Yes |
| 5370208 | 11.29.23_Miami_2.pdf | DHS | Expedited removal order | Yes |
| 5426997 | 11.29.24_Cleveland.pdf | DHS | Termination of removal proceedings | Yes |
| 5441903 | 11.29.24_Cleveland_2.pdf | DHS | Termination of removal proceedings | Yes |
| 5435219 | 11.30.23_Annandale.pdf | DHS | Granting application for deferral of removal | Yes |
| 5236260 | 11.30.23_Dallas.pdf | Respondent | Denying application for asylum and withholding of removal | Yes |
| 5429994 | 11.30.23 Dallas_2.pdf | Respondent | Finding respondent removable | Yes |
| 5438147 | 12.2.24_Cleveland.pdf | DHS | Granting motion to withdraw pleadings and terminate | Yes |
| 5428394 | 12.3.24_Cleveland.pdf | DHS | Granting motion to withdraw pleadings and terminate | Yes |
| 5394525 | 12.4.23_San Diego.pdf | Respondent | Termination of removal proceedings | Yes |
| 5488857 | 12.4.24_Lowell.pdf | Respondent | Denying application for withholding of removal | Yes |
| 5282195 | 12.4.24_NYC.pdf | Respondent | Denying application for withholding of removal | Yes |
| 5411385 | 12.4.24_San Antonio.pdf | DHS | Termination of removal proceedings | Yes |
| 5368258 | 12.5.23_Miami.pdf | DHS | Vacating expedited removal order | Yes |
| 5495905 | 12.5.24_Chelmsford.pdf | DHS | Granting application of withholding of removal | Yes |
| 5368352 | 12.6.23_Miami.pdf | DHS | Vacating expedited removal order | Yes |
| 5368360 | 12.6.23_Miami_2.pdf | DHS | Vacating expedited removal order | Yes |
| 5369881 | 12.6.23_Miami_3.pdf | DHS | Vacating expedited removal order | Yes |
| 5324865 | 12.6.23_Tacoma.pdf | Respondent | Denying application for deferral of removal | Yes |
| 5493844 | 12.6.24_Miami.pdf | Respondents | Denying request for continuance, pretermitting applications for asylum and withholding of removal | Yes |
| 5434836 | 12.8.23_Newark.pdf | DHS | Termination of removal proceedings | Yes |
| 5449714 | 12.11.23_Batavia.pdf | DHS | Granting application for withholding of removal | Yes |
| 5414176 | 12.11.23_LA.pdf | Respondents | Denying applcations for asylum and withholding of removal | Yes |
| 5489689 | 12.11.24_Aurora.pdf | Respondent | Denying application for asylum and withholding of removal, CAT | Yes |
| 5432132 | 12.11.24_Cleveland.pdf | DHS | Granting motions to to withdraw pleadings and terminate | Yes |
| 5368311 | 12.12.23_Miami.pdf | DHS | Vacating expedited removal order | Yes |
| 5497201 | 12.12.24_Elizabeth.pdf | Respondent | Finding respondent removable | Yes |
| 5497150 | 12.12.24_Oakdale.pdf | Respondent | Denying application for asylum and withholding of removal, CAT | Yes |
| 5449829 | 12.13.23_Santa Ana | respondent | asylum application; withholding of removal; CAT protection | Yes |
| 5370828 | 12.14.23_Miami.pdf | DHS | expedited removal order | Yes |
| 5324585 | 12.14.23_Phoenix.pdf | respondent | order of removal | Yes |
| 5307678 | 12.14.23_Seattle.pdf | respondent | Termination of removal proceedings | Yes |
| 5430037 | 12.15.23_Boston.pdf | respondent | asylum application; withholding of removal; CAT protection | Yes |
| 5260919 | 12.15.23_El Paso.pdf | respondent | asylum application | Yes |
| 5368262 | 12.15.23_Miami.pdf | DHS | expedited removal order | Yes |
| 5368358 | 12.15.23_Miami_2.pdf | DHS | expedited removal order | Yes |
| 5368359 | 12.15.23_Miami_3.pdf | DHS | expedited removal order | Yes |
| 5370400 | 12.15.23_Miami_4.pdf | DHS | expedited removal order | Yes |
| 5250422 | 12.16.24_LA.pdf | DHS | asylum application | Yes |
| 5489925 | 12.16.24_Los Fresnos.pdf | DHS | CAT protection | Yes |
| 5478286 | 12.18.24_Adelanto.pdf | respondent | CAT protection | Yes |
| 5362903 | 12.18.24_Cleveland.pdf | DHS | Termination of removal proceedings | Yes |
| 5310280 | 12.19.23_Cleveland.pdf | respondent | order of removal | Yes |
| 5456157 | 12.19.23_Lumpkin.pdf | respondent | finding that respondent is removable as charged and made no applications for relief from removal | Yes |

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|---|---|---|---|---|---|
| 5369544 | 12.19.23_Miami.pdf | DHS | expedited removal order | Yes | |
| 5257778 | 12.19.23_San Diego.pdf | respondent | termination of removal proceedings | Yes | |
| 5422556 | 12.19.24_Boston.pdf | DHS | termination of removal proceedings | Yes | |
| 5364520 | 12.19.24_Cleveland.pdf | DHS | termination of removal proceedings | Yes | |
| 5497192 | 12.19.24_Jena.pdf | DHS | asylum application | Yes | |
| 5368251 | 12.20.23_Miami.pdf | DHS | expedited removal order | Yes | |
| 5370216 | 12.20.23_Miami_2.pdf | DHS | expedited removal order | Yes | |
| 5412005 | 12.20.23_Miami_3.pdf | respondent | continuance; asylum application; withholding of removal; CAT protection | Yes | |
| 5360562 | 12.20.24_Cleveland.pdf | DHS | Termination of removal proceedings | Yes | |
| 5481140 | 12.20.24_Conroe.pdf | respondent | cancellation of removal under INA | Yes | |
| 5463922 | 12.20.24_Los Fresnos.pdf | DHS | cancellation of removal under INA | Yes | |
| 5253011 | 12.21.23_Boston.pdf | respondent | denied motion to terminate removal proceedings | No | interlocutory appeal |
| 5446614 | 12.21.23_Chicago.pdf | DHS | Termination of removal proceedings | Yes | |
| 5448482 | 12.21.23_Cleveland.pdf | respondent | withholding of removal under INA and the CAT | Yes | |
| 5397372 | 12.22.23_Seattle.pdf | respondent | asylum application; withholding of removal; CAT protection | Yes | |
| 5500765 | 12.23.24_Elizabeth.pdf | DHS | cancellation of removal under INA | Yes | |
| 5453705 | 12.26.23_Oakdale.pdf | respondent | order of removal | Yes | |
| 5233489 | 12.28.23_Atlanta.pdf | respondent | pretermitting applications for relief; order of removal | Yes | |
| 5369782 | 12.29.23_Miami.pdf | DHS | expedited removal order | Yes | |
| 5453894 | 12.29.23_Oakdale.pdf | respondent | order of removal | Yes | |
| 5502265 | 12.30.24_Adelanto.pdf | respondent | order of removal | Yes | |
| 5419690 | 12.30.24_LA.pdf | DHS | Termination of removal proceedings | Yes | |
| 5287662 | 12.31.24_LA.pdf | respondent | cancellation of removal under INA | Yes | |
| 5240593 | 12.31.24_Philadelphia.pdf | respondent | asylum application; withholding of removal; CAT protection | Yes | |

**Attachment B**

**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals*
*Office of the Clerk*

*5107 Leesburg Pike, Suite 2000*
*Falls Church, Virginia 22041*

**Reyes-Flores, Teresa Raquel**
**Immigration Services and Legal Advocacy**
**3801 Canal Street, Suite 210**
**New Orleans LA 70119**

**DHS/ICE Office of Chief Counsel - OAK**
**1010 East Whatley Road**
**Oakdale LA 71463-1128**

**Name:** [redacted] **A** [redacted]**357**

**Date of this Notice: 1/29/2024**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Userteam: Docket

**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals*
*Office of the Clerk*

*5107 Leesburg Pike, Suite 2000*
*Falls Church, Virginia 22041*

[redacted]357
**1133 Hampton Dupre Rd**
**Pine Prairie LA 70586**

**DHS/ICE Office of Chief Counsel - OAK**
**1010 East Whatley Road**
**Oakdale LA 71463-1128**

**Name:** [redacted] **A** [redacted]**357**

**Date of this Notice: 1/29/2024**

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Userteam: Docket

**NOT FOR PUBLICATION**

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

[redacted], A [redacted]357

Respondent

**FILED**
Jan 29, 2024

ON BEHALF OF RESPONDENT: Teresa R. Reyes-Flores, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Oakdale, LA

Before: Greer, Appellate Immigration Judge; O'Connor, Appellate Immigration Judge; Saenz, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Saenz

SAENZ, Appellate Immigration Judge

The respondent, a native and citizen of El Salvador, appeals from the Immigration Judge's August 8, 2023, decision denying his application[1] for deferral of removal under the regulations implementing the Convention Against Torture ("CAT").[2] The respondent's request for oral argument is denied. *See* 8 C.F.R. § 1003.1(e)(7). The appeal will be sustained, and the Immigration Judge's denial of CAT protection will be reversed.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo questions of law, discretion, and judgment, and all other issues in appeals from the Immigration Judge's decision. 8 C.F.R. § 1003.1(d)(3)(ii).

In denying protection, the Immigration Judge first found the respondent's criminal history while residing in the United States and numerous, visible tattoos would lead to his apprehension and detention by authorities upon return to El Salvador (IJ at 4). However, the Immigration Judge then found that the harmful prison conditions the respondent would experience while in detention are not specifically intended to inflict torture (IJ at 5). On appeal, the respondent argues the Immigration Judge erred in rejecting contrary country condition and expert evidence,

[1] The respondent conceded his ineligibility for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A), before the Immigration Judge (IJ at 2).

[2] The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c)-1208.18.

(Respondent's Br. at 10-16, 26). *Matter of M-A-M-Z-*, 28 I&N Dec. 173, 177-78 (BIA 2020) ("[W]hen the Immigration Judge makes a factual finding that is not consistent with an expert's opinion, it is important . . . to explain the reasons behind the factual findings."). We agree.

The Immigration Judge clearly erred in finding that the expert witness evidence was "not substantiated by other country conditions evidence in the record," and in not considering the cumulative effect of the entire evidence combined with the respondent's particular circumstances (IJ at 6-7; Respondent's Br. at 26).

Upon consideration of the totality of the evidence, the Immigration Judge permissibly found that the respondent's extensive, prominent tattoos and serious criminal history would more than likely lead the respondent to being investigated and detained by authorities in El Salvador. Based on the respondent's particular circumstances, in combination with the extensive documentary evidence of record, we are persuaded that the respondent is more likely than not to experience torture upon return to El Salvador and, therefore, he is eligible for deferral of removal under the CAT. Thus, we vacate the Immigration Judge's decision and reverse the denial of CAT protection.

In light of the foregoing, we need not reach the respondent's remaining appellate arguments (IJ at 7; Respondent's Br. at 16-17, 26-27). *See Matter of J-G-*, 26 I&N Dec. 161, 170 (BIA 2013) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (discussing the general rule that courts and agencies are not required to make findings on issues which are not dispositive to the outcome of cases)).

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: The Immigration Judge's decision dated August 8, 2023, is vacated. The Immigration Judge's order of removal to El Salvador is reinstated, and the respondent's request for deferral of removal under the CAT is granted.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals*
*Office of the Clerk*

*5107 Leesburg Pike, Suite 2000*
*Falls Church, Virginia 22041*

**Page, Allyson**
**ISLA**
**2714 Canal Street, Suite 300**
**New Orleans, LA 70119**

**DHS - ICE Office of Chief Counsel -**
**OAKDALE 2**
**1010 E. Whatley Rd.**
**OAKDALE, LA 71463**

**Name:** [redacted] **A** [redacted]**019**

**Date of this notice: 5/28/2019**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Grant, Edward R.
Kendall Clark, Molly
Guendelsberger, John

GilbeauR
Userteam: Docket

**U.S. Department of Justice**
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A [redacted] 019 – Oakdale, LA

Date:

MAY 23 2019

In re: [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Allyson Page, Esquire

ON BEHALF OF DHS: John Zachary
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Cuba, appeals an Immigration Judge's December 3, 2018, decision denying him asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), and protection under the Convention Against Torture, 8 C.F.R. §§ 1208.16-1208.18. The Department of Homeland Security (DHS) has filed a brief in opposition to the appeal. The respondent's request for oral argument is denied. *See* 8 C.F.R. § 1003.1(e)(7). However, the appeal will be sustained, the respondent will be granted asylum, and the record will be remanded to the Immigration Judge for the requisite background checks.

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

The respondent claims to have suffered persecution in Cuba on account of his political opposition to Fidel Castro. Before a border patrol agent, an asylum officer, and the Immigration Judge, the respondent discussed three occasions where he was arrested, detained, and beaten by Cuban police based on his political opinions (IJ at 3-4; Tr. at 33-39; Exhs. 6, 7). The police also destroyed his business in retaliation for his political views (IJ at 3; Tr. at 37).

The Immigration Judge found the respondent "generally credible," (IJ at 9), but ultimately determined that he failed to meet his burden of proof for the relief he was seeking. The Immigration Judge reasoned that the respondent's testimony was "unpersuasive" because it lacked sufficient detail with respect to the nature of his mistreatment during his detentions (IJ at 3). The Immigration Judge also faulted the respondent for making general conclusory statements to the border patrol agent and asylum officer about his abuse (*Id.* at 4).

We find clear error in the Immigration Judge's factual findings that the respondent's testimony and evidence lacked sufficient detail. The respondent testified that before his first arrest, police officers knocked him to the ground and hit him with their fists, their boots, and a baton for approximately 20 minutes (Tr. at 34). Thereafter, they threw him by force into a car and took him into custody. In custody, police beat him over the course of 72 hours, forced him to drink only

water with vinegar, and only released him when he expressed a concern that he had suffered internal injuries (*Id.* at 34-35). We find the respondent's account of these events sufficiently detailed to ascertain his experiences at that time.

The respondent's testimony about his second arrest and detention was also sufficiently detailed. The respondent testified that police arrived at his business, destroyed it, and then dragged him and beat him on his head and against a patrol car (Tr. at 35-36). Although the respondent did not go into detail regarding the beatings he sustained during his ensuing 24-hour detention, he did state that he was deprived of food and that police officers threw cold water at him continuously (*Id.* at 36). He also stated that police threatened him, told him that he was "against them," and further stated that they were not going to allow him to propagate his beliefs (*Id.*). The respondent also testified that he began to see a psychologist as a result of that event (*Id.* at 37).

The respondent's testimony about his third arrest and detention was less detailed than his testimony surrounding his first and second detentions (Tr. at 37-39). However, the respondent did testify that he was arrested for failing to vote in an election and was "beaten" during a 1-day detention (*Id.*). Again, we deem this testimony sufficiently detailed to assess the respondent's claim of past persecution, particularly when considered together with his more detailed accounts of the first two arrests and detentions.

The respondent's statements to the border patrol agent and asylum officer are not inconsistent with his testimony (Exh. 6, 7). In sum, we reverse the Immigration Judge's ultimate legal determination that the respondent's evidence lacked sufficient detail to meet his burden of proof for asylum.

While a close call, we believe the respondent's mistreatment by Cuban police did not rise to the level of past persecution. *See Abdel-Masieh v. U.S. INS,* 73 F.3d 579, 583-84 (5th Cir. 1996) (upholding the Board's finding that two arrests, two detentions, and beatings not characterized as severe did not rise to level of past persecution). However, we also conclude that the respondent's past experiences support an objective basis for a well-founded fear of future persecution on account of an actual or imputed political opinion. *See* 8 C.F.R. § 1208.13(b)(2). He is therefore eligible for asylum. We also find that the respondent merits a favorable exercise of discretion to obtain such relief.

Based on the foregoing, we will sustain the respondent's appeal. The respondent is found eligible for asylum, and the record will be remanded to the Immigration Judge for the sole purpose of conducting the requisite background checks. Given our disposition of this matter, we need not address the respondent's remaining arguments on appeal.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained, and the record is remanded to the Immigration Judge for the required security checks.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| AMICA CENTER FOR IMMIGRANT RIGHTS *et al.*,<br><br>*Plaintiffs*,<br><br>v.<br><br>EXECUTIVE OFFICE FOR IMMIGRATION REVIEW *et al.*,<br><br>*Defendants*. | Case No. |

**[PROPOSED] ORDER STAYING EFFECTIVE DATE UNDER 5 U.S.C. § 705**

Upon consideration of Plaintiffs' emergency motion for a stay under 5 U.S.C. § 705, and the parties' briefing thereon, it is hereby

**ORDERED** that Plaintiffs' motion is **GRANTED**; and it is further

**ORDERED** that the effective date of the interim final rule entitled "Appellate Procedures for the Board of Immigration Appeals," 91 Fed. Reg. 5,267, is **STAYED** pursuant to 5 U.S.C. § 705 pending a final ruling on the merits of this case.

**SO ORDERED.**

Dated: _____

_____
UNITED STATES DISTRICT JUDGE