AILA

Law Journal

A Publication of the American Immigration Lawyers Association

Cyrus D. Mehta
Editor-in-Chief

Volume 7, Number 2, October 2025

Letter from the Editor-in-Chief
Cyrus D. Mehta

No Second Chance
The Inappropriate Use of Juvenile Delinquencies in Immigration Law Adjudications
Sarah Diaz, Jessica Heldman, Lisa Jacobs, and Sierra Garcia

Sanctuary by Proxy
Vicarious Constitutional Protections for Noncitizens in Religious Institutions
Kristin Hommel

Can I Vote?
Ramifications of False Claims to Citizenship and Emerging Initiatives for Noncitizen Voting
Olivia Serene Lee, Karl Krooth, Annette Wong, Shannon V. Reed, and Ron Hayduk

Rethinking the Role of Patent Licensing in U.S. Immigration Laws
Abhilasha Khanal

How Artificial Intelligence May Be Failing Us
Delaram Rezaeikhonakdar and Craig Shagin

fastcase FULL COURT PRESS

AILA Law Journal

Volume 7, Number 2, October 2025

93 **Letter from the Editor-in-Chief**
Cyrus D. Mehta

95 **No Second Chance**
The Inappropriate Use of Juvenile Delinquencies in Immigration Law Adjudications
Sarah Diaz, Jessica Heldman, Lisa Jacobs, and Sierra Garcia

123 **Sanctuary by Proxy**
Vicarious Constitutional Protections for Noncitizens in Religious Institutions
Kristin Hommel

145 **Can I Vote?**
Ramifications of False Claims to Citizenship and Emerging Initiatives for Noncitizen Voting
Olivia Serene Lee, Karl Krooth, Annette Wong, Shannon V. Reed, and Ron Hayduk

167 **Rethinking the Role of Patent Licensing in U.S. Immigration Laws**
Abhilasha Khanal

185 **How Artificial Intelligence May Be Failing Us**
Delaram Rezaeikhonakdar and Craig Shagin

Craig R. Shagin
Member, The Shagin Law Group LLC,
Adjunct Professor of Law, Widener Commonwealth Law School

Rebecca Sharpless
Professor, University of Miami School of Law

Mark Stevens
Member, Clark Hill PLC

William A. Stock
Managing Partner, Klasko Immigration Law Partners,
LLP/AILA Past President

Margaret Kuehne Taylor
Adjunct Professor of Law, University of Maryland Carey School of Law,
Ret. Senior Litigation Counsel, Office of Immigration Litigation,
U.S. Department of Justice

AILA LAW JOURNAL (ISSN 2642-8598 (print)/ISSN 2642-8601 (online)) is published two times per year by Full Court Press, a Fastcase, Inc., imprint. Individual issues may be purchased for $60.00, or subscriptions for $99.00 a year. Discounts are available for AILA members and Fastcase legal research users.

Publishing Staff
Publisher: David Nayer
Production Editor: Sharon D. Ray
Cover Design: Morgan Morrissette Wright and Sharon D. Ray

The cover of this journal features a painting known as *The Sea* by French artist Jean Désiré Gustave Courbet. A leader of the Realist movement, Courbet is also remembered for his political content and activism. The image is provided courtesy of the Metropolitan Museum of Art under a CC0 1.0 Universal (CC0 1.0) Public Domain Dedication.

Cite this publication as:

AILA Law Journal (Full Court Press, Fastcase, Inc.)

A Full Court Press, Fastcase, Inc., Publication

Editorial Office

729 15th Street, NW, Suite 500, Washington, DC 20005
https://www.fastcase.com

POSTMASTER: Send address changes to AILA LAW JOURNAL, 729 15th Street, NW, Suite 500, Washington, DC 20005

Disclaimer

The articles featured in the AILA Law Journal do not necessarily represent the views of AILA or the publisher, nor should they be regarded as legal advice from the association or authors. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional.

Likewise, the articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors, or their firms or organizations.

Submissions

Direct editorial inquires and send material for publication to:

ailalawjournal@aila.org

Material for publication is welcomed—articles, decisions, or other items of interest to attorneys, law firms, and organizations working in immigration law.

Questions About This Publication?

For questions about the Editorial Content appearing in these volumes or reprint, please contact:

Morgan Morrissette Wright, Editorial Product Manager, Publications & AILALink, AILA, at mwright@aila.org

For questions about Sales, or to reach Customer Service:

Sales
202.999.4777 (phone)
sales@fastcase.com (email)

Customer Service
Available 8am–8pm Eastern Time
866.773.2782 (phone)
support@fastcase.com (email)

ISSN 2642-8598 (print)
ISSN 2642-8601 (online)

Sanctuary by Proxy

Vicarious Constitutional Protections for Noncitizens in Religious Institutions

Kristin Hommel*

Abstract: Although it has long been recognized that immigrants on U.S. soil enjoy many of the same constitutional protections as U.S. citizens, the extent to which immigrants enjoy First Amendment protections under the Free Exercise Clause is as yet unsettled. Following the rescission of the "safe spaces" directive and the subsequent increase in enforcement activities in religious settings, U.S. citizens and religious organizations have begun asserting their First Amendment privileges to vicariously extend protection to their immigrant congregants. This article examines First Amendment jurisprudence as it applies to both citizens and noncitizens, and discusses how, in the absence of any definitive case law, the vigorous exercise of constitutional rights by U.S. citizens could serve to extend de facto protections to immigrants.

Introduction

With the advent of the second Trump administration, the entanglement of free religious exercise with immigration has become ever more prevalent as the administration continues to roll out anti-immigration policies. Concerningly, modern policy shifts are testing the limits of constitutional protections within church walls for immigrants and U.S. citizens alike. As the administration ignores judicial rulings seeking to curb executive action, the rise of legislation like the Laken Riley Act,[1] invocation of the Alien Enemies Act,[2] and the recision of "sensitive location" enforcement guidelines,[3] urgent constitutional questions are increasingly being raised about the scope of the Free Exercise Clause and the protections it affords congregants of all nationalities. Answers to these questions are particularly vital, given the dearth of case law decisively (dis)affirming a noncitizen's rights to free expression under the First Amendment.[4]

Current litigation reflects the growing tension that continues to build around the constitutional questions surrounding the intersection of immigration enforcement with religious free exercise principles. In its suit against the U.S. Department of Homeland Security (DHS), the Philadelphia Yearly Society of Friends posits that the newly authorized practice of allowing Immigration and Customs Enforcement (ICE) agents to drag out congregants in the midst of religious services is "anathema to Quaker religious exercise."[5] Similarly, in

AILA Law Journal / October 2025, Vol. 7, No. 2, pp. 123–143.

ISSN 2642-8598 (print) /ISSN 2642-8601 (online)

suing DHS for the same practice, the Mennonite Church—as well as numerous other religious organizations that joined as plaintiffs—asserted that ICE engaging in immigration enforcement activities in church is "devastating to their religious practice" and "would shatter the consecrated space of sanctuary, thwart communal worship, and undermine the social service outreach that is central to religious expression and spiritual practice for Plaintiffs' congregations and members."[6] By framing the issue as an infringement of the First Amendment right to free exercise of religion, rather than challenging DHS's right to engage in immigration enforcement, the plaintiffs in both cases effectively seek to cast an umbrella of protection over immigrant congregants in their churches by asserting the constitutional rights of their U.S. citizen members.

Importantly, this framing of the issue is perhaps one of the only means of challenging the DHS decision to scrap the "sensitive locations" guidelines; infused as it is with the power of the executive to engage in actions that protect the United States, it is unlikely that any other plaintiff demographic would have standing to challenge DHS's authority to engage in ICE raids in religious spaces. Further, with the substantial jurisprudential precedent heavily favoring protection of the right to free exercise, the courts must necessarily conduct intense balancing tests to determine which right reigns supreme: the right to free exercise of religion, or the right to engage in immigration enforcement, in essence weighing the rights of the people against the powers of the president.

In exploring how the First Amendment can impute constitutional protections to noncitizens, this paper argues that when immigration enforcement in sacred spaces burdens the religious exercise of U.S. citizens, noncitizens may gain collateral protection under the First Amendment as a result. First, this paper begins by discussing the jurisprudential and legislative background of the constitutional conundrum challenging courts today, with a short analysis of the Free Exercise Clause, free exercise jurisprudence, and modern arguments against constitutional protections for noncitizens, as expressed both through executive orders and current litigation. Second, the paper examines alternate measures that have been used in lieu of targeting "sensitive spaces" in explaining how the governmental purpose of immigration enforcement may be accomplished through other means. Third, the analysis turns to an examination of the chilling effects to a U.S. citizen's free exercise of religion by ICE enforcement actions taking place in churches and other religious venues, affecting not only congregants but also clergy and other religious leaders. This section examines an array of ongoing and prior case law to demonstrate the long-held judicial paradigm that free expression must be protected both from overt attacks as well as through "subtle government interference."[7] This section includes an analysis of the level of coercion and the immediacy of prospective harm required in order to confer standing upon potential litigants who seek to wield their status as U.S. citizens as a shield protecting religious exercise and observance. Finally, the paper concludes with an analysis of the constitutional protections which, when extended to U.S. citizens claiming

First Amendment guarantees, tangentially incorporate foreign nationals who might not otherwise have standing to bring such claims.

Background

An Overview of First Amendment and Free Exercise Jurisprudence

It is a long-held precept that the Free Expression Clause of the First Amendment protects beliefs but not religious conduct which contravenes public values.[8] The quintessential protection of the Free Exercise Clause is the "right to engage in conduct that is motivated by the religious beliefs held by the individual asserting the claim."[9] However, later courts established that a distinction must be made between direct and indirect or incidental burdens on religious conduct; in the seminal case on the matter, *Braunfeld v. Brown*, the Supreme Court found that a Sunday closing law that indirectly impacted a Jewish business owner's opening hours (since she was bound by her religious convictions to also remain closed on Saturdays) was an indirect burden that did not outweigh the government's interest in a universal day of rest.[10] In contrast, a law that required state officials to swear their belief in God constituted an actionable direct violation, since it obligated public officials to swear oaths purporting beliefs that they did not truly hold.[11] However, as bright a line as this dichotomy may appear to be, this constitutional guarantee is far murkier in practice.

First Amendment and Free Exercise Jurisprudence as Applied to Citizens

Even if the free exercise of one's religion is only indirectly impeded by a state or federal statute, that does not end the inquiry; if it is found that the purpose or *effect* of a law impedes one's observance of the religion, then "that law is constitutionally invalid even though the burden may be characterized as being only indirect."[12] Importantly, these indirect burdens must impede one's ability to freely exercise or observe one's religion or engage in religious expression; if the burden is not upon the religion but rather some other aspect of the individual's life, then there has been no infringement.[13]

However, once it is found that the "purpose or effect of a law is to impede the observance of one or all religions … that law is constitutionally invalid even though the burden may be characterized as being only indirect."[14] In *Sherbert v. Verner*, for example, the Supreme Court found that where a plaintiff is ineligible for benefits solely on the basis of her religion, "the pressure upon her to forego that [religious] practice is unmistakable."[15] In contrast, where there is a rational basis for a statute that indirectly burdens an individual's ability to freely exercise their religion, there has been found no constitutional violation.[16] Particularly where competing constitutional or governmental interests are at stake (especially when the interest is national security), courts may tolerate some burdens on religious exercise. In *Goldman v. Weinberger*, for

instance, the Court provided significant deference to the needs of the military, even when those purported needs interfered with religious exercise.[17] In *Lyng v. Northwest Indian Cemetery Protective Ass'n*, the Supreme Court stated that "[t]he Free Exercise Clause is written in terms of what the government cannot do to the *individual*, not in terms of what the individual can exact from the government,"[18] supporting the principle that the impact upon the individual is crucial, but also recognizing that the individual may not dictate government activity. Where the governmental interest is tied to another constitutional right—for example, Equal Protection under the Fourteenth Amendment—and where the government's purpose cannot be accomplished through other means, the infringement upon religious exercise is permissible.[19]

Interestingly, the Supreme Court has (perhaps hypocritically) found that, even where an entity's religious exercise infringes upon Fourteenth Amendment principles, nevertheless, the government interest falls short where a statute fails to meet the requirements of neutrality and general applicability.[20] In *Fulton v. City of Philadelphia*, the Court held that even where the "weighty" interests of equal protection and equal treatment are invoked, the policy must nevertheless be both neutral and of general applicability; where exceptions are made available under the policy—as in *Fulton*, where the non-discrimination policy specifically allows for exceptions—the government must provide a compelling reason as to its "particular interest in denying an exception to [one religious organization] while making them available to others."[21] Importantly, the Court expressed the rule in one simple sentence: "[S]o long as the government can achieve its interests in a manner that does not burden religion, *it must do so*."[22]

First Amendment and Free Exercise Jurisprudence as Applied to Noncitizens

U.S. citizens naturally enjoy greater constitutional guarantees than noncitizens.[23] However, that is not to say that noncitizens do not benefit from the protections of the Constitution. Indeed, the Supreme Court in 1886 held that the protections of the Fourteenth Amendment "are universal in their application, to *all persons within the territorial jurisdiction*" of the United States, and that "the rights of [noncitizen petitioners] … are *not less*, because they are aliens and subjects of [a foreign government]."[24] This principle as articulated in 1886 has been interpreted, expanded, and narrowed by subsequent courts. For instance, the Supreme Court has held that noncitizens benefit from the nondiscrimination provisions under the Equal Protection Clause of the Fourteenth Amendment. As such, noncitizens may not be discriminated against in hiring, neither by the federal government,[25] nor by individual states;[26] similarly, they may not be discriminated against for state welfare benefits where the state conditions receipt of welfare upon possessing either U.S. citizenship or lawful permanent resident status.[27] In so holding, the Supreme Court in *Graham v. Richardson* asserted that "whatever may be the scope of the constitutional right of interstate travel, aliens lawfully within this country have a right to enter and abide in any State in the Union on an *equality of legal privileges with all*

citizens under non-discriminatory laws."[28] In contrast, other rights have been withheld or modified for noncitizens. For example, noncitizens do not enjoy the same strength of protection as U.S. citizens with regard to ownership of real property, residence rights, and employment opportunities (as some employment opportunities may be withheld if there is a compelling justification, such as national security).[29]

When the inquiry approaches First Amendment rights to freedom of speech and free exercise of religion, the answer is often veiled in a murky realm of twilight, with the courts often divided on the issue. Although the Supreme Court has previously held that freedom of speech under the First Amendment is accorded to "resident aliens" living within the country,[30] there is scant precedent extending that same right to noncitizens who might not be characterized as possessing roots that are "deeply fixed in this land."[31]

Modern-day courts are actively grappling with this issue in light of various immigration policies pursued by the second Trump administration, with some modern federal courts acknowledging that "First Amendment protections have long extended to noncitizens residing within the country."[32] Some courts have inferred that, in all instances where "the People" are referred in the Bill of Rights, that definition includes all "persons who are part of a national community or who have otherwise developed *sufficient connection with this country* to be considered part of that community."[33] This "sufficient connection" characterization appears to be broader than the "deeply fixed [roots]" standard established by the *Bridges v. Wixon* court in 1941, such that lawful permanent residency might not be required in order to demonstrate such a "sufficient connection" to be "considered part of that community."[34]

This logic has been followed in the Seventh Circuit, where the Court required the noncitizen to show "substantial connections" with the United States in order for protections under the Bill of Rights to attach; significantly, it did *not* require the noncitizen to be a lawful permanent resident.[35] Some courts have gone further and outlined *de facto* factors for determining the existence of a substantial connection. For instance, even where an alien does not possess a visa or lawful permanent resident status, the Fifth Circuit found that she nevertheless has developed a "substantial connection" where she possesses valid travel documents (such as a border-crossing card), acquiesces to the U.S. system of immigration, and where otherwise the "nature and duration of [the noncitizen's] contacts with the United States" demonstrate a "voluntary acceptance of societal obligations" within the United States.[36] Indeed, the Supreme Court appeared to imply the same in *United States v. Verdugo-Urquidez*, when it conversely found that, because the noncitizen-appellee in question "had no previous *significant voluntary connection* with the United States," he could not avail himself of case law extending Bill of Rights protections to noncitizen aliens.[37]

As for the applicability of the First Amendment's Free Exercise Clause to noncitizens, courts are divided on whether noncitizens have standing to

bring suits against government infringements on their free exercise of religion, and indeed, this issue has been seldom broached in federal court. In a First Amendment case involving a noncitizen's political speech, the U.S. District Court for the District of Massachusetts recently asserted that "noncitizens lawfully present in the United States have *at least the core rights protected by the First Amendment*."[38] Significantly, a California district court found that, even when a noncitizen is in removal proceedings, "the values underlying the First Amendment *require the full applicability* of First Amendment Rights,"[39] implying that even where there might be a rational governmental purpose, noncitizens still benefit from the protections of the First Amendment.

In sum, this issue remains an unsettled question, with the courts taking different approaches to free exercise as it applies to noncitizens. Although it appears that most courts agree that noncitizens with a "sufficient connection" to the United States benefit from First Amendment protections, most precedential decisions have only addressed the issue from the freedom of speech angle without considering either religion clause. Importantly, some courts have held that not only do foreign nationals possessing "sufficient connections" to the United States benefit from First Amendment freedom of speech protections, but also that the First Amendment "also protects U.S. citizens' *right to hear* those foreign nationals' [protected] speech."[40] As such, it will be interesting to see if a court may find that the same applies to free exercise; that is, that U.S. citizens have the right to associate with and engage in religious activities with noncitizens without ICE's shadow darkening their doorstep.

Indeed, given that the established case law protects the right of U.S. citizens to hear the protected speech of noncitizens, there is a strong argument that U.S. citizens have the right to participate in religious exercises led by noncitizen clergy members and religious leaders. If accepted by a court, citizen congregants would then have the power to exercise their First Amendment rights to extend protection over noncitizen religious leaders who might be the target of ICE enforcement. In effect, in such a scenario, both noncitizen congregants *and* noncitizen clergy/religious leaders would benefit from the First Amendment invocation of U.S. citizens on both sides of the religious altar.

First Amendment and Free Exercise Jurisprudence as Codified by Congress

In 1993, Congress codified the Religious Freedom and Restoration Act (RFRA),[41] which "prohibits the federal government from imposing *substantial burdens* on religious exercise, *absent a compelling interest* pursued through the *least restrictive means*."[42] Those who assert a viable claim under the RFRA are entitled to "appropriate relief," including "damages against government officials in their official capacities."[43] Immediately prior to the RFRA, the Supreme Court had determined that if a law is neutral or generally applicable, then it is constitutionally tolerable even where it burdens or prohibit religious exercise and even in the absence of a compelling government interest.[44] Congress countered this holding through the passage of the RFRA, reinstating

the compelling interest test for laws that substantially burden an individual's religious exercise.[45]

To bring a challenge under the RFRA, a claimant bears the burden of proving three threshold elements: (1) the governmental action or policy impedes one's religious exercise, (2) the religious exercise "is grounded in a sincerely held religious belief," and (3) there is a substantial burden upon the exercise arising from the policy or action.[46] Courts have defined a "substantial burden" as one that "exists when government action puts 'substantial pressure on an adherent to *modify his behavior* and to violate his beliefs.'"[47] Once the claimant has established a *prima facie* RFRA violation, "the burden shifts to the government to demonstrate that the government interest is *compelling*, and its action is the *least restrictive means*."[48]

There has been substantial debate as to who constitutes a "person" who may seek redress under the RFRA. In *Burwell v. Hobby Lobby Stores, Inc.*, for example, the Supreme Court grappled with whether a corporation fell within the meaning of a "person" under the RFRA (ultimately finding in the affirmative).[49] In *Rasul v. Myers*, the U.S. Court of Appeals for the District of Columbia analyzed interpretations of "person" by the Supreme Court at the time of RFRA's enactment and determined that, as a matter of statutory interpretation, the noncitizen appellants were not persons falling within RFRA's protections.[50] Importantly, the *Rasul* majority relied upon case law, some of which was nearly 60 years old at that time,[51] which discussed whether the Fifth Amendment "person" included nonresident aliens detained at Guantanamo Bay, with the Court's decision turning on the "foreign policy complexities of allowing aliens [not present on U.S. soil] to assert constitutional rights."[52] The *Rasul* court used its interpretation in *Johnson v. Eisentrager* of a Fifth Amendment "person" as justification for the conclusion that Congress did not intend for nonresident aliens to qualify as protected persons under the RFRA.[53] The *Rasul* concurrence, in contrast, dissented against the majority's holding "that the term 'person' limits the scope of the RFRA," arguing that true application of the applicable canon of statutory construction required an examination of a word's "ordinary, contemporary, common meaning."[54]

Importantly, when the D.C. Circuit asserted that "nonresident aliens[ ] do not qualify as protected 'person[s]' within the meaning of [RFRA],"[55] it appears likely that when the court referred to a "nonresident alien," it was referring to immigrants who are neither lawful permanent residents (i.e., immigrants who do not possess a "green card") *or* those who fail the "sufficient connection" test described above. Indeed, this seems to be the federal understanding of this term of art.[56] With this understanding of the holding, the question remains unsettled whether a *resident* noncitizen, specifically a noncitizen who does not possess a green card but has "substantial connections" to the United States, is a protected person under the RFRA.

In contrast, in a 2017 Tenth Circuit case, although the U.S. District Court for the District of New Mexico did not necessarily reach the question

of whether a noncitizen constituted a "person" within the meaning of the RFRA, it did conclude summarily in a footnote that "'persons' in the United States immigration system have RFRA rights."[57] Notably, the court did not rely on any precedent for this conclusion, nor did it define what it means to be "in the immigration system." Further, in *Salesian Soc'y v. Mayorkas*, the U.S. District Court for the District of Columbia analyzed and arrived at a holding for three noncitizens' RFRA and First Amendment Free Exercise claims without ever raising a question as to standing of the plaintiffs as a qualified "person."[58] Presumably, the court assumed RFRA standing because the primary named plaintiff, the Salesian Society religious order, easily constituted a person under the *Hobby Lobby* precedent, which identified a "person" as "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals."[59] If true, then argument for the expansion of constitutional protections (including through the RFRA) to noncitizens by merit of claims made by U.S. citizen "persons" begins to take clearer shape.

Once standing, a substantial burden, and a compelling government interest have been established and identified, the question then turns to whether the government policy constitutes the least restrictive means of accomplishing its interest.

The Declaration of an Invasion as a Tool for Eroding Constitutional Protections for Noncitizens

Arguments against the existence of constitutional protections for noncitizens have gained traction among the Trump administration, leading to the issuance of multiple executive orders that seek to undermine even well-established constitutional principles applying to noncitizens. Perhaps chief among these is the presidential proclamation declaring the existence of an ongoing invasion at the southern border,[60] a weighty invocation that, if accepted, makes available to the president numerous powers and authorities, including the authority to take measures to repel the alleged "invasion" and to "take care" that the laws of the United States are faithfully executed.[61] In the proclamation, the Trump administration explicitly invokes these authorities to "suspend[] the physical entry of aliens involved in an invasion into the United States across the southern border until [President Donald Trump] determine[s] that the invasion has concluded."[62] In the same proclamation, Trump also ordered DHS and the Secretary of State to aggressively engage in deportation and immigration enforcement actions until the "invasion at the southern border has ceased."[63]

The rationale for declaring an invasion essentially comes down to two issues with the immigration system: information gaps when processing new entrants, and a system overwhelmed by the number of unauthorized entrants at the southern border.[64] These issues, the administration claims, create such national security concerns that the president is "necessarily" authorized to

"prevent the physical entry of aliens involved in an invasion into the United States, and to *rapidly repatriate them* to an alternative location."[65]

To that end, the Trump administration invoked the Alien Enemies Act on March 14, 2025, as a means of facilitating speedy deportations of alleged gang members,[66] often without conducting hearings to ensure adequate due process.[67] By characterizing the present and arriving population of unauthorized immigrants as "invaders," the administration effectively seeks to erode constitutional protections—including, most importantly, due process—for noncitizens under the guise of national security.[68] For example, the administration suggested that it may take the extreme step of suspending habeas corpus for detained noncitizens,[69] an action that may only be suspended in times of rebellion or invasion.[70]

Most relevant to this paper, the categorization of the situation as an "invasion" on the southern border spurred the administration to rescind on day one[71] a 2021 Biden Policy that directed ICE and DHS to refrain from engaging in enforcement activities at certain protected areas, including places of religious worship.[72] Indeed, in a statement issued by a DHS representative, the administration affirmed that the rescission was "essential to ending the *invasion of the U.S. southern border*,"[73] a direct reference to the Invasion Proclamation also issued on day one.[74] By framing the issue as a dire matter of public welfare, the administration is capitalizing on the president's constitutional powers, as well as the authority granted to him by the Alien Enemies Act, to erode constitutional protections for unauthorized immigrants in the name of national security.

Current Litigation Surrounding the Intersection of the Free Exercise Clause and Immigration Enforcement

As a result of ICE's increasing encroachment upon religious spaces, several actions have been filed by religious organizations and entities, which in effect cast a wing of protection over noncitizen congregants by merit of constitutional violations to U.S. citizens. Although they vary slightly in their precise arguments, religious litigants have asserted that their ability to freely exercise their religion has been "chilled" because of ICE enforcement activities within religious spaces.[75]

In light of the scant precedent discussing the existence, breadth, and veracity of free exercise rights of noncitizens, it is particularly important to note that the cases at bar argue *not* for the expansion of First Amendment protections to noncitizens, but instead that it is the *right of the devout U.S. citizen to minister to the immigrant as part of their religious practice*.[76] In pursuing this argument, the litigants in the following cases aim to achieve judicial recognition of a religious organization's constitutional right to minister to noncitizens without fear.

In the first of these cases, *Philadelphia Yearly Meeting of the Religious Society of Friends v. U.S. Department of Homeland Security* (hereinafter *Society of Friends*), the plaintiffs argue that "attending religious services is at the very heart of the guarantee of religious liberty."[77] Importantly, however, the Society of Friends does not argue that noncitizens possess this right, but rather that the new policy allowing ICE to conduct enforcement activities in religious spaces (hereinafter referred to as the "2025 Policy") constitutes a "direct[] interfere[nce] with Plaintiffs' religious exercise"[78] specifically because "[d]eterring immigrants from worshipping in-person" prevents Quakers from engaging in what they call an "essential component" of worship; namely, a diverse, communal worship experience.[79] Further, the Society of Friends alleges that the 2025 Policy "affect[s] Quakers personally, viscerally, emotionally, and theologically" because "[p]acifism is deeply ingrained in the Quaker faith,"[80] and therefore the Society of Friends asserts that it and its joint plaintiffs cannot freely exercise their religion because, by continuing to conduct worship services, they may "[k]nowingly [be] putting a person in harm's way or subjecting them to the possibility of a violent encounter with an armed law-enforcement officer."[81] This, the Society of Friends argues, "would violate Quaker beliefs in peace and nonviolence" and "thus significantly hamper Plaintiffs' ability to exercise their faith."[82]

The District Court of Maryland, in enjoining immigration enforcement activities at churches, found that the 2025 Policy will "substantially burden" the plaintiffs' free exercise under the RFRA because it will "impose substantial pressure on Plaintiffs to modify their behavior by preventing them from worshipping with a larger and more diverse group of congregants and thereby inhibiting their exercise of central facets of their respective religions."[83]

In *Mennonite Church USA v. U.S. Department of Homeland Security*, the plaintiffs similarly assert that a foundational tenet of the principles held by the various religions held by the plaintiffs all center around one common belief: that it is the duty of the believer to minister to, support, and worship with immigrants and other disenfranchised communities.[84] Therefore, the litigants assert that the 2025 Policy "will violate the sanctity of their worship space and disrupt congregants' ability to worship without fear," not least because the churches are "in the impossible position of choosing whether to freely carry out their religious mission, putting congregants and those they serve at risk of arrest or deportation."[85] Indeed, some of the plaintiffs assert that immigration activities in a worship space amount to a "sacrilegious" offense.[86] The plaintiffs point to reduced attendance at worship services immediately following the rescission of the 2021 Biden Policy, as well as the "immigration enforcement blitz" conducted during the first week of the new administration, as evidence of tangible and imminent threatened harm,[87] requesting that the court immediately enjoin enforcement of the 2025 Policy during the pendency of the litigation.

Unlike *Society of Friends*, however, the U.S. District Court for the District of Columbia found that the plaintiffs lacked Article III standing, finding that the fears expressed by the plaintiffs and the harms alleged were speculative in nature, and that the affidavits offered in support of their positions were "conclusory, second-hand, and limited in nature."[88] The court thus did not have occasion to reach the Free Exercise question. Since this decision, however, the "speculative harm" so flippantly disregarded by the District Court has materialized, with some churches reporting that attendance at Spanish-speaking parishes has gone down by 50 percent since the rescission of the safe spaces guidelines.[89]

The result of these disparate decisions is that ICE is bound by the Maryland court order *only* as to 1,400 locations within 36 states, where it must abide by the 2021 Biden-era memorandum when conducting enforcement activities at protected places; in all other locations in any of the other 14 states not covered by *Society of Friends*, the 2025 Policy controls.[90] As immigration enforcement in sacred spaces continues to accelerate, new challenges to the new directives have sprung up, and remain pending in federal court.[91]

Analysis

Standing and "Substantial Burden" Under the RFRA

Having discussed the contours of RFRA protection and its ambiguity regarding noncitizens, the question then turns to how courts might actually use previous decisions—as well as the plain language of the RFRA and its legislative context—to shield religious institutions from immigration enforcement activities when that practice would necessarily result in a burden to noncitizens and U.S. citizens alike. As discussed above, the RFRA protects any person whose religious exercise is substantially burdened by the government, particularly where the governmental interest can be accomplished through means that do not burden religion.[92] It is an unsettled question whether noncitizens with demonstrable "substantial connections" to the United States qualify as a "person" for RFRA purposes. Although it is well-settled that associations, societies, and organizations fall within the definition of a "person" under the RFRA,[93] the ambiguity that *Society of Friends* and *Mennonite Church* sought to address is whether a RFRA "substantial burden" exists when ICE policy permits immigration enforcement actions at and during religious ceremonies, indirectly suppressing a congregation's ability to conduct services, minister to immigrants, or maintain safe spaces where congregants can gather without fear.

Litigation challenging such enforcement activities has, as discussed above, been met with varied results. However, *Mennonite Church*'s unfavorable decision hinged primarily on the plaintiffs' lack of standing absent more concrete

and less speculative injury.[94] And indeed, the jurisprudence acknowledges that the threatened harms alleged by the *Mennonite Church* plaintiffs—declining attendance, inability to engage in activities mandated by their genuinely-held beliefs (such as immigrant support services), and inability to gather for communal worship services—can constitute a substantial burden under the RFRA.[95] This precise principle was recognized by the U.S. District Court for the District of Maryland in *Society of Friends*. The court here found that "the 2025 Policy effectively compels Plaintiffs to engage in worship with a smaller congregation and with fewer immigrants, even though their beliefs call for worship with as large and diverse a community as possible."[96] The court even found that where the alleged harm was mere inability to serve the immigrant community, the individual plaintiff had established a substantial burden.[97]

Therefore, the true question at bar is how immediate must the risk of the substantial burden be for a religious plaintiff to have standing to allege a violation under the RFRA? Interestingly, *Society of Friends* successfully sued for an injunction of the 2025 Policy nearly two months before the U.S. District Court for the District of Columbia issued its decision in *Mennonite Church*, and yet the primary rationale for denying the requested injunction in *Mennonite Church* was the alleged "speculative nature" of the threat to the plaintiffs' religious exercise, despite evidence of concrete injury.[98] Therefore, there seems to be a split as to the question of immediacy.

However, this author posits that on appeal, the *Mennonite Church* plaintiffs will likely succeed on the merits.[99] The court in *Mennonite Church* erred in finding that the harm was too speculative to constitute a substantial burden, for the RFRA does *not* require that direct harm actually occur. Rather, it is enough that the government policy places "substantial pressure" on a claimant to modify or abandon a protected religious practice or exercise.[100] Here, the 2025 Policy authorized ICE to engage in enforcement activities in religious spaces, and the chilling effect on churches was *immediately tangible*.[101] Churches are increasingly reporting that attendance at services is dropping, particularly among their immigrant congregants,[102] religious institutions have begun modifying the format of their worship services to encourage attendance,[103] and there are multiple instances of ICE seizing congregants as they leave worship services,[104] in one case even brandishing a rifle at a pastor as they did so.[105] As immigration enforcement activities have accelerated in the months following *Mennonite Church*, the types of harm alleged by the Mennonite Church have transformed from speculative to actual for other religious sects, making it more likely that a challenge to the *Mennonite Church* decision may face greater success as religious expression for more and more populations is suppressed.[106]

The case law is clear: When a government policy coerces individuals to refrain from engaging in a protected religious exercise, then the government bears the burden of demonstrating that the compelling government interest for that policy cannot be accomplished through alternative means that do not burden religious exercise.[107] And now, far from the "speculative harm" upon

which the *Mennonite Church* based its dismissal, ICE is increasingly targeting congregants on ingress and egress from religious sites, intimidating clergy and staff into submission,[108] arresting immigrants in church parking lots and during preschool pickups,[109] and some even attempting arrests during worship services.[110] The effect of the 2025 Policy has palpably and quantifiably affected the ability of religious institutions to engage in protected religious exercise. Indeed, the threat has become so pervasive that Catholic churches have begun excusing congregants from their obligation to attend Mass for those who fear being targeted by immigration raids.[111] Therefore, the 2025 Policy has, in fact, placed a substantial burden on religious entities' right to free exercise by merit of the *threat* upon these institutions.

The RFRA Provides Religious Institutions with Standing Even When the Policy Is Facially Neutral

There is strong case precedent supporting the argument that government policies that appear facially neutral may nevertheless have a discriminatory effect on religious practice. For example, in *Church of the Lukumi Babalu Aye v. City of Hialeah*, the Supreme Court struck down city ordinances that were neutral on their face, but which clearly targeted religious practices—in this case, animal sacrifice by practitioners of Santeria, a religion loosely derived from Christianity, which was brought to Florida by migrants from Cuba.[112] Despite the general wording of the ordinances, the Court held that the ordinances were neither neutral nor generally applicable, finding that the government action did not "advance interests of the highest order," nor was it "narrowly tailored in pursuit of those interests."[113]

Similarly, the 2025 Policy burdens religious organizations *indirectly* and *substantially* by chilling attendance, coercing churches to modify or completely abstain from conducting worship services, and interfering with the religious organizations' ability to engage in religious exercises that stem from their genuinely held beliefs. While the 2025 Policy does not explicitly target religious institutions, it does specifically revoke protection of religious spaces that were previously in place; further, it has had a chilling effect on congregational worship and ministry to immigrants, which forms a core tenet of many faiths. This indirect suppression falls squarely within the type of government action that the *Lukumi* court condemned, and should raise serious concerns under the *Lukumi* framework. Specifically, the government action here is not narrowly tailored to pursue the interests of the executive in ensuring national security, and thus cannot justify the tangible chilling effect on church attendance and upon churches' ability to exercise their core beliefs. Even if it is not the clear intent of the administration to burden the religious exercise of religious organizations, courts cannot ignore that the effect of the 2025 Policy impermissibly infringes their religious exercise all the same.

Further, in *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, the Court ruled that even where a serious government interest like preventing illicit drug use is in contention, the government interest *must* give way to the religious exercise unless the government demonstrates that no less restrictive alternative exists to accomplish the governmental goal.[114] Importantly, the Court held that even though the drug in question, hoasca, had been placed under Schedule I in a statute regulating "exceptionally dangerous" drugs,[115] this congressionally mandated categorization did *not* relieve the government of its obligation to demonstrate that the policy was the least restrictive means of accomplishing the government's goal.[116] The Court reasoned that the government's argument, in essence, was circular: "[M]ere invocation of the general characteristics of [the statute] cannot carry the day," for the fact that Congress determined a certain drug should be severely restricted "does not provide a categorical answer that relieves the Government of the obligation to shoulder its RFRA burden."[117]

Likewise, the government cannot rely solely upon the provisions of the Immigration and Nationality Act, nor the language of the 2025 Policy, nor the mere declaration of an invasion to categorically excuse itself from its RFRA burden of demonstrating that the 2025 Policy is the least restrictive means of accomplishing its goals; the government must demonstrate that the interests of the 2025 Policy could not be accomplished through less restrictive means. The government's general interest in immigration enforcement is simply insufficient on its own.

Success in This Arena May Confer Further Derivative Benefits in Other Contexts

Should churches successfully assert that the RFRA protects their right to minister to the noncitizen demographic, further questions might arise about the scope of those protections. For example, if the 2025 Policy is found to be a violation of the RFRA as it applies to enforcement actions in religious institutions, could this also confer derivative protections and standing on noncitizens to directly challenge ICE enforcement activities during other activities associated with religious exercise? Similarly, could these principles potentially be extended to other, previously protected "safe spaces"?[118]

As previously discussed, courts have occasionally acknowledged and protected the rights of listeners or participants to *hear* protected speech made by noncitizens, suggesting that constitutional protections sometimes cast a net of protections beyond the speaker himself to also encompass those in mere participatory roles;[119] thus, a derivative impact has been recognized in similar arenas. It might therefore be but a small step to apply similar reasoning to noncitizens who seek to engage with constitutionally protected institutions, such as churches, in the context of religious practice.

For example, if *Society of Friends* and *Mennonite Church* succeed in expanding the bounds of free exercise to include the demographic of their congregants, could RFRA protections also extend to nonprofit organizations whose mission is to minister through provision of social services (such as shelters, outreach programs created by churches, or nonprofits providing resettlement aid to asylum seekers)? Alternatively, could a noncitizen religious leader—such as a pastor, imam, rabbi, etc.—invoke a similar derivative protection if his or her deportation chills U.S. citizens' ability to worship communally?

These open questions suggest that the current RFRA litigation could serve as a foothold for creating broader vicarious protections for noncitizens in other contexts beyond traditional religious practice. Therefore, *Society of Friends* and *Mennonite Church* could, hypothetically, pave the way for religious institutions in varied contexts that are able to demonstrate that their religious exercise is tightly interwoven with the ability to interact with and minister to the immigrant population.

Conclusion

Although immigrants doubtless possess constitutional rights when they have established a "substantial connection" to the United States, the government interest in immigration enforcement and national security likely justifies the infringement of an immigrant's First Amendment rights under the Free Exercise Clause, since the government is permitted to "make rules which would be unacceptable if applied to citizens."[120] However, when a religious entity asserts that ministry to immigrants is a genuinely held tenet of its faith and demonstrates that a government immigration policy substantially burdens the religious organization's ability to engage in the activity, the likelihood of success increases. Although courts are currently split on the immediacy of the threat to religious activity, the argument has solid jurisprudential support. However, with the rise of enforcement activities taking place in sacred religious spaces, it may be that the question of immediacy may be considered a moot point. Further, because the government has successfully engaged in immigration enforcement activities for more than a decade without breaching the religious space, the government will likely find it difficult to justify a finding that its interest cannot be accomplished through alternative means.

As the aforementioned cases proceed through the legal system, it is likely that courts will strengthen the sanctity of religious spaces, thereby casting an umbrella of protection over noncitizen congregants as a result. Whether derivative protections might be extended to noncitizens in other constitutional spaces remains a question for the courts to decide. Ultimately, however, the constitutional sanctity of the church must remain inviolate from the reach of civil enforcement where less restrictive alternatives exist.

Notes

* Kristin Hommel is an Associate Business Immigration Attorney at Charlotte Immigration Law Firm.

1. Laken Riley Act of 2025, Pub. L. No. 119-1, 139 Stat. 3 (2025).
2. Proclamation No. 10903, 90 Fed. Reg. 13033 (Mar. 14, 2025) ("Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua").
3. Memorandum from Benjamine C. Huffman, Acting Sec'y, to Caleb Vitello, Acting Dir., U.S. Immigr. and Customs Enf't, on Enforcement Actions in or Near Protected Places (Jan. 20, 2025), https://www.nafsa.org/sites/default/files/media/document/BenjamineHuffmanProtectedAreasMemo_20250120.pdf.
4. *See* below the subsection "First Amendment and Free Exercise Jurisprudence as Applied to Noncitizens."
5. Complaint at 3, ¶ 6, Phila. Yearly Meeting of the Religious Soc'y of Friends v. U.S. Dep't of Homeland Sec., 2025 WL 1549332 (D. Md. Jan. 27, 2025) (No. 8:25-cv-00243).
6. Complaint at 8, ¶ 7, Mennonite Church USA v. U.S. Dep't of Homeland Sec., 2025 WL 1357704 (D.D.C. Jan. 25, 2025) (No. 1:25-cv-00403).
7. Pathfinder Fund v. Agency for Int'l Dev., 746 F. Supp. 192, 195 (D.D.C. 1990) (quoting *Lyng v. Int'l Union*, 485 U.S. 360, 367 n.5 (1988)).
8. Reynolds v. United States, 98 U.S. 145 (1878); *see also* Davis v. Beason, 133 U.S. 333 (1890).
9. Bible Believers v. Wayne County, 805 F.3d 228, 255-56 (6th Cir. 2015).
10. Braunfeld v. Brown, 366 U.S. 599 (1961); *see also* Sherbert v. Verner, 374 U.S. 398 (1963) (asserting that, to survive the appellant's constitutional challenge, the government was required to show that "any *incidental* burden on the free exercise of appellant's religion may be justified by a 'compelling state interest in the regulation of a subject within the State's constitutional power to regulate.'" (quoting *NAACP v. Button*, 371 U.S. 415, 438 (1963))).
11. Torcasco v. Watkins, 367 U.S. 488 (1961)
12. *Braunfeld*, 366 U.S. at 599.
13. *See, e.g.*, *id.* (finding that economic hardships that arise as an indirect result of a Sunday closing law does not violate one's right to free expression, since the burden was essentially economic in nature and did not preclude the claimant from practicing her religion).
14. Sherbert v. Verner, 374 U.S. 398 (1963) (quoting *Braunfeld*, 366 U.S. at 607).
15. *Id.*
16. *See, e.g.*, Goldman v. Weinberger, 475 U.S. 503 (1986) (finding that there is a compelling governmental interest in uniformity among the armed forces such that an individual's First Amendment rights are not violated by the prohibition on wearing yarmulkes).
17. *Id.*
18. Lyng v. Nw. Indian Cemetery Protective Ass'n, 485 U.S. 439, 441 (1988) (emphasis added).
19. *See, e.g.*, Bob Jones Univ. v. United States, 461 U.S. 574 (1983) (finding that, where the university sought to prohibit interracial relationships pursuant to its religious beliefs, there were no less restrictive means of eradicating racial discrimination—the stated governmental interest—than by restricting the university's free exercise of religion).

20. *See, e.g.*, Fulton v. City of Philadelphia, 593 U.S. 522 (2021).

21. *Id.*

22. *Id.* (emphasis added)

23. Demore v. Hyung Joon Kim, 538 U.S. 510, 523 (2003) ("In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.").

24. Yick Wo v. Hopkins, 118 U.S. 356, 368 (1886) (emphasis added.

25. *See* Hampton v. Mow Sun Wong, 426 U.S. 88 (1976).

26. *See, e.g.*, Examining Bd. of Eng'rs, Architects & Surveyors v. Flores De Otero, 426 U.S. 572, 573 (1976) ("[T]he governmental interest claimed to justify the discrimination [against noncitizens] is to be carefully examined in order to determine whether that interest is legitimate and substantial, and inquiry must be made whether the means adopted to achieve the goal are necessary and precisely drawn[.]").

27. *See* Graham v. Richardson, 403 U.S. 365, 366 (1971) (finding that "classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny").

28. *Id.* (emphasis added).

29. *See* 1 Charles Gordon, Stanley Mailman, Stephen Yale-Loehr, Ronald Y. Wada, *Immigration Law and Procedure* § 6.02 (2025); *see also* Examining Bd. of Eng'rs, Architects & Surveyors, 426 U.S. at 573 (finding that the governmental interest in discriminating against noncitizens for certain employment opportunities must be "legitimate and substantial," and that "the means adopted to achieve the goal are necessary and precisely drawn").

30. Bridges v. Wixon, 326 U.S. 135, 148 (1941) ("Freedom of speech and of press is accorded aliens residing in this country").

31. *Id.* at 154.

32. *See, e.g.*, Ozturk v. Trump, 779 F. Supp. 3d 462, 490 (D. Vt. 2025) (citing *Bridges*, 326 U.S. at 135.

33. United States v. Meza-Rodriguez, 798 F.3d 664, 670 (7th Cir. 2015) (internal quotation omitted) (emphasis added).

34. *Id.*

35. *Meza-Rodriguez*, 798 F.3d at 670.

36. Martinez-Aguero v. Gonzalez, 459 F.3d 618, 625 (5th Cir. 2006) (finding that, even though the appellee was not a lawful permanent resident or even in possession of a temporary visa, she had sufficiently "'developed substantial connections with the country' and *earned the protections of the Fourth Amendment*" through her repeated entries, possession of a border-crossing card, and acquiescence to the U.S. system of immigration (emphasis added)).

37. United States v. Verdugo-Urquidez, 494 U.S. 259, 271 (1990) (emphasis added); *see also* American-Arab Anti-Discrimination Comm. v. Reno, 70 F.3d 1045, 1064 (9th Cir. 1995) (interpreting *Verdugo-Urquidez* as "recognizing that aliens with substantial ties thought *family* and *work* form part of [the United States'] 'national community'" (emphasis added)).

38. Am. Ass'n of Univ. Professors v. Rubio, 780 F. Supp. 3d 350, 381 (D. Mass. 2025) (emphasis added).

39. American Arab Anti-Discrim. Comm. v. Meese, 714 F. Supp. 1060, 1074-82 (C.D. Cal. 1989) (emphasis added).

40. Opawl v. Yost, 747 F. Supp. 1065, 1080 (S.D. Oh. 2024) (emphasis added).

41. *See* 42 U.S.C. § 2000bb-1(a) ("Government shall not substantially burden a *person's* exercise of religion . . ." (emphasis added)).

42. Tanzin v. Tanvir, 592 U.S. 42 (2020) (emphasis added).

43. *Id.*

44. *Id.*

45. *Id.*; *see also* 42 U.S.C. § 2000bb(b)(1)-(2).

46. *See* Standing Rock Sious Tribe v. U.S. Army Corps of Eng'rs, 239 F. Supp. 3d 77, 88 (D.D.C. 2017).

47. Kaemmerling v. Lappin, 553 F.3d 669, 678 (D.C. Cir. 2008) (emphasis added).

48. Sabra v. Pompeo, 453 F. Supp. 3d 291, 326 (D.D.C. 2020) (emphasis added).

49. Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 682 (2014).

50. Rasul v. Myers, 563 F.3d 527, 533 (D.C. Cir. 2009).

51. Johnson v. Eisentrager, 339 U.S. 763 (1950).

52. *Rasul*, 563 F.3d at 534 (J. Janice Brown, concurring).

53. *Id.* at 533.

54. *Id.* (Brown, J., concurring).

55. Aamer v. Obama, 742 F.3d 1023, 1043 (D.C. Cir. 2014).

56. *See, e.g.*, *Nonresident Aliens*, Internal Revenue Service (last updated May 22, 2025), https://www.irs.gov/individuals/international-taxpayers/nonresident-aliens ("A nonresident alien is an alien who has not passed the green card test or the substantial presence test.").

57. O Centro Espirita Beneficiente Uniao Do Vegetal in the United States v. Duke, 286 F. Supp. 3d 1239, 1259 n.11 (D.N. Mex., 2017).

58. Salesian Soc'y v. Mayorkas, 2021 U.S. Dist. LEXIS 180472 (D.D.C. Sept. 22, 2021).

59. Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 707 (2014).

60. Proclamation No. 10888, 90 Fed. Reg. 8333 (Jan. 20, 2025) ("Guaranteeing the States Protection Against Invasion").

61. *See, e.g.*, U.S. Const. art. IV, § 4; *see also* U.S. Const. art. II.

62. *See* Proclamation No. 10888, *supra* note 60.

63. *Id.*

64. *Id.*

65. *Id.* (emphasis added).

66. *See, e.g.*, Proclamation No. 10903, 90 Fed. Reg. 13033 (Mar. 14, 2025) ("Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua").

67. *See, e.g.*, Aaron Reichlin-Melnick, *These Men Were Deported to El Salvador with No Due Process. Their Stories Show Why an Investigation Is Necessary*, Immigration Impact (Apr. 3, 2025), https://immigrationimpact.com/2025/04/03/men-deported-el-salvador-stories-investigation/ (detailing how more than 130 Venezuelans had never been ordered removed by an immigration judge, and had in fact been pending immigration court hearings).

68. *See id.*

69. Dan Mangan, *Trump Administration "Looking at" Suspending Habeas Corpus for Migrants, Stephen Miller Says*, CNBC (May 9, 2025), https://www.cnbc.com/2025/05/09/trump-deportation-habeas-corpus-miller.html.

70. U.S. Const. art. I, § 9, cl. 2 ("The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it[.]").

71. *See* Memorandum from Benjamine C. Huffman, Acting Sec'y, to Caleb Vitello, Acting Dir., U.S. Immigr. and Customs Enf't, on Enforcement Actions in or Near Protected Places (Jan. 20, 2025), https://www.nafsa.org/sites/default/files/media/document/BenjamineHuffmanProtectedAreasMemo_20250120.pdf.

72. *See* Memorandum from Alejandro Mayorkas, Sec'y of Homeland Sec., to Tae Johnson, Acting Dir., U.S. Immigr. and Customs Enf't, on Guidelines for Enforcement Actions in or Near Protected Areas (Oct. 27, 2021), https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw10272021.pdf.

73. *Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the Abuse of Humanitarian Parole*, Dep't of Homeland Sec. (Jan. 21, 2025), https://www.dhs.gov/news/2025/01/21/statement-dhs-spokesperson-directives-expanding-law-enforcement-and-ending-abuse (emphasis added).

74. *See* Proclamation No. 10888, *supra* note 60.

75. *See, e.g.*, Complaint, *Phila. Yearly Meeting of the Religious Soc'y of Friends*, *supra* note 5, at 3, ¶ 6.

76. *See, e.g.*, Complaint at 39, ¶ 169, New England Synod v. U.S. Dep't of Homeland Sec. (D. Mass. July 28, 2025) (No. 4:25-cv-40102) ("The 2025 Policy puts Plaintiffs to an impossible choice: either violate their core religious beliefs by failing to welcome all to worship or violate their core religious beliefs by placing others in harm's way.").

77. Complaint, *Phila. Yearly Meeting of the Religious Soc'y of Friends*, *supra* note 5, at 4.

78. *Id.* at 26, ¶ 89.

79. *Id.* at 19 ¶¶ 62-67.

80. *Id.* at 25, ¶ 88 (internal quotation omitted).

81. *Id.* at 26, ¶ 90.

82. *Id.* at ¶¶ 90-91.

83. Phila. Yearly Meeting of the Religious Soc'y of Friends v. U.S. Dep't of Homeland Sec., 767 F. Supp. 3d 293, 321-22 (D. Md. 2025).

84. Complaint, *Mennonite Church USA*, *supra* note 6, at 36-38, ¶¶ 78-81.

85. *Id.* at 39, ¶¶ 83, 84.

86. *Id.* at 40, ¶ 86.

87. *Id.* at 35, ¶ 74.

88. Mennonite Church USA v. United States Dep't of Homeland Sec., 778 F. Supp. 3d 1, 11-12 (D.D.C. 2025).

89. *See, e.g.*, Gina Christian, *Amid Immigration Raids, Nashville Diocese Tells Catholics They Don't Have to Attend Sunday Mass if Safety Is at Risk*, Am.: The Jesuit Rev. (May 15, 2025), https://www.americamagazine.org/faith/2025/05/15/tennessee-diocese-immigration-mass-crackdown-catholic-250694/.

90. *See Protected Areas and Courthouse Arrests: Enforcement Actions in or Near Places of Worship—Injunction (March 2025)*, Immigr. and Customs Enf't (last updated Mar. 27, 2025), https://www.ice.gov/about-ice/ero/protected-areas.

91. *See, e.g.*, Complaint, *New England Synod*, *supra* note 76, at ¶¶ 5-8.

92. 42 U.S.C. § 2000bb(b)(1)-(2).

93. Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 682 (2014).

94. Mennonite Church USA v. U.S. Dep't of Homeland Sec., 778 F. Supp. 3d 1, 11-12 (D.D.C. 2025).

95. *See, e.g.*, Sabir v. Williams, 52 F.4th 51 (2d Cir. 2022) (finding that a policy hindering Muslim prisoners from engaging in communal worship in the prison chapel constituted a substantial burden under the RFRA).

96. Phila. Yearly Meeting of the Religious Soc'y of Friends v. U.S. Dep't of Homeland Sec., 767 F. Supp. 3d 293, 331 (D. Md. 2025).

97. *Id.*

98. *Mennonite Church USA*, 778 F. Supp. 3d at 11-12.

99. Plaintiffs filed a Notice of Appeal to the United States Court of Appeals for the D.C. Circuit on May 30, 2025. The case remains open and pending. *See* Notice of Appeal, Mennonite Church USA v. U.S. Dep't of Homeland Sec., 2025 WL 1357704 (D.D.C. 2025) (No. 1:25-cv-00403-DLF).

100. 42 U.S.C. § 2000bb(b)(1)-(2).

101. *See, e.g.*, Catherine E. Shoichet, *How Churches Are Trying to Keep Their Congregations Safe as Threats of ICE Raids Loom*, CNN (Feb. 20, 2025), https://www.cnn.com/2025/02/20/us/churches-ice-immigration-raids-cec; *see also* Pricilla Alvarez & Rosa Flores, *Trump Administration Launches Nationwide Immigration Enforcement Blitz*, CNN (Jan. 27, 2025), https://edition.cnn.com/2025/01/26/politics/chicago-immigration-trump-ice/index.html.

102. *See, e.g.*, Fadia Patterson, *Tampa Bay Pastors Say Church Attendance by Immigrants Has Declined*, Spectrum Bay News 9 (Apr. 13, 2025), https://baynews9.com/fl/tampa/news/2025/04/13/tampa-bay-pastors-say-church-attendance-by-immigrants-has-declined (reporting that "fear [of ICE] has led to the shuttering of in-person services for the Haitian community in Brandon" and "attendance by immigrant members of [Brandon Christian Church] has significantly declined").

103. *See, e.g.*, Marina E. Franco, *Amid Fears of Immigration Raids, Latino Churches Rethink How to Conduct Services*, NBC News (Apr. 7, 2025), https://www.nbcnews.com/news/latino/latino-churches-immigration-raids-fears-deportation-rcna199982.

104. Gustavo Valdes & Caroll Alvarado, *Undocumented Man's Immigration GPS Monitor Rang in Church. When He Went Outside, ICE Agents Were Waiting*, CNN (Jan. 29, 2025), https://www.cnn.com/politics/live-news/trump-news-today-hearings-immigration-01-29-25#cm6i25xkh00003b6nfvhw8ewq (describing how ICE agents immediately seized an undocumented immigrant pending immigration proceedings immediately upon leaving the church building).

105. *See* Erin Stone, *Downey Church Community on Edge After Masked, Armed Officers Detain Man on Church Property*, LAist (June 11, 2025), https://laist.com/news/politics/downey-church-community-on-edge-after-masked-armed-police-detain-man-on-church-property.

106. *See, e.g.*, Aleja Hertzler-McCain, *Diocese of San Bernadino Issues Dispensation Saying Catholics Who Fear ICE Don't Have to Attend Mass*, NPR (July 9, 2025), https://www.npr.org/2025/07/09/nx-s1-5462837/diocese-of-san-bernardino-issues-dispensation-saying-catholics-who-fear-ice-dont-have-to-attend-mass.

107. 42 U.S.C. § 2000bb(b)(1)-(2).

108. *See, e.g.*, Rev. Tanya Lopez, *ICE Agents Wielding Guns Tried to Intimidate My Church. We Will Not Bow in Fear*, USA Today (July 15, 2025), https://www.usatoday.com/story/opinion/2025/07/15/ice-raids-la-church-trump-deportation/84640051007/.

109. *See* Karla Rendon, *Immigration Raids Reported Near Downey Churches*, NBCLA (June 11, 2025), https://www.nbclosangeles.com/news/local/downey-churches-home-depot-immigration-raids/3721686/.

110. *See, e.g.*, *Religious Groups Sue Trump-Vance Administration Over Immigration Raids at Houses of Worship*, Democracy Forward (July 28, 2025), https://democracyforward.org/updates/houses-of-worship/.

111. *See* Hertzler-McCain, *supra* note 106.

112. Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993).

113. *Id.* at 546.

114. Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418 (2005).

115. *Id.* at 423.

116. *Id.*

117. *Id.*

118. For example, the Supreme Court has previously held that all children have the right to attend school, even undocumented children. *See* Plyler v. Doe, 457 U.S. 202 (1982). Should the religious organization plaintiffs experience success in extending collateral constitutional protects to noncitizen congregants, the opportunity may become ripe for public schools to make similar arguments to protect undocumented children attending public school.

119. Opawl v. Yost, 747 F. Supp. 1065, 1080 (S.D. Oh. 2024).

120. Demore v. Hyung Joon Kim, 538 U.S. 510, 523 (2003).