

No. 25-2240

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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DIMAS ANTONIO AMADOR-CANACAS,

*Petitioner,*

v.

TODD BLANCHE, ATTORNEY GENERAL,

*Respondent.*

On Petition for Review of Orders of the Immigration Judge and  
Department of Homeland Security  
Agency No. A077-259-765  
Custody status: Detained

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**BRIEF *AMICI CURIAE* OF AMERICAN IMMIGRATION LAWYERS  
ASSOCIATION AND PUBLIC COUNSEL  
IN SUPPORT OF PETITIONER**

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**TABLES OF CONTENTS**

	<b>Page</b>
TABLE OF AUTHORITIES .....	ii
INTEREST OF <i>AMICI CURIAE</i> .....	1
SUMMARY OF ARGUMENT .....	2
ARGUMENT .....	4
I.    Access to Counsel Is Crucial to Accurate Adjudication in Reasonable-Fear Proceedings.....	4
a. Congress structured removal proceedings to facilitate access to counsel. ....	4
b. Representation dramatically improves outcomes. ....	12
II.   The Risk of Erroneous Removal in Reasonable-Fear Proceedings Is High. ....	14
a. Legal and evidentiary complexity make pro se error likely.....	14
b. Individuals like Mr. Amador-Canacas are poorly positioned to represent themselves. ....	19
c. Errors at this stage are irreversible with grave consequences. ....	21
III.  Without Judicial Review, Systemic Pressures Will Erode the Right to Counsel and Other Due Process Protections. ....	23
a. Accepting the Government’s position would create systemic incentives to circumvent the right to counsel. ....	23
b. In an overworked and error-prone immigration system, judicial review of constitutional claims is essential. ....	27
CONCLUSION .....	32
APPENDIX .....	33
CERTIFICATE OF SERVICE.....	34

## TABLE OF AUTHORITIES

	Page(s)
<b>CASES</b>	
<i>Abrego Garcia v. Noem</i> , No. 8:25-cv-951-PX (D. Md. Apr. 13, 2025).....	22
<i>Akosung v. Barr</i> , 970 F.3d 1095 (9th Cir. 2020).....	16
<i>Alvarez-Ayala v. Bondi</i> , No. 24-3249, 2025 WL 2888012 (9th Cir. Oct. 10, 2025).....	30
<i>Amica Ctr. for Immigrant Rts. v. Exec. Off. for Immigr. Rev.</i> , No. CV 26-696, 2026 WL 662494 (D.D.C. Mar. 8, 2026) .....	9, 22
<i>Ayala v. Sessions</i> , 855 F.3d 1012 (9th Cir. 2017).....	29
<i>Baltazar-Alcazar v. I.N.S.</i> , 386 F.3d 940 (9th Cir. 2004).....	19
<i>Bibiano v. Lynch</i> , 834 F.3d 966 (9th Cir. 2016).....	29
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<i>Connecticut Board of Pardons v. Dumschat</i> , 452 U.S. 458 (1981) (Brennan, J., concurring).....	28
<i>Davila v. Barr</i> , 968 F.3d 1136 (9th Cir. 2020).....	17
<i>Escobar v. Barr</i> , 801 F. App'x 564 (9th Cir. 2020) .....	29
<i>Fernandez-Vargas v. Gonzales</i> , 548 U.S. 30 (2006).....	5
<i>Freza v. Att'y Gen. United States</i> , 49 F.4th 293 (3d Cir. 2022).....	9

<i>Hernandez Lara v. Barr</i> , 962 F. 3d 45 (1st Cir. 2020) .....	7, 19
<i>Hernandez-Gil v. Gonzales</i> , 476 F.3d 803 (9th Cir. 2007).....	14, 23
<i>Hernandez-Lara v. Lyons</i> , 10 F.4th 19 (1st Cir. 2021) .....	21
<i>J.R. v. Barr</i> , 975 F.3d 778 (9th Cir. 2020).....	16
<i>The Japanese Immigrant Case</i> , 189 U.S. 86, 100-01 (1903) .....	28
<i>Lok v. Immigr. &amp; Naturalization Serv.</i> , 548 F.2d 37 (2d Cir. 1977).....	15
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976) .....	28
<i>Moncrieffe v. Holder</i> , 569 U.S. 184 (2013) .....	19
<i>Montes-Lopez v. Holder</i> , 694 F.3d 1085 (9th Cir. 2012).....	7
<i>Morrissey v. Brewer</i> , 408 U. S. 471 (1972) .....	28
<i>Nat’l Immigration Project of Nat’l Lawyers Guild v. U.S. Dept. of Homeland Sec.</i> , No. 11-cv-3235, 2014 WL 6850977 (S.D.N.Y. Dec. 3, 2014) .....	22
<i>Navarrete v. Bondi</i> , No. 24-2776, 2026 WL 797428 (9th Cir. Mar. 23, 2026) .....	18, 21, 27, 31
<i>Njoroge v. Holder</i> , 753 F.3d 809 (8th Cir. 2014).....	7
<i>Orozco-Lopez v. Garland</i> , 11 F.4th 764 (9th Cir. 2021).....	4, 5, 8, 28

<i>Patel v. Garland</i> , 596 U.S. 328 (2022) .....	27
<i>Quintero v. Garland</i> , 998 F.3d 612 (4th Cir. 2021).....	15, 16
<i>Reno v. Flores</i> , 507 U.S. 292 (1993) .....	28
<i>Rios-Berrios v. I.N.S.</i> , 776 F.2d 859 (9th Cir. 1985).....	20, 26
<i>In Re S-M-J</i> , 21 I. & N. Dec. 722 (BIA 1997) .....	26
<i>Scarlett v. Barr</i> , 957 F.3d 316 (2d Cir. 2020).....	18
<i>Sow v. U.S. Att’y Gen.</i> , 949 F.3d 1312 (11th Cir. 2020).....	19
<i>Torres Morales v. Garland</i> , No. 22-569, 2023 WL 3074552 (9th Cir. Apr. 25, 2023) .....	26
<i>United States v. Valdivias-Soto</i> , 112 F.4th 713 (9th Cir. 2024).....	18
<i>Usubakunov v. Garland</i> , 16 F.4th 1299 (9th Cir. 2021).....	4, 14
<i>Velasquez-Samayoa v. Garland</i> , 49 F.4th 1149 (9th Cir. 2022).....	17
<i>Xue v. Bd. of Immigr. Appeals</i> , 439 F.3d 111 (2d Cir. 2006).....	23
<i>Zadvydas v. Davis</i> , 533 U.S. 678 (2001) .....	27
<i>Zuniga v. Barr</i> , 946 F.3d 464 (9th Cir. 2019).....	12, 29, 31

**STATUTES**

8 U.S.C. § 1158 ..... 15, 16  
 8 U.S.C. § 1229a ..... 17  
 8 U.S.C. § 1362 ..... 2, 5, 13  
 Immigration and Nationality Act, 8 U.S.C. § 1231 ..... *passim*

**REGULATIONS**

8 C.F.R. § 208.31 ..... 6, 28  
 8 C.F.R. § 241.8 ..... 5, 6  
 8 C.F.R. § 1208.16 ..... 15, 16, 17  
 8 C.F.R. § 1208.17 ..... 15  
 8 C.F.R. § 1208.18 ..... 15, 17  
 8 C.F.R. § 1208.31 ..... 6, 21  
 8 C.F.R. § 1240.11 ..... 24

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 Exec. Off. For Immigr. Rev., *Adjudication Statistics: Pending Cases, New Cases, and Total Completions* (July 31, 2025), <https://www.justice.gov/eoir/media/1344791/dl?inline> ..... 9

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The American Immigrant Lawyers Association and Public Counsel respectfully submit this brief as *Amici Curiae* in support of petitioner.<sup>1</sup>

### **INTEREST OF *AMICI CURIAE***

*Amici* are immigration-focused organizations with substantial interest in the Court’s resolution of this case.

*Amicus* the American Immigration Lawyers Association (“AILA”) is a national, non-partisan, nonprofit association founded in 1946. It has more than 18,000 members throughout the United States and abroad, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA promotes justice, advocates for fair and reasonable immigration law and policy, and advances the quality of immigration and nationality law and practice.

*Amicus* Public Counsel is a nonprofit public interest law firm dedicated to advancing civil rights and racial and economic justice, as well as to amplifying the power of its clients through comprehensive legal advocacy. Public Counsel engages in immigration-related policy work and impact litigation, and provides pro bono

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<sup>1</sup> All parties have consented to the filing of this *Amici Curiae* brief. No counsel for any party authored this brief in whole or in part, and no person or entity other than *Amici Curiae*, their members, or counsel made a monetary contribution to the preparation or submission of this brief.

placement and direct representation to immigrants seeking protection—including those in immigration detention.

As distinguished organizations in the immigration litigation space, *Amici* share an important interest in ensuring a robust statutory right to counsel in removal proceedings. Through their work, *Amici* are well-positioned to describe the practical challenges detained noncitizens face in securing counsel within compressed timelines and navigating immigration proceedings without representation, and the importance of judicial review in this context. To aid the Court’s analysis of an issue central to the immigration system, *Amici* write to emphasize the importance of access to counsel in removal proceedings.

### **SUMMARY OF ARGUMENT**

Congress directed that “[i]n any removal proceedings before an immigration judge” that “the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings.” 8 U.S.C. § 1362. This case concerns whether that right to counsel in reasonable fear proceedings before an Immigration Judge is meaningful or a mere formality.

Congress and this Court’s longstanding precedent recognize a robust right to counsel in removal proceedings. However, expedited scheduling practices can render this right meaningless. Under the current regime, an Immigration Judge may

move up a scheduled removal hearing to the next day, leaving a noncitizen a single day to confirm counsel's attendance or secure new counsel—even when several days remain within the ten-day governing window for review. Such actions cannot be squared with the language of the statute or this Court's caselaw.

Data show that counsel is extraordinarily important in removal proceedings, and in many cases outcome-determinative. But noncitizens cannot afford to keep counsel on retainer for weeks, and pro bono counsel with full caseloads cannot change schedules on short notice without sacrificing their obligations to other clients. Further, practical barriers can prevent detained noncitizens from communicating these last-minute changes to counsel in a timely manner.

Forcing noncitizens to proceed pro se only increases the likelihood of error. Removal proceedings are inherently legally and evidentiarily complex. Noncitizens face additional barriers that make proper self-representation near impossible: little or no English proficiency, hurdles in securing necessary evidence, and restricted phone and mail access. These facts are especially concerning because the consequences of misadjudication are unusually high in removal proceedings—an erroneous removal can result in serious bodily harm or death.

In an overworked and error-prone immigration system, systemic pressures could create incentives to erode the right to counsel and other constitutional protections. Even if review of the merits of fear determinations is limited after

*Navarrete*, constitutional challenges—like those at issue in Mr. Amador-Canacas’ case—remain reviewable. Indeed, under *Mathews v. Eldridge*, the life-or-death stakes at issue, the high risk of erroneous deprivation, and the minimal burden that constitutional review poses on the Government all favor preserving judicial review.

## ARGUMENT

### **I. Access to Counsel Is Crucial to Accurate Adjudication in Reasonable-Fear Proceedings.**

#### **a. Congress structured removal proceedings to facilitate access to counsel.**

As this Court recognized in *Orozco-Lopez v. Garland*, “Congress intended that noncitizens have an entitlement to counsel at every possible flavor of removal proceedings before an I[mmigration] J[udge].” 11 F.4th 764, 776 (9th Cir. 2021). This entitlement reflects a broader statutory design: Congress required that noncitizens be advised of their right to counsel to facilitate the retention of legal representation in removal proceedings.

The Government’s actions here undermined that design. By pressuring Mr. Amador-Canacas to proceed unrepresented despite his timely requests for counsel and despite the available time under the governing regulation to accommodate his request, the Immigration Judge reduced a statutory right into a formal gesture. A right to counsel that cannot realistically be exercised is no right at all. See *Usubakunov v. Garland*, 16 F.4th 1299, 1304 (9th Cir. 2021) (“[W]e cannot

allow a myopic insistence upon expeditiousness to render the right to counsel an empty formality.” (cleaned up)).

*Orozco-Lopez* makes clear that reasonable fear proceedings before an Immigration Judge constitute removal proceedings within the meaning of 8 U.S.C. § 1362. 11 F.4th at 775–77. Reinstatement of removal proceedings tend to move under expedited timelines that make it difficult for detained noncitizens to obtain counsel. A noncitizen who unlawfully reenters the United States after having already been ordered removed is generally subject to an expedited removal process under 8 U.S.C. § 1231(a)(5)—known as reinstatement of removal. *See* 8 U.S.C. § 1231(a)(5). Under this summary administrative removal process, a Department of Homeland Security (“DHS”) officer issues a notice of intent to reinstate the previously executed removal order and allows the noncitizen to make a statement contesting that determination. *See* 8 C.F.R. § 241.8(b). The officer then either signs off on a new reinstatement removal order or reconsiders that order in light of the noncitizen’s statement. *See id.*

If the noncitizen “expresses a fear of returning to the country designated in that order” during reinstatement proceedings, the individual is interviewed by an asylum officer “to determine whether the [noncitizen] has a reasonable fear or torture.” 8 C.F.R. § 241.8(e); *see also Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 35 n.4 (2006) (“Notwithstanding the absolute terms in which the bar on relief is

stated, even a[] [noncitizen] subject to [8 U.S.C. § 1231(a)(5)] may seek withholding of removal under 8 U.S.C. § 1231(b)(3)(A) . . . or under 8 CFR [sic] §§ 241.8(e) and 208.31 (2006)[.]”). That interview is intended to take place within days. *See* 8 C.F.R. § 208.31(b) (“Upon issuance of a Final Administrative Removal Order under § 238.1 . . . [a noncitizen] . . . shall be referred to an asylum officer for a reasonable fear determination. In the absence of exceptional circumstances, this determination will be conducted within 10 days of the referral.”). If the asylum officer issues a negative reasonable fear determination, then an Immigration Judge reviews the decision within 10 days. *See* 8 C.F.R. § 1208.31(g). Immigration and Customs Enforcement (“ICE”) attempts to accomplish this entire process—from the initial referral to the asylum officer through the Immigration Judge review—in as few as 20 calendar days. *See* U.S. Immigr. & Customs Enf’t, *Expedited Removal & Reinstatement of Removal: Script (English) (Legal Orientation Program)* at 9, [https://portal.ice.gov/pdf/LOPPdf/ER\\_Reinstatement/ExpeditedRemoval%26ReinstatementofRemoval\\_Script\\_%28English%29508.pdf](https://portal.ice.gov/pdf/LOPPdf/ER_Reinstatement/ExpeditedRemoval%26ReinstatementofRemoval_Script_%28English%29508.pdf) (last visited Apr. 9, 2026) (“A reasonable fear interview is supposed to be conducted no later than 10 days after DHS officially decides to remove you, but it can often take much longer. Also, reasonable fear decisions must be reviewed within 10 days by an immigration judge if you get a negative decision from the Asylum Officer and ask for the judge to review it.”).

Under this compressed timeline, the risk of denying noncitizens their right to counsel is not hypothetical—noncitizens may request counsel, successfully acquire representation, and still be required to proceed unrepresented for reasons beyond their control. For instance, *Hernandez Lara v. Barr*, 962 F. 3d 45 (1st Cir. 2020), illustrates how even diligent efforts to secure counsel may require more time than expedited proceedings afford. Despite being detained and unable to speak, read, or write in English, Hernandez undertook industrious efforts to acquire counsel, which she obtained in about two weeks for her hearing before an Immigration Judge. *See id.* at 55–56. Nevertheless, she was forced to proceed without representation because her newly retained attorney could not attend her hearing, and the Immigration Judge would not grant her a continuance. *See id.* at 51. Last minute conflicts affecting retained counsel’s inability to appear are not unusual. *See, e.g., Njoroge v. Holder*, 753 F.3d 809, 810 (8th Cir. 2014) (noting that noncitizen appeared pro se because her recently retained attorney informed her the day before that she could not attend her hearing); *Montes-Lopez v. Holder*, 694 F.3d 1085, 1088–89 (9th Cir. 2012) (finding Immigration Judge erred when he denied a continuance to a detained noncitizen whose attorney could not attend hearing because he was suspended from practice). Although the Government argued that she had multiple continuances, Ms. Hernandez Lara was fortunate that the First Circuit concluded she was denied the right to counsel. *See Hernandez Lara*, 962 F. 3d at 54.

Despite this background, the Government may argue that an Immigration Judge's last-minute change to the date of the removal hearing does not preclude a noncitizen from retaining counsel. That contention is wrong for several reasons.

*First*, keeping attorneys on retainer is a luxury that few noncitizens can afford. Many noncitizens lack the financial resources to secure private legal representation. See WorkRise, *Immigrants in the Low-Wage Workforce*, Urb. Inst. (2025), <https://workrisenetwork.org/feature/immigrants-low-wage-workforce> (last visited Apr. 9, 2025) (reporting that immigrants are disproportionately represented in low-wage jobs). They cannot afford to hire lawyers to sit around and be ready on a moment's notice for a hearing. The Government admits as much by requiring noncitizens in reasonable fear proceedings to be provided "a relevant current list of legal service providers." U.S. Citizenship & Immigr. Servs., *Reasonable Fear Procedures Manual* 13, 33, 34 (2018), <https://www.uscis.gov/sites/default/files/document/guides/ReasonableFearProceduresManual.pdf> (specifying that a list of free legal service providers be given to noncitizens who have a positive fear determination or request an Immigration Judge review); see also *Orozco-Lopez*, 11 F.4th at 773 (concerning noncitizen in reinstatement removal proceeding who received a list of free legal services providers after requesting an Immigration Judge review).

*Second*, in *Amici*'s experience, the few pro bono immigration legal providers with the expertise and experience to successfully navigate reasonable fear proceedings are overwhelmed by the volume of noncitizens who need assistance. This is particularly true given the recent increase in immigration court caseloads. See Exec. Off. For Immigr. Rev., *Adjudication Statistics: Pending Cases, New Cases, and Total Completions* (July 31, 2025) (last visited Apr. 9, 2026) (showing that the immigration court backlog doubled from approximately two million pending cases in 2022 and to nearly four million by the third quarter of 2025), <https://www.justice.gov/eoir/media/1344791/dl?inline>. As a result, pro bono counsel frequently triage several urgent matters and cannot commit to appearing on a single day's notice without jeopardizing their obligations to other clients. See, e.g., *Freza v. Att'y Gen. United States*, 49 F.4th 293, 296 (3d Cir. 2022) (noting that, although Freza contacted the pro bono legal organizations provided to him, he was unable to secure representation for nearly a year because none "could take his case at the time"). Additionally, pro bono counsel may not be able to confirm representation until shortly before a hearing due to scheduling conflicts and the need to coordinate limited staff and volunteer resources. Cf, e.g., *Amica Ctr. for Immigrant Rts. v. Exec. Off. for Immigr. Rev.*, No. CV 26-696, 2026 WL 662494, at \*13–17 (D.D.C. Mar. 8, 2026) (generally discussing resource constraints of pro bono immigration legal providers).

In that context, entering an appearance carries professional obligations that cannot be easily withdrawn. As a result, filing a notice of appearance may occur shortly before the hearing, even where a counsel intends to appear and represent the noncitizen. The absence of a previously filed notice of appearance reflects the practical constraints of overloaded free immigration services and not an unwillingness to represent a noncitizen. Thus, it cannot justify denying a continuance within the regulatory period, as it occurred here. *See* E-CAR-13 (denying a continuance because there had not yet been a notice of appearance in the record).<sup>2</sup>

*Third*, even where noncitizens begin the process of securing counsel, last-minute changes to hearing dates can undermine those efforts. Obtaining representation is not instantaneous, as it generally requires time to identify counsel, establish communication, and coordinate their representation. When a hearing date is changed—much less advanced—on short notice, that reliance is disrupted. Counsel who was available for an original date may no longer be able to appear.

These challenges are exacerbated by the practical barriers that detained noncitizens face in communicating with counsel. Under the 2025 ICE guidelines, detained noncitizens must request permission to access a phone to place one of the

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<sup>2</sup> This Brief refers to the Executive Office of Immigration Review’s certified administrative record as “E-CAR.”

limited free calls permitted under the guidelines, including calls to pro bono legal service providers. U.S. Immigr. & Customs Enf't, *National Detention Standards for Non-Dedicated Facilities* 158 (rev. ed. 2025) <https://www.ice.gov/doclib/detention-standards/2025/nds2025.pdf>. The standards provide that such requests must be generally granted in eight hours, and no later than twenty-four hours. *See id.* at 159. In practice, however, individual facilities may impose even further limitations on hours, frequency, and duration of calls. *See, e.g.*, Letter from Am. C.L. Union et al. to Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec., and Tae D. Johnson, Acting Dir., U.S. Immigr. & Customs Enf't 5–8 (Oct. 29, 2021), <https://www.aclu.org/documents/coalition-letter-dhs-and-ice-access-counsel-immigration-detention> (providing several examples of inadequate telephone access in detention facilities); *see also Nat'l Detention Standards, supra*, at 160 (noting a “facility may place reasonable restrictions on the hours, frequency, and duration” of free call).

These restrictions can significantly impede a detained noncitizen's ability to communicate time-sensitive information, such as a change in hearing date, to counsel. Where a hearing is advanced by several days with little notice, detained noncitizens may not have a meaningful opportunity to inform their attorney of the change and confirm their attendance. As a result, these individuals who were in the process of obtaining representation may be forced to proceed without it.

In sum, the Immigration Judge’s actions compound with structural barriers to stymie a noncitizen’s statutory right to counsel. Reasonable fear interviews were intended by Congress to be a “screening process to evaluate torture claims for [noncitizens] subject to streamlined administrative removal processes.” *Zuniga v. Barr*, 946 F.3d 464, 467 (9th Cir. 2019). Safeguarding the right to counsel for noncitizens ensures that Congress’s goal in providing for reasonable fear review hearings is effectuated—that is, all qualified individuals obtain relief from deportation.

**b. Representation dramatically improves outcomes.**

Empirical evidence confirms that noncitizens with legal representation fare better at every stage of the removal process. One comprehensive national study looking at access to counsel in immigration courts found that individuals represented by counsel had better outcomes than similarly situated individuals who lacked representation. *See* Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Pa. L. Rev. 1 (2015). Detained immigrants with counsel were eleven times more likely to seek relief from removal, and three times more likely to obtain that relief than those lacking representation. *See id.* at 57 & fig. 4. Indeed, among noncitizens who obtained relief from deportation between 2007 and 2012, only 5% were unrepresented. *See id.* at 22–24 & fig. 4. The disparity in outcomes is even more stark when you consider that only a small number of

individuals can secure counsel for immigration proceedings. Of the more than 1.2 million removal cases decided between 2007 and 2012, only 14% of detained noncitizens secured legal representation. *See id.* at 2. A mere 2% of that number were able to obtain pro bono representation. *See id.*

A second study underscores these findings. In a study of immigration cases between 2011 and 2019 that resulted in relief from removal, nearly 93% had legal representation. *See* Muzaffar Chishti et al., *At the Breaking Point: Rethinking the U.S. Immigration Court System*, Migration Pol’y Inst. 29 (July 2023). In that same period, of the cases that resulted in a removal order, 81% lacked legal representation. *See id.*

*Amici’s* analysis of more recent data further confirms the same: Representation materially affects outcomes in fear-based proceedings. For example, in credible fear review proceedings, represented individuals are more than twice as likely to receive a positive determination and face substantially lower denial rates. *See* App’x at 1. The reasonable fear review data reflect a similar trend. *See id.* Even at this review stage, where individuals have already received an initial negative determination, representation is associated with materially improved outcomes.

All these studies underscore that the absence of counsel is not merely procedural but outcome-determinative. Congress recognized the same when it enshrined the right to counsel in immigration proceedings. *See* 8 U.S.C. § 1362. A

just immigration court system must facilitate access to counsel for those who request it.

## **II. The Risk of Erroneous Removal in Reasonable-Fear Proceedings Is High.**

Barriers to counsel in reasonable fear proceedings have serious—sometimes irretrievable consequences. Because detained noncitizens are particularly ill-equipped to represent themselves in these proceedings, the risk of wrongful negative decisions leading to removal is high and can be avoided by properly enforcing individuals’ right to counsel.

### **a. Legal and evidentiary complexity make pro se error likely.**

Pro se error is particularly likely in the context of reasonable fear proceedings because of the unusual complexity of the law of asylum, withholding of removal, and Convention Against Torture (“CAT”) protection and the difficulty of obtaining and presenting evidence in detention. The Ninth Circuit has confirmed that the right to counsel of choice is a critical procedural protection necessary for removal proceedings to “meet the essential standards of fairness.” *Usubakunov*, 16 F.4th at 1303 (internal quotation marks and citations omitted). The right to counsel is critical because of the “high stakes of a removal proceeding and the maze of immigration rules and regulations” that apply to individuals in removal proceedings or applying for protection. *Hernandez-Gil v. Gonzales*, 476 F.3d 803, 806 (9th Cir. 2007). The

Court has long acknowledged that “[t]he proliferation of immigration laws and regulations,” is “a labyrinth that only a lawyer could navigate.” *Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005); *see also Lok v. Immigr. & Naturalization Serv.*, 548 F.2d 37, 38 (2d Cir. 1977) (noting that Congress “enacted a baffling skein of provisions for the I.N.S. and courts to disentangle”).

This is particularly true in cases involving withholding of removal under the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231(b)(3), and protection under CAT, which are the two forms of protection involved in reasonable fear proceedings. Withholding of removal uses similar, but not identical, standards to asylum standards, while CAT protection uses a different set of elements. *See* 8 U.S.C. § 1231(b)(3)(A)–(B) (standards for withholding under the INA); 8 C.F.R. § 1208.16(b) (same); 8 C.F.R. §§ 1208.16(c), 1208.17, 1208.18 (standards for CAT). Both are extremely complex. *See Quintero v. Garland*, 998 F.3d 612, 632 (4th Cir. 2021) (“While U.S. immigration law is generally notorious for its esoteric nature, the law of asylum is one of the more complex areas thereof.”).

At a minimum, an applicant for withholding of removal like Mr. Amador-Canacas must establish that: 1) he is credible;<sup>3</sup> 2) he has reasonably available

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<sup>3</sup> 8 U.S.C. § 1231(b)(3)(C) (in adjudicating withholding of removal under the INA, the immigration judge should make burden of proof and credibility determinations as described in the asylum statute, 8 U.S.C. § 1158(b)(1)(B)).

corroborating evidence;<sup>4</sup> 3) he has suffered past harm rising to the level of persecution or a likelihood of such future harm;<sup>5</sup> 4) his harm was or will be on account of one of the five protected grounds under the INA;<sup>6</sup> 4a) if that ground is “particular social group,” he belongs to a group that passes a three-part test of particularity, immutability, and social distinction;<sup>7</sup> 5) the persecution was or will be by the government or an entity the government is unwilling or unable to control;<sup>8</sup> 6) he cannot internally relocate in his country to avoid persecution;<sup>9</sup> and 7) he does not have specific criminal or national security bars to withholding.<sup>10</sup>

The Fourth Circuit, focusing on only *one* of the above elements, found it “unreasonable and fundamentally unfair to expect *pro se* asylum seekers—many of whom suffer from the effects of trauma and lack literacy, English proficiency, formal education, and relevant legal knowledge—to even understand what a particular social group is, let alone fully appreciate which facts may be relevant to their claims and articulate a legally cognizable group.” *Quintero*, 998 F.3d at 632.

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<sup>4</sup> *Id.*; 8 U.S.C. § 1158(b)(1)(B) (applicant must provide corroborating evidence requested by the trier of fact unless it cannot reasonably be obtained).

<sup>5</sup> 8 C.F.R. § 1208.16(b)(1)-(2).

<sup>6</sup> *Id.*

<sup>7</sup> *See Akosung v. Barr*, 970 F.3d 1095, 1103 (9th Cir. 2020).

<sup>8</sup> *See J.R. v. Barr*, 975 F.3d 778, 782 (9th Cir. 2020)

<sup>9</sup> 8 C.F.R. § 1208.16(b)(3).

<sup>10</sup> 8 C.F.R. § 1208.16(d)(2).

To establish a claim under the CAT, an applicant must separately establish at least that: 1) he is credible;<sup>11</sup> 2) he has reasonably available corroborating evidence;<sup>12</sup> 3) he will likely suffer severe future harm meeting the definition of torture;<sup>13</sup> 4) the torture is by government officials or by a third party with the consent or acquiescence of such officials;<sup>14</sup> 5) the torture will be done with specific intent to cause severe pain and suffering;<sup>15</sup> and 6) he cannot internally relocate in his country to avoid torture.<sup>16</sup> Instead of having to establish that the harm feared is “on account of” a protected ground as one would for asylum or withholding of removal, the applicant may show that the aggregation of many individual characteristics, or the aggregation of multiple possible sources of harm, adds up to a likelihood of torture.<sup>17</sup> *See Davila v. Barr*, 968 F.3d 1136, 1144 (9th Cir. 2020) (“An applicant for CAT relief need not show that she will be tortured on account of any particular ground.”). Federal courts often correct the agency for failing to separate the standards for asylum and withholding of removal on one hand and CAT on the other; to ask pro se, detained

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<sup>11</sup> 8 U.S.C. § 1229a(c)(4)(C) (the standards for asylum credibility determinations apply to all applications for relief from removal).

<sup>12</sup> 8 U.S.C. § 1229a(c)(4)(B) (the standards for corroborating evidence apply to all applications for relief from removal).

<sup>13</sup> 8 C.F.R. § 1208.18(a)(1).

<sup>14</sup> 8 C.F.R. § 1208.18(a)(1), (7) (defining consent and acquiescence).

<sup>15</sup> 8 C.F.R. § 1208.18(a)(4)–(5).

<sup>16</sup> 8 C.F.R. § 1208.16(c)(3)(ii).

<sup>17</sup> *Velasquez-Samayoa v. Garland*, 49 F.4th 1149, 1155 (9th Cir. 2022) (as amended) (requiring the agency to consider the aggregate risk of torture from all sources).

individuals to do so without their counsel is a near-impossible task. *See, e.g., Scarlett v. Barr*, 957 F.3d 316, 334–36 (2d Cir. 2020) (discussing how the “unable or unwilling” standard from asylum and withholding is not the same as the CAT “acquiescence” element). In the reasonable fear interview context, applicants must make a threshold showing instead of presenting the entire claim on the merits. *See Navarrete v. Bondi*, No. 24-2776, 2026 WL 797428, at \*2 (9th Cir. Mar. 23, 2026) (recounting that because the immigration judge affirmed the negative reasonable fear finding, Navarrete was not placed into “full” withholding-only proceedings). However, an asylum officer or reviewing Immigration Judge could issue or affirm a negative reasonable fear determination on any one of the above elements. For this reason, counsel is a critical tool in navigating the complexity of legal requirements. *See United States v. Valdivias-Soto*, 112 F.4th 713, 722–24 (9th Cir. 2024) (vacating a prior removal order as fundamentally unfair where translation errors and misadvice by the immigration judge deprived the individual of exercising his right to counsel and to appeal). Even at this threshold stage, a negative determination may rest on any one of several complex legal elements, such that proceeding without counsel creates a significant risk of erroneous removal.

**b. Individuals like Mr. Amador-Canacas are poorly positioned to represent themselves.**

The complexity of humanitarian protection law would be too difficult for most people to navigate pro se. But individuals like Mr. Amador-Canacas typically face additional barriers to self-representation that make their rights to counsel of choice all the more important to enforce. Noncitizens in reasonable fear proceedings are typically not English speakers, may have limited formal education, and likely have no knowledge of the American immigration legal system. *See Baltazar-Alcazar v. I.N.S.*, 386 F.3d 940, 948 (9th Cir. 2004) (noting that given the petitioners’ “limited command of English and even less experience with the American legal system,” they were “prejudiced in proceeding without counsel of choice”); *Hernandez Lara*, 962 F.3d at 55 (noting that “[i]n addition to the constraints imposed by detention, Hernandez does not speak, read, or write English”)

Moreover, when detained, noncitizens experience extreme difficulty obtaining, translating, and presenting country conditions reports or individualized evidence in support of their protection claims. With their liberty restricted and phone and mail access limited and slow, detained people are highly dependent on those in the outside world to help them. *See Moncrieffe v. Holder*, 569 U.S. 184, 201 (2013) (noting detained noncitizens “have little ability to collect evidence”); *Sow v. U.S. Att’y Gen.*, 949 F.3d 1312, 1318 (11th Cir. 2020) (acknowledging that because

petitioner was detained, he could not gather evidence himself and could only review evidence that his attorney or relatives “collected on his behalf”); Michael Kaufman, *Detention, Due Process, and the Right to Counsel in Removal Proceedings*, 4 Stan. J. Civ. Rts. & Civ. Liberties 113, 127 (2008) (noting that detainees’ access to phone calls and visits is generally limited).<sup>18</sup>

All of these factors work together to make self-representation near-impossible for most noncitizens in Mr. Amador-Canacas’ position. *See Rios-Berrios v. I.N.S.*, 776 F.2d 859, 863 (9th Cir. 1985) (noting that an out of state transfer of petitioner, “combined with the unexplained haste in beginning deportation proceedings, combined with the fact of petitioner’s incarceration, his inability to speak English, and his lack of friends in this country, demanded more than lip service to the right of counsel declared in statute and agency regulations”).

These barriers are why detained noncitizens are particularly unlikely to win their cases. *See Eagly & Shafer, supra*, at 32 (concluding that respondents in removal proceedings who are not detained are nearly five times more likely to obtain counsel than those who are detained); Lori A. Nessel & Farrin Anello, Seton Hall Univ. Sch. of L. Ctr. for Soc. Just., *Deportation Without Representation: The Access-to-Justice*

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<sup>18</sup> *See also* Kate Morrissey, *Detained Immigrants Lose a Lifeline as ICE Ends Free Phone Time Program*, Cap. & Main (July 11, 2024), <https://capitalandmain.com/detained-immigrants-lose-a-lifeline-as-ice-ends-free-phone-time-program> (describing difficulty scheduling attorney calls and serious impacts of low-income immigrants losing access to previously free phone calls).

*Crisis Facing New Jersey's Immigrant Families* 14 (2016) (finding while 79% of non-detained noncitizens had representation at some point in their cases, that number drops to 33% for detained noncitizens); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 31 (1st Cir. 2021) (in the context of preparing for a bond hearing pro se, explaining that “a detainee often starts out behind the eight ball,” and “the opportunities for prejudicial error abound.”)

**c. Errors at this stage are irreversible with grave consequences.**

The stakes of reasonable fear proceedings are high: when a detained noncitizen is found not to have a reasonable fear of persecution or torture, they are typically removed from the United States promptly. There is no appeal available to the Board of Immigration Appeals of an Immigration Judge’s affirmance of a negative reasonable fear determination. *See* 8 C.F.R. § 1208.31(g)(1). If that decision was wrong, a noncitizen may lack any avenue to petition for review and seek a stay of removal while challenging it. This Court has recently held that it lacks jurisdiction over an appeal from a reasonable fear decision that does not also timely challenge the underlying order reinstating an order of removal. *Navarrete*, 2026 WL 797428, at \*5. This means that many individuals face removal to the harm they fear even if they have the knowledge, or the access to counsel, to be able to seek judicial review. In addition, seeking pro bono counsel for a petition for review is even more difficult than securing counsel before the asylum office or immigration judge: petitions for

review are highly specialized and time-intensive, and nonprofit legal service providers who take on appellate matters must often choose to serve fewer clients in order to balance their limited budgets. *See Amica Ctr. for Immigrant Rts.*, 2026 WL 662494, at \*13–17 (describing the financial and personnel burdens on nonprofit providers on expanding their appellate pro bono practices).

In addition, even if a noncitizen prevails on a petition for review, returning to the United States is extremely difficult and often cost-prohibitive, as ICE does not have a consistent return policy that would guarantee the right to return.<sup>19</sup> *See Nat’l Immigration Project of Nat’l Lawyers Guild v. U.S. Dept. of Homeland Sec.*, No. 11-cv-3235, 2014 WL 6850977, at \*5 (S.D.N.Y. Dec. 3, 2014) (finding “the government’s refusal to fund the return of indigent [noncitizens]” “troubling” because “the financial burden of removal may, as a practical matter, preclude effective relief.”); Tianyin Luo & Sean Lai McMahon, *Victory Denied: After Winning On Appeal, An Inadequate Return Policy Leaves Immigrants Stranded Abroad*, 19 *Bender’s Immigr. Bull.* 1061, 1061 (2014), [http://www.law.nyu.edu/sites/default/files/upload\\_documents/19%20Benders%20I](http://www.law.nyu.edu/sites/default/files/upload_documents/19%20Benders%20I)

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<sup>19</sup> Even this presumes that the Government complies with its obligation to facilitate return of a petitioner who was removed and then prevailed in his petition for review, and did not refuse to comply with orders to do so. *See, e.g.*, Response to Plaintiffs’ Motion for Additional Relief 3–4 (ECF No. 65), *Abrego Garcia v. Noem*, No. 8:25-cv-951-PX (D. Md. Apr. 13, 2025) (Government arguing that “[t]he federal courts have no authority to direct the Executive Branch” to take certain actions to facilitate return of wrongfully deported individual).

mmigr%20Bull%201061\_Victory%20%282%29.pdf (“[M]any immigrants who have won their deportation cases on appeal before a circuit court ... are stranded in their countries of origin, with no way to return . . .”).

For this reason, errors in reasonable fear proceedings are often irreversible, and may result in detained noncitizens being promptly returned to serious harm. This makes it all the more important that individuals have a meaningful right to counsel of choice to present their claim, and that the system of adjudication gets these cases right. *See Xue v. Bd. of Immigr. Appeals*, 439 F.3d 111, 113–14 (2d Cir. 2006) (“We should not forget, after all, what is at stake. For each time we wrongly deny a meritorious [fear-based] application, . . . we risk condemning an individual to persecution. Whether the danger is of religious discrimination, extrajudicial punishment, forced abortion or involuntary sterilization, physical torture or banishment, we must always remember the toll that is paid if and when we err.”).

### **III. Without Judicial Review, Systemic Pressures Will Erode the Right to Counsel and Other Due Process Protections.**

#### **a. Accepting the Government’s position would create systemic incentives to circumvent the right to counsel.**

“[W]e cannot allow a myopic insistence upon expeditiousness to render the right to counsel an empty formality.” *Hernandez-Gil*, 476 F.3d at 807–08 (9th Cir. 2007). Congress created a framework that facilitates access to counsel for good

reason. As the data highlighted above illustrate, legal representation is critically important—even outcome-determinative—to noncitizens in removal proceedings. The Government’s position would render this privilege meaningless.

Advancing hearings without sufficient notice risks becoming another way Immigration Judges may attempt to manage an already overtaxed immigration court system. Immigration Judges wear multiple hats in removal proceedings. They direct proceedings, accept filings, and advise immigrants of potential forms of relief. *See* 8 C.F.R. § 1240.11(a). Despite this active role, they are expected to contend with a backlog of nearly 3.75 million immigration cases. *See* Exec. Off. for Immigr. Rev., *EOIR Announces Significant Immigration Court Milestones* (Sept. 4, 2025), <https://www.justice.gov/eoir/pr/eoir-announces-significant-immigration-court-milestones>. Even with a record-breaking case completions in 2024, Immigration Judges would still need more than five years to clear the current backlog—assuming, impossibly, that not a single new case was filed during that time. *See* Exec. Off. for Immigr. Rev., *Office of the Chief Immigration Judge* (last updated Mar. 10. 2026), <https://www.justice.gov/eoir/office-of-the-chief-immigration-judge> (there are more than 600 Immigration Judges); Holly Staut-Eppsteiner, Cong. Rsch. Serv., IN12492, *FY2024 EOIR Immigration Court Data: Caseloads and the Pending Cases Backlog*, <https://www.congress.gov/crs-product/IN12492> (explaining that in 2024

Immigration Judges completed 701,749 cases, “the largest number in the agency’s history” but it was still not enough to “counter the growth in new cases”).

Given these enormous backlogs, Immigration Judges face immense pressure to adjudicate removal proceedings quickly. A September 2025 Directive from the Executive Office of Immigration Review imposed rigid performance metrics, including a requirement that 95% of detained removal cases should be completed within 60 days of filing the Notice to Appear or calendaring the case. *See* Sirce E. Owen, Exec. Off. for Immigr. Rev., Policy Memorandum 25-47: Case Priorities and Immigration Court Performance Measures, App’x (Sept. 12, 2025), <https://www.justice.gov/eoir/media/1413981/dl>. Another directive stated that it was “clear” that Immigration Judges have not been “efficiently manag[ing] their dockets,” and encouraged them to “take” “all appropriate action to immediately resolve cases on their dockets.” Sirce E. Owen, Exec. Off. for Immigr. Rev., Policy Memorandum 25-28: Pretermission of Legally Insufficient Applications for Asylum 1 (Apr. 11, 2025), <https://www.justice.gov/eoir/media/1396411/>.

In this high-pressure environment, it would only be natural for overburdened Immigration Judges to take any avenue available to adjudicate cases expeditiously. In the absence of clear mandates protecting the right to counsel in this context, these pressures can produce scheduling practices that leave noncitizens without a meaningful opportunity to secure representation. This case is one such example: the

Immigration Judge advanced a hearing on short notice, despite ample available time within the regulatory period, which effectively deprived Mr. Amador-Canacas the benefit of counsel that he was in the process of obtaining. *Amici* are aware of many others. Although these cases arise outside of the reinstatement context, they emphasize the same principle: expediency cannot always trump a noncitizen's meaningful opportunity to secure counsel. *See, e.g., Biwot*, 403 F.3d at 1098–1100 (Immigration Judge erred in denying a continuance where detained noncitizen had only **five business days** to secure counsel); *Rios-Berrios*, 776 F.2d at 862–63 (Immigration Judge erred in denying a third continuance to a noncitizen given a little more than **two business days** to locate an attorney while incarcerated); *Torres Morales v. Garland*, No. 22-569, 2023 WL 3074552, at \*1 (9th Cir. Apr. 25, 2023) (Immigration Judge erred in denying a continuance where detained noncitizen with limited English proficiency had only **21 business days** to obtain counsel).

At bottom, without clear guidance from this Court, similar outcomes will continue to occur at greater frequency. Justice should not be the cost of expediency. Indeed, “[I]mmigration enforcement obligations do not consist only of initiating and conducting prompt proceedings that lead to removals at any cost. Rather, as has been said, the government wins when justice is done.” *In Re S-M-J-*, 21 I. & N. Dec. 722, 727 (BIA 1997).

**b. In an overworked and error-prone immigration system, judicial review of constitutional claims is essential.**

Courts routinely correct errors in immigration court proceedings. “It is no secret that when processing applications, licenses, and permits,” adjudicating agencies “sometimes make[] mistakes.” *Patel v. Garland*, 596 U.S. 328, 347 (2022) (Gorsuch, J., dissenting). The life-or-death stakes of fear-based claims make careful and accurate adjudication even more vital. Asylum officers, Immigration Judges, and the Board of Immigration Appeals frequently make substantive and procedural errors in assessing claims in reasonable fear proceedings. Judicial review is the only outlet for noncitizens to ensure that these errors are corrected and that they are not erroneously deported to countries where they will face serious harm or death.

At the same time, this Court has recently recognized the scope and limits of judicial review in the immigration context. *See Navarrete*, 2026 WL 797428, at \*5. While judicial review may be unavailable regarding the merits of a determination under CAT absent a challenge to the underlying removal order, constitutional claims can and should remain reviewable. This distinction is crucially important.

The Due Process Clause “applies to all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The Supreme Court

has recognized due process rights of noncitizens prior to their removal. *See Reno v. Flores*, 507 U.S. 292, 306 (1993) (citing *The Japanese Immigrant Case*, 189 U.S. 86, 100-01 (1903)).

Individuals must show that they have a liberty interest in the remedy to trigger due process analysis. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). The INA and other regulations provide the “particularized standards or criteria [that] guide[s] the [agency’s] decisionmakers.” *Connecticut Board of Pardons v. Dumschat*, 452 U.S. 458, 467 (1981) (Brennan, J., concurring). This Court held that Congress has created a constitutionally protected liberty interest by entitling noncitizens to counsel in reinstatement removal proceedings. *See Orozco-Lopez*, 11 F.4th at 776 (extending 8 C.F.R. § 208.31(g) to reinstatement removal proceedings).

To analyze a due process claim, courts weigh: (1) “the private interest that will be affected”; (2) “the risk of an erroneous deprivation”; and (3) “the Government’s interest.” *Mathews*, 424 U.S. at 335. The balancing test is “flexible” and “calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U. S. 471, 481 (1972). All three factors lean toward more judicial review here.

*First*, denial of judicial review could have life-threatening consequences. Reasonable fear proceedings exist to protect individuals against serious harms and persecution in their countries of origin. In the reinstatement context, these

proceedings account for the possibility that circumstances may change: a noncitizen who initially left for non-protected reasons may find themselves facing new conditions that forces them to flee again. *See, e.g., Zuniga*, 946 F.3d at 465–66 (holding remand required where petitioner was removed to Mexico after testifying against a cartel and reentered the U.S. fearing retaliatory violence for his testimony). All individuals seeking fear-based relief do so because of a fear of severe harm or death in their home country. *See, e.g., Escobar v. Barr*, 801 F. App'x 564, 564 (9th Cir. 2020). They may be “harassed, beaten, and sexually assault” because of their “sexual orientation and gender identity.” *See Bibiano v. Lynch*, 834 F.3d 966, 969 (9th Cir. 2016). Or they may be “targeted for extortion” and face “threats of violence” because of their family ties. *See Ayala v. Sessions*, 855 F.3d 1012, 1014 (9th Cir. 2017). These individuals have an extremely high interest in ensuring their safety from severe bodily harm—or worse still, death. This interest is heightened by the irreversibility of removal; once an individual is sent to their country of origin there is no practical way to fix the error. *See supra* Part II.C.

*Second*, without judicial review constitutional violations in these proceedings can go unchecked. The speed at which these proceedings move makes these errors inevitable. Dana Marks, President Emerita of the National Association of Immigration Judges, describes it as “doing death penalty cases in a traffic court setting.” Hon. Mark A. Drummond, “*Death Penalty Cases in a Traffic Court*

*Setting*”: *Lessons from the Front Lines of Today’s Immigration Courts*, ABA: Voices from the Bench (Jan. 15, 2019), <https://www.americanbar.org/groups/litigation/resources/litigation-news/2019/death-penalty-cases-traffic-court-setting-lessons/>. Other Immigration Judges have agreed that these temporal pressures limited their “ability to render correct and well-reasoned decisions.” Ilyce Shugall, Op-Ed, *Why I resigned as an immigration judge*, L.A. Times (Aug. 4, 2019), <https://lat.ms/2YyS3Wu> (her docket in 2019 “was fully booked with cases through 2021” and that she had to schedule “three cases every day”); *see also supra* Part III.A. Social science research confirms these judges’ experiences: “The accuracy of human judgments decreases under time pressure.” Anne Edland & Ola Svenson, *Judgment and Decision Making Under Time Pressure Studies and Findings*, in *Time Pressure And Stress In Human Judgment And Decision Making* 29, 35–36 (Ola Svenson & A. John Maule eds., 1993).

These structural pressures increase the likelihood that noncitizens will be forced to proceed without adequate due process, escalating the risk that meritorious claims will be improperly denied. Courts have long served as the final guard against these errors. *See, e.g., Alvarez-Ayala v. Bondi*, No. 24-3249, 2025 WL 2888012, at \*1–2 (9th Cir. Oct. 10, 2025) (holding that an Immigration Judge violated petitioner’s due process rights where the judge denied her a *de novo* review of the

asylum officer's initial negative reasonable fear determination); *Zuniga*, 946 F.3d at 470–71 (same where the statutory right to counsel is violated). They should not end their watch now.<sup>20</sup>

*Lastly*, the Government's interests do not tip the scales in its favor. Judicial review of constitutional claims creates minimal additional burdens for the Government. Detained noncitizens can still petition for review to challenge their removal orders. *See Navarrete*, 2026 WL 797428, at \*4. Allowing the review to encompass constitutional claims does not require the courts to review factual determinations or reweigh evidence. This modest burden is justified when weighed against the absence of any mechanism to correct constitutional violations.

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<sup>20</sup> Charlie Savage, *Trump and Miller Plan to Purge Immigration Judges*, N.Y. Times (Apr. 9, 2026), <https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html> (reporting that under “the administration’s view[,] . . . many undocumented immigrants should no longer receive a constitutional right of due process as they seek legal status”).

## CONCLUSION

For the foregoing reasons, *Amici Curiae* AILA and Public Counsel respectfully urge the Court to reverse the decision below.

Respectfully submitted,

Dated: April 9, 2026.

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## APPENDIX

### Credible Fear Review Outcomes by Representation Status

Oct. 1997 through Feb. 2026

	Not Represented		Represented		Total	
	count	percent	count	percent	count	percent
<b>All Credible Fear Cases</b>	158,838	100%	49,333	100%	208,171	100%
<b>Credible Fear Not Found</b>	121,129	76%	29,664	60%	150,793	72%
<b>Credible Fear Found</b>	28,714	18%	19,094	39%	47,808	23%
<b>Credible Fear - Other</b>	8,995	6%	575	1%	9,570	5%

Source: Acacia analysis of TRAC "Outcomes of Immigration Court Proceedings" Tool. Accessed April 7, 2026

### Reasonable Fear Case Outcomes by Representation Status

Oct. 1997 through Feb. 2026

	Not Represented		Represented		Total	
	count	percent	count	percent	count	percent
<b>All Reasonable Fear Cases</b>	26,102	100%	11,612	100%	37,714	100%
<b>Reasonable Fear Not Found</b>	22,186	85%	7,785	67%	29,971	79%
<b>Reasonable Fear Found</b>	3,491	13%	3,606	31%	7,097	19%
<b>Reasonable Fear - Other</b>	425	2%	221	2%	646	2%

Source: Acacia analysis of TRAC "Outcomes of Immigration Court Proceedings" Tool. Accessed April 7, 2026

## CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2026, a copy of the foregoing was filed with the Clerk of Court via this Court's electronic filing Appellate Case Management System, which will provide notice and service on all counsel of record for all parties.

Dated: April 9, 2026.

s/ Rekha Kennedy  
Rekha Kennedy

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9th Cir. Case Number(s)

I am the attorney or self-represented party.

This brief contains  words, including  words

manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief (*select only one*):

- complies with the word limit of Cir. R. 32-1.
- is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
- it is a joint brief submitted by separately represented parties.
- a party or parties are filing a single brief in response to multiple briefs.
- a party or parties are filing a single brief in response to a longer joint brief.
- complies with the length limit designated by court order dated
- is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 34. Disclosure Statement under FRAP 26.1 and Circuit Rule 26.1-1**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form34instructions.pdf>*

**9th Cir. Case Number(s)**

Name(s) of party/parties, prospective intervenor(s), or amicus/amici filing this form:

American Immigration Lawyers Association and Public Counsel

Under FRAP 26.1 and Circuit Rule 26.1-1, I make the following disclosures:

1. I disclose the following information required by FRAP 26.1(a) and/or Circuit Rule 26.1-1(b) for any nongovernmental corporation, association, joint venture, partnership, limited liability company, or similar entity<sup>1</sup> which is a party, prospective intervenor, or amicus curiae in any proceeding, or which the government identifies as an organizational victim below in section 2 of this form,<sup>2</sup> or which is a debtor as disclosed below in section 3 of this form.

a. Does the party, prospective intervenor, amicus, victim, or debtor have any parent companies? Parent companies include all companies that control the entity directly or indirectly through intermediaries.

Yes       No

If yes, identify all parent corporations of each entity, including all generations of parent corporations (*attach additional pages as necessary*):

N/A

b. Is 10% or more of the stock of the party, prospective intervenor, amicus, victim, or debtor owned by a publicly held corporation or other publicly held entity?

Yes       No

<sup>1</sup> A corporate entity must be identified by its full corporate name as registered with a secretary of state's office and, if its stock is publicly listed, its stock symbol or "ticker."

<sup>2</sup> To the extent it can be obtained through due diligence.

If yes, identify all such owners for each entity (*attach additional pages as necessary*):

N/A

2. In a criminal case, absent good cause shown, the government must identify here any organizational victim of the alleged criminal activity:

N/A

3. In a bankruptcy case, the debtor, the trustee, or, if neither is a party, the appellant must identify here each debtor not named in the court of appeals caption:

N/A

4. Are you aware of any judge serving on this Court who participated at any stage of the case, either in district court, administrative proceedings, or in related state court proceedings?

Yes  No

If yes, list the name of the judge and the case name, case number, and name of court of the related proceedings:

N/A

I certify that (*select only one*):

- this is the first disclosure statement filed in the above-referenced case by the above-identified party/parties, prospective intervenor(s), or amicus/amici, and this disclosure statement complies with FRAP 26.1 and Circuit Rule 26.1-1.
- the party/parties, prospective intervenor(s), or amicus/amici submitting this supplemental disclosure statement has previously filed a compliant disclosure statement in this case, and this updated disclosure statement discloses changed or additional information.
- I have reviewed this form, FRAP 26.1, and Circuit Rule 26.1-1 and, to the best of my knowledge, have no information to disclose at this time.

**Signature**

**Date**

(use "s/[typed name]" to sign electronically-filed documents)