February 25, 2026

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

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

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

Dear Acting Assistant Director Comans:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

Conclusion

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

Sincerely,

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

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

Katharine Clark
Appellate Immigration Judge, 2023-2025

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

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

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

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

Megan E. Kludt
Appellate Immigration Judge, 2024-2025

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

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

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

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

Andrea A. Sáenz
Appellate Immigration Judge, 2021-2025

Daniel L. Swanwick
Temporary Appellate Immigration Judge, 2020

Attachment A

Appeal ID	File Name	Appellant Identity	Type of Ap
5450327	1.29.23_Jena.pdf	Respondent	asylum, withholding of removal, CAT
5450280	1.3.24_Annandale.pdf	DHS	withholding of removal under CAT
5305435	1.5.24_El Paso.pdf	Applicant	withholding of removal under INA and CA
5397654	1.5.24_NYC.pdf	DHS	asylum
5449129	1.8.24_Jena.pdf	Respondent	asylum, withholding of removal under INA
5318113	1.9.24_York.pdf	Respondent	asylum, withholding of removal under INA
5238487	1.10.24_Cleveland.pdf	Respondent	asylum, withholding of removal under INA
5449715	1.11.24_Eloy.pdf	Respondent	asylum, withholding of removal under INA
5456209	1.12.24_Batavia.pdf	DHS	withholding of removal under CAT
5281928	1.12.24_LA.pdf	DHS	termination of removal proceedings
5430892	1.12.24_LA_2.pdf	Respondent	asylum, withholding of removal under INA
5349002	1.12.24_San Diego.pdf	Respondent	cancellation of removal under INA and vo
5454804	1.17.24_SF.pdf	DHS	asylum, withholding of removal under INA
5450916	1.18.24_Atlanta.pdf	DHS	Findings of removeability
5267968	1.18.24_Boston.pdf	Respondent	asylum, withholding of removal under INA
5455708	1.18.24_Oakdale.pdf	Respondent	order of removal
5431974	1.22.24_Annandale.pdf	DHS	deferral of removal under CAT (DHS); det particularly serious crime (respondent)
5413785	1.23.24_San Diego.pdf	Respondent	withholding of removal under INA and CA
5453174	1.24.24_KC.pdf	Respondent	asylum, withholding of removal under INA
5393505	1.25.24_Miami.pdf	Respondent	order of removal
5338376	1.26.24_Detroit.pdf	DHS	asylum
5234613	1.26.24_Otay Mesa.pdf	Respondent	asylum
5236828	1.29.24_Detroit.pdf	DHS	cancellation of removal under INA
5452547	1.29.24_Oakdale.pdf	Respondent	deferral of removal under CAT
5440630	1.29.24_Tucson.pdf	DHS	termination of removal proceedings
5327964	1.31.24_Conroe.pdf	Respondent	asylum under INA, withholding of removal
5258688	1.31.24_Phoenix.pdf	DHS	waiver of inadmissibility under INA (DHS)
5424025	2.1.24_Boston.pdf	DHS	termination of removal proceedings
5446923	2.1.24_Conroe.pdf	DHS	adjustment of status under INA
5428180	2.5.24_Seattle.pdf	Respondent	asylum, withholding of removal, CAT
5255776	2.6.24_Hartford.pdf	Respondent	asylum under INA, withholding of removal
5394833	2.6.24_SF.pdf	Respondent	asylum under INA, withholding of removal
5271032	2.7.24_Batavia.pdf	Respondent	abandonment of applications for relief, o
5436008	2.8.24_Jena.pdf	Respondent	asylum under INA, withholding of removal
5256610	2.8.24_Seattle.pdf	DHS	adjustment of status under INA
5451381	2.9.24_Otero.pdf	Respondent	asylum, withholding of removal
5371569	2.13.24_Miami.pdf	DHS	vacating expedited removal order
5397721	2.14.24_NYC.pdf	Respondent	asylum under INA, withholding of removal
5283763	2.15.24_Chicago.pdf	DHS	termination of removal proceedings
5449271	2.15.24_Laredo.pdf	Applicant	withholding of removal under INA, CAT
5410055	2.15.24_Miami.pdf	DHS	adjustment of status under Cuban Adjust
5452547	2.20.24_Oakdale.pdf	Respondent	deferral of removal under CAT
5363416	2.21.24_Denver.pdf	DHS	cancellation of removal under INA
5368255	2.21.24_Miami.pdf	DHS	vacating expedited removal order

5462265	4.5.24_Oakdale.pdf	Respondents	Application for asylum and withholding o
5410767	4.8.24_LA.pdf	Respondent	Application for asylum and withholding o
5465180	4.9.24_Otero.pdf	Applicant	Application for withholding of removal ur
5457421	4.10.24_Chicago.pdf	DHS	Grant of applications for adjustment of st
5364217	4.10.24_Cleveland.pdf	DHS	Termination of removal proceedings
5462569	4.11.24_Laredo.pdf	Respondent	Denial of the application for asylum and v
5464971	4.12.24_Oakdale.pdf	Respondent	Order of removal
5447931	4.12.24_SF.pdf	Respondents	Denial of application for asylum and with CAT
5287244	4.15.24_Baltimore.pdf	Respondent	Denial of application for asylum and with CAT
5446741	4.15.24_Van Nuys.pdf	Respondent	Denial of application for asylum and with CAT
5462415	4.16.24_Aurora.pdf	Respondent	Denial of application for asylum and with CAT
5456809	4.17.24_Annandale.pdf	DHS	Grant of application for asylum and withh
5464664	4.18.24_Detroit.pdf	DHS	Grant of application for asylum under INA
5465038	4.18.24_Laredo.pdf	Respondent	Denial of application for asylum and with CAT
5392018	4.19.24_SF.pdf	Respondents	Denial of application for asylum and with CAT
5467634	4.22.24_Boston.pdf	Respondents	Denial of application for asylum and with CAT
5434357	4.23.24_NYC.pdf	Respondents	Denial of application for asylum and with CAT
5449817	4.23.24_Phoenix.pdf	DHS	Termination of proceedings based on per application
5320766	4.23.24_Tucson.pdf	Respondent	Denial of application for asylum and with CAT
5469127	4.24.24_Florence.pdf	DHS	Grant of application for cancellation of re
5377336	4.25.24_Newark.pdf	Respondents	Denial of application for asylum and with CAT
5468255	4.25.24_Oakdale.pdf	Respondent	Denial of application for asylum and with CAT
5448325	4.26.24_SF.pdf	Respondents	Denial of application for asylum and with CAT
5463962	4.29.24_Laredo.pdf	Respondent	Denial of application for asylum and with CAT
5287559	4.30.24_Boston.pdf	DHS	Termination of removal proceedings
5291784	4.30.24_Memphis.pdf	Respondent	Denial of application for cancellation of re
5458578	4.30.24_Miami.pdf	Respondents	Denial of application for asylum and with CAT
5461472	5.10.24_Denver	DHS	Granted asylum
5305706	5.10.24_NOLA.pdf	Respondent	Denied cancellation of removal
5284280	5.14.24_SF.pdf	DHS	Granted termination of removal proceedi
5363905	5.16.24_Cleveland.pdf	DHS	Granted termination of removal proceedi

5476624	6.28.24_Adelanto.pdf	DHS	Granted asylum
5353172	6.28.24_Baltimore.pdf	Respondent	Found removeable
5473543	6.28.24_Boston.pdf	DHS	Granted asylum
5440108	6.28.24_LA.pdf	Respondent	Denied aslylum, withholding of removal,
5418874	6.28.24_Newark.pdf	Respondent	Denied aslylum, withholding of removal,
5471155	6.28.24_SF.pdf	Respondent	Denied aslylum, withholding of removal,
5414154	6.5.24_SF.pdf	Respondent	Denied aslylum, withholding of removal,
5469800	6.6.24_Boston.pdf	Respondent	Denied motion to continue
5402064	6.6.24_Miami.pdf	Respondent	Denied aslylum, withholding of removal,
5459153	6.6.24_Newark.pdf	Respondent	Denied aslylum, withholding of removal,
5463445	6.6.24_NYC.pdf	DHS	Granted asylum
5469522	6.7.24_Conroe.pdf	Respondent	Denied aslylum, withholding of removal,
5470009	6.7.24_Oakdale.pdf	Respondent	Denied aslylum, withholding of removal,
5480176	7.1.24_Florence.pdf	Respondent	Order of Removal
5314326	7.10.24_Aurora.pdf	DHS	Termination of Removal Proceedings
5408535	7.10.24_Detroit.pdf	Respondent	Asylum
5403429	7.11.24_Arlington.pdf	Respondent	Asylum
5475891	7.11.24_Los Fresnos.pdf	Respondent	Asylum
5476554	7.12.24_Elizabeth.pdf	DHS	Deferral of Removal
5286460	7.12.24_NYC.pdf	DHS	Termination of Removal Proceedings
5474699	7.12.24_Oakdale.pdf	Respondent	Asylum
5250660	7.12.24_San Diego.pdf	Respondent	Asylum
5287756	7.12.24_SF.pdf	Respondent	Asylum
5362590	7.17.24_Cleveland.pdf	DHS	Termination of Removal Proceedings
5477429	7.17.24_Florence.pdf	DHS	Termination of Removal Proceedings
5478534	7.17.24_Ft Snelling.pdf	Respondent	CAT
5392581	7.17.24_Seattle.pdf	Respondent	Asylum
5427612	7.17.24_Seattle_2.pdf	Respondent	Asylum
5473787	7.2.24_El Paso.pdf	Respondent	CAT
5423154	7.2.24_NYC.pdf	Respondent	Asylum
5273217	7.2.24_Phoenix.pdf	Respondent	Cancellation of Removal
5331921	7.22.24_Boston.pdf	Respondent	Asylum
5476589	7.22.24_Oakdale.pdf	Respondent	Order of Removal
5220748	7.22.24_SF.pdf	Respondent	Asylum
5355488	7.23.24_LA.pdf	Respondent	Order of Removal
5237841	7.25.24_LA.pdf	Respondent	Asylum
5476254	7.25.24_NYC.pdf	Respondent	Asylum
5364522	7.26.24_Cleveland.pdf	DHS	Termination of Removal Proceedings
5221119	7.26.24_NYC.pdf	Respondent	Asylum
5325818	7.29.24_Atlanta.pdf	Respondent	Asylum
5425629	7.29.24_NYC.pdf	Respondent	Asylum
5480822	7.3.24_Oakdale.pdf	DHS	Termination of Removal Proceedings
5472927	7.3.24_Otay Mesa.pdf	DHS	Asylum
5422020	7.3.24_Seattle.pdf	Respondent	Asylum
5476562	7.30.24_Conroe.pdf	Respondent	Asylum
5425052	7.31.24_Boston.pdf	DHS	Adjustment of Status
5475998	8.1.24_Oakdale.pdf	Respondent	Asylum

5487633	9.3.24_Conroe.pdf	Respondent	Order of Removal
5418952	9.30.24_Atlanta.pdf	DHS	Granted termination of removal proceedi
5490734	9.30.24_Aurora.pdf	Respondent	Denied asylum, wittholding of removal, C
5411652	9.30.24_San Antonio.pdf	DHS	Granted termination of removal proceedi
5455454	9.30.24_Seattle.pdf	Respondent	Denied asylum, wittholding of removal, C
5401414	9.5.24_San Diego.pdf	Respondent	Denied dismissal without prejudice
5274189	9.6.24_Batavia.pdf	Respondent	Denied asylum, wittholding of removal, C
5440511	9.6.24_Boston.pdf	DHS	Granted asylum
5408077	9.6.24_San Antonio.pdf	DHS	Granted termination of removal proceedi
5297066	10.10.23_Jena.pdf	Respondent	Denied asylum, wittholding of removal, C
5438603	10.10.23_Miami.pdf	Applicant	Denied wittholding of removal, CAT
5265555	10.10.23_Newark.pdf	Respondent	Denied application for adjustment of stat
5273267	10.10.23_NYC.pdf	Respondent	Denied asylum, wittholding of removal, C
5346081	10.11.24_Annandale.pdf	Respondent	Denied CAT
5220151	10.11.24_Dallas	Respondent	Order of Removal
5487385	10.11.24_Newark.pdf	DHS	Granted withholding of removal under CA
5380743	10.11.24_NYC.pdf	Respondent	Denied asylum, wittholding of removal
5367538	10.11.24_SF.pdf	Respondent	Denied asylum, wittholding of removal
5244426	10.12.23_Buffalo.pdf	Respondent	Denied cancellation of removal
5262429	10.13.23_Miami.pdf	Respondent	Ineligible for waiver and adjustment of st
5239259	10.13.23_San Diego.pdf	Respondent	Order of Removal
5418111	10.15.24_Cleveland.pdf	DHS	Granted termination of removal proceedi
5488361	10.16.24_Miami.pdf	Respondent	Denied asylum, wittholding of removal, C
5496257	10.16.24_Oakdale.pdf	DHS	Granted deferral of removal under CAT
5431677	10.17.24_Houston.pdf	DHS	Granted termination of removal proceedi
5488103	10.17.24_Las Vegas.pdf	Applicant	Denied wittholding of removal, CAT
5445976	10.18.23_Tacoma.pdf	Respondent	Pretermitting application for cancellation
5417670	10.18.24_LA.pdf	Respondent	Denied asylum, wittholding of removal
5391790	10.18.24_Van Nuys.pdf	Respondent	Granted dismissal of proceedings
5229500	10.19.23_Boston.pdf	DHS	Granted asylum
5355349	10.19.23_Miami.pdf	DHS	Granted adjustment of status
5429139	10.2.24_Cleveland.pdf	DHS	Granted termination of removal proceedi
5478723	10.2.24_Lumpkin.pdf	DHS	Granted asylum
5433896	10.20.23_Aurora.pdf	Respondent	Denied asylum, wittholding of removal, C
5270759	10.20.23_NYC.pdf	Respondent	Denied asylum, wittholding of removal, C
5427326	10.23.23_Newark.pdf	DHS	Granted termination of removal proceedi
5268092	10.23.23_NYC.pdf	Respondent	Denied asylum, wittholding of removal, C
5381148	10.23.23_SF.pdf	Respondent	Denied asylum
5438217	10.24.23_Baltimore.pdf	Respondent	Order of Removal
5438112	10.24.23_Lumpkin.pdf	DHS	Granted termination of removal proceedi
5440353	10.24.23_Otay Mesa.pdf	Respondent	Denied asylum but granted withholding o
5242810	10.24.24_Chicago.pdf	Respondent	Denied motion for continuance/deemed
5407575	10.24.24_Cleveland.pdf	DHS	Granted termination of removal proceedi
5478723	10.24.24_Lumpkin.pdf	Respondent	Denied request for consideration of asylu
5422571	10.4.24_San Antonio.pdf	DHS	Granted termination of removal proceedi
5253143	10.5.23_Atlanta.pdf	Respondent	Denied asylum, wittholding of removal, C

5305005	11.14.23_SF.pdf	Respondent	Denied cancellation of removal
5395584	11.15.23_Miami.pdf	DHS	Granted adjustment of status
5492907	11.15.24_Adelanto.pdf	Respondent	Denied aslylum, withholding of removal,
5305241	11.15.24_Boston.pdf	Respondent	Denied aslylum, withholding of removal,
5492950	11.15.24_LA.pdf	Respondent	Denied aslylum, withholding of removal,
5400298	11.16.23_Newark.pdf	Respondent	Denied aslylum, withholding of removal,
5395584	11.17.23_Miami.pdf	DHS	Vacated removal order
5370422	11.17.23_Miami_2.pdf	DHS	Vacated removal order
5275698	11.17.23_NYC.pdf	Respondent	Denied aslylum, withholding of removal,
5424844	11.17.23_NYC_2.pdf	Respondent	Denied aslylum, withholding of removal
5270002	11.18.24_Baltimore.pdf	Respondent	Order of Removal
5336971	11.18.24_LA.pdf	Respondent	Cancellation of Removal
5302792	11.18.24_NYC.pdf	Respondent	Asylum
5499750	11.18.24_Pompano Beach.pdf	Respondent	Asylum
5290072	11.19.24_Arlington.pdf	Respondent	Asylum
5413522	11.19.24_Cleveland.pdf	DHS	Termination of Removal Proceedings
5493497	11.19.24_Las Vegas.pdf	Respondent	Asylum
5344048	11.20.23_Denver.pdf	DHS	Cancellation of Removal
5368252	11.20.23_Miami.pdf	DHS	Order of Removal
5369788	11.20.23_Miami_2.pdf	DHS	Order of Removal
5370091	11.20.23_Miami_3.pdf	DHS	Order of Removal
5370391	11.20.23_Miami_4.pdf	DHS	Order of Removal
5370409	11.20.23_Miami_5.pdf	DHS	Order of Removal
5370423	11.20.23_Miami_6.pdf	DHS	Order of Removal
5370492	11.20.23_Miami_7.pdf	DHS	Order of Removal
5371574	11.20.23_Miami_8.pdf	DHS	Order of Removal
5411246	11.20.24_Cleveland.pdf	DHS	Termination of Removal Proceedings
5493719	11.20.24_Elizabeth.pdf	Respondent	Asylum
5251420	11.21.24_NYC.pdf	Respondent	Denied asylum and withholding of remov
5444690	11.22.23_Laredo.pdf	DHS	Granted asylum of respondent
5368353	11.22.23_Miami.pdf	DHS	Vacating expedited removal order
5268016	11.22.23_Phoenix.pdf	DHS	Termination of removal proceedings
5456205	11.22.24_Boston.pdf	Respondents	Denying application for asylum
5381645	11.22.24_Seattle.pdf	Respondent	Denying application for asylum
5424183	11.23.23_NYC.pdf	Respondents	Denying application for asylum and remo
5386717	11.24.23_SF.pdf	Respondents	Denying application for asylum and remo
5493592	11.25.24_Annandale.pdf	Respondent	Denying application for deferral of remov
5435857	11.25.24_Cleveland.pdf	DHS	Termination of Removal Proceedings
5496489	11.25.24_LA.pdf	Respondents	Applications for relief abandoned and or
5469630	11.26.24_Boston.pdf	DHS	Granting application for asylum
5269671	11.26.24_Imperial.pdf	Respondent	Denying application for asylum, CAT
5413094	11.26.24_San Diego.pdf	Respondent	Termination of Removal Proceedings
5372253	11.27.23_Miami.pdf	DHS	Vacating expedited removal order
5432484	11.27.24_Cleveland.pdf	DHS	Termination of Removal Proceedings
5420812	11.27.24_Cleveland_2.pdf	DHS	Termination of Removal Proceedings
5489190	11.27.24_Elizabeth.pdf	DHS	Decision that respondent is not removabl proceedings

5369544	12.19.23_Miami.pdf	DHS	expedited removal order
5257778	12.19.23_San Diego.pdf	respondent	termination of removal proceedings
5422556	12.19.24_Boston.pdf	DHS	termination of removal proceedings
5364520	12.19.24_Cleveland.pdf	DHS	termination of removal proceedings
5497192	12.19.24_Jena.pdf	DHS	asylum application
5368251	12.20.23_Miami.pdf	DHS	expedited removal order
5370216	12.20.23_Miami_2.pdf	DHS	expedited removal order
5412005	12.20.23_Miami_3.pdf	respondent	continuance; asylum application; withhol
5360562	12.20.24_Cleveland.pdf	DHS	Termination of removal proceedings
5481140	12.20.24_Conroe.pdf	respondent	cancellation of removal under INA
5463922	12.20.24_Los Fresnos.pdf	DHS	cancellation of removal under INA
5253011	12.21.23_Boston.pdf	respondent	denied motion to terminate removal proc
5446614	12.21.23_Chicago.pdf	DHS	Termination of removal proceedings
5448482	12.21.23_Cleveland.pdf	respondent	withholding of removal under INA and th
5397372	12.22.23_Seattle.pdf	respondent	asylum application; withholding of remov
5500765	12.23.24_Elizabeth.pdf	DHS	cancellation of removal under INA
5453705	12.26.23_Oakdale.pdf	respondent	order of removal
5233489	12.28.23_Atlanta.pdf	respondent	pretermitting applications for relief; orde
5369782	12.29.23_Miami.pdf	DHS	expedited removal order
5453894	12.29.23_Oakdale.pdf	respondent	order of removal
5502265	12.30.24_Adelanto.pdf	respondent	order of removal
5419690	12.30.24_LA.pdf	DHS	Termination of removal proceedings
5287662	12.31.24_LA.pdf	respondent	cancellation of removal under INA
5240593	12.31.24_Philadelphia.pdf	respondent	asylum application; withholding of remov

Attachment B

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

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

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

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

Date of this Notice: 1/29/2024

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Userteam: Docket

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

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

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

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

Date of this Notice: 1/29/2024

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Userteam: Docket

NOT FOR PUBLICATION

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

MATTER OF:

[redacted], A [redacted]357

Respondent

FILED
Jan 29, 2024

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

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

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

Opinion by Appellate Immigration Judge Saenz

SAENZ, Appellate Immigration Judge

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

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

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

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

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

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

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

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

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

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained.

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

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

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

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

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

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

Date of this notice: 5/28/2019

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

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

GilbeauR
Userteam: Docket

File: A [redacted] 019 – Oakdale, LA

Date:

MAY 23 2019

In re: [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Allyson Page, Esquire

ON BEHALF OF DHS: John Zachary
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

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

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

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

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

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

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

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

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

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

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

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

Accordingly, the following orders will be entered.

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

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