No. 20-4182

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA
Plaintiff/Appellee,

v.

GUSTAVO PEREZ-PAZ
Defendant/Appellant.

On Appeal From the United States District Court
for the Eastern District of Virginia
Richmond Division (The Hon. Henry E. Hudson)

BRIEF OF *AMICI CURIAE* NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
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who is amicus, makes the following disclosure:
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If yes, identify all parent corporations, including all generations of parent corporations:

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If yes, identify all such owners:

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5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☑NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Khaled Alrabe Date: July 28, 2020

Counsel for: National Immigration Projec

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I. INTRODUCTION AND STATEMENT OF AMICUS CURIAE[1]

The District Court below denied Mr. Perez-Paz's motion to dismiss his indictment challenging the constitutionality of the illegal reentry statute, 8 U.S.C. § 1326. It falls to this Court to decide whether the statute violates the Fifth and Sixth Amendments. The National Immigration Project of the National Lawyers Guild respectfully submits this brief to assist the Court with this question. *See* Fed. R. App. P. 29(a). It is of exceptional importance and presents the Court an opportunity to uphold fair process for criminal defendants.

Mr. Perez-Paz's brief lays out several reasons why 8 U.S.C § 1326 violates the Fifth and Sixth Amendments. *Amicus* fully endorses those arguments. This brief will provide context clarifying why the use of prior removal orders as an element of a criminal offense is especially troubling by highlighting the severe lack of procedural protections in removal proceedings. Not only do the immigration procedures used to remove noncitizens not comport with constitutional criminal protections, but in

[1] Pursuant to Fed. R. App. P. 29(a)(4)(e), amicus curiae state that no counsel for the party authored this brief in whole or in part, and no party, party's counsel, or person or entity other than amicus curiae and their counsel contributed money that was intended to fund preparing or submitting the brief.

practice they bear no resemblance to an adjudicative process that guarantees the fair administration of law.

Proceedings before an immigration judge – where noncitizens theoretically have higher procedural protections than in other types of removal proceedings – suffer from a number of serious procedural defects. First, noncitizens do not have a right to government-appointed counsel – a factor that has significant consequences on whether an individual prevails. Second, while in proceedings, many noncitizens are placed in detention centers indistinguishable from prisons, which severely curtails their ability to secure representation or collect evidence relevant to their case. Third, immigration judges are not independent in that they are part of the executive branch and are under constant pressure, particularly recently under the Trump administration, to reduce procedural safeguards and accelerate removal. Finally, the fair adjudication of cases is impeded by a lack of uniformity in the immigration courts, where the idiosyncrasies of specific immigration judges and their local operating procedures significantly affect the outcome of cases.

Even more troubling, expedited removal – the most common type of removal process in the United States – is a summary removal procedure that has far less protections. Noncitizens in expedited removal do not have

a right to counsel or a hearing before an immigration judge. Under this process, an immigration official takes on the role of judge, jury, and prosecutor. If an immigration official believes a person is subject to expedited removal, the burden is on the individual in proceedings to prove otherwise. The few procedural protections that exist under expedited removal – such as referral to an asylum officer where an individual expresses fear of return to their home country – are not uniformly adhered to.

These flawed procedures result in removal orders that in turn form the basis of illegal reentry convictions that may be punishable with a sentence of up twenty years. In addressing Mr. Perez-Paz's argument, the Court should consider this underlying factual context, especially in light of the Trump administration's policies that have further whittled away procedural protections for noncitizens.

NIPNLG is a non-profit organization of immigration attorneys, legal workers, grassroots advocates, and others working to defend immigrants' rights and to secure a fair administration of the immigration and nationality laws. NIPNLG provides technical assistance to the bench and bar, hosts continuing legal education seminars on the rights of noncitizens, and is the author of numerous practice advisories as well as *Immigration*

Law and Crimes, a leading treatise on the intersection of criminal and immigration law published by Thompson-Reuters. Amicus has a direct interest in ensuring that the rules governing classification of criminal convictions for immigration purposes are fair and predictable.

II. BACKGROUND ON REMOVAL ORDERS

A prior removal from the United States, irrespective of its underlying lawfulness, is an element of the illegal reentry statue. *See* 8 U.S.C. § 1326; *United States v. Mendoza-Lopez*, 481 U.S. 828, 833 (1987). Under the Immigration and Nationality Act (INA), generally a removal order may be issued against a noncitizen through three types of administrative proceedings: an immigration proceeding before an immigration judge, expedited removal by the Department of Homeland Security (DHS), and administrative removal by DHS for noncitizens allegedly convicted of aggravated felonies.[2] Orders of removal are most commonly issued through removal proceedings before an immigration judge and the expedited removal process.

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[2] Noncitizens may also be removed through "reinstatement of removal," a summary removal process that does not entail the issuance of a removal order but rather reinstates a prior order of removal. *See* 8 U.S.C. § 1231(a)(5).

III. ARGUMENT

a. Removal Proceedings Before an Immigration Judge Lack Basic Procedural Protections

Even where removal proceedings are at their most protective before an immigration judge, they are bereft of basic safeguards that would guarantee the fair administration of law. This is due to a number of factors including the lack of legal representation, excessive and mandatory civil detention, the absence of independent adjudicators, and idiosyncratic procedures in each immigration court that can have serious consequence on the outcome of a case.

An immigration judge may order a noncitizen removed in removal proceedings under 8 U.S.C. § 1229a. These proceedings are before an administrative judge employed by the Executive Office for Immigration Review (EOIR) within the Department of Justice. Immigration judges may grant certain forms of relief, such as asylum and cancellation of removal. *See* 8 U.S.C. §§ 1158, 1229b. Removal decisions through this process are subject to administrative review before the Board of Immigration Appeals (BIA). *See* 8 U.S.C. § 1229a(c)(5). BIA decisions are subject to limited judicial review before a US Circuit Court of Appeals. *See* 8 U.S.C. § 1252.

Noncitizens in removal proceedings have no statutory right to government-appointed counsel. 8 U.S.C. § 1229a(b)(4)(A). Accordingly, only thirty-seven percent of noncitizens in removal proceedings have legal representation.[3] That rate falls to fourteen percent for noncitizens in immigration detention. *Id.* The difference in outcomes between represented and *pro se* individuals is considerable: represented noncitizens are at least five times more likely, if not detained, and twice as likely, if detained, to prevail in their cases than those without. *Id.* at 3, 15. In the context of asylum, the difference is staggering: immigration judges deny asylum for ninety percent of unrepresented noncitizens but only forty-eight percent of those represented.[4]

Complicating the lack of counsel, many noncitizens are placed in immigration detention during their removal proceedings. In 2019, DHS detained 510,854 individuals, of which 137,084 were detained by U.S. Immigration and Customs Enforcement (ICE), and the average daily

[3] *See* American Immigration Council, *Access to Counsel in Immigration Court* 5 (2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.
[4] *See* TRAC Immigration, *Continued Rise in Asylum Denial Rates: Impact of Representation and Nationality* (Dec. 13, 2016), https://trac.syr.edu/immigration/reports/448/.

population of individuals in ICE custody was 50,165.[5] Noncitizens merely *charged* as removable for having been convicted of certain crimes are subject to mandatory detention during the entire course of removal proceedings while other noncitizens may be detained at the discretion of the attorney general. *See* 8 U.S.C. §§ 1226(a),(c). Many individuals in immigration detention are routinely detained for longer than six months.[6]

Problematically, those in detention are even less likely to be assisted by counsel; from 2007 to 2012, only 14 percent of detained noncitizens had lawyers.[7] Thus, the vast majority of individuals in detention are forced to proceed *pro se* and will fail to receive any legal assistance in their case. Immigration detention conditions are indistinguishable from jail or prison where detained individuals typically have little to no access to email or the internet and limited access to telephones.[8] These access limitations thwart a noncitizen's ability to compile evidence and argue their case, particularly

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[5] *See* U.S. Immigration and Customs Enforcement, *Fiscal Year 2019 Enforcement and Removal Operations Report* (2019) at 4-5, https://www.ice.gov/doclib/about /offices/ero/pdf/eroFY2018Report.pdf.

[6] American Immigration Counsel, *Immigration Detention in the United States by Agency*, 4 (2019), https://www.americanimmigrationcouncil.org/sites/default/files/ research/ immigration_detention_in_the_united_states_by_agency.pdf

[7] Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Pa. L. Rev. 1, 32 (2015).

[8] *See*, *e.g.*, *Human Rights First, Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – A Two Year Review*, 40, 52 (2011), https://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf.

in light of the complexity of immigration law. *See*, *e.g.*, *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1690 (2013) (recognizing that noncitizens in detention "have little ability to collect evidence"); *Padilla v. Kentucky*, 559 U.S. 356, 369 (2010) (noting that "[i]mmigration law can be complex, and it is a legal specialty of its own."). These limitations are especially difficult for those in mandatory detention because the most useful arguments to rebut most criminal charges of removability require noncitizens to engage in sophisticated multistep legal analyses under the categorical approach.

Additionally, removal proceedings are marred by the fact that immigration judges lack impartiality because they are at the behest of the Attorney General. *See* 8 C.F.R. § 1003.10(a)("Immigration judges shall act as the Attorney General's delegates in the cases that come before them"). Immigration judges are meant to be neutral arbiters under federal laws and regulations. *See*, *e.g.*, 8 C.F.R. § 1003.10(b) ("In all cases, immigration judges shall seek to resolve the questions before them in a timely and impartial manner consistent with the Act and regulations"). In practice, however, their placement as employees of the head of the executive branch's primary law enforcement agency inevitably encroaches upon their impartiality.

This is best illustrated by the actions of the current administration to strictly limit the independence of immigration judges. Starting in 2017, the Office of the Attorney General has introduced, among other things, performance metrics tied to unmanageable case completion quotas requiring judges to complete 700 cases per year.[9] The National Association of Immigration Judges (NAIJ), the immigration judges' union, has spoken out against the actions of the Attorney General and referred to the quota as a "death knell for judicial independence in the Immigration Courts."[10] The Department of Justice is now seeking to decertify the union.[11] The Attorney General has also issued decisions that limit immigration judges' ability to administratively close or terminate cases for good cause or provide continuances to respondents in immigration court. *See*, *e.g.*, *Matter of Castro-Tum*, 27 I. & N. Dec. 271 (AG 2018) (eliminating administrative closure); *Matter of L-A-B-R-*, 27 I. & N. Dec. 504 (AG 2018) (limiting the use

[9] *See Memorandum from James McHenry, Dir., Exec. Office for Immigration Review, to All EOIR Judges Regarding Immigration Judge Performance Metrics* (Mar. 30, 2018), https://www.aila.org/infonet/eoir-memo-immigration-judge-performance-metrics.
[10] National Association of Immigration Judges, *Threat to Due Process and Judicial Independence Caused by Performance Quotas on Immigration Judges* (Oct. 2017), https://www.naij-usa.org/images/uploads/publications/NAIJ_Quotas_in_IJ_Performance_Evaluation_10-1-17.pdf.
[11] *See* Jacqueline Thomsen, *Immigration Judges, Joined by Latham & Watkins, Fight DOJ Effort to Decertify Union*, LAW.COM (Jan. 7, 2020), https://www.law.com/therecorder/2020/01/07/immigration-judges-joined-by-latham-watkins-fight-doj-effort-to-decertify-union/.

of continuances); *Matter of S-O-G- & F-D-B-*, 27 I. & N. Dec. 462 (AG 2018) (limiting immigration judges' discretion to terminate or dismiss cases). The performance metrics and these decisions create an incentive scheme whereby immigration judges have to pit the fundamental due process interests of respondents against their job security.

Finally, immigration law is not applied uniformly across the country. It is well documented that the chances that a respondent is granted relief from removal through asylum is highly correlated with where the proceeding occurred and before which judge.[12] For example, between 2014 and 2019, one judge in Atlanta decided 162 asylum cases and denied every single one, whereas during that same time period a judge in New York granted 97.4 percent of the 774 asylum cases she saw.[13] This stark difference between judge grant rates is not limited to geographically disparate courts. In this same time period within the Arlington Immigration Court in Virginia, two judges who oversaw roughly the same

[12] *See, e.g.*, *Asylum Outcome Continues to Depend on the Judge Assigned*, TRAC Immigration (Nov. 20, 2017), https://trac.syr.edu/immigration/reports/490/; Jaya Ramji-Nogales, Andrew I. Schoenholtz & Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 Stan. L. Rev. 295 (2007).
[13] *See Judge-by-Judge Asylum Decisions in Immigration Courts FY 2014-2019*, TRAC Immigration https://trac.syr.edu/immigration/reports/judge2019/ denialrates.html (last visited Jul. 24, 2020).

number of cases had drastically different outcomes: one judge *granted* 85.6 percent of asylum cases and the other *denied* 91.3 percent of cases. *Id.*

These idiosyncrasies are not just limited to asylum grant rates but spill over onto sub-regulatory court-specific procedural rules that can impede the due process rights of respondents. Although immigration judges may adopt local operating procedures, they must not be inconsistent with federal regulations. *See* 8 CFR § 1003.40. In practice, some of these unpublished sub-regulatory rules violate regulations by hindering a respondent's ability to file an asylum application, adding restrictions to evidence submission, and limiting testimony.[14]

b. Expedited Removal, the Most Common Type of Removal in the U.S., Entails Almost No Procedural Safeguards

While proceedings in immigration court suffer a variety of procedural defects, expedited removal proceedings have even less protections and in practice have almost no safeguards. This is especially the case under the Trump administration, which has sought to expand the use of expedited removal. Alarmingly, expedited removal was the most common type of

[14] *See generally* Innovation Law Lab & S. Poverty Law Ctr., *The Attorney General's Judges: How the U.S. Immigration Courts Became a Deportation Tool*, 13-14 (2019), https://www.splcenter.org/sites/default/files/com_policyreport_the_attorney_generals_judges_final.pdf.

removal in 2018, the most recent year for which there is government data, with 144,263 noncitizens removed through the process, constituting 43 percent of all removals.[15]

Under expedited removal, a DHS official may summarily remove certain noncitizens without a hearing before an immigration judge or review by the BIA. *See* 8 U.S.C. § 1225(b)(1)(A)(i). Expedited removal applies to noncitizens at a port of entry who lack valid entry documents or have committed fraud or willful misrepresentation to gain admission to the United States. *Id*. It also applies to such individuals if they are apprehended at a place other than a port of entry if they cannot show that they have resided in the U.S. for two or more years. *See* 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Since enactment, DHS had limited this provision to individuals who are apprehended within 14 days of their arrival in the U.S. and within 100 miles of an international land border. *See Designating Aliens For Expedited Removal*, 69 Fed. Reg. 48877, 48880 (2004).

DHS officials take on the part of judge, prosecutor, and jury in the expedited removal process. Under the regulations, if a DHS officer

[15] *See* Mike Guo and Ryan Baugh, *Immigration Enforcement Actions: 2018, DHS Office of Immigration Statistics* (October, 2019), at 8, https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/enforcement_actions_2018.pdf.

determines that an individual is subject to expedited removal, they must "create a record of the facts of the case and statements made by the [noncitizen]." 8 C.F.R. § 235.3(b)(2)(i). The burden is on the noncitizen to show that expedited removal is not applicable by having to prove that they have been physically present in the U.S. "continuously for the 2-year period immediately prior to the date of determination of inadmissibility" or that they were paroled or lawfully admitted into the US. 8 C.F.R. §§ 235.3(b)(1)(ii), (b)(6). The conclusions of the immigration officer are then reviewed and approved by a DHS supervisor, who does not interact with the noncitizen, and both a notice of the finding of removability and a removal order are issued simultaneously. *See* 8 C.F.R. §§ 235.3(b)(2), (b)(7).

Unlike removal proceedings before an immigration judge, there is no statutory right to counsel during this process. The key safeguards are the review of a DHS officer and the fact that the noncitizen must read (or be read to) and sign the relevant administrative forms including the removal order. *See* 8 C.F.R. § 235.3(b)(2).

If, and only if, an individual indicates an intention to apply for asylum or a fear of persecution, a DHS official must refer them to an asylum officer

for a credible fear interview.[16] *See* 8 U.S.C. §§ 1225(b)(1)(A)(ii), (B); 8 C.F.R. §§ 235.3(b)(4), 208.30(d). Otherwise there can be no further hearing or review. 8 U.S.C. § 1225(b)(1)(A)(i). Judicial review of expedited removal decisions is extremely limited. *See* 8 U.S.C. §§ 1252(a)(2)(A),(e).

The lack of procedural protections in expedited removal suggests that DHS regularly issues invalid removal orders. As one Federal Circuit Court Judge put it:

> "[T]he deportation process can begin and end with a CBP officer untrained in the law…There is no hearing, no neutral decision-maker, no evidentiary findings, and no opportunity for administrative or judicial review. This lack of procedural safeguards in expedited removal proceedings creates a substantial risk that noncitizens subjected to expedited removal will suffer an erroneous removal."

United States v. Peralta-Sanchez, 847 F.3d 1124, 1144 (9th Cir. 2017) (Pregerson, J., dissenting), *withdrawn on grant of reh'g*, 868 F.3d 852 (9th Cir. 2017)

Moreover, the limited protections that do exist in expedited removal are not generally adhered to: mistakes are widespread within the program

[16] In a credible fear interview, if an asylum officer finds that there is a significant possibility that an individual can establish eligibility for asylum, they are placed in removal proceedings before an immigration judge. *See* 8 C.F.R. § 208.30(e)(2). A noncitizen may appeal an adverse credible fear decision by an asylum officer before an immigration judge. 8 U.S.C. §§ 1225(b)(1)(B)(iii)(II)-(III); *see also* 8 C.F.R. §§ 208.30(g)(1), 1003.42, 1208.30.

as documented by several congressionally authorized studies and other independent research reports. For example, concerned with defects in expedited removal, Congress commissioned the U.S. Commission on International Religious Freedom (USCIRF) to study the program. *See* International Religious Freedom Act of 1998 § 605(a), 22 U.S.C § 6474. The first of a series of USCIRF studies found that in more than eighty five percent of cases tracked, DHS officials recorded false information about citizen's fear of return to their country.[17] In more than seventy percent of cases tracked, DHS officials denied noncitizens the opportunity to review or respond to information that formed the basis of the removal order and that they were required to sign. *Id.* at 19.

The most recent USCIRF report from 2016, reported multiple examples of non-compliance with required procedures including "failure to read back the answers to the interviewee and allow him to correct errors before signing, as required; interviewing individuals together instead of separately and in private; failure to read the required script from the

[17] Allen Keller, M.D. *et al.*, *Evaluation of Credible Fear Referral in Expedited Removal at Ports of Entry in the United States*, U.S. Comm'n on Int'l Religious Freedom, Report on Asylum Seekers in Expedited Removal: Volume II: Expert Reports at 15 (2005), https://www.uscirf.gov/sites/default/files/resources/stories/pdf/asylum_seekers/evalCredibleFear.pdf

[required administrative form]; and failure to record an answer correctly."[18] Similar levels of non-compliance have been corroborated by other independent report.[19]

Despite the shortcomings of expedited removal, on July 23, 2019, the Trump administration issued a new rule applying expedited removal *anywhere* in the United States. *See Notice Designating Aliens for Expedited Removal*, 84 Fed. Reg. 35409 (July 23, 2019). Although the rule was initially halted by a preliminary injunction, that injunction has recently been overturned by the D.C. Circuit. *See Make the Rd. N.Y. v. Wolf*, 962 F.3d 612 (D.C. Cir. 2020). This means that soon, expedited removal can be applied to individuals located *anywhere* in the United States who cannot affirmatively prove to an immigration officer that they have been continuously present in the United Sates for more than two years.

c. The Procedural Defects in Removal Proceedings Underscore the Dangers of Using their Outcome as an Element of a Criminal Offense

As described above, expedited removal and removal proceedings before an immigration judge are riddled with shortcomings. Yet, the outcomes of

[18] U.S. Comm'n on Int'l Religious Freedom, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal* at 20 (2016); https://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf

[19] *See e.g.*, ACLU Foundation, American Exile: Rapid Deportations That Bypass the Courtroom (2014), https://www.aclu.org/files/assets/120214-expeditedremoval_0.pdf

these flawed administrative proceedings constitute an element of the crime of illegal reentry. Consequently, errors in immigration proceedings undoubtedly infect the criminal process.

The lack of representation in immigration court is an illustrative example of how immigration court procedures imperil the due process rights of defendants in illegal reentry prosecutions. Given the stark difference in outcomes in immigration court between those with and without legal representation, many with legitimate asylum claims lose their cases simply because they cannot afford attorneys. Subsequently, to avoid suffering at the hands of their persecutors, these individuals may re-enter the United States and in doing so could be subject to illegal re-entry and sentenced to years in prison. Although "any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him," in the case of § 1326 prosecutions, this mandate is effectively unavailing. *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). The outcome of an administrative hearing – where individuals are not guaranteed legal representation and where this lack of representation is prejudicial – is an element of § 1326 and as a result many individuals are convicted simply because they were "too poor to hire a lawyer." *Id*. These issues are

compounded in the expedited removal context where there is no access to counsel.

Before the enactment of the procedures for removal proceedings and expedited removal described above,[20] when the Supreme Court faced the narrow issue of whether an individual may collaterally attack his underlying removal order in an illegal reentry prosecution, the Court raised the question of whether the result of an administrative immigration proceeding could *ever* appropriately establish the elements of a criminal offense. *See United States v. Mendoza-Lopez*, 481 U.S. 828, 838 n.15 (1987) ("[T]he use of the result of an administrative proceeding to establish an element of a criminal offense is troubling…[and] the *propriety of using an administrative ruling in such a way remains open to question*.")(emphasis added). Today, given the deficiencies of the post-IIRIRA immigration framework and the recent administration's onslaught on the procedural rights of immigrants, this question ought to be answered in favor of criminal defendants.

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[20] Modern removal proceedings and expedited removal were enacted through the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996).

IV. CONCLUSION

For the foregoing reasons this Court should hold 8 U.S.C. § 1326 unconstitutional and reverse Mr. Perez-Paz's conviction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I hereby certify that the attached amicus brief

(i) complies with the type-volume limitation in Fed. R. App. P. 32(a)(7)(B) because it contains 3,742 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); and

(ii) complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6), because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word in 14-point Century Schoolbook.

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Dated: July 28, 2020

CERTIFICATE OF SERVICE

U.S. Court of Appeals Docket Numbers: No. 20-4182

I, Khaled Alrabe, hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on July 28, 2020.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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