Nos. 19-896, 20-322

In The
Supreme Court of the United States

TAE D. JOHNSON, ACTING DIRECTOR OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ET AL.
Petitioners,

v.

ANTONIO ARTEAGA-MARTINEZ
Respondent.

MERRICK B. GARLAND, ATTORNEY GENERAL, ET AL.
Petitioners,

v.

ESTEBAN ALEMAN GONZALEZ, ET AL.
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE THIRD AND NINTH CIRCUITS

BRIEF OF AMICI CURIAE FORMER IMMIGRATION JUDGES AND BOARD OF IMMIGRATION APPEALS MEMBERS IN SUPPORT OF RESPONDENTS

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BRIEF FOR FORMER IMMIGRATION JUDGES AND BOARD OF IMMIGRATION APPEALS MEMBERS AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

This brief is submitted on behalf of the following former immigration judges (IJs) and Board of Immigration Appeals (BIA) members: Hon. Terry A. Bain; Hon. Sarah Burr; Hon. Jeffrey Chase; Hon. George Chew; Hon. Joan V. Churchill; Hon. Cecelia Espenoza; Hon. Noel Ferris; Hon. James Fujimoto; Hon. John Gossart; Hon. Miriam Hayward; Hon. Carol King; Hon. Bill Joyce; Hon. Elizabeth A. Lamb; Hon. Margaret McManus; Hon. Charles Pazar; Hon. Laura Ramirez; Hon. John Richardson; Hon. Lory Rosenberg; Hon. Susan Roy; Hon. Paul Schmidt; Hon. Ilyce Shugall; Hon. Helen Sichel; Hon. Denise Slavin; Hon. Robert Vinikoor; and Hon. Polly Webber.[1]

INTEREST OF AMICI CURIAE

Amici curiae are former immigration judges and BIA members. *Amici* have an interest in this case based on their many years of dedicated service administering the immigration laws of the United States. *Amici* collectively presided over thousands of removal proceedings and conducted thousands of bond hearings in connection with those proceedings. Based on this experience, they believe that noncitizens who

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[1] All parties consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of the brief. No person other than amici curiae or their counsel made a monetary contribution to the preparation or submission of this brief.

are detained more than six months during withholding-only proceedings should be entitled to individualized bond hearings before IJs to determine whether continued detention is appropriate. *Amici* recognize that detention of noncitizens during withholding-only proceedings may be appropriate in certain cases. But prolonged detention of noncitizens during withholding-only proceedings makes it more difficult for IJs to administer those proceedings fairly and efficiently. *Amici* believe that affording noncitizens subject to prolonged detention pending withholding-only proceedings with individualized bond hearings before IJs would foster just and efficient administration of immigration laws.

SUMMARY OF THE ARGUMENT

In a small number of cases, noncitizens who are subject to final removal orders (including those subject to reinstated removal orders) may be eligible to seek withholding or deferral of removal in "withholding-only" proceedings. To qualify for withholding-only proceedings, noncitizens subject to final removal orders must establish before an asylum officer a reasonable fear of persecution or torture upon return to the designated country of removal. To obtain withholding or deferral of removal through withholding-only proceedings, noncitizens must establish that it is more likely than not that they will be subject to persecution or torture upon return. In the vast majority of cases, noncitizens who qualify for withholding-only proceedings are detained for the duration of those proceedings.

Based on their experience as IJs and BIA members administering the immigration laws, *amici* believe

that IJs could administer withholding-only proceedings more fairly and more efficiently if detained applicants for withholding or deferral of removal were entitled to individualized bond hearings at which the DHS bears the burden to establish that continued detention is necessary in light of the risk of flight or danger to the community.

First, while detention of noncitizens during withholding-only proceedings serves legitimate purposes in appropriate cases, detention also makes it more difficult to administer those already complex proceedings fairly and efficiently. This is so for several reasons. In particular, detainees are significantly less likely to obtain legal representation. Legal representation is crucial—and may even be outcome-determinative—in complex withholding-only proceedings. In addition, detention makes it more difficult for applicants for withholding or deferral of removal to gather evidence and present their cases, regardless of whether they are represented.

Second, requiring individualized bond hearings before IJs would mitigate the harms from detention while also fulfilling the legitimate purpose of detention in appropriate cases. IJs conducting individualized bond determination can ensure that applicants for withholding who present a safety or flight risk remain in detention, while permitting applicants to be released in appropriate cases. Requiring individualized bond hearings would not require that any particular noncitizen be released from detention. Individual IJs already conduct hundreds of bond hearings in a typical year. They are experienced in evaluating flight risk and danger.

Empirical evidence confirms that they do so effectively.

Third, requiring bond hearings for those subject to prolonged detention during withholding-only proceedings would not impose a significant additional burden on IJs or the immigration system. Withholding-only proceedings represent less than one percent of cases in immigration court. The Ninth Circuit's decision below would require bond hearings only in those withholding-only cases that continue for more than six months. Holding bond hearings—conducted under various streamlined procedures—in this limited number of additional cases would impose minimal additional burden on IJs.

BACKGROUND

Several different provisions of the Immigration and Nationality Act (INA) authorize the government to detain noncitizens during removal proceedings. *See* 8 U.S.C. §§ 1225(b), 1226(a), 1226(c), and 1231(a). This case involves Section 1231(a), governing detention of noncitizens subject to final removal orders, including those who have had prior removal orders reinstated. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271 (2021).

In the typical case, once a noncitizen has been ordered removed, the Attorney General "shall remove the alien from the United States within a period of 90 days" and, "[d]uring the [90-day] removal period, the "Attorney General shall detain the alien." 8 U.S.C. § 1231(a). In general, those subject to final removal orders or reinstated removal orders may not further challenge their removal in immigration court. *See, e.g.,* 8 C.F.R. §§ 2418(a), 1241.8(a). As a result, the

vast majority of those subject to final removal orders are, in fact, deported within 90 days.

Under Section 1231(a)(6), if a noncitizen has not been deported within the 90-day removal period, the Attorney General "may" either continue to detain her or may release her subject to various conditions, including payment of a bond. 8 U.S.C. § 1231(a)(6).

Under federal law and the United Nations Convention Against Torture (CAT), the United States may not deport a noncitizen to a country where he or she would face persecution or torture. See 8 U.S.C. § 1231(b)(3)(A); Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, § 2242, 112 Stat. 2681 (1998). Accordingly, if a noncitizen subject to a final removal order expresses a fear of persecution or torture if returned to the country designated for removal, the DHS must institute proceedings to determine whether that person may permissibly be deported to the designated country.

First, DHS must refer the noncitizen to an asylum officer to determine whether he or she can establish a "reasonable fear of persecution or torture." 8 U.S.C. § 1231(a)(5). The "reasonable fear" standard is high.[2] If the asylum officer concludes that an applicant has

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[2] For example, between October 1, 2019 and October 15, 2020, asylum officers found "reasonable fear" in just 1,034 of 7,670 cases (approximately 13%). U.S. Citizenship and Immigration Services, *Semi-Monthly Credible Fear and Reasonable Fear Receipts and Decisions* (Nov. 5, 2020), https://web.archive.org/web/20201102081057/https://www.uscis.gov/tools/reports-and-studies/semi-monthly-credible-fear-and-reasonable-fear-receipts-and-decisions.

met this high standard and established a "reasonable fear" of persecution or torture upon return, then the applicant is entitled to seek limited relief from removal in a "withholding-only" hearing before an immigration judge.

These proceedings are called "withholding-only" hearings because "proceedings are 'limited to a determination of whether the alien is eligible for withholding or deferral of removal,' and as such, 'all parties are prohibited from raising or considering any other issues, including but not limited to issues of admissibility, deportability, eligibility for waivers, and eligibility for any other form of relief.'" *Guzman Chavez*, 141 S. Ct. at 2283 (quoting 8 U.S.C. §§ 208.2(c)(3)(i), 1208.2(c)(3)(i)).[3]

To obtain relief in a withholding-only proceeding, the applicant must show it is more likely than not that she will be subject to persecution or torture if returned to the designated country of removal.[4] Those granted withholding or deferral of removal may not be

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[3] In withholding-only proceedings, noncitizens may seek three forms of relief: withholding of removal under the INA, withholding of removal under the CAT, and deferral of removal under the CAT.

[4] To obtain withholding of removal under the INA, the noncitizen must show that it is more likely than not that her life or freedom would be threatened in the proposed country of removal on account of race, religion nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16. To obtain either withholding or removal or deferral of removal under the CAT, the noncitizen must show that it is more likely than not that she would be tortured if removed to the designated country. 8 C.F.R. §§ 1208.16(c)(2); 1208.17(a).

deported to the designated country of removal. While the government may seek to remove them to another country, "in practice * * * non-citizens who are granted [withholding of] removal are almost never removed from the U.S." *Kumarasamy v. Attorney Gen.*, 453 F.3d 169, 171 n.1 (3d Cir. 2006) (quoting David Weissbrodt & Laura Danielson, *Immigration Law and Procedure* 303 (5th ed. 2005)). Recognizing this reality, regulations entitle those granted withholding of removal to obtain employment authorization. 8 C.F.R. § 274a.12(a)(10).

Because one must first establish a reasonable fear of persecution or torture before an asylum officer to qualify for a withholding-only hearing, withholding-only proceedings are relatively uncommon. In recent years, approximately 3,000 new withholding-only cases have been initiated each year, representing less than one percent of all new cases in immigration court.[5] Moreover, while the total number of new immigration cases has increased significantly in recent years, the number of withholding-only proceedings has held steady.[6]

Given that applicants for withholding or deferral of removal must carry the heavy burden of establishing a reasonable fear of persecution or

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[5] *See* American Immigration Council, *The Difference Between Asylum and Withholding of Removal*, https://www.americanimmigrationcouncil.org/research/asylum-withholding-of-removal.

[6] American Immigration Council, *supra*.

torture before they are entitled to withholding-only hearings, those applicants who obtain such hearings are often successful in obtaining withholding or deferral of removal, as well. One study estimated that over 25% of applicants in withholding-only proceedings are ultimately permitted to remain in the United States.[7]

Withholding-only cases can last for years, given the complex issues involved.[8] *Amici* believe that the interests of our immigration system would be best served if individualized bond hearings before IJs were required in withholding-only cases continuing for more than six months.

ARGUMENT

I. PROLONGED DETENTION OF APPLICANTS FOR WITHHOLDING MAKES COMPLEX WITHHOLDING-ONLY PROCEEDINGS HARDER TO ADMINISTER

Withholding-only proceedings are complex cases. In deciding whether an applicant is entitled to withholding or deferral of removal, an immigration judge must make findings about the conditions in the designated country, whether members of a particular social, political, cultural, or religious group are likely to be subject to persecution or torture, and whether the applicant is, in fact, a member of such a group. Accordingly, withholding-only proceedings often involve testimony by the applicant, family members,

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[7] *See* David Hausman, *Fact Sheet: Withholding-Only Cases and Detention* (2015), https://www.aclu.org/fact-sheet/fact-sheet-withholding-only-cases-and-detention.

[8] *See ibid.*

and other witnesses; expert testimony about conditions in the proposed country of removal; review of documentation and country conditions information; and administrative appeals. In addition, those seeking withholding or deferral of removal are typically non-English speakers from vastly different cultures who are unfamiliar with the operations of the U.S. legal system and may have little formal education.[9] These factors make withholding-only proceedings among the most difficult cases on an immigration judge's docket.

The stakes in withholding-only cases could not be higher. The Court has "long recognized that deportation is a particularly severe 'penalty.'" *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010) (quoting *Fong Yue Ting v. United States*, 149 U.S. 698, 740 (1893)). In withholding-only proceedings, the applicant for withholding or deferral of removal not only faces the "particularly severe penalty" of deportation, but also faces the risk of deportation to a country where he or she may be subject to persecution or torture.

Detention during withholding-only proceedings impairs applicants' ability to present their cases, which, in turn, makes it more difficult for IJs to conduct withholding-only proceedings fairly and efficiently. In particular, detention prevents applicants for withholding or deferral of removal from obtaining legal representation—which can be

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[9] Eighty-nine percent of noncitizens proceeded in a language other than English for immigration court cases completed in Fiscal Year 2018. Dep't of Justice, Exec. Office for Immigr. Review, *Statistics Yearbook Fiscal Year 2018* 18, https://www.justice.gov/eoir/file/1198896/download.

outcome-determinative in some cases—and hinders their ability to gather and present evidence in support of their claims.

A. Detention During Withholding-Only Proceedings Makes It Harder For Applicants For Withholding or Deferral of Removal to Obtain Representation

Noncitizens who are detained during removal proceedings are far less likely to obtain representation than those who are released on bond.[10] One nationwide study found that "nondetained respondents were almost five times more likely to obtain counsel than detained respondents."[11]

That disparity has real consequences. Legal representation in removal proceedings "[is] especially important" because of "the complexity of immigration procedures, and the enormity of the interests at stake." *Ardestani v. INS*, 502 U.S. 129, 138 (1991). When represented by counsel, noncitizens are better prepared to navigate withholding-only proceedings, leading to better developed and organized cases.[12] Represented noncitizens are also much more likely to be prepared for their scheduled appearances, resulting in their cases being handled more efficiently

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[10] *See Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings*, 33 Cardozo L. Rev. 357, 367-73 (2011) (finding that "custody status (i.e., whether or not [individuals] are detained) strongly correlates with their likelihood of obtaining counsel").

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

[12] *See* Ingrid V. Eagly & Steven Shafer, *supra*, at 66.

and requiring fewer continuances and judicial resources. By contrast, unrepresented applicants for withholding are less likely to be prepared for their hearings, leading to delays in the administration of their cases, and to additional cost and burden on the immigration courts.

Empirical studies confirm the common-sense notion that cases involving represented immigrants are better argued and proceed more efficiently, both in the immigration courts and before the BIA. For example, while BIA members consistently report that quality briefing facilitates effective legal review of removal proceedings, most unrepresented immigrants do not submit *any* brief at all in appellate proceedings before the BIA.

Not surprisingly, studies consistently show significant disparities in outcomes based on representation.[13]

B. Detention During Withholding-Only Proceedings Hinders Applicants' Ability to Present Their Cases, Regardless of Whether They are Represented

Detention makes it harder for applicants for withholding or deferral of removal to present their cases effectively, whether they are appearing *pro se* or

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[13] *See Developments in the Law: Immigration Rights and Immigration Enforcement*, *Representation in Removal Proceedings*, 126 Harv. L. Rev. 1658, 1658 (2013); Exec. Office for Immigration Review*, A Ten-Year Review of the BIA Pro Bono Project: 2002–2011* 12 (2014) (in BIA proceedings, the likelihood of an immigrant achieving a favorable result increased from 9.5% to 31% when BIA Pro Bono Project volunteers provided legal representation).

are among the minority fortunate enough to obtain representation.

For those represented by counsel, detention makes effective attorney-client communications significantly more difficult. Because detention facilities are typically located far from the urban centers where most immigration lawyers practice, immigration lawyers must travel long distances to meet their detained clients. *See Hamama v. Adducci*, 261 F. Supp. 3d 820, 827-28 (E.D. Mich. 2017) (noting that it was "nearly impossible" and "impractical" for attorneys to visit clients because they were detained approximately four hours away). When immigration attorneys make the long trips to remote detention facilities, they may be barred from seeing their clients. *See Innovation Law Lab v. Nielson*, 310 F. Supp. 3d 1150, 1158-59 (D. Or. 2018) (describing repeated instances of attorneys being denied access to their detained clients, including where "[p]ermission that had been granted for a legal visit * * * [and] was revoked on the morning of [the scheduled visit] after Law Lab's legal team had already departed for" the detention facility). When lawyers are finally able to visit detained clients, poor conditions in detention centers continue to impair attorney-client relations.[14]

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[14] *See* Pat E. Morgenstern-Clarren, *Retired judge: Shut down this immigrant detention center*, Houston Chronicle (Feb. 3, 2019), https://www.houstonchronicle.com/opinion/outlook/article/Retired-judge-Shut-down-this-immigrant-detention-13582574.php ("[V]isiting conditions [for attorneys are] abysmal. Laptops,

Detained immigrants also face difficulties consulting with their lawyers by phone. Many detention facilities have few working phones.[15] When phones are available, detention facilities may limit the length of calls or charge detained immigrants "prohibitively expensive" per-minute fees.[16]

It is even worse for those proceeding *pro se*. Many detention facilities have inadequate or outdated legal resources.[17] Even if a detention facility provides the most up-to-date legal materials available, these resources will be useless to many detainees if they are not available in languages other than English. And even when detained immigrants have access to adequate legal resources in their native languages, detention (and the resulting restricted access to the outside world) makes it far more difficult to gather

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mobile phones, voice recorders and Spanish-English dictionaries are prohibited; counsel may only bring in a notebook, pen and one business card per client.").

[15] *See* DHS Office of Inspector General, *Management Alert on Issues Requiring Immediate Action at the Theo Lacy Facility in Orange, California* 7 (2017) ("telephone problems [at one detention facility included] low volume and inoperable phones").

[16] *See Hamama*, 261 F. Supp. 3d at 827-28 (noting that an Arizona detention facility charges twenty-five cents per minute and that detention facilities limited calls to ten or fifteen minutes).

[17] *See* U.S. Comm'n on Int'l Religious Freedom, *Report on Asylum Seekers in Expedited Removal* 186 (2005) (finding that "in *none* of the facilities visited by the experts were all the legal materials listed in the DHS detention standards * * * present and up-to-date").

evidence required to establish entitlement to withholding of removal.

Frequent transfers of noncitizen detainees between detention centers compound these problems.[18] Transfers between facilities make it even more difficult for detainees to gather evidence in support of their claims for withholding of removal. Records may be lost or destroyed during transfer.[19] Mail may not be forwarded.[20] For represented detainees, transfers may make it "difficult for attorneys to contact, or even locate, their clients." *Chhoeun v. Marin*, 306 F. Supp. 3d 1147, 1156 (C.D. Cal. 2018).

C. Despite IJs' Best Efforts, Detention During Withholding-Only Proceedings May Be Outcome-Determinative in Some Cases

Conscientious immigration judges attempt to overcome these challenges by taking time to ensure

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[18] One recent study study found that 54% of adult detainees were transferred at least once during their detention and more than a quarter were transferred multiple times. *See* Emily Ryo & Ian Peacock, *A National Study of Immigration Detention in the United States*, 92 Southern California L. Rev. 1, 39 (2018).

[19] *See* Karen Tumlin et al., *A Broken System: Confidential Reports Reveal Failures in U.S. Immigration Detention Centers*, 41-42, 70 (2009), https://www.nilc.org/wp-content/uploads/2016/02/A-Broken-System-2009-07.pdf.

[20] *See, e.g.*, Peter L. Markowitz, *Barriers to Representation for Detained Immigrants Facing Deportation: Varick Street Detention Facility, A Case Study*, 78 Fordham L. Rev. 541, 559, 570 (2009).

that unrepresented detainees understand their rights and by working to develop a proper record for the BIA's review. As one immigration judge has written, conducting removal proceedings for *pro se* detainees "puts substantial pressure on the judge to ensure that available relief is thoroughly explored and the record fully developed."[21]

Despite IJs' best efforts, however, the well-documented disparity in outcomes in removal cases depending on detention status confirms that detention alone can often determine the substantive outcome of those proceedings.[22]

II. REQUIRING BOND HEARINGS BEFORE IMMIGRATION JUDGES WOULD MITIGATE THE HARMS OF PROLONGED DETENTION WHILE ACCOMPLISHING ITS LEGITIMATE PURPOSES

Bond hearings permit experienced judges to make informed judgments about the risk of flight and danger to the community from releasing particular noncitizens. These judgments are based on

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[21] *See* Noel Brennan, *A View From the Immigration Bench*, 78 Fordham L. Rev. 623, 626 (2009) ("However time-consuming, it is our duty to explain the law to *pro se* immigrants and to develop the record to ensure that any waiver of appeal or of a claim is knowing and intelligent.").

[22] *Cf.* Brennan, *supra*, at 624 (noting that, even in represented cases, if "the attorney fails to create a complete record including submitting documents that are essential to the case, the immigrant may lose, no matter how authentic his claim for asylum may be or how dire the consequences of deportation").

employment history, length of residence in the community, family ties, previous record of nonappearance at court proceedings, previous criminal or immigration law history, and other factors. *See In re Guerra*, 24 I&N Dec. 37, 40 (B.I,A. 2006).

IJs routinely make such assessments in removal proceedings that are not subject to mandatory detention. *See* 8 U.S.C. § 1226(a); 8 C.F.R. § 1003.19(c). Indeed, IJs completed more than 90,000 bond hearings in 2018.[23]

Empirical studies confirm that immigration judges make these determinations effectively. For example, few noncitizens released on bond abscond. During fiscal year 2015, for example, over 85% of noncitizens released on bond appeared at their subsequent hearing, a higher rate than for those released on bond in criminal proceedings.[24] The proportion of detained noncitizens receiving bond hearings has increased substantially in the two decades since this Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001),

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[23] Dep't of Justice, Exec. Office for Immigr. Review, *supra*, at 5.

[24] *See* TRAC Immigr., *What Happens When Individuals Are Released on Bond in Immigration Court Proceedings?* (Sept. 14, 2016), https://trac.syr.edu/immigration/reports/438/; Will Dobbie et al., *The Effects of PreTrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, 108 AM. ECON. REV. 201, 214 (2018), https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.20161503

from about one-in-five to about one-in-two.[25] The number of noncitizens released on bond has increased accordingly.[26] "Court records so far demonstrate that the practical result of the release of increasing numbers of individuals on bond has not resulted in any significant increase in those who abscond and fail to show up for their immigration hearings," and trends, "if anything, show declines."[27]

There is no reason to believe that noncitizens pursuing withholding of removal would pose a greater risk of flight. The law rightly recognizes that those "with a greater likelihood of being granted relief [have] a stronger motivation to appear for a deportation hearing than [those] who * * * ha[ve] less potential of being granted such relief." *In re Andrade*, 19 I. & N. Dec. 488, 490 (B.I.A. 1987). This is the principle underlying mandatory detention under Section 1231(a): in the typical case, once a noncitizen is subject to a final removal order, he or she will be deported within 90 days and, if released from detention, has little to lose by absconding. The same is not true of applicants for withholding or deferral of removal. They have a strong interest in diligently pursuing their cases to obtain relief from removal, so that they can remain in the United States legally. To do so, they must appear at their scheduled hearings.

Any decision to release a detainee can also be made subject to appropriate conditions of release, which help minimize the already small risk of flight. Moreover, any order releasing an applicant for

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[25] *See* TRAC Immigr., *supra*.
[26] *See ibid.*
[27] *Ibid.*

withholding on bond would be subject to multiple levels of review: First, any ruling releasing a detainee would be subject to review by the BIA and could be stayed pending that review. 8 C.F.R. § 1003.1(b). Second, if the BIA authorizes release, DHS can request further review from the Attorney General. 8 C.F.R. § 1003.1(h).

III. REQUIRING BOND HEARINGS FOR NON-CITIZENS DETAINED MORE THAN SIX MONTHS DURING WITHHOLDING-ONLY CASES WOULD NOT IMPOSE A SIGNIFICANT ADDITIONAL BURDEN ON IMMIGRATION JUDGES

Requiring individualized bond hearings for those detained more than six months during withholding-only proceedings would not impose any meaningful additional burden on immigration judges. Indeed, the number of additional bond hearings required would be miniscule in relation to a typical IJ's overall docket. There are approximately 400 IJs in the immigration courts. In 2018—the most recent year for which statistics are available—they presided over more than 500,000 cases, including more than 90,000 bond hearings.[28] Thus, each IJ presides over more than a thousand cases each year, including hundreds of bond hearings. By contrast, only 3,000 withholding-only proceedings were initiated in 2018. The Ninth Circuit's decision would require bond hearings only in those withholding-only cases resulting in detention for more than six months. The practical consequence of the Ninth Circuit's rule would thus be only a

[28] Dep't of Justice, Exec. Office for Immigr. Review, *supra*, at 9.

handful of additional bond hearings *annually* for each IJ.

In addition, those bond hearings would be subject to streamlined proceedings. IJs can hold bond hearings in conjunction with other scheduled hearings in ongoing cases and can make bond determinations based on a written record or by telephone. *See* 8 C.F.R. § 1003.19. These procedures would substantially mitigate the already small additional burden from requiring bond hearings for noncitizens detained more than six months during withholding-only proceedings.

CONCLUSION

The Court should affirm the decisions below.

Respectfully submitted,

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