

No. 25-363

IN THE
Supreme Court of the United States

VICTOR MANUEL CASTRO-ALEMAN,
A/K/A/ ALFREDO QUINONEZ OLMO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT

**BRIEF FOR *AMICI CURIAE*
THE GEORGE WASHINGTON UNIVERSITY LAW
SCHOOL IMMIGRATION CLINIC
IN SUPPORT OF PETITIONER**

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INTEREST OF THE *AMICUS CURIAE*¹

Amicus curiae is the George Washington University Law School Immigration Clinic. Established in 1979, the George Washington University Law School (“GW Law”) Immigration Clinic is an experiential and academic course for second- and third-year law students seeking to work with real clients and learn the practice of immigration law. In turn, clients are provided with pro bono representation and access to resources, like interpreters, that are financed by GW Law. The GW Law Immigration Clinic has been recognized locally and nationally for its caliber of representation, even winning awards. *Amicus* is under the direction of Paulina Vera, Distinguished Professorial Lecturer in Law and Director of the Immigration Clinic at the George Washington University Law School.

Amicus advocates on behalf of non-citizens facing removal proceedings, particularly in the Sterling, Annandale, Hyattsville, and Baltimore Immigration Courts. Additionally, *amicus* focuses on serving individuals seeking humanitarian relief, including asylum. *Amicus* has a particular interest in ensuring that noncitizens entering proceedings before an Immigration Judge (“IJ”) receive the Due Process that they are guaranteed by the United States Constitution. To that end, *amicus* believes that the Due Process Clause of the Fifth Amendment requires IJs to inform non-citizens of

¹ Pursuant to Rule 37.6, *amicus* state that no party, counsel for any party, or any person other than *amicus*’ counsel authored this brief in whole or in part or made any monetary contribution for its preparation or submission. Pursuant to Rule 37.2, *amicus* sent a timely notice of intent to file to Petitioner. Although *amicus* sent an untimely notice of intent to file to Respondent, Respondent indicated in writing that it does not object to this filing.

the discretionary relief available to them in immigration court.

SUMMARY OF ARGUMENT

Pursuant to Supreme Court Rule 37, the GW Law Immigration Clinic respectfully submits this *amicus curiae* brief in support of the petition for a writ of certiorari. *Amicus* advances two points to demonstrate why the Due Process Clause should be construed to mandate an IJ's duty to inform *pro se* respondents in immigration court of their options for discretionary relief. First, *amicus* showcases a diverse representation of its pro bono clients to underscore the procedural complexities they have faced that served as barriers to their presenting otherwise meritorious asylum claims. Second, *amicus* spotlights the *Mendez Rojas v. Wolf* class action settlement to illustrate how the Due Process Clause imposes a duty on immigration officials to provide adequate notice to asylum seekers outside the court context.

Accordingly, this Court should grant the petition and reverse the Fourth Circuit's decision.

ARGUMENT

Petitioner Victor Manuel Castro-Aleman was denied the opportunity to apply for asylum due to the IJ's failure to inform him of his ability to do so. As Petitioner explains, there is a split of authority on whether the failure to inform a noncitizen of asylum amounts to a due process violation. *Amicus* urges this Court to (i) grant review and (ii) find that the failure amounts to a due process violation.

I. Seeking Asylum is a Complicated Experience with Measurable Variance That Can Be Mitigated by an Immigration Judge's Affirmative Duty to Offer Adequate Notice.

Amicus knows all too well the complexities surrounding an application for asylum. With over 45 years of institutional knowledge, the GW Law Immigration Clinic has successfully secured asylum on behalf of hundreds of individuals who fled persecution from across the globe. Each client who has sought assistance from the clinic comes with their own unique—but not entirely uncommon—experiences dealing with immigration agencies. Below, *amicus* highlights the stories of recent clients to demonstrate their perseverance vis-à-vis a system in desperate need of updated due process safeguards.²

A. Venezuelan National

A Venezuelan mother and her son entered the United States. The husband and father, also a Venezuelan national, had entered the country a few weeks prior. The family sought asylum in the United States due to the persecution they faced back in Venezuela. The mother and father opposed the regime of President Nicolás Maduro and expressed their political opinion through public protests. As a result, government-affiliated agents and paramilitary officers threatened to kill the family on numerous occasions. Cognizant of the Maduro regime's capability to carry out its threats against opposition activists, the family fled to the United States and entered on tourist visas.

² *Amicus* has received written consent from former clients who agreed to have their stories shared here. These individuals no longer have an active asylum case before the federal government.

The procedural history of the Venezuelan family's asylum case reflects the complicated nature of the United States immigration system. The father filed an asylum application on behalf of his family with USCIS, but it was rejected for lack of jurisdiction. The family then sought the assistance of the GW Law Immigration Clinic. Even with the clinic's help, the immigration court rejected their asylum applications because the Notices to Appear for the father and son were never filed with the court. Finally, the clinic refiled the asylum application with the mother as the primary applicant. The IJ accepted the asylum application, even though it was filed after the one-year deadline, due to the extraordinary circumstances surrounding the technicalities of jurisdiction. Eventually, the IJ granted the mother asylum, which allowed for her son and husband to pursue derivative asylum status. Sadly, the mother has since passed away from breast cancer, but her son and husband are now in the process of applying for green cards based on the asylum grant. Were the family to remain *pro se*, they would have faced an uphill battle in properly filing an asylum application—especially without guidance from the IJ. The clinic's diligence in helping the family re-apply for asylum at each step of the way likely had a strong impact in the success of their case.

B. Sierra Leonean National

A man from Sierra Leone was at the wrong place at the wrong time when soldiers from his country detained him and a few others and accused them of being members of rebel groups. For about two weeks, the soldiers tortured him, including burning him with cigarettes. This man also suffers from many health problems, including renal failure, HIV, hepatitis, and blood clots. With the help of the GW Law Immigration

Clinic, this man was ultimately granted humanitarian asylum. Humanitarian asylum is a discretionary form of relief that accounts for past persecution, but instead of finding a well-founded fear of future persecution, considers a reasonable possibility of other serious harm being suffered in the future. The other serious harm does not need to be related to the initial persecution and can include civil strife, extreme economic deprivation, and additional physical and mental harm. In this case, the Immigration Judge found that due to this man's medical issues and the lack of access to life-saving dialysis and medications in Sierra Leone, he would face other serious harm in his country of origin. This man has since become a U.S. citizen, again with the assistance of the GW Law Immigration Clinic.

His circumstances demonstrate how important it is for an IJ to inform noncitizens of their potential forms of discretionary relief. He is the beneficiary of a very specific and underutilized type of asylum. Without notice, survivors like him may never discover that the law affords them a form of protection. He was fortunate to find the GW Law Immigration Clinic and fortunate that the Clinic happened to be taking new clients at the time. Others in his position may not be as fortunate to find legal aid. This man's story highlights how access to discretionary relief and protection should not depend on chance encounters or the availability of pro bono representation, but on the fundamental fairness that due process requires.

C. Honduran National

A woman from Honduras entered the United States with her son. In Honduras, she raised her son as a single mother and did everything possible to provide for her son. One afternoon, while working, she had an encounter with an MS-13 gang member who informed

her that her son had been recruited to deliver drugs. She threatened to report the gang member to the police if they did not leave her son alone. The gang member threatened to kill her if she went to the police. A week later, the gang member forced his way into her home where she verbally and physically attacked. The gang member held a gun to her head and threatened to kill her and her son if she went to the police. She knew that the police officers would not be able to help her because of the close connection between gang members and police officers in Honduras. Fearing for her life, she and her son left Honduras and made their way to the United States.

With the help of GW Law's Immigration Clinic, the woman was able to apply for asylum and list her son as a derivative. The Clinic assisted her in filing her asylum application within the one-year deadline. She had her individual hearing where she presented the merits of her case. She was granted asylum, along with her son.

Without the assistance of the GW Law Immigration Clinic, this woman and her son likely would not have known that asylum was a form of discretionary relief available to them, or that they were required to apply within one year of entering the United States. Immigration proceedings are exceedingly complex and especially when navigated without counsel. This is why it is crucial that IJ's inform noncitizens of the potential avenues for discretionary relief that are available to them. When judges fail to do so, a noncitizen's opportunity for lifesaving protection depends on chance rather than on the law or fairness that Due Process requires.

D. Salvadoran National A

A Salvadoran woman entered without inspection near the U.S.-Mexico border. The Department of Homeland Security placed her in removal proceedings, during which she sought asylum based on the harm she suffered back in El Salvador.

Back in her home country, this woman suffered sexual, emotional, and physical abuse at the hands of three men. The first man was her own father, who beat her with his own hands and whipped her with various objects like belts and wood. When she was only thirteen years old, he tried to coerce her into having sex with him. Even when she reported her father to the authorities, his case ended up dismissed. Her father's incessant abuse led this woman to flee her household. On her own, this woman encountered her sister's ex-boyfriend, a sergeant in the Salvadoran army. One day, the sergeant drugged this woman and raped her, later explaining that it was because she looked like her sister. The sergeant threatened her not to report the rape because he had powerful connections in the government. Lastly, this woman was abused by her ex-partner, the father of her son. When she was pregnant with their son, her ex-partner attacked her belly and said he did not want to be with her. Her ex-partner also had ties with gangs and threatened to kidnap their son after he was born.

The compounding harms to this Salvadoran woman pushed her to seek asylum in the United States. The legal complexity of her asylum claim meant that her case spanned across two different presidential administrations. Her case entailed several appeals to appellate courts and several remands to the trial court. It highlights the importance of deadlines in a labyrinthine process in which a *pro se* respondent might

otherwise be lost. Given how difficult it is to navigate this process, the Salvadoran woman could not have possibly known about how to properly apply for asylum, let alone her right to appeal an adverse decision several times. The woman ultimately won asylum for herself and her son after years of perseverance and proper guidance from *amicus*.

E. Salvadoran National B

A woman from El Salvador and her two children were detained by U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement following entry without inspection. All three were then placed in removal proceedings.

This woman graduated from the police academy and shortly entered onto duty in El Salvador. After a few years of working as a police officer, she began to have problems with local gangs including MS-13. Gang members approached her eldest son in an attempt to recruit him. Fearing for his life, she sent her son to the United States to live with a family member. A year later, a police raid was conducted against MS-13 by the woman's police department. Although she was not involved in the raid, she and her two other children began to receive constant death threats by MS-13 members. Due to the constant death threats and fearing for her life, she and her two children left El Salvador and made their way to the United States. In El Salvador, active police officers face significant risks in the exercise of their job and are often targets of gang violence, and the woman even had superiors in the police force tell her that she was not safe in El Salvador as long as she was on the gang's radar.

With the help of GW Law's Immigration Clinic, the woman was able to apply for the discretionary relief of asylum and include her two children as derivatives.

The Clinic assisted her in filing her asylum application within the one-year deadline. Two years later, she had her individual hearing where she presented the merits of her case. She was granted asylum along with her two children, and after her grant, her eldest son obtained derivative asylum through her approved I-730 petition. She, along with her two sons she entered with, are now green-card holders based on the grant of asylum.

This outcome, however, was a result of her finding legal assistance. Had she not found the Clinic, she likely would have not known that asylum was a form of relief available to her or the need to file an asylum application within one year of entering the United States. If an IJ fails to inform a noncitizen of the potential avenues for discretionary relief, that noncitizen's fate will depend on chance rather than on the fair and informed process that the Fifth Amendment guarantees. Her case shows why due process requires that IJs inform noncitizens of avenues for discretionary relief such as asylum, so that lifesaving relief is not left to chance.

II. The Due Process Clause Already Requires Adequate Notice of the Asylum Process Outside Immigration Court.

The stories above illustrate clients who were able to apply for asylum or other forms of humanitarian protection. Each of these clients were fortunate to obtain legal assistance through the GW Law Immigration Clinic. However, there are millions of individuals who never receive that chance and remain unaware of the protections that the law affords them. According to data from Syracuse University's Transactional Records Access Clearinghouse ("TRAC"), over 3 million immigration cases are pending

nationwide, yet only about one third of individuals in proceedings are represented.³ This leaves roughly 2 million noncitizens to navigate the complicated process alone. Even so, the systemic due process issues born from non-citizens' lack of legal knowledge is not new. Federal courts have already acknowledged that failing to inform asylum seekers of critical information about their rights violates both the Immigration and Nationality Act and the Due Process Clause. *See Mendez Rojas v. Johnson*, 305 F.Supp.3d 1176 (W.D. Wash. 2018).

Mendez Rojas is a clear example that federal courts have recognized that due process requires immigration officials to provide meaningful notice and opportunity to apply for asylum. *Mendez Rojas* is a nationwide class action suit that addressed the U.S. Department of Homeland Security's ("DHS") failure to notify asylum seekers who were in their custody of the one-year filing deadline. *See Mendez Rojas*, 305 F.Supp.3d at 1176. The plaintiffs, who were asylum seekers, argued that the failure to inform them of the one-year deadline deprived them of a fair opportunity to seek asylum. *Id.* at 1180. On March 29, 2018, the District Court agreed, finding that DHS's failure to provide plaintiffs with notice of the one-year deadline violated the Administrative Procedure Act, the Immigration and Nationality Act, and the Due Process Clause of the Fifth Amendment. *Id.* at 1183, 1187–88. The parties eventually entered a final settlement agreement, and the District Court adopted it on November 4, 2020. *See Mendez Rojas v. Wolf*, No. 2:16-cv-01024-RSM (W.D. Wash. July 28, 2020), ECF No. 79-1. Pursuant to this agreement, the

³ See TRAC Reports, *Too Few Immigration Attorneys: Average Representation Rates Fall from 65% To 30%* (Jan. 24, 2024), <https://tracreports.org/reports/736/>.

government had to (1) provide appropriate notice of the one-year filing period to all asylum seekers; (2) create a uniform procedural mechanism to facilitate the timely filing of asylum applications; and (3) grant relief to certain asylum seekers harmed by the government's prior failure to provide such notice. *Id.* In sum, *Mendez Rojas* demonstrates the need for this Court to set a uniform rule in which federal agencies must appropriately inform noncitizens of the availability of discretionary relief and how to access it.

Due Process mandates that non-citizens on American soil are adequately notified of their statutory right to seek discretionary relief before a federal agency. As *Mendez Rojas* illustrates, the adequacy of such notice does not stop at the government's acknowledgment of pathways to relief—the government must also advise on nuances material to a non-citizen's decision to apply for relief. If a non-citizen is not made aware of the procedural prerequisites (or lack thereof) to pursuing a form of immigration relief, then he or she is functionally denied a full and fair opportunity to access the right to apply for such relief. The Due Process Clause's application in the immigration context should not depend on geographical or agency contexts. Whether a non-citizen is detained by DHS or before an IJ in court, he or she should be adequately informed by the government.

The aforementioned stories of GW Law Immigration Clinic clients are testaments to the need for such notice. Even though the *Mendez Rojas* settlement happened, the actual reality is that U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement still do not adequately inform people about asylum when they are apprehended at the Southern Border. Many of *amicus's* clients were not

inquired about their fear of returning to their home country when apprehended at the border. These realities make it that much more critical that IJs, especially given their legal training, fill in the gaps of due process.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

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