No. 25-2238

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RASHA ALAWIEH,

Petitioner-Appellant,

YARA CHEHAB, AS NEXT FRIEND OF RASHA ALAWIEH,

Petitioner,

v.

MARKWAYNE MULLIN, SECRETARY OF U.S. DEPARTMENT OF HOMELAND SECURITY ("DHS"); RODNEY S. SCOTT, IN THE OFFICIAL CAPACITY AS COMMISSIONER, U.S. CUSTOMS AND BORDER PROTECTION ("CBP"); TWEEDIE, OFFICER OF U.S. CUSTOMS AND BORDER PROTECTION AT THE BOSTON LOGAN INTERNATIONAL AIRPORT; KANE, OFFICER OF U.S. CUSTOMS AND BORDER PROTECTION AT THE BOSTON LOGAN INTERNATIONAL AIRPORT; CAROLINE R. TULLY, OFFICER OF U.S. CUSTOMS AND BORDER PROTECTION AT THE BOSTON LOGAN INTERNATIONAL AIRPORT; JOHN/JANE DOE, ACTING FIELD OFFICE DIRECTOR OF THE BOSTON FIELD OFFICE OF U.S. CUSTOMS AND BORDER PROTECTION; TODD BLANCHE, ACTING ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE,

Respondents-Appellees.

MARCO RUBIO, U.S. SECRETARY OF STATE; JOHN DOE, FIELD DIRECTOR, CBP, BOSTON FIELD OFFICE,

Respondents.

On Appeal from the United States District Court for the District of Massachusetts in Case No. 1:25-cv-10614-LTS, Judge Leo T. Sorokin.

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE AMERICAN IMMIGRATION COUNCIL, AMERICAN IMMIGRATION LAWYERS ASSOCIATION, CREATING LAW ENFORCEMENT ACCOUNTABILITY & RESPONSIBILITY, THE NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD, THE NATIONAL IMMIGRATION LAW CENTER, AND VAN DER HOUT LLP IN SUPPORT OF APPELLANT AND REVERSAL

June 4, 2026

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Pursuant to Federal Rule of Appellate Procedure 29, the American Immigration Council (the "Council"), American Immigration Lawyers Association ("AILA"), Creating Law Enforcement Accountability & Responsibility ("CLEAR"), the National Immigration Project of the National Lawyers Guild ("National Immigration Project"), the National Immigration Law Center ("NILC"), and Van Der Hout LLP respectfully move for leave to file a brief as *amici curiae* in support of Petitioner-Appellant and reversal. The proposed amicus brief is attached. Petitioner-Appellant has consented to *amici*'s motion. Defendant-Appellee has not stated a position. Accordingly, *amici* respectfully submit this motion for leave.[1]

The Council is a nonprofit organization that advances U.S. immigration policy through research, advocacy, and legal efforts rooted in fairness and compassion. It provides free legal services to immigrants, including those in detention or facing removal, and actively litigates and participates as *amicus curiae* in appellate and Supreme Court cases on immigration detention, removal, and judicial review.

AILA is a national, nonpartisan nonprofit with over 16,000 attorneys and law professors specializing in immigration law. It promotes fair immigration policies and high-quality legal practice, and its members regularly appear before immigration

[1] No counsel for a party authored the amicus brief in whole or in part, and no person or entity, aside from *amici curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of the brief.

agencies, courts, and federal courts, with AILA frequently participating as *amicus curiae* in appellate and Supreme Court cases.

CLEAR is a legal advocacy organization that represents and advises individuals and groups affected by national security and counterterrorism policies, particularly where government scrutiny targets their beliefs or associations. It challenges unconstitutional surveillance, discriminatory enforcement, and abuses of governmental power.

National Immigration Project is a nonprofit membership organization of legal practitioners and advocates dedicated to defending immigrants' rights and promoting fair immigration laws. It provides representation, counseling, and training in immigration and related criminal matters, with a particular focus on policies that disproportionately affect Black, African, Middle Eastern, Muslim, and South Asian communities.

NILC is a nonprofit organization that advocates for low-income immigrants and their families by promoting access to justice and protection against unlawful government practices through litigation, policy advocacy, and community education.

Van Der Hout LLP is a full-scope immigration and nationality practice committed to advancing the rights of immigrants.

The proposed brief from *amici curiae* offers a unique perspective informed by *amici*'s extensive experience and expertise in immigration law based on their work providing legal services to noncitizens, advising on immigration policies and practices, and advocating for the fair and just administration of immigration laws. *Amici* are organizations comprised of members, practitioners, and advocates whose efforts span across the United States. For example, AILA alone comprises more than 16,000 members across 39 regional chapters and brings over 75 years of experience in the immigration field. Furthermore, *amici* regularly participate as *amici* curiae in high-profile cases involving issues of immigration law. *See, e.g.*, *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2025) (AIC and AILA participating as *amici* curiae); *Farhane v. United States*, 121 F.4th 353 (2d Cir. 2024) (CLEAR participating as *amici* curiae); *Bouarfa v. Mayorkas*, 604 U.S. 6 (2024) (Van Der Hout LLP participating as *amici curiae*); *Lee v. U.S.*, 582 U.S. 357 (2017) (National Immigration Project participating as *amici* curiae); *Mayorkas v. Innovation L. Lab*, 141 S. Ct. 2842 (2021) (NILC participating as *amici* curiae).

In this case, *amici*'s participation is particularly relevant because *amici* have clients and stakeholders who are directly impacted by the lower court's ruling, which, if affirmed, would signify that an immigration officer's removal of a noncitizen pursuant to an expedited order of removal could moot a noncitizen's petition for habeas corpus to challenge that removal, as authorized under 8 U.S.C.

§ 1252(e)(2), rendering that statute a dead letter. *Amici*'s proposed amicus brief intends to argue that such a ruling would contravene Congress's statutory scheme, insulate expedited removal orders from independent review, and exacerbate the grave consequences stemming from expedited removal.

Furthermore, the proposed brief will assist the Court in deciding this appeal by highlighting the stakes that follow from the lack of meaningful habeas review against the backdrop of today's expanded expedited removal regime. In particular, the proposed brief uses real-world stories to highlight three main consequences: (i) the risk for potential abuse due to the coercive and rapid environment of expedited removal; (ii) the heightened likelihood of an immigration officer making a grave error that may, in practice, be irreversible; and (iii) the life-altering impacts that unreviewed expedited removal can have on noncitizens, their families, and their communities due to the five-year inadmissibility bar and other downstream effects from expedited removal. These consequences underscore the need for habeas review to be made meaningfully available—and not mooted upon removal—for noncitizens who seek to challenge their unlawful expedited removal orders pursuant to 8 U.S.C. § 1252(e)(2).

For the foregoing reasons, the Court should grant leave to file the attached brief as *amici curiae* and accept for filing the proposed amicus brief for the Council,

AILA, CLEAR, the National Immigration Project, NILC, and Van Der Hout LLP in support of Petitioner-Appellant and reversal.

Respectfully submitted,

/s/ *Christina Luo*
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June 4, 2026

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing Motion For Leave to File Brief Of Amici Curiae American Immigration Council, American Immigration Lawyers Association, Creating Law Enforcement Accountability & Responsibility, the National Immigration Project of the National Lawyers Guild, the National Immigration Law Center, and Van Der Hout LLP in Support of Appellant and Reversal with the Clerk of the United States Court of Appeals for the First Circuit via the CM/ECF system this 4th day of June, 2026 to be served on all counsel of record via ECF.

/s/ *Christina Luo*

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CORPORATE DISCLOSURE STATEMENT

American Immigration Council (the "Council"), American Immigration Lawyers Association ("AILA"), Creating Law Enforcement Accountability & Responsibility ("CLEAR"), the National Immigration Project of the National Lawyers Guild ("National Immigration Project"), and the National Immigration Law Center ("NILC") state that they are tax-exempt non-profit organizations. The Council, AILA, CLEAR, the National Immigration Project, NILC, and Van Der Hout LLP have no parent corporations and no publicly held company has 10% or greater ownership in the Council, AILA, CLEAR, the National Immigration Project, NILC, or Van Der Hout LLP.

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STATEMENT OF INTEREST OF AMICI CURIAE[1]

American Immigration Council (the "Council") is a non-profit organization that strives to strengthen the United States by shaping immigration policies and practices through innovative programs, cutting-edge research, and strategic legal and advocacy efforts grounded in evidence, compassion, justice and fairness. In addition to providing free legal services for immigrants, including those facing removal, those in ICE detention, and those seeking asylum in the United States, the Council regularly litigates and advocates around issues involving immigration detention, removal, and judicial review and has appeared as amicus curiae before the U.S. Courts of Appeals and the U.S. Supreme Court.

The American Immigration Lawyers Association ("AILA"), founded in 1946, is a national, nonpartisan, nonprofit association with more than 16,000 members throughout the United States and abroad, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to promote justice, advocate for fair and reasonable immigration law and policy, and advance the quality of immigration and nationality law and practice. AILA's members practice regularly before the Department of Homeland Security, immigration courts, and the Board of Immigration Appeals, as well as before the

[1] No counsel for a party authored this brief in whole or in part, and no person or entity, aside from amici curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

federal courts. AILA has participated as amicus curiae in numerous cases before the U.S. Courts of Appeals and the U.S. Supreme Court.

Creating Law Enforcement Accountability & Responsibility ("CLEAR") represents and advises community and movement members on a vast set of issues that arise in connection to government policies and practices deployed under the guise of "national security" and "counterterrorism." We represent individuals and organizations facing investigation, prosecution, or other forms of government scrutiny that are tied to their beliefs, associations, or advocacy. Our cases challenge unconstitutional surveillance, discriminatory enforcement, and abuses of power.

The National Immigration Project of the National Lawyers Guild (d/b/a/ National Immigration Project) is a non-profit membership organization comprised of immigration attorneys, legal workers, jailhouse lawyers, grassroots advocates, and others working to defend immigrants' rights and to secure a fair administration of immigration laws. The National Immigration Project has extensive experience in immigration law, is involved in counseling and representing immigrants in removal proceedings, counseling immigrants and their attorneys in the criminal justice system, and training others for such representation and counseling. The National Immigration Project is especially concerned with immigration policies that disproportionately impact Black, African, Middle Eastern, Muslim, and South Asian ("BAMEMSA") communities. It has a direct interest in addressing the

government's use of expedited processing and sweeping immigration bans and prolonged administrative processing to discriminatorily target BAMEMSA community members.

The National Immigration Law Center ("NILC") is a non-profit organization dedicated to advancing the rights and opportunities of low-income immigrants and their families. NILC works to ensure that immigrant communities have access to justice and are protected against unlawful practices and governmental overreach. NILC has a long history of advocating for fairness in the immigration system through litigation, policy advocacy, and community education.

Van Der Hout LLP is a full-scope immigration and nationality practice committed to advancing the rights of immigrants.

SUMMARY OF THE ARGUMENT

Amici submit this brief in support of Petitioner-Appellant's argument that a petition for habeas corpus ("habeas petition") challenging an expedited order of removal pursuant to 8 U.S.C. § 1252(e)(2) does not become moot upon a noncitizen's removal. As Petitioner-Appellant explains, such a ruling would contravene Congress's statutory scheme, insulate expedited removal orders from independent review, and exacerbate the grave consequences stemming from these orders. Affirming the district court's finding would permit U.S. Immigration and Customs Enforcement ("ICE") and U.S. Customs and Border Protection ("CBP"),

in almost all cases, to moot a noncitizen's habeas petition by fast-tracking their removal before a court could hear their claims—or even after a court hears their claims, but purportedly before the agency receives notice of the court's order, as in Petitioner-Appellant's case. In effect, affirming the lower court's ruling would make it practically impossible for noncitizens to challenge their expedited removal orders as Congress authorized under 8 U.S.C. § 1252(e)(2). In other words, so long as ICE or CBP can act swiftly to effectuate a noncitizen's expedited removal before the noncitizen has the opportunity to file a habeas petition and obtain a stay or court order on the merits of that petition, the habeas review protected by § 1252(e)(2) becomes a dead letter. Such a scheme cannot be what Congress intended.

Amici submit this brief to highlight three points significant to the issues before the Court. First, expedited removals are now a major component of immigration enforcement and account for more than 50% of all removals.[2] The expansion of expedited removal orders, well beyond their initial scope, has significantly exacerbated the profound, practical consequences expedited removal can have on individuals' lives and their communities. Second, habeas review under § 1252(e)(2) plays a critical role in allowing noncitizens to challenge expedited removal orders,

[2] U.S. Dep't of Homeland Sec., Off. of Homeland Sec. Stats., *Immigration Enforcement Actions: 2022*, 16 tbl. 6 (Nov. 2023), https://ohss.dhs.gov/sites/default/files/2024-03/2023_0818_plcy_enforcement_actions_fy2022.pdf.

as Congress authorized, and must remain meaningfully available to noncitizens for the statute to have effect. Third, as the real-world experiences of impacted individuals illustrate, the lack of habeas review to challenge erroneous and unlawful determinations, against the backdrop of an expanded expedited removal regime, have posed life-altering consequences for noncitizens affected by expedited removal.

As Petitioner-Appellant's case illustrates, such accelerated, unanticipated expedited removal orders have ripple effects that reach far beyond the individuals who are removed, often uprooting families (which can include U.S. citizen children, spouses, and relatives), disrupting employers who are left struggling to deal with sudden staff absences, and destabilizing their larger communities in the United States. In effect, the expanded scope of expedited removal—as well as its very nature as an accelerated process to determine inadmissibility—exacerbates the challenges of having limited meaningful opportunity to seek judicial review afforded by § 1252(e)(2).

All told, these factors effectively bestow low-level, unappointed immigration officers with unchecked authority to remove noncitizens before they can challenge their expedited removal, leaving noncitizens subjected to expedited removal with few to no safeguards despite the habeas review expressly authorized under § 1252(e)(2) to challenge such removal. *Amici* therefore submit this brief to explain

why habeas review under § 1252(e)(2) must be given meaning and protected from easy bypass procedures, and to support Petitioner-Appellant's argument that the Court should reverse the district court's finding of mootness in her case.

ARGUMENT

I. THE SCOPE OF EXPEDITED REMOVAL HAS SIGNIFICANTLY EXPANDED BEYOND ITS ORIGINAL BORDER-CONTROL PURPOSE, IMPOSING DEVASTATING CONSEQUENCES ON NONCITIZENS DEPRIVED OF ANY MEANINGFUL OPPORTUNITY TO CHALLENGE REMOVAL

Congress originally created expedited removal as a specific mechanism intended to help streamline the processing of certain noncitizens who arrive at the border or ports of entry. However, subsequent expansions have extended its use far beyond those limits. The current administration now applies expedited removal regardless of an individual's proximity to the border and even when an individual has lengthy residence in the United States. Expedited removals have thus become a major component of immigration enforcement and have been transformed into a tool for mass deportation.

Congress first introduced expedited removal in 1996, when the legislature attempted to overhaul federal immigration laws by enacting the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). The primary purpose of IIRIRA was to "increase control over immigration" by addressing, among other things, what Congress perceived as a rise in visa overstays and unlawful entries into the United States. S. Rep. No. 104-249, at 2–3 (1996). Congress established

expedited removal procedures in IIRIRA specifically to help immigration officers accelerate the processing of newly arrived immigrants.

As originally designed, the expedited removal process involved immigration officers at the border or at ports of entry determining whether noncitizens fell into a narrow set of inadmissibility grounds, *i.e.*, whether they lacked valid entry documents or sought admission through fraud or misrepresentation. *See* 8 U.S.C. § 1225(b)(1)(A); *see also* Cong. Rsch. Serv., R45314, *Expedited Removal of Aliens: Legal Framework* at 7 (Oct. 8, 2019) ("This expedited removal process, codified in INA Section 235, does not apply to all arriving aliens who are believed inadmissible, but only to those who are inadmissible because they lack valid entry documents or have attempted to procure their admission through fraud or misrepresentation."). Under this framework, immigration officers could remove noncitizens they deemed inadmissible under an enumerated ground of § 1225(b)(1) without further administrative review and without review by an immigration judge.[3] *See id*. Noncitizens deemed inadmissible based on grounds other than those enumerated in § 1225(b)(1) received the procedural protection of an administrative hearing before

[3] Section 1225(b)(1) carves out one clear exception for noncitizens who "indicate[] either an intention to apply for asylum … or a fear of persecution," after which point the noncitizen undergoes an interview with an asylum officer, who is tasked with determining whether the noncitizen has a credible fear of persecution. If the officer makes a negative credible fear finding, the noncitizen may seek review of that decision by an immigration judge. *See* 8 U.S.C. § 1225(b)(1).

an immigration judge. *See* 8 U.S.C. §§ 1225(b)(2)(A), 1229(a).

Since the inception of expedited removal, however, DHS has continued to designate additional categories of noncitizens subject to this process. In doing so, it has substantially expanded expedited removal's scope to sweep in an increasing number of noncitizens, including those already present within the United States. *See* 8 U.S.C. § 1225(b)(1)(A)(iii). In 2002, for example, DHS extended expedited removal to apply to certain noncitizens arriving by sea. *See* 67 Fed. Reg. 68,924 (Nov. 13, 2002). Then in 2004, the agency further expanded it to apply to noncitizens encountered within 100 miles of the border—instead of ***at*** the border or ports of entry—if they were apprehended within 14 days of entry. *See* 69 Fed. Reg. 48,877 (Aug. 11, 2004).

In 2019, the first Trump administration lifted all geographic restrictions on expedited removal. *See* 84 Fed. Reg. 35,409 (July 23, 2019) (expanding expedited removal nationwide to noncitizens who had (1) not been admitted or paroled into the United States or (2) could not demonstrate two years of continuous physical presence

in the United States).[4] Although the 2019 regulation was rescinded in 2022,[5] in January 2025, the Trump Administration reiterated its intention to use expedited removal to the broadest extent possible under the law. *See* 90 Fed. Reg. 8,139 (Jan. 24, 2025). As promulgated, the 2025 regulation provides that immigration officers may apply expedited removal to noncitizens "apprehended ***anywhere*** in the United States for ***up to two years after*** the [noncitizen] arrived in the United States," including where the noncitizen cannot "affirmatively show[], to the satisfaction of an immigration officer, that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility." *Id.* at 8,139 (emphasis added). The 2025 regulation once again jettisons both the geographical and durational limitations historically applied to expedited removal.[6]

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[4] In 2019, a district court issued a preliminary injunction blocking DHS's attempt to expand expedited removal authority. *See Make the Road N.Y. v. McAleenan*, 405 F. Supp. 3d 1, 72 (D.D.C. 2019). After the case was reversed and remanded, the plaintiffs filed an amended complaint and second motion for preliminary injunction before the Biden Administration ultimately rescinded the expanded expedited removal policy. The case was then voluntarily dismissed.

[5] *See* 87 Fed. Reg. 16,022 (Mar. 21, 2022) ("This Notice rescinds the July 23, 2019 Notice, *Designating Aliens for Expedited Removal*, which expanded to the maximum extent permitted by the Immigration and Nationality Act (INA) the application of expedited removal procedures to noncitizens not already covered by previous designations.").

[6] On August 29, 2025, a district court judge stayed the implementation of the 2025 expanded regulations after a lawsuit challenging the 2025 expansion of expedited removals was filed in the U.S. District Court for the District of Columbia. *See*

As a result of these cumulative expansions, expedited removal has now become a significant tool for immigration enforcement in the United States. In 2023, DHS reported that expedited removals comprised approximately 50% of all removals in the United States in 2022.[7] Although DHS no longer publishes comparable annual breakdowns, it recently reported that the number of noncitizens processed for expedited removal "tripled" following policy changes in 2024.[8] These expansions have thus transformed expedited removal from a limited border-screening tool into a broad enforcement mechanism capable of reaching noncitizens who were previously beyond its scope.

As *amici's* experience confirms, since the government promulgated the January 2025 regulation, it has followed through on its purported goal of deploying expedited removal in a sweeping range of circumstances—including many likely illegal ones. Beginning in May 2025, for example, ICE attorneys and enforcement officers began coordinating nationwide to arrest noncitizens subject to the newly

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Make the Road N.Y. v. Noem, No. 1:25-cv-00190-JMC, Dkt. 64 (D.D.C. Aug. 29, 2025). In a *per curiam* order in November 2025, a split D.C. Circuit panel largely denied the government's motion for an administrative stay of the lower court's order. *See Make the Road N.Y. v. Noem*, No. 25-5320 (D.C. Cir. Nov. 22, 2025). The case is currently pending after oral argument on the merits was heard before a three-judge panel on December 9, 2025.

[7] *Immigration Enforcement Actions: 2022*, *supra* n.2 at 16 tbl. 6.

[8] U.S. Customs & Border Prot., CBP Releases September 2024 Monthly Update (Oct. 22, 2024), https://www.cbp.gov/newsroom/national-media-release/cbp-releases-september-2024-monthly-update.

expanded interpretation of expedited removal at immigration courts and to dismiss their pending removal proceedings in order to place them in expedited removal—a legally dubious but difficult to contest practice.[9] Data obtained through a Freedom of Information Act request shows that oral dismissals by immigration judges increased by ***633%*** between May 19 and May 20 of 2025—when the coordinated effort apparently kicked into effect—highlighting the staggering magnitude of the government's use of expedited removal to effectuate its mass deportation campaign.[10] Thousands of noncitizens who had been living in the United States and had scheduled immigration court proceedings have now been abruptly channeled into fast-track deportation and unexpectedly deprived of those procedural safeguards.[11]

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[9] According to news reports, ICE circulated an internal memorandum on May 20, 2025, directing government prosecutors to coordinate with enforcement officers to facilitate arrests of noncitizens "amenable" to expedited removal. *See* Aleaziz et al., *How ICE Is Seeking to Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times (May 30, 2025), https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html.

[10] Khan & Opila, *ICE Attorneys Increasingly Request Case Dismissals at Immigration Court Hearings—and Immigration Judges Grant Them on the Spot*, Am. Immigr. Council (Oct. 7, 2025), https://www.americanimmigrationcouncil.org/blog/ice-attorneys-case-dismissals-immigration-court-hearings-judges-grant/.

[11] *See* National Immigration Project, *Practice Alert*: *Protecting Noncitizens from Expedited Removal and Immigration Court Arrests* (May 30, 2025), https://nipnlg.org/sites/default/files/2025-05/alert-protecting-noncitizens-er.pdf (describing leaked ICE email interpreting expedited removal statute more broadly).

These efforts have devastating consequences for noncitizens now suddenly vulnerable to expedited removal, as well as their families and communities. Although expedited removal was historically intended to target recently arrived noncitizens, *amici* are aware of numerous cases in which noncitizens who have built their lives in the United States for years, sometimes decades, are now at heightened risk of summary removal. This has been true for noncitizens who have valid visas, such as Petitioner-Appellant, and for those who are pursuing or who have successfully gained lawful status (for example, through marriage to a U.S. citizen), in part because expedited removal places the burden on the individual to establish—on the spot—lawful status, continuous physical presence in the country for more than two years, or a valid asylum claim.[12] Thus, if the noncitizen is unable to provide such proof during questioning—which can occur suddenly upon arrest or detention, without the presence of an attorney, and in circumstances of duress—then the ICE or CBP officer is authorized to issue an expedited order of removal and swiftly deport them.

[12] Chishti & Bush-Joseph, *Trump Administration's Expansion of Fast-Track Deportation Powers Is Transforming Immigration Enforcement*, Migration Policy Institute (Sept. 25, 2025), https://www.migrationpolicy.org/article/trump-expedited-removal (describing how unauthorized immigrants who have lived in the United States for long periods are at risk of being swept into expedited removal).

II. HABEAS REVIEW, THOUGH LIMITED, PROVIDES A CRITICAL PROTECTION AND SHOULD NOT BE MOOTED BY SWIFT REMOVAL

Congress provided limited access to procedural safeguards for noncitizens seeking to challenge expedited orders of removal by sharply circumscribing judicial review. *See* 8 U.S.C. §§ 1229a, 1252(a)(2)(A). But—importantly—Congress did not foreclose review entirely. It preserved an avenue for noncitizens to challenge their expedited removal orders through habeas petitions in certain circumstances. In particular, 8 U.S.C. § 1252(e)(2) expressly allows "[j]udicial review of any [expedited removal] determination" to be "available in habeas corpus proceedings," and limits its review to three issues:

> (a) whether the petitioner is an alien, (b) whether the petitioner was ordered removed under such section, and (c) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, such status not having been terminated, and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 1225(b)(1)(C) of this title.

8 U.S.C. § 1252(e)(2).

Because of this highly constrained avenue for judicial review, expedited removal strips noncitizens of the procedural safeguards that ordinarily accompany removal proceedings in immigration court. The statute does not entitle them to a hearing before an immigration judge—who is an appointed officer—and the expedited removal process affords them little to no rights during inspection. As

illustrated in the narratives described in this brief, noncitizens also often lack notice of the grounds of inadmissibility, an opportunity to respond to the government's allegations, or an ability to present evidence bearing on their lawful status, physical presence, or admissibility. The result is that officers may revoke the valid visa status of individuals, as in Petitioner-Appellant's case, or remove them based on untested factual determinations, without any meaningful opportunity to correct errors, obtain counsel, or secure review before officers execute the removal order.

As the lived experiences of numerous noncitizens illustrate, the expedited removal process—under which CBP or ICE officers may coercively interrogate noncitizens, make rapid inadmissibility determinations based on an immediate lack of evidence of continual presence or legal status, and swiftly deport them—creates nearly insurmountable barriers for individuals to seek judicial review. Allowing DHS to moot, through rapid removal, any habeas petition would render the habeas review Congress granted under § 1252(e)(2) entirely meaningless.

For example, in April 2021, Mr. Twalal Fuad Mohamed Rudainy, a Kenyan citizen, arrived at Chicago O'Hare International Airport with a valid immigrant visa based on his marriage to a United States citizen four years earlier.[13] Despite

[13] Several of the narratives in this brief come from public sources, such as other court cases. Citations are provided for those narratives. *See* Br. for Harvard Immigration and Refugee Clinical Program as Amici Curiae Supporting Appellant, *I.M.. v. U.S. Customs and Border Patrol*, No. 22-5071 (D.C. Cir. Aug. 3, 2022).

presenting his valid visa, CBP officers detained and questioned Mr. Rudainy for approximately eight hours. During that time, the officers confiscated and searched his cellphone before informing Mr. Rudainy that they were removing him for not having a "valid unexpired immigrant visa" under INA § 212(a)(7)(A)(i)(I). A more thorough inspection would have revealed that this determination was incorrect.

Despite the officer's clear error, Mr. Rudainy had no meaningful opportunity to challenge his removal. Because officials confiscated his cellphone and did not return it until he was seated on his return flight, he was unable to seek legal assistance. Unlike in Petitioner-Appellant's case, where her next friend was able to quickly file a habeas petition while she was in custody and was even able to secure an order from the district court immediately staying her removal,[14] officers in Mr. Rudainy's case did not serve him an expedited removal order until 30 minutes before removal. Mr. Rudainy was then allowed only a brief, five-minute phone call to inform his U.S. citizen wife. Under these circumstances, there was no realistic opportunity to hire or contact an attorney and file a habeas petition—let alone have it adjudicated—before officers could effectuate his removal.

[14] This is, of course, notwithstanding the fact that even though Petitioner-Appellant was able to file a habeas petition prior to removal, CBP nevertheless flouted the court's order by removing her despite the stay order, which under the lower court's ruling, successfully mooted the petition.

As another example, in July 2025, Ms. Mirta Amarilis Co Tupul—a 38-year-old resident of Phoenix, Arizona and a single mother of three U.S. citizen children—was stopped and detained by a CBP agent on her way to work. Ms. Co Tupul came to the United States at age nine and had lived in the United States for almost thirty years.[15] The CBP officer nearly removed her pursuant to an expedited removal order because she was unable to immediately produce proof of two years of continuous physical presence in the United States. Fortunately for her and her family, she was able to avoid a similar fate to Mr. Rudainy by rapidly obtaining legal counsel. Her attorneys intervened to move her into standard removal proceedings and out of the expedited removal framework.[16] Had Ms. Co Tupul not been lucky enough to secure legal counsel within the accelerated timeframe—and had her attorneys not intervened quickly—CBP officers likely would have expeditiously removed her, leaving behind her three children and thirty years of building a life in the United States.

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[15] Mordowanec, *Woman in U.S. for Nearly 3 Decades Arrested by ICE After Traffic Stop*, Newsweek (Aug. 15, 2025), https://www.newsweek.com/mother-arrested-ice-traffic-stop-2114061; *see also* Castillo, *ICE Walks Back Rapid Deportation of Longtime Immigrant Without Court Hearing*, L.A. Times (Aug. 14, 2025), https://www.latimes.com/politics/story/2025-08-14/ice-walks-back-rapid-deportation-of-longtime-immigrant-without-court-hearing.

[16] *See generally Co Tupul v. Noem*, No. 2:25-cv-02748-DJH (D. Ariz. Aug. 13, 2025); *see also* Mordowanec, *supra* n. 15 (describing sealed stipulation in which ICE agreed to place Ms. Co Tupul in non-expedited, Section 240 proceedings and further agreed in writing not to pursue expedited removal in her case).

However, as illustrated by Petitioner-Appellant's case, even obtaining counsel and filing a timely habeas petition can be insufficient if CBP could work an end-run around the habeas and moot the petition by removing the individual, as the lower court's ruling would provide. Habeas review must therefore remain meaningfully available for noncitizens faced with expedited removal—as Congress intended—rather than rendered irrelevant by an immigration officer's swift removal.

III. THE ACCELERATED NATURE OF EXPEDITED REMOVAL, COMBINED WITH ITS SWEEPING EXPANSION, UNDERMINES THE LIMITED JUDICIAL REVIEW AFFORDED BY § 1252(E)(2), CREATING DEVASTATING DOWNSTREAM CONSEQUENCES FOR AFFECTED NONCITIZENS

The consequences of today's expanded expedited removal regime are enormous. As more noncitizens, including those with significant ties to the United States, face sudden expedited removal, it is more imperative than ever to preserve the few remaining procedural safeguards that exist through § 1252(e)(2). Three significant consequences underscore the need for procedural safeguards: first, the risk for potential abuse inherent in the coercive and accelerated nature of expedited removal; second, the heightened likelihood of an immigration officer making a grave error; and third, the potentially life-altering ramifications of an unreviewed expedited removal, including a five-year reentry bar.

First, expedited removal proceeds so rapidly that noncitizens are frequently removed before a habeas petition can be filed, much less adjudicated. The very nature of expedited removal creates an atmosphere ripe for abuse. Not only do

subjected noncitizens have limited time to provide proof of their continuous residency or status, but this burden may be compounded by other factors, such as the stressful, coercive nature of being questioned by an immigration officer, family separation, language barriers, and a lack of access to legal representation.[17] Non-native English speakers, who are already under significant stress from being stopped, detained, or questioned by DHS officers, are at especially heightened risk of failing to fully understand secondary inspections and the accompanying questions by officers, including any demand to present proof of continuous presence and/or legal status.[18]

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[17] *See* Shepherd & Murray, *The Perils of Expedited Removal: How Fast-Track Deportations Jeopardize Asylum Seekers*, American Immigration Council (2017), https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_perils_of_expedited_removal_how_fast-track_deportations_jeopardize_detained_asylum_seekers.pdf (explaining that trauma, family separation, and lack of counsel for vulnerable populations, such as asylum seekers, to present their claims); *see also* National Immigration Forum, *Expanded Expedited Removal and Challenges to Due Process* (June 23, 2025) ("The administration's current application of expedited removal … sacrifices fairness for speed, increasing the risk of errors and unjust outcomes, a danger to citizens and noncitizens alike."); American Immigration Council, *Expedited Removal Explainer* (Feb. 20, 2025), https://www.americanimmigrationcouncil.org/fact-sheet/expedited-removal/ (explaining that because the expedited removal process often consists of "a single interview with the inspecting officer while the noncitizen is detained," there is "little or no opportunity to consult with an attorney or to gather any evidence that might prevent deportation").

[18] *See, e.g.*, *B.C. v. Attorney Gen. United States*, 12 F.4th 306, 315-316 (3d Cir. 2021) (in holding that petitioner was denied due process because the immigration court did not properly evaluate whether an interpreter was needed, the court

The lived experiences of individuals subjected to expedited removal illustrate the extent and immediacy of these harms and the potential for abuse. For example, around November 2023, a Palestinian family with two children,[19] one who is a U.S. citizen, came to the U.S. after fleeing the war in Gaza—but CBP officers immediately detained them upon their arrival at Dallas Fort Worth International Airport. Despite the family holding valid B1/B2 visas issued by a U.S. embassy, immigration officials separated the parents and questioned each aggressively, including asking extensive questions about conditions in Gaza, events following October 7, 2023, and whether they had encountered or possessed information regarding Hamas officials or affiliates. During his interrogation, the father explained that he was an ordinary civilian with no connection to Hamas, and that his family had been evacuated from northern Gaza in response to evacuation directives during the conflict.

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recognized that noncitizens may have difficulty understanding "American English," particularly under the stressful circumstances of entry, and may require an interpreter even if they nominally speak the same language).

[19] This case example is from a noncitizen who shared their story with CRCL via a complaint filed by their counsel. That complaint and relevant supporting documentation is on file with undersigned counsel. *Amici* have anonymized certain individual accounts to protect the privacy and safety of the affected individuals, many of whom face a credible risk of retaliation or other adverse consequences, including immigration-related harms, if identified publicly.

However, the officials attempted to bait the father, stating that his visa would be cancelled unless he could provide information about Hamas. When the father explained that he could not do so because he had no knowledge of Hamas activities, the officers carried through on their threat and cancelled his visa, informing him that he would not be admitted into the United States. Officers did not provide him with copies of the paperwork explaining the basis for the visa cancellation or for the denial of entry. The family, which was mixed-status, like many in this country, was subsequently issued expedited orders of removal and promptly removed. One parent was removed to Türkiye and the other was removed to Jordan. The minor child—a U.S. citizen—left with one parent to Türkiye, and the family later reunited in Egypt. Had the family not been so swiftly removed, they may have had time to file a habeas petition challenging their unlawful removal by unappointed immigration officers, as Petitioner-Appellant did—but even if they had been able to, under the district court's ruling below, any such petition would have been mooted upon their removal.

As another example, in June 2024, a Jordanian traveler with a valid B1/B2 visa arrived at JFK International Airport for a short vacation to the United States. Despite holding a valid visa, CBP officers took the traveler into secondary inspection and detained them for more than ten hours. CBP officers handcuffed the traveler, denied them an Arabic interpreter, and did not provide a meaningful explanation for the detention. Even though English was not the traveler's first language, CBP

officers interrogated the traveler extensively on topics ranging from political views to the nature of their charitable donations. After ten hours of questioning, CBP officers canceled the traveler's visa and declared that it had been "issued by accident." The traveler was also informed that refusal to withdraw the application for admission could result in a ten-year re-entry bar to the United States. Despite CBP's efforts, the traveler refused to sign any papers without an interpreter. CBP officers immediately placed the traveler on a return flight without any opportunity for legal recourse and removed them under an expedited removal order.

Second, the accelerated, coercive process also increases risk of error by immigration officers. Although the regulation provides for supervisory review of any expedited removal order issued by an immigration officer,[20] expedited removal in practice lacks meaningful oversight and vests extraordinary authority in individual, low-level, unappointed CBP and ICE officers to make rapid-fire determinations about admissibility—often based on limited information. And because Congress largely insulated these determinations from judicial review, individual officers effectively exercise dispositive authority in an accelerated process with little oversight, and with few meaningful avenues for correction where

[20] *See* 8 C.F.R. § 235.3(b)(7) ("Any removal order entered by an examining immigration officer pursuant to section 235(b)(1) of the Act must be reviewed and approved by the appropriate supervisor before the order is considered final.").

mistakes occur. The result is a system in which a single, low-level immigration officer's judgment can both decide and effectuate removal without meaningful oversight or accountability—despite the availability of habeas challenges through § 1252(e)(2).

Much like the experiences of Mr. Rudainy, whom officers removed for having failing to have a "valid unexpired immigrant visa" even though he did hold a valid visa, the experiences of R.E., an Iranian citizen, illustrate how habeas review can be frustrated in expedited removal scenarios.[21] On September 18, 2019, R.E. arrived at Boston Logan International Airport holding a valid F-1 student visa to attend the Harvard Divinity School on a full scholarship. After R.E. presented her valid documents, the officers detained R.E. for approximately eight hours and denied her access to her cellphone and to legal counsel. While in detention, the officers questioned her about her past employment, family ties to the United States, her siblings and their compulsory military service, her travel history, and her volunteer activities.

Ultimately, without any explanation, CBP officers placed her on a return flight to Iran. Only after her return to Iran did she learn that CBP deemed her inadmissible under INA § 212(a)(7)(A)(i)(I),[22] a provision invoked to expeditiously remove

[21] *See* Br. for Harvard Immigration and Refugee Clinical Program, *supra* n.13.

[22] Codified in 8 U.S.C. § 1182(a)(7)(A)(i)(I).

arriving noncitizens for lacking valid entry documents, even though she held a valid F-1 visa and passport. CBP justified the expedited removal on the grounds that R.E. allegedly failed to overcome the presumption of being an "intending immigrant." But because the agent did not disclose the basis for his inadmissibility determination and had confiscated her phone, CBP deprived R.E. of a meaningful opportunity to correct the officer's error, seek legal advice, and more importantly, to exercise her opportunity to invoke the habeas review Congress explicitly provided before she was summarily removed.[23]

Third, to make matters worse, these swift removal determinations by unappointed DHS officers can have life-altering consequences, as expedited removal results in a five-year re-entry bar. *See* 8 U.S.C. § 1182(a)(9)(A)(i) (providing that noncitizens removed under expedited removal are inadmissible to the United States for five years from the date of removal). A noncitizen with an expedited removal order is therefore unable to return to the United States for work, travel, or family for at least five years, uprooting them from their families (many of which may be mixed

[23] Although the habeas provisions in § 1252(e)(2) do not provide for judicial review of determinations about a petitioner's visa status, petitioners like R.E. and Mr. Rudainy would nevertheless be entitled to seek habeas review of their removal order by invoking similar arguments to those made by Petitioner-Appellant under § 1252(e)(2)(B), *i.e.,* that they were never "ordered removed" because the Appointments Clause prohibits unappointed immigration officers from having such authority.

status), careers, and communities. In the case of Petitioner-Appellant, CBP has now barred her from re-entering the United States for five years, even though she lawfully lived, studied, and worked in the United States since 2018 on valid J-1 and H-1B visas. *See* Br. for Petitioner-Appellant 4–5. Her removal has also left a gaping hole in the Rhode Island medical community, where Petitioner-Appellant was one of only three physicians in the state to specialize in kidney transplants. *Id.* at 4.

For R.E., the Iranian student who sought to pursue her doctorate at Harvard Divinity School, the consequences were also severe. CBP's actions caused R.E. to lose her opportunity to complete her education at Harvard on a fully funded scholarship.[24] Moreover, CBP barred her from reentering the United States for five years, a restriction that will continue to affect her future visa applications not only to the United States but potentially to other countries as well, as visa applications in other countries may ask whether the individual has ever overstayed, violated, or been denied a visa.

Faced with the potential to be barred from the United States for five years, some noncitizens in expedited removal proceedings have been coerced into "voluntarily" withdrawing their admission applications—which would not carry the five-year re-entry bar—in lieu of being issued an expedited order of removal,

[24] *See supra* n.21.

underscoring how significant the stakes are when an individual is subjected to expedited removal.[25] For example, in May 2024, a Palestinian traveler with a valid B1/B2 visa issued in their Palestinian Authority passport, arrived at Boston Logan International Airport, intending to sit for a professional dental examination required for advanced education and fellowship opportunities.[26] Despite presenting valid documentation, CBP officers detained the traveler and took them into secondary inspection for several hours at the airport.

CBP officers not only confiscated the traveler's phone, passport, and personal belongings, but also denied them the opportunity to seek legal assistance. The officers interrogated the traveler in English without providing an interpreter, despite the custodial and high-stakes circumstances. Following prolonged questioning, CBP

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[25] *See* Pérez-Peña et al., *Migrants Were Told to Sign Away Right to Enter U.S., Lawyers Say*, N.Y. Times (Jan. 30, 2017), https://www.nytimes.com/2017/01/30/us/migrants-documents-travel-ban.html (describing how immigration officers at ports of entry coerced noncitizens to "voluntarily" cancel their otherwise valid visas); *see also* Rainwater, *U.S. Customs and Border Protection Loses Airport Frog Incident Case Against Detained Traveler*, AOL (Apr. 11, 2026), https://www.aol.com/lifestyle/u-customs-border-protection-loses-125922792.html (reporting that a researcher arriving at Boston Logan International Airport on a valid visa was told she would not be admitted and was permitted to withdraw her application for admission in lieu of expedited removal after officers stated "the decision" regarding her admissibility "has been made").

[26] This case example is from a noncitizen who shared their story with CRCL via a complaint filed by their counsel. That complaint and relevant supporting documentation is on file with undersigned counsel.

officers presented the traveler with documents for signature. Without providing an adequate explanation that the documents represented the traveler's "voluntary" withdrawal of their application for admission, officers obtained the traveler's signature and immediately returned the traveler to Türkiye, where they held temporary student status. Facing immense pressure to sign papers for voluntary withdrawal of admission and without a realistic opportunity to seek legal counsel, the traveler ultimately acquiesced into signing documents to withdraw their admission.

A Palestinian family fleeing the ongoing war in Gaza suffered a similar experience in 2023.[27] After crossing the Rafah border with the help of the U.S. Task Force, a couple arrived at Dallas Fort Worth International Airport in November 2023 with their young children, one of whom is a United States citizen. Upon arrival at customs, the officers separated the parents and detained the children with their mother for over 24 hours. The officers confiscated the family's electronic devices and accused the family of intending to immigrate permanently. The officers then informed the mother and children that the father would be arrested if they sought asylum or insisted on entering the United States.

[27] This case example is from a noncitizen who shared their story with CRCL via a complaint filed by their counsel. That complaint and relevant supporting documentation is on file with undersigned counsel.

Ultimately, after hours of interrogation and detention, officers cancelled the family's visas and compelled them to sign voluntary withdrawal documents without any meaningful interpretation assistance. Following their compelled departure from the United States, the family struggled to secure lawful residency abroad and enroll their children in school. This experience exacerbated the instability and legal uncertainty they faced, even outside the United States.

As these narratives illustrate, "voluntary" withdrawal of applications for admission can still carry harsh collateral consequences even if the withdrawal does not trigger a five-year re-entry bar like expedited removal. Withdrawal of an application for admission remains on noncitizens' immigration records and thus causes them to face heightened scrutiny in future visa applications. Noncitizens forced to withdraw their applications are often subject to secondary inspection upon re-entry, complicating any future travel to the United States. And ultimately, if noncitizens had the ability to fully realize the benefits of the habeas relief available to them pursuant to § 1252(e)(2)—as Congress intended—they could avoid the coerced choice of withdrawing their applications for admission and instead challenge any legally defective expedited removal orders and the five-year reentry bar.

* * *

Taken together, these real-life stories illustrate the significant harm that expedited removal can have. These experiences echo those of Petitioner-Appellant and demonstrate how the speed of expedited removal can render habeas review largely illusory in practice. Even in cases involving clear factual or legal error, and even in circumstances like Petitioner-Appellant's where a habeas petition is properly filed while noncitizens are still in physical custody, it is impossible in most cases for habeas courts to adjudicate such petitions before DHS rapidly removes petitioners. Such noncitizens are thus unable to invoke the available judicial review Congress preserved, leaving errors in expedited removal orders effectively unreviewable. Courts must therefore give full effect to challenges under § 1252(e)(2) and must not treat them as moot after removal. Any other holding would allow expedited removal to operate in a manner largely insulated from procedural safeguards or oversight, extinguishing the only remaining avenue for judicial scrutiny of expedited removal orders.

CONCLUSION

For these reasons, and those set forth by Petitioner-Appellant, this Court should hold that removal does not moot habeas review under 8 U.S.C. § 1252(e)(2) and should reverse the judgment below.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i).

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(f), the brief contains 6,499 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14 point Times New Roman font. As permitted by Fed. R. App. P. 32(g), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

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CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing Brief for Amici Curiae American Immigration Council, American Immigration Lawyers Association, Creating Law Enforcement Accountability & Responsibility, the National Immigration Project of the National Lawyers Guild, the National Immigration Law Center, and Van Der Hout LLP with the Clerk of the United States Court of Appeals for the First Circuit via the CM/ECF system this 4th day of June, 2026 to be served on all counsel of record via ECF.

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