

**UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL**

MATTER OF M-S-,
Respondent

Referred from:
United States Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals
27 I&N Dec. 476 (A.G. 2018)

**BRIEF OF AMICI CURIAE MIJENTE, ET AL.
URGING VACATUR OF REFERRAL ORDER OR RECUSAL**

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INTRODUCTION AND SUMMARY OF ARGUMENT

The Attorney General has referred this case to himself under 8 C.F.R. § 1003.1(h)(1)(i). At issue in this case is the availability of a bond hearing before an Immigration Judge (IJ) for noncitizens screened into removal proceedings under section 235(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(1), 240, 8 U.S.C. § 1229a, following a positive credible fear determination. He seeks to overturn the Board's decision in *Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005), and force thousands of asylum seekers to languish in public and private detention facilities pending the outcome of their removal proceedings, forcing many to give up hope and be forced to return to the dangerous conditions from which they fled.

This move would permit the Executive to unilaterally expand mass incarceration, to the great profit of private detention facilities that donated to President Trump's campaign and which lobby the Trump Administration. It would raise an actual conflict of interest, or, at best, the appearance of such a conflict. It would continue to expose asylum seekers to widespread medical neglect, sexual assault, labor violations, solitary confinement, and other inhumane and degrading conditions. Because of his known animosity toward asylum-seekers, his vested financial interest in the expansion of mass incarceration, and his impulses towards totalitarian government, it would violate due process for Attorney General Sessions to decide this case.

INTEREST OF AMICI CURIAE¹

Over 50 immigrant rights organizations submit this brief. They are:

Mijente

Mijente is a digital and grassroots hub for Latinx and Chicanx movement building and organizing. We seek to increase the profile of policy issues that matter to Latinx communities and increase the participation of Latinx and Chicanx people in the broader movements for racial, economic, climate and gender justice.

¹ No party's counsel authored this brief in whole or in part; no party's counsel contributed money that was intended to fund the preparation or submission of this brief; and no person (other than amici curiae, their counsel, or their members) contributed money that was intended to fund the preparation of this brief.

Adelante Alabama Worker Center

Adelante Alabama Worker Center (“Adelante”) is a non-profit community organization based in Birmingham, Alabama that unites low-wage and immigrant workers and their families to defend their rights, promote their dignity, and pursue justice for all. Adelante engages in community education, organizing, media advocacy, and litigation to challenge workplace exploitation, detention and deportation, racial profiling and other unlawful practices that affect immigrant workers in Alabama. Adelante provides and coordinates pro bono legal representation for detained immigrants seeking release from detention in Alabama and Louisiana. Adelante is the anchor organization for the Shut Down Etowah campaign, a collective of civil and immigrants’ rights organizations and individuals working to expose human rights abuses at the Etowah County Detention Center in Gadsden, Alabama.

The Black Alliance for Just Immigration

The Black Alliance for Just Immigration (BAJI) believes that a thriving multiracial democracy requires racial, social and economic justice for all. African Americans and black immigrants are stronger together and they can win by becoming leaders in the fight against structural racism and systemic discrimination. BAJI was formed to bring Black voices together to advocate for equality and justice in their laws and their communities.

Black LGBTQ+ Migrant Project

Through leadership development, capacity building, and organizing, the Black LGBTQ+ Migrant Project (BLMP) addresses the ways in which our community is targeted by the criminal law and immigration enforcement system, and marginalized in the broader migrant community and movement.

Boston Immigration Justice Accompaniment Network / Beyond Bond Fund:

We are a network of faith communities, individuals and other activist groups working to provide mutual aid and support to those of us facing deportation and jail because of immigration status. We accompany people in court and at check-ins, raise money for bond, and try to reduce harm in the moment while fighting for a world of no jails, no borders and no walls. We honor people's dignity and choices in a system that denies dignity and choice; judge the system, not people and fight for one another as family, because we are.

Brooklyn Community Bail Fund:

The Brooklyn Community Bail Fund pays bail for New Yorkers who can’t afford even modest amounts, and who would be jailed or forced to plead guilty just to go home. In operation since 2015, BCBF is the largest charitable bail fund in the country and has made bail payments in excess of \$3,500,000 to secure the pretrial freedom of over 3,500 people. We work with allies here in New York and across the country in the fight to end the criminalization of race and poverty and all forms of wealth-based detention.

Casa San Jose, Pennsylvania

Casa San Jose is a community resource center that advocates and empowers Latinxs in Allegheny County by promoting self-sufficiency and thoughtful integration of communities. We are currently raising money for bond hearings at this moment. We have a network of volunteer attorneys that want to help folks that have been detained obtain a bond hearing. Our fund is to

help pay the attorney fees associated with requesting a bond hearing to help immigrants get through the financial burden of bond hearings that they would otherwise not afford or not receive any other help with. Many families are separated for long periods of time while they wait for court hearings, hence the continued separation of families. We're hoping that our bond will help our families be reunited, as we await and advocate for the end to family separation.

The Center for Constitutional Rights (“CCR”)

The Center for Constitutional Rights (“CCR”) is a national non-profit legal and educational organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and international human rights law. Founded in 1966, CCR has a long history of litigating cases on behalf of those with the fewest protections and least access to legal resources, including numerous landmark civil and human rights cases fighting for racial and immigrant justice, on behalf of those in civil immigration detention, and those seeking the right to apply for asylum. CCR’s recent work on behalf of immigrant communities includes litigation on behalf of individuals in civil immigration detention, see *Ziglar v. Abbasi*, Nos. 15-538, 15-539, 15-363, 582 U.S. ___, (2017) and *D.J.C.V. v. ICE*, No. 18-cv-9115 (AKH) (S.D.N.Y. Oct. 15, 2018), and those seeking to apply for asylum, see *Al Otro Lado, Inc. v. Nielsen*, No. 17-cv-02366, 327 F. Supp. 3d 1284 (S.D. Cal. 2018).

La ColectiVA, Virginia

La ColectiVA is an inclusive collaborative led by gente Latinx who are committed to upholding social justice and equity. By empowering our community and fostering leadership, we challenge norms of xenophobia, white supremacy, colonialism, and cis hetero-patriarchy. Our diverse membership builds bridges across movements that won’t stop till we are all free.

Colorado Freedom Fund :

The Colorado Freedom Fund (CFF) works to end money bond while restoring the presumption of innocence for people jailed only due to inability to afford bail. CFF posts primarily criminal legal bonds, but the families with whom we work often face immigration challenges as well—including needing assistance with bond hearings and immigration bonds.

Compañeros Inmigrantes de las Montañas en Accion

The Compañeros Inmigrantes de las Montañas en Acción (CIMA) connects, strengthens and organizes communities to take action for immigrants’ rights in Western North Carolina. CIMA strives for inclusive communities with justice, freedom, and equality for all. CIMA deals with bond hearings since we work with community members that have come into contact with ICE, either by operations the agency makes or by people being picked up at the local jail for minor offenses. At times, these members are not given a bond or a given a high bond they cannot afford. Therefore keeping them in detention for longer amount of time.

Connecticut Bail Fund:

Connecticut Bail Fund is a grassroots and abolitionist community organization working to reduce the harms of incarceration while building power among individuals and families impacted by incarceration, homelessness, and deportation.

Cville Immigrant Bond Fund, Charlottesville, Virginia

The Cville Immigrant Bond Fund has been established to assist local families in obtaining release and legal defense for loved ones detained by Immigration and Customs Enforcement (ICE).

Detained Migrant Solidarity Committee

(DMSC) is a community group based in El Paso, TX, that fights to free the border from the criminalization and mass incarceration of migrants. We aim to reach this goal through support services, organizing, and actions that promote more humane public policy and respect for migrants and other marginalized communities.

Detention Watch Network

Detention Watch Network (DWN) is a coalition of approximately 200 organizations and individuals working against the injustices of the immigration detention and deportation systems. DWN members are lawyers, activists, community organizers, advocates, social workers, clergy, formerly detained immigrants, and affected families from around the country. They are engaged in individual case and impact litigation, documenting conditions violations, local and national administrative and legislative advocacy, community organizing and mobilizing, visitation, teaching, and support for immigrants seeking release from detention.

Eastern Iowa Community Bond Project (Iowa City, IA):

The Eastern Iowa Community Bond Project aims to increase access to due process by providing immigration bail and additional legal support to immigrants arrested and imprisoned by Immigration and Customs Enforcement. We are an all-volunteer run and community supported effort whose goal is to provide a direct positive intervention within a justice system that unfairly punishes individuals who lack adequate financial resources to pay a bond amount up front. We aim to recognize the many contributions of immigrants to our lives and to our communities.

Episcopal City Mission (ECM)

Episcopal City Mission (ECM) fights for racial, economic and immigrant justice through building relationships of shared power with faith rooted communities, grass-roots organizations and community organizing movements in Massachusetts. Our Episcopal lens invites us to see all life as sacred and worthy of dignity and justice. This understanding guides us as we face into the dynamics of power and enable access and liberation for all communities. ECM's Immigrant Justice Bond Fund works in partnership with local Episcopal Parishes and Grass-Roots Organizations to increase access to lawyers and bond funds for our immigrant neighbors. In addition, people offered funds are supported in their re-entry into their local community.

El Refugio Ministry

A ministry of hospitality and visitation serving immigrants at Stewart Detention Center and their families and friends.

Familia: Trans Queer Liberation Movement

Familia: Trans Queer Liberation Movement is a national trans and queer Latinx organization working at the intersections of LGBTQ and immigrant rights, and racial justice. Our mission is to achieve the collective liberation of trans, queer, and gender nonconforming Latinxs through community building, grassroots organizing, advocacy, and education. We have been working with trans and queer asylum seekers for more than 4 years and many of them have come to the United States seeking safety and protection. Taking away the availability of a bond hearing before an immigration judge for trans and queer asylum seekers will allow for trans and queer detainees to be further physically and sexually abused. For this community, being able to be granted a bond is a matter of life or death.

Freedom for Immigrants:

Freedom for Immigrants is devoted to abolishing immigration detention, while ending the isolation of people currently suffering in this profit-driven system. We visit and monitor 55 immigrant prisons and jails, and we run the largest national hotline for detained immigrants. Through these windows into the system, we gather data and stories to combat injustice at the individual level and push systemic change. Freedom for Immigrants runs a [National Detention Bond Fund](#).

Fronterizo Fianza Fund:

The Fronterizo Fianza Fund is an immigrant bond fund serving detained people in Far West Texas and New Mexico, established in early 2018. Well over 50% of the individuals we have helped bond out of detention are arriving asylum seekers.

Georgia Alliance for Social Justice

Working together to empower and mobilize the people of Georgia towards justice and equity for all.

Georgia Detention Watch

Georgia Detention Watch (GDW) is a coalition of organizations and individuals that advocate, alongside immigrants, to end the inhumane and unjust detention and law enforcement policies and practices directed against immigrant communities in our state.

Georgia Latino Alliance for Human Rights

The Georgia Latino Alliance for Human Rights (GLAHR) is a grassroots community organizing non-profit that develops statewide grassroots leadership in Latina/o/x immigrant communities in Georgia. Through two decades of combining organizing, communications, and advocacy, GLAHR has established a powerful network of informed community members and local committees (comites populares) to defend and advance the civil and human rights of Latinas/os/xs and immigrants regardless of immigration status.

Georgia WAND

Georgia WAND Education Fund's mission is to educate the public and opinion leaders about the need to reduce violence and militarism in society, and redirect excessive military spending to unmet human and environmental needs.

Grass Roots Alliance for Immigrant Rights, South Carolina

The mission of the Grassroots Alliance for Immigrant Rights(GAIR) is to challenge immigration detention and deportation policies and document abuses and injustices in that system, end collaborations between Law Enforcement Agencies in SC, and advocate for meaningful changes that promote respecting the human rights and dignity of immigrants in South Carolina.

Grassroots Leadership:

Grassroots Leadership works for a more just society where prison profiteering, mass incarceration, deportation and criminalization are things of the past. At Grassroots Leadership, we work with women detained at the T. Don Hutto Detention Center in Taylor, TX. Through our visitation program, we support women while they go through their immigration court cases, including the bond process.

Immigrant Families Defense Fund:

The Immigrant Family Defense Fund (IFDF) is a network of teachers, parents, and other loved ones of children in Northern California schools who volunteer their time to support and empower immigrant families threatened with detention and deportation. IFDF facilitates access to legal representation and assists students and their parents, siblings and teachers get released on bond, ensuring families stay together and fight their deportation cases from a place of safety and freedom.

IUC Ministerios Rios de Agua Viva / Joy Like a River United Church of Christ, Grand Rapids, MI

Joy Like a River United Church of Christ stands on three pillars; 1) Immigrant Welcoming, 2) Open and Affirming of All of God's Children and 3) We are Sanctuary Church that embraces the innate dignity and worth of All of God's Children.

We believe that everyone deserves a safe and sacred space to simply be. We will continue to oppose policies that criminalize our global siblings, kidnap children from their parents, forces family separations, deports parents while refusing to release their children and denies these parents and their children the legal protections they are entitled to and denies them their due process. We fundamentally believe that all are God's children. None of God's children are illegal. We stand with our global siblings because it is the right and just thing to do as a community of faith. Rev. Justo González, II, Pastor and Pastor Daniel Montejo, Associate Pastor.

Jewish Voice for Peace

Jewish Voice for Peace (JVP) is a national, grassroots organization seeking justice for all the people of Israel/Palestine. JVP has over 200,000 online supporters, over 60 chapters, a youth wing,

a Rabbinic Council, an Artist Council, an Academic Advisory Council, and an Advisory Board made up of leading U.S. intellectuals and artists.

JVP organizes for human rights for immigrants, refugees and other marginalized communities from Palestine to the US-Mexico border, such as with the Deadly Exchange campaign, which seeks to end US-Israel exchange trips of police, ICE, military officials and others.

Juntos

Juntos is a Latinx immigrant community-led social justice organization in Philadelphia, Pennsylvania working to create organized, vocal & healthy communities prepared to fight for our rights. We combine leadership development, community organizing & focused collaborations with other community-based organizations to build power for our community so we may be active agents of change. We believe all residents, regardless of immigration status, deserve a quality education & the freedom to live & work with dignity

Make the Road - New York

Make the Road New York (MRNY) builds the power of immigrant and working class communities to achieve dignity and justice. MRNY has community centers in five immigrant communities in New York - in Brooklyn, Queens, Staten Island, Long Island and Westchester. MRNY provides deportation defense through legal services and community organizing and believes in ending immigration detention.

Migrant Center for Human Rights:

The Migrant Center for Human Rights works to advance the human rights of all migrants by increasing legal knowledge and access to legal services at the South Texas Detention Complex in Pearsall, Texas. We carry out our mission by providing free and low-cost legal services to low-income immigrants facing removal from the United States, primarily through our Protecting the Persecuted program (writing asylum applications and declarations in English, researching and compiling evidence, preparing for hearings and appeals), our Unjustified Detention program (parole, bond, and habeas cases), and our Access to Justice program (language access, separated family policies, and detention conditions). In addition to our legal work we engage in community education and policy advocacy on behalf of the detained immigrants we work with. We have extensive first-hand experience of how important the right to a bond hearing is for our clients and other immigrants in detention in ensuring that their Constitutional due process and liberty interests are protected.

The Minnesota Freedom Fund

The Minnesota Freedom Fund is a community bail fund based in Minneapolis Minnesota. We work to end the harm done to our communities by the imposition of bail and bonds. We support both individuals caught in the legal system unable to afford bail and immigrants targeted by ICE who are unable to afford their release.

National Bail Fund Network

The National Bail Fund Network is a network of over forty community bail and bond funds across the country that pool community resources to free people by paying bail/bond in the

criminal legal and immigration detention systems. The Network coordinates technical assistance and community-based advocacy to abolish the money bail system and pretrial detention. We believe that bail funds are a temporary intervention, not a permanent solution, to the mass injustices embodied by the criminal legal system and the immigration detention system and are dedicated to ensuring and protecting pretrial freedom.

The New Hampshire Conference United Church of Christ Immigrant and Refugee Support Group

The New Hampshire Conference United Church of Christ Immigrant and Refugee Support Group was formed in 2011 to respond to immigration issues being encountered by members of our newest NH UCC congregation: Maranatha Indonesian UCC. We have since expanded our scope to include advocacy and support for immigrants of all nations

The New Hampshire Conference United Church of Christ works closely with lawyers from the NH Immigrant Rights Project so that eligible immigrants can be bonded out of detention and given post detention support until their work authorization is granted.

The New Orleans Workers' Center for Racial Justice

The New Orleans Workers' Center for Racial Justice is membership organization founded by guest workers, immigrant workers, and Black residents of New Orleans in the aftermath of Hurricane Katrina. The Center is dedicated to defending civil and labor rights through organizing, advocacy, and litigation. The Center's members organized for and won welcoming city policies in New Orleans that make the city safer for all residents, both immigrant and U.S born. In 2011, two reconstruction workers represented by the Center brought suit against the Sheriff of Orleans Parish for unlawfully over-detaining immigrants—for as long as five months, without any probable cause determination. *Cacho v. Gusman*, Civ. No. 11-225 (E.D. La.). In 2013, the Sheriff agreed to stop both the unconstitutional over-detention of immigrants and the use of jail resources for civil immigration investigations, announcing a new policy that was part of the settlement of the *Cacho* case. The Center has also litigated the constitutionality of prolonged, no-bond detention of immigrants seeking humanitarian relief. *Sarmiento v. Ramos*, Civ. No. 16-1424 (W.D. La.).

The Northwest Arkansas Workers Justice Center

The Northwest Arkansas Workers Justice Center (NWAJWC) is a grassroots immigrant-led organization focused on improving conditions of employment for low-wage immigrant workers in the Ozark region. By educating, organizing, and mobilizing immigrant workers, NWAJWC is building collective responses aimed at addressing the root causes by involving workers closest to the problems in determining their solutions. Since 2002, we have assisted workers living below the federal poverty line to advocate against workplace injustices.

Over 95% of NWAJWC's constituency and/or family members have been or are currently undergoing immigration proceedings, meaning our constituency's lives are already dictated by the existing immigration system. Our constituency cannot afford to lose any opportunities to due

process because doing so would leave our community dismembered and at further risk of victimization.

Northwest Detention Center Resistance

Northwest Detention Center Resistance (NWDC Resistance) is a volunteer grassroots collective led by undocumented immigrants and U.S. citizens located in Tacoma, Washington. It is an unincorporated association formed for the purposes of confronting human rights violations at the Northwest Detention Center and dedicated to ending the detention and deportation of immigrants. www.nwdcresistance.org

In the Tacoma detention center, one of the largest in the country, half of the population come from the border, most are asylum seekers. Again and again we have seen asylum seekers joining hunger strikers demanding their release after languishing for months in detention. Most have been told they would be granted parole or bonds. When this doesn't happen, people detained do the only recourse they have: peaceful protest through a hunger strike. When hunger strikes happen, people detained send their demands to the public and to ICE, every time demands include the opportunity to have a bond hearing and to an affordable bond.

We can't allow indefinite detention, and we shouldn't allow an unfair system that seeks to punish people in civil immigration matters to deny the chance to be released to continue the process in the outside with their families.

Organized Communities Against Deportations, Chicago

OCAD is an undocumented-led group that organizes against deportations, detention, criminalization, and incarceration, of Black, brown, and immigrant communities in Chicago and surrounding areas. Through grassroots organizing, legal and policy work, direct action and civil disobedience, and cross-movement building, we aim to defend our communities, challenge the institutions that target and dehumanize us, and build collective power. We fight alongside families and individuals challenging these systems to create an environment for our communities to thrive, work, and organize with happiness and without fear.

Project South

Project South is a social justice organization founded in 1986 based in Atlanta that defends and protects Muslim, Middle Eastern, South Asian, immigrant, and Black communities. Project South has worked for years on combating oppressive policies, organizing to shut down detention centers in Georgia, and ending detention pipelines through publishing comprehensive reports on the human rights violations in Georgia detention centers, educating the public, lobbying against anti-immigrant bills, engaging in impact litigation, and working to combat local law enforcement collaboration with ICE.

Puente Arizona

Puente Arizona grassroots migrant justice organization based in Phoenix, Arizona. We develop, educate, and empower migrant communities to protect and defend our families and ourselves in order to enhance the quality of life of our community members.

Racial Justice Action Center

RJAC's model of organizing emphasizes deep leadership development to facilitate transformation on an individual, community and societal level. This approach is being developed by seasoned organizers who have identified the strengths and weaknesses of traditional social justice organizing and are working to create a model that is more effective, sustainable, democratic and is led by poor and working class people of color.

Refugee and Immigrant Center for Education and Legal Services (RAICES):

RAICES is a 501(c)(3) nonprofit agency that promotes justice by providing free and low-cost legal services to underserved and often detained immigrant children, adults, families, and refugees in Texas. Since June of 2018, RAICES has paid over 260 individual bonds in 20 different states from 48 different detention centers. RAICES is committed to ending mass detention and deportation of immigrants through robust legal aid, outreach, and advocacy programs.

The Social Justice Ministry of the Illinois Conference of the United Church of Christ

The Social Justice Ministry of the Illinois Conference of the United Church of Christ (UCC) represents 241 UCC congregations throughout the state of Illinois that seek to live out the words of the Prophet Micah, "What does the Lord Require of You but to do justice, love kindness and walk humbly before your God (Micah 6:8)." We are the social conscience of the Church within the state. We advocate for just and ethical policies that embrace, protect and affirm the human dignity of all of God's Children. We strongly opposed the forced separation of families and children.

Southeast Immigrant Rights Network (SEIRN)

The mission of the Southeast Immigrant Rights Network (SEIRN) is to lift up the voice and the leadership of immigrant communities of the Southeast at the regional and national levels. We promote collaboration and exchange between our members, as well as political education and collective action to build just and inclusive communities.

SEIRN collaborates with 30 immigrant rights organizations in the Southeast of United States, more than half of our organizational members work with immigrant families to stop the deportation of their loved ones.

Southerners on New Ground, southern regional

SONG envisions a sustainable South that embodies the best of its freedom traditions and works towards the transformation of our economic, social, spiritual, and political relationships. We envision a multi-issue Southern justice movement that unites us across class, age, race, ability, gender, immigration status, and sexuality: a movement in which LGBTQ people – poor and working class, immigrant, people of color, rural – take our rightful place as leaders shaping our region's legacy and future. We are committed to restoring a way of being that recognizes our collective humanity and dependence on the Earth.

With the Attorney General's move to strip immigration judges of any discretion in issuing bonds to non-citizens in immigration proceedings, this administration continues to demonstrate its

disregard for human rights. Denying petitioners the opportunity to make their case before an immigration judge is the latest offensive in Jeff Sessions' all out assault on immigrants. Leaving the issuance or denial of immigration bonds to the enforcement agency that feeds people into detention centers owned by corporations that have funded this administration is as unethical as Trump's racist agenda is immoral.

Transgender Law Center (“TLC”)

Transgender Law Center is the largest national trans-led organization advocating self-determination for all people. Grounded in legal expertise and committed to racial justice, TLC employs a variety of community-driven strategies to keep transgender and gender nonconforming (“TGNC”) people alive, thriving, and fighting for liberation. TLC believes that TGNC people hold the resilience, brilliance, and power to transform society at its root, and that the people most impacted by the systems TLC fights must lead this work. TLC builds power within TGNC communities, particularly communities of color and those most marginalized, and lays the groundwork for a society in which all people can live safely, freely, and authentically regardless of gender identity or expression. TLC works to achieve this goal through leadership development and by connecting TGNC people to legal resources. It also pursues impact litigation and policy advocacy to defend and advance the rights of TGNC people, transform the legal system, minimize immediate threats and harms, and educate the public about issues impacting our communities.

UndocuBlack Network

UndocuBlack is a multigenerational network that fosters community, facilitates access to resources, and contributes to transforming the realities of currently and formerly undocumented Black people, so that all people are thriving. In order for us to center the humanity, dignity, and well-being of our communities we have to move beyond survival. For our community migration is survival, and being able to access lives outside of detention centers is a part of how Black immigrants move beyond survival.

Unitarian Universalist Association (UUA):

As an Association of Unitarian Universalist spiritual communities, we are committed to [Seven Principles](#) that include the worth of each person, the need for justice and compassion, and the right to choose one’s own beliefs. Our 2018 General Assembly called on our 1000+ member congregations and our denomination to demand an end family separation and detention of asylum seekers and to abolish ICE. As people of faith we believe in interdependence so we know that none of us are free until we are all free and what we do to our siblings, we do to ourselves. Unitarian Universalist congregations, clergy and members are living our values through providing sanctuary, raising money for bond funds, fighting policies that criminalize those who migrate, opening our homes to asylum seekers, providing pastoral visits to folks in ICE jail and struggling for a world where love knows no borders. Asylum seekers, like so many who migrate for so many reasons, deserve to pursue relief outside of jail.

Vermont Freedom Bail Fund /El Fondo Para La Libertad VT

Vermont Freedom Bail Fund/El Fondo para Libertad VT is a tax-deductible fund available to bail out immigrants living in Vermont held by ICE on immigration charges. Our volunteer

Steering Committee supports human rights for immigrants in order that they be freed from the prison system to rejoin their families and communities, have wider legal options, get help in preparing their cases, be able to earn their living, and maintain their human dignity. We see impartial bond hearings as an essential antidote in the current immigration system that expresses explicit bias against immigrants.

We Count, Florida

WeCount! strives to build the power of Latin American immigrants and farm workers in Homestead, Florida to fulfill their aspirations of justice and equality through education, developing leaders, organizing, cultural work, building coalitions, and collective action.

Women Watch Afrika, Inc. (WWA), Georgia

Woman Watch Afrika, Inc. is a social justice community-based organization that advocates for the protection and defense of refugees and immigrants, to end all forms of dehumanizing, and unjust detention and anti-immigrant policies directed at our people.

Women on the Rise is a membership-based organization of women targeted and/or impacted by the criminal “justice” system. **Women on the Rise** works to educate, heal, and empower ourselves, one another, and our communities to demand justice, dignity, and liberation for all.

ARGUMENT

I. The Due Process Clause Protects Noncitizens from Biased Decisionmakers

“[T]he Due Process Clause applies to all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.”

Zadvydas v. Davis, 533 U.S. 678, 693 (2001). It entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). The neutrality requirement helps guarantee that life, liberty, or property will not be taken based on an erroneous or distorted conception of the facts or the law. *See Mathews v. Eldridge*, 424 U.S. 319, 344 (1976).

“[T]he constitutional due process requirement that the hearing be before a fair and impartial arbiter” requires the recusal of IJs under certain circumstances. *Matter of Exame*, 18 I&N Dec. 303, 306 (BIA 1982). First, an IJ must recuse where “it [is] demonstrated that [he] had

a personal, rather than judicial, bias stemming from an ‘extrajudicial’ source which resulted in an opinion on the merits on some basis other than what the immigration judge learned from his participation in the case.” *Id.* Second, even when the conduct at issue is internal to the proceedings, an IJ must recuse where “such pervasive bias and prejudice is shown by otherwise judicial conduct as would constitute bias against a party.” *Id.*

Even if an IJ did not intend to become an advocate for the government, judicial conduct is improper whenever a judge appears biased. *Abulashvili v. Att’y Gen. of U.S.*, 663 F.3d 197, 207 (3d Cir. 2011). An IJ has a duty to conduct hearings in an unbiased way to afford each petitioner a fair and full opportunity to be heard. *See Huang v. Gonzales*, 453 F.3d 142, 148 (2d Cir. 2006); *Islam v. Gonzales*, 469 F.3d 53, 55 (2d Cir. 2006).

The right to an impartial decisionmaker is inherent in due process. *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970). This well-established principle “preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.” *Marshall*, 446 U.S. at 242. “Fairness of course requires an absence of actual bias . . . [b]ut our system of law has always endeavored to prevent even the probability of unfairness.” *In re Murchison*, 349 U.S. 133, 136 (1955).

Thus, in determining whether a decisionmaker possesses the requisite impartiality to adjudicate a matter, “[t]he inquiry is an objective one” that asks “not whether the [decisionmaker] is actually, subjectively biased, but whether the average [decisionmaker] in his position is ‘likely’ to be neutral.” *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 881 (2009). One measure of fairness is an adjudicator’s personal and financial interests. *Cf. In re*

Murchison, 349 U.S. at 136 (“[N]o man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.”).

II. **Attorney General Sessions Is Biased Against Asylum Seekers and In Favor of Mass Incarceration and Totalitarianism**

Sessions has “adjudged the facts as well as the law” of this case in advance of hearing it. *Cinderella Career & Finishing Schools, Inc. v. FTC*, 425 F.2d 583, 591 (DC Cir. 1970). He has made public statements and enacted devastating policies that have entrenched him in a position that is anti-immigrant. He works for an Administration that unethically benefits from the profits of private prison companies. He has consistently consolidated totalitarian power in the realm of immigration enforcement, seriously limiting the power of IJs and increasing the power of ICE. Thus, he has a personal bias stemming from “extrajudicial” sources, which will inevitably result in an opinion on the merits on some basis other than what he learns from his participation in the case. *See Matter of Exame*, 18 I&N Dec. at 306.

Sessions has enacted a regime that is profoundly anti-asylum. After issuing a memorandum asking all federal prosecutors to make “immigration offenses higher priorities,” criminal prosecutions for “illegal entry” and “reentry” have increased by 27 percent.² These directives, however, do not mention asylum. It is not a crime to seek asylum. Rather, it is a fundamental human right, and all parties to the 1951 Refugee Convention (including the United States) are prohibited from penalizing asylum seekers “on account of their illegal entry or presence”—a protection created following World War II when many states treated refugees as “illegal entrants.”³ The United States, under Sessions’ directives, is now violating international law.

² Human Rights First, *Seeking Asylum is not a crime, but Trump is prosecuting them anyway* (July 20, 2017), available at <https://www.humanrightsfirst.org/blog/seeking-asylum-not-crime-trump-prosecuting-them-anyway>

³ *Id.*

Worse, Sessions oversaw the implementation of a Zero Tolerance program that led to separation of asylum-seeking parents from their minor children. He announced a goal of 100% prosecution of all who enter the United States illegally. When parents are prosecuted and imprisoned, their children are necessarily separated from them. Children are detained in cages and tent cities, with reports that staff members are prevented from physically comforting them and reports of distraught parents killing themselves in detention centers.⁴

Sessions has also worked to limit protections for asylum-seekers asking for protection from gangs and domestic abusers. *See Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018). In a deeply flawed legal decision, Session launched an assault on decades of settled asylum law and set up asylum seekers to fail their credible fear interviews. Sessions declared that the plight of domestic and gang violence survivors is “merely personal,” deliberately ignoring that Central American governments are unable and unwilling to provide effective protection to refugees fleeing these harms. Sessions has directed asylum officers to implement new, illegal rules for credible fear screenings, leading to unjustified deportations of vulnerable asylum-seekers.

These assaults on asylum seekers must be understood in the context of financial incentives. The Trump Administration has been funded by private prison companies, which massively benefit from the expansion of immigration detention. Immigration detention will further expand if *Matter of X-K-* is overturned and asylum seekers are no longer entitled to a bond hearing before an IJ. Indeed, private prison stocks are up 100% since Trump’s victory because they know that his Administration is pro-mass incarceration of immigrants.⁵ The largest

⁴ Christopher Ingraham, *Sessions says family separation is ‘necessary’ to keep the country from being ‘overwhelmed.’ Federal immigration data says otherwise*, Wash. Post (June 18, 2018), available at https://www.washingtonpost.com/news/wonk/wp/2018/06/18/sessions-says-family-separation-is-necessary-to-keep-the-country-from-being-overwhelmed-federal-immigration-data-says-otherwise/?utm_term=.218905d1c2ee

⁵ Heather Long, *Private Prison Stocks Up 100% Since Trump’s Win*, CNN (Feb. 24, 2017), available at <https://money.cnn.com/2017/02/24/investing/private-prison-stocks-soar-trump/index.html>

private prison contractors reap sizeable annual profits from detaining immigrants, including asylum seekers.⁶ CoreCivic, Inc. and GEO Group, Inc.—which collectively manage more than half of private prison contracts in the country—earned combined revenue exceeding \$4 billion in Fiscal Year 2017.⁷ They have spent millions of dollars on lobbying and campaign contributions, seeking to sway the political process toward detention-focused policies that favor their interests—a tactic that appears to be paying off in the Trump era.⁸

The Trump Administration has a history of unethical behavior that creates an impression that its actors are susceptible to graft. The District of Columbia has sued Trump in federal court under the Emoluments Clause because he accepts money from foreign agents in violation of the U.S. Constitution. *Dist. of Columbia v. Trump*, 315 F.Supp.3d 875 (D. Md. 2018). More than half of Trump’s Cabinet members have been the subject of ethics violation allegations for using government funds for private use or accepting gifts from lobbyists.⁹ To date, Trump has refused to divest from his vast business empire, holding onto an organization made up of hundreds of different companies in at least 20 countries.¹⁰ There have been bipartisan calls for Trump to follow the example of every modern president and sell his interests in these businesses because his failure to do so gives rise to “intractable conflicts of interest.”¹¹ It is still impossible to know whether key decisions in the areas of taxes, regulation, environmental policy, employment and

⁶ Livia Lunn, *Profiting from Enforcement: The Role of Private Prisons in U.S. Immigration Detention*, Migration Policy (May 2, 2018), available at <https://www.migrationpolicy.org/article/profitting-enforcement-role-private-prisons-us-immigration-detention>

⁷ *Id.*

⁸ *Id.*

⁹ Scott Simon, *Government Ethics in the Trump Administration*, NPR (Aug. 11, 2018), available at <https://www.npr.org/2018/08/11/637780576/government-ethics-in-the-trump-administration>

¹⁰ Citizens for Responsibility and Ethics in Washington, *Trump Inc: The Ethics Crisis in Trump’s First 100 Days*, available at <https://www.citizensforethics.org/trump-inc-ethics-crisis-trumps-first-100-days/>

¹¹ *Id.*

housing discrimination, foreign policy, trade, *and immigration* are being made in Trump's own financial interest.¹²

The profit motive extends to private prisons' scrimping on medical and mental health care, food, sanitation, and safety. The conditions inside private detention facilities are inhumane and degrading. In a December 2017 report entitled, "Concerns about ICE Detainee Treatment and Care at Detention Facilities," the Office of Inspector General documented delayed medical care, lack of cleanliness and hygiene, unsafe food handling, misuse of segregation, a culture of disrespect for detainees' basic rights, and other concerns.¹³ There have been reports of sexual abuse at the T. Don Hutto detention center in Texas, the death of a man at a facility in Aurora, Colorado, and incidences of female detainees being forced to urinate or defecate in plastic bags inside their cells at a jail in Richmond, California.¹⁴ Private prisons are determined to save money at the expense of human rights.

Since taking office, Sessions has repeatedly referred cases to himself for review as a means of divesting IJs of authority and consolidating the Administration's totalitarian power in the realm of immigration law. *See e.g., Matter of E-F-H-L-*, 27 I&N Dec. 226 (A.G. 2018) (undoing the requirement that asylum seekers be granted a hearing); *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018) (rolling back protections for immigrants fleeing domestic and gang violence); *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018) (eliminating IJs' power to administratively close cases) *Matter of L-A-B-R-*, 27 I&N Dec. 245 (A.G. 2018) (narrowing grounds for good cause for an IJ to grant a continuance); *Matter of S-O-G- and F-E-B-*, 27 I&N

¹² *Id.*

¹³ Office of Inspector General, *Concerns about ICE Detainee Treatment and Care at Detention Facilities* (Dec. 11, 2017), available at <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>

¹⁴ Victoria Lopez, *Watchdog Agency Issues Report on ICE Abuse as Agency Seeks to Acquire New Detention Centers*, ACLU (Dec. 15, 2017), available at <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/watchdog-agency-issues-report-ice-abuse-agency>

Dec. 462 (A.G. 2018) (limiting IJs' power to terminate removal proceedings). In each case, he has taken the opportunity to fundamentally gut immigration laws and limit the number of people granted legal status in the United States. He has abused his authority to undermine procedural protections for noncitizens. Sessions, who was denied a federal judgeship in 1986 because of his overt racism, is now the most-prolific user of the self-referral provision since 1956.¹⁵ By comparison, Eric Holder and Loretta Lynch certified a total four cases between them during the entire eight years of the Obama Administration.¹⁶ Sessions is prejudging these cases in a result-oriented way as a means of enacting an anti-immigrant agenda.

CONCLUSION

Sessions is too biased to serve as an impartial adjudicator in this case. His anti-immigrant agenda is a power grab, and it marks a step on the road to totalitarianism. He desires to divest power from independent IJs and leave ICE with complete control over custody decisions as a means of deterring asylum-seekers and enriching private prison companies. The asylum process is already difficult. Most asylum-seekers are deported. Holding those who pass credible fear interviews in prison will make it harder for them to access counsel and will expose them to medical neglect, sexual assault, solitary confinement, and other inhumane and degrading detention conditions. For the reasons set forth above, Sessions should vacate the referral order or recuse himself from the decision.

Respectfully submitted,

Dated: October 29, 2018

Elizabeth Simpson
NATIONAL IMMIGRATION PROJECT

¹⁵ Bea Bischoff, *Jeff Sessions is Hijacking Immigration Law*, Slate (June 13, 2018), available at <https://slate.com/news-and-politics/2018/06/in-matter-of-a-b-jeff-sessions-hijacked-immigration-law-by-abusing-a-rarely-used-provision.html>

¹⁶ *Id.*

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CERTIFICATE OF COMPLIANCE

This brief complies with the instructions in the Attorney General's referral order dated October 12, 2018, because it contains 7306 words.

Dated: October 29, 2018

/s/ Elizabeth Simpson

CERTIFICATE OF SERVICE

I hereby certify that, on October 29, 2018, the foregoing brief was submitted electronically to AGCertification@usdoj.gov and in triplicate to:

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