UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SERGIO CRUZ CRUZ	)	
	)	
Petitioner	)	
	)	
v.	)	CA No. 25-CV00262-JJM-PAS
	)	
PAMELA BONDI, et als.	)	
	)	
Respondents	)	

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO THE AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS

Petitioner Sergio Cruz Cruz hereby replies to the government's opposition to the amended petition for writ of habeas corpus, and also opposes the motion to dismiss, and states the following reasons therefor:

Removal Order, Reinstatement of Removal Order, and Right to file for Asylum:

Petitioner (hereinafter "Sergio") first entered the United States on February 6, 2014 where he encountered US immigration agents. As set forth in the Amended Petition, he was 19 years old at the time, classified as a "child" under US immigration law, and he is part of the minority indigenous Mextica community (descendants of the pre-European contact Aztec civilization) whose first language is Mixteco rather than Spanish. In this regard, Sergio incorporates both the majority and dissenting opinions in Garcia v. Sessions, 856 F3d 27 (1st Cir 2017), in which the petitioner Garcia there was a member of the minority indigenous Mayan community in Guatemala whose first language is K'iche. Sergio is incorporating the dissent as well in the Garcia case because the majority did not necessarily disagree with some portions of the dissent; rather the

majority found some of those contentions were not adequately presented or developed in that appeal, so did not consider or decide them. Sergio, by contrast, does rely on some of those arguments.

8 CFR sec. 235.3 ("Inadmissible aliens and expedited removal"), sec. (b)(2) states in part:

> "In every case in which the expedited removal provisions will be applied and before removing the alien from the United States pursuant to this section, the examining immigration officer shall create a record of the facts of the case and statements made by the alien. This shall be accompanied by means of a sworn statement using Form I-867AB, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act. The examining immigration officer shall read (or have read) to the alien all information contained on Form I-867A. Following questioning and recording of the alien's statement regarding identity, alienage, and inadmissibility, the examining immigration officer shall record the alien's response to the questions contained on Form I-867B, and have the alien read (or have read to him or her) the statement, and the alien shall sign and initial each page of the statement and each correction. The examining immigration officer shall advise the alien of the charges against him or her on Form I-860, Notice of Order of Expedited Removal, and the alien shall be given an opportunity to respond to those charges in the sworn statement." (emphasis added).

Here, in 2014 a one-page Form I-860 was apparently prepared and says "See I-831." The next page states at the top "Continuation Page for Form I-860" but at the bottom is printed "Form I-831 Continuation Page (Rev. 08/01/07)." Under Sergio's name at the top of this I-831 is the heading "NARRATIVE", but there is no narrative setting forth the information in the "shall" CFR provision quoted above.[1] An actual sample "narrative" in another case on a Form I-831 obtained from the internet is included as Exhibit 1 to this

[1] Sergio notes that in Respondents' earlier "Opposition to Petition for Writ of Habeas Corpus and Motion to Dismiss, dated September 5, 2025, Respondents assert "although not required to do so, Respondents provided counsel with documents related to Petitioner's removal." Those are the documents in Exhibit 4 to the Amended Petition, and it almost seems as if respondents believe they are doing Sergio a favor by providing him with the documents underlying and leading to his current detention.

filing as it includes a narrative providing specific information on the noncitizen. See Exhibit 1 hereto.[2]

In Garcia v. Sessions, above, 856 F3d at 33, the circuit court noted that Garcia had entered the United States in 2004, was detained in 2007, and although he may have been entitled to some kind of relief, that did not happen "apparently because of the language barriers he faced and because he was uncounseled." In the instant case, the US Department of Homeland Security (DHS) did not follow the Code of Federal Regulations requirements and therefore there is no record of what transpired during Sergio's 2014 incident. Moreover, there is no indication that DHS considered or acknowledged this gaping deficiency when in May 2025 it purported to "reinstate" the 2014 documents.

More specifically, in Johnson v. Guzman Chavez, 594 US 523, 141 SCt 2271, 2282 (2021), the Court, citing 8 CFR sec. 241.8(a)-(c), states the regulation "allows the alien to contest that [reinstatement] determination...." The "Notice of Intent/Decision to Reinstate Prior Order" is dated May 24, 2025. Amended Petition, Exhibit 4. Six days later, Sergio through counsel filed a habeas corpus petition stating in part, "[i]t is not known on what legal or other basis ICE detained petitioner, or why ICE is holding him." Petition, para. 2. It was following that filing that the government made the comment in footnote 1 above, and after the documents were received Sergio filed an Amended Petition alleging the violations in the purported 2014 order and, "[a]ccordingly, there was no basis to 'reinstate' in 2025 that 2014 'order'." Amended Petition, p. 4. Thus, this is not a case like Garcia Sarmiento v. Garland, 45 F4th 560, 564 (1st Cir 2022) where petitioner "does not contest that he was removed, unlawfully reentered the country, and is now the

[2] Even though Exhibit 1 hereto is a Form I-213, it contains some of the same information that is required by 8 CFR sec. 235.3 quoted above.

subject of a reinstated removal order." Sergio contends the process described above is unlawful under the Administrative Procedures Act (APA), 5 USC sec. 701 et seq., and deprived him of due process of law under the Fifth Amendment to the United States Constitution. See Hernandez-Lara v. Lyons, 10 F4th 19 (1st Cir 2021) and cases there cited. See also Mathews v. Eldridge, 424 US 319 (1976). In addition, at this juncture Sergio calls the Court's attention to the rule of lenity which "favors construction of immigration laws in the light most favorable to the alien" due to the "drastic consequences of deportation." Lumataw v. Holder, 582 F3d 78, 90 (1st Cir 2009). See also Fong Haw Tan v. Phelan, 333 US 6, 10 (1948)(applying the rule of lenity "because deportation is a drastic measure and at times the equivalent of banishment o[r] exile").

As set forth in the Amended Petition, Exhibit 9, in 2018 Sergio filed a Form I-589 application for asylum and withholding of removal, and submitted to biometrics. The formal I-589 Receipt Notice sent to all applicants reads in part, "[y]ou may remain in the United States until your asylum application is decided." Pursuant to the application, he was issued Employment Authorization Documents (EAD) by the USCIS which checked his biometrics each time for various reasons including whether there was any criminal record (there was not). In Garcia v. Sessions, above, the question was whether a reinstated removal order precluded the filing and consideration of an asylum application, leaving the only relief available the "withholding of removal." After much discussion, the majority concluded asylum was not available. However, in reaching its conclusion in its 2017 decision the majority applied "Chevron deference." But last year in a landmark decision the Supreme Court overturned the longstanding Chevron doctrine in Loper Bright Enterprises v. Raimondo, 603 US 369 (2024). Thus, whether or not there is a

valid reinstated removal order, Sergio's position is that his case should be considered for asylum as well as withholding. It should also be noted that Sergio's 2018 Form I-589 asylum application is still pending with USCIS.

As noted above, the majority in the Garcia v. Sessions case did not deem certain arguments adequately developed so it did not rule on them. However, the dissent disagreed, believed that these arguments should be addressed and resolved, and set forth legal arguments with citations that initial removal orders and/or reinstatement of those orders are subject to judicial review under the federal constitution's Due Process and Suspension Clauses. See Garcia, above, 856 F3d at 51-53 (Stahl, J., dissenting). Sergio adopts those arguments and, due to the failure to follow the CFR requirements discussed above, and the lack of the required record (Amended Petition, Exhibit 4), the constitutional requirements have not been complied with. Such a failure has led to the government refusing to allow Sergio to pursue an asylum application and instead relegating him to the "withholding-only" proceeding with no right to a bond hearing in the Immigration Court -- despite the fact he has no criminal record.

In addition to the federal constitutional issues, an agency such as DHS has a duty to follow its own regulations. United States ex rel Accardi v. Shaughnessy, 347 US 260, 268 (1954); Morton v. Ruiz, 415 US 199, 235 (1974)("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures."); APA, 5 USC sec. 701 et seq.; Jimenez v. Cronen, 317 F Supp 3d 626, 634 (D Mass 2018)(noting "a long line of Supreme Court and other decisions holding that regulations are laws that the government must obey"). Here, as noted above, the agency utterly failed to follow its own written rules governing expedited removal and reinstatement thereof.

Custody review and 8 CFR sec. 241.4:

Regardless of anything set forth in the government's opposition and motion to dismiss, there appears to be no disagreement that Sergio was entitled to a custody review under 8 CFR sec. 241.4. Sections 241.4(e) and (f) set forth the criteria and factors to be considered, and ICE's notice of the review (Amended Petition, Exhibit 6) reiterates some of them. Sergio's counsel timely filed a Form G-28 appearance form, cover letter, and facts and evidence to be considered with the evaluation. Amended Petition, Exhibit 7, which included the recent Immigration Court decision finding that Sergio had a "reasonable fear" of returning to Mexico, and information that Sergio has no criminal record and has a young US citizen son.

In its "Decision to Continue Detention", ICE wrote "ICE is in receipt of or expects to receive the necessary travel documents to effectuate your removal, and removal is practicable, likely to occur in the reasonably foreseeable future, and in the public interest." However, there is no acknowledgement of the Immigration Court's ruling that Sergio had established a "reasonable fear" of return and was entitled to a "withholding- only" hearing. And it certainly would not be in the "public interest" to send a person to a place where they had established a "reasonable fear."

Next, ICE writes it has made its custody decision based on one factor:

> "On February 7, 2014, you were arrested by Customs and Border Protection (CBP) at the San Ysidro, CA Port of Entry. On that same date CBP served you a Form I-860, Notice and Order of Expedited Removal and removed you to Mexico. On an unknown date, at an unknown time and unknown location, you re-entered the United States, without admission or parole from an immigration official."

To begin with, even were we accept the government's position that the 2014 removal order and the 2025 reinstatement order are legally in place, that does not erase

the regulatory violations discussed above in the entry of the 2014 order. Moreover, when Sergio entered the United States he was a "child" under federal immigration law and his first language was the indigenous Mextica. We do not know what transpired in February 2014 because the immigration officer did not make the required record. Thus, this purported basis of custody review denial is entitled to little weight.

More importantly, the ICE custody decision renders 8 CFR sec. 241.4 a nullity because it ignores the last eleven (11) years that Sergio has been in the United States. If we look at the 241.4(f) "factors", seven of the eight are in his favor. Only one, number 6, concerns past immigration history, the incident when he came to the US border eleven years ago which is discussed above. Today, were Sergio a citizen, he would be considered a model citizen -- he has no criminal record, he works and pays his taxes, he has a partner and young US citizen child whom he supports. As noted by the First Circuit:

> "The more time an individual spends in the community, the lower her bail risk is likely to be, and the more probable it is that fair custody review would result in her release." Castaneda v. Souza, 810 F3d 15, 41 (1st Cir 2015).

Here Sergio will note that after extensive proceedings, the district court in Jimenez v. Cronen, above, found that often ICE custody reviews are not fair. Sergio also points out that he lost his father to "disappearance" when Sergio was a 16 year old minor, and there is a great deal of violence where he comes from with the government not providing protection especially to minority indigenous communities. Exhibits 2 and 3 hereto.

"Freedom from imprisonment -- from government custody, detention, or other forms of physical restraint -- lies at the heart of the liberty that Clause [US Const.,

Amend. 5] protects." Zadvydas v. Davis, 533, US 678, 690 (2001).[3] "Except as punishment for a crime, detention of any 'person' is justified only 'in special and narrow non-punitive circumstances, where a special justification...outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" Jimenez v. Cronen, above, 317 F Supp 3d at 638, quoting Zadvydas. The instant case involves civil detention of a person who is not a criminal and has no criminal record. Release can easily be accomplished with traditional safeguards such as bail/bond, electronic monitoring and other methods of supervision.

Finally, Sergio points out that EOIR which includes the Immigration Courts recently disseminated a publication entitled "Neutrality and Impartiality in Immigration Court Proceedings" which is highly unusual and could be interpreted as a threat. Exhibit 4 hereto. During the same period dozens of Immigration Judges have been terminated. Moreover, this year in ongoing cases, and prior to final hearing and decision, Immigration Courts are enclosing notices encouraging noncitizens to "self-deport", along with customary case documents such as court orders -- this from an administrative court that is supposed to be fair and impartial. Thus, there will likely be more lengthy proceedings with appeals to the Board of Immigration Appeals (BIA) and petitions for review in the circuit courts. In Demore v. Kim, 538 US 510 (2003), post-decision the government informed the Supreme Court that submitted statistics had been faulty and that in reality the length of incarceration was much longer for cases that were being appealed through the system.

CONCLUSION

[3] Many of the cases cited by the government involve noncitizens with serious criminal records thus leading to prolonged incarceration.

For these reasons, given that motions to dismiss and for summary judgment require the government to show there is little basis for the opposing party's claims, petitioner contends his petition raises substantial issues and should not be dismissed or receive summary treatment.

Respectfully submitted,

/s/ William A. Hahn

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CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2025, I electronically filed the foregoing reply and opposition and it is available for viewing and downloading from the Court's CM/ECF system, and that the participants in the case that are registered CM/ECF users will be served electronically by the CM/ECF system.

/s/ William A. Hahn

Exh. 3

Historical and Political Overview of the Mixtec People and Mixteca Region of Oaxaca, Mexico

By: Theresa Billo
Equity and Immigration Rights Advocate
B.A. in Political Science, Boston College

10.3.2025

Mixtec History

The Mixtecs are an ethnic group Indigenous to the Mixteca region of Oaxaca, Mexico. The state of Oaxaca is home to the largest Indigenous population of any state in Mexico according to a 2024 report by ACLED, which states 39% of the state's inhabitants are Indigenous.[1]

Mexico's government has a history of tense relations with its Indigenous inhabitants, as a result of a longstanding pattern of mistreatment of Indigenous people in Mexico. According to "Promoting Indigenous Rights in Mexico", a 2008 report by Amnesty International, Indigenous people in Mexico have faced instances of sexual violence, forced sterilization, and a pattern of harassment, intimidation, kidnapping, and violence against Indigenous rights advocates, with little justice or accountability resulting from cases that have been investigated.[2]

Amnesty International reports specifically cite groups such as the Organization for the Future of Mixtec Indigenous Peoples (OFPM), as targets of violence and mistreatment, as seen in the 2009 publishing of a report on the kidnapping and murder of two indigenous rights advocates in Oaxaca's neighboring state of Guerrero, where the victims' families, members of the OFPM, and other human rights advocates were highlighted as specifically vulnerable to violence, kidnapping, and murder.[3]

Tension between Government and Indigenous People in Oaxaca

Since the 1970's in Oaxaca, the Oaxacan Popular Movement has sought to defend land and natural resources in Oaxaca from exploitation by the government and private actors, and seeks to uphold Indigenous identities, traditions, and cultures. These motivations have put Indigenous groups at odds with many government initiatives. Under governor Ulises Ruiz Ortiz, in office from 2004 - 2010, the situation drastically worsened due to his efforts to enforce "rule of law".

This tension led to conflict in 2006, when a teacher's union contract negotiation turned violent, and grew into a movement led by the Popular Assembly of the Peoples of Oaxaca (APPO). The movement aimed to fight back against repressive state government control. This uprising spoke to many existing tensions in the area, including the rift between Indigenous people and the state government forces, and the APPO eventually took control of Oaxacan territory, including the capital, Oaxaca de Juárez, for a period of months, with citizens collectively governing the area, before state government forces violently took back control and reinstated their oppressive regime.[4]

In 2016, tensions between popular sentiments and the state came to a head once again, during an event referred to by locals as the "Nochixtlán Massacre". Leading up to the event, Mixtec education workers went on strike in protest of federal education reforms, and 8 protestors were

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[1] https://acleddata.com/report/mexicos-land-and-elections-feuds-threaten-political-figures-oaxaca-and-chiapas

[2] https://www.amnesty.org/en/documents/AMR41/040/2008/en/

[3] https://www.amnesty.org/en/documents/AMR41/010/2009/en/

[4] https://oxfordre.com/latinamericanhistory/display/10.1093/acrefore/9780199366439.001.0001/acrefore-9780199366439-e-752?p=emailA8jnPjTG81jxY&d=/10.1093/acrefore/9780199366439.001.0001/acrefore-9780199366439-e-752)

killed. The reforms, among other changes, would threaten the bilingual (Spanish/Indigenous) teaching system established in many schools in the area, favoring English instead. In the aftermath of the killings, thousands of Indigenous people took to the streets to march in protest, further illustrating the pattern of tensions between the Federal government and Indigenous groups.[5]

Indigenous efforts to organize for progress and dignity have been repeatedly quelled by the Mexican government, and these events underscore the danger faced particularly by members of Indigenous groups like the Mixtecs in Oaxaca.

Policing, Crime, and Disappearances in Oaxaca

Across Mexico, the police force has historically proven to be poorly trained and ineffective, and there is little trust in the police by the public. Incidents of police brutality and corruption are frequent across all Mexican states, including in Oaxaca,[6] and police cooperation with cartels occurs frequently.[7] Recent reports state that Mexican authorities resolve about 1% of all crimes.[8]

In 2020, a slew of civilian killings by police sparked protests across the country. These protests were relevant to people of Oaxaca, as one of these instances included a 16-year-old boy from Oaxaca, shot dead by police while running an errand for his mother, by an officer who claimed to mistake the boy for someone else.[9]

Disappearances and kidnappings are commonplace across Mexico as well, both at the hand of criminals and security forces. A report by The International Commission on Missing Persons on the situation in Mexico states, "According to the National Registry of Missing Persons, as of 21 September 2023, 111,521 persons were reported as disappeared in Mexico as a result of crime"[10]. The report also stated that these events are likely under reported out of fear of retaliation and mistrust in authority. They also described the context of the rise in violence, writing, "Disappearances reflect rising levels of violence by organized crime in response to the government's strategy of militarized security, as well as violent repression by state or private groups competing for control of illegal markets, natural resources, and land. More than 150,000 people are estimated to have been killed in Mexico between 2006 and 2018".[11]

Further, when a loved one goes missing, there are few viable options for help investigating the situation. Human Rights Watch's report on Mexico in 2019 described this, saying, "Prosecutors and police routinely neglect to take basic investigative steps to identify those responsible for enforced disappearances, often telling the missing people's families to investigate on their own",[12] and between 2013-18, only 11 cases resulted in pressing charges. In 2025, HRW

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[5] https://www.wgbh.org/news/2016-07-22/a-protest-over-education-has-turned-into-a-movement-in-mexico
[6] https://www.hrw.org/news/2007/07/23/mexico-probe-charges-police-brutality-oaxaca
[7] https://www.hrw.org/news/2020/07/24/mexico-overhaul-police-forces
[8] https://www.impunidadcero.org/impunidad-en-mexico/#/
[9] https://www.hrw.org/news/2020/07/24/mexico-overhaul-police-forces
[10] (https://icmp.int/what-we-do/geographic-programs/mexico/
[11] (https://icmp.int/what-we-do/geographic-programs/mexico/
[12] (https://www.hrw.org/world-report/2019/country-chapters/mexico#899ef4

included in Mexico's report that, "Victims' families have formed more than 230 'search collectives' to investigate disappearances. Members of these collectives search prisons, hospitals, morgues, and often locate and dig up clandestine graves. They often face threats and violence. In February, human rights organizations reported, at a hearing before the IACHR, that 16 members of these collectives had been killed during the López Obrador administration."[13]

Relevance to Cruz Cruz's Hometown

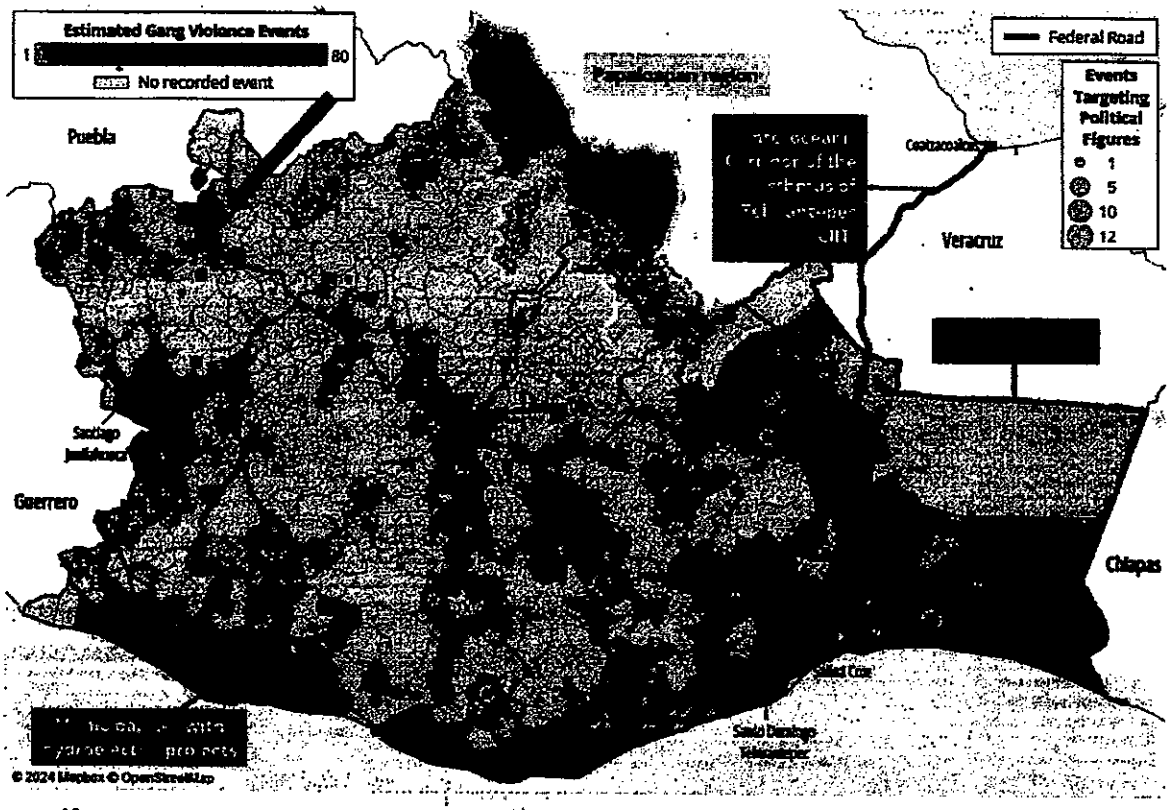
San Antonino Huajuapan De Leon, the nearest city in proximity to Cruz Cruz's home town of San Antonino Monte Verde, is located in an area strategically important to gangs and particularly at risk for gang violence, due to its proximity to the border with the state of Puebla and a main federal road, according to a report by ACLED.[14] If Cruz Cruz's father was traveling via the main federal road or close to the border with Veracruz, this would put him at higher risk of encountering gang violence. **See Map**

[13] https://www.hrw.org/world-report/2025/country-chapters/mexico#047311

[14] https://acleddata.com/report/mexicos-land-and-elections-feuds-threaten-political-figures-oaxaca-and-chiapas

Gang Violence and Targeting of Political Figures in Oaxaca

January 2018 - April 2024



15

Red arrow points to San Antonino Huajuapan De Leon, Oaxaca

[15] https://acleddata.com/report/mexicos-land-and-elections-feuds-threaten-political-figures-oaxaca-and-chiapas

Current Situation

The Mexican government has made very little real progress towards a solution to the problem of their weak security forces and the widespread disappearances that have plagued the country for years.

A US Congressional report from 2022 details that: "In many cases [of disappearances], police or military officials first detain people from whom they seek to obtain confessions or gather intelligence without warrants or probable cause. Some detainees are tortured for purposes of obtaining information and then "disappeared" by security forces to cover up their deaths. Others are handed over to organized crime groups, who often hold them for ransom, extort them, or use them for forced labor. An August 2021 report by the nongovernmental organization OpenGlobalRights describes how Mexican officials often falsify evidence and use other means to "cover up" their involvement in disappearances."[16]

"In November 2021, the U.N. Committee on Enforced Disappearances visited Mexico and acknowledged recent efforts by the Mexican government to address enforced disappearances. The Committee nevertheless criticized the 'structural impunity' that continues for perpetrators of disappearances, including corrupt public officials. In an April 2022 follow-up report, the U.N. asserted that only 2% to 6% of disappearances were successfully prosecuted."[17]

In 2019 the Mexican government announced the creation of the National Search Commission, a government initiative formed to address the issue of kidnappings and disappearances across the country. After just a few years, the leader of the organization abruptly resigned, and later claimed the government intended to falsify and manipulate the data and reports produced by the commission. The Guardian reported, "Karla Quintana, who had led the National Search Commission since 2019, resigned shortly after that announcement. 'Their intention is very clear and it is regrettable: it is to reduce the number of disappeared people, mainly during this government,' said Quintana soon afterwards."[18] The following leader of the initiative resigned as well, citing the same concerns.[19]

Other government efforts formed specifically to protect people at risk of violence have proven to be ineffective as well. In 2021, when journalist Gustavo Sánchez was enrolled in Mexico's federal Mechanism for the Protection of Human Rights Defenders and Journalists, he was killed shortly after receiving multiple death threats that he reported to authorities.[20]

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[16] https://sgp.fas.org/crs/row/IF11669.pdf)
[17] https://sgp.fas.org/crs/row/IF11669.pdf)
[18] https://www.theguardian.com/world/2023/dec/21/critics-denounce-mexico-war-on-drugs-presidential-election
[19] https://www.unotv.com/nacional/quien-es-teresa-reyes-sahagun-comision-nacional-de-busqueda-perfil/
[20] https://www.amnesty.org/en/latest/news/2024/03/the-killing-of-gustavo-sanchez/

Takeaways

There are a number of factors supported by the above evidence that would put Cruz Cruz's life in jeopardy in Mexico, and that would serve as valid reasons to flee the country after his father's kidnapping:

- A history of tension between Indigenous people and the Federal/Oaxacan government puts Mixtec people at risk of becoming victims of violence or marginalization.
- High rates of crime across the country and proven gang activity in Cruz Cruz's area.
- The police are ineffective and proven to be untrustworthy.
- Families of the disappeared face the risk of retaliation or being kidnapped themselves (especially if they attempt to search for their missing loved one).
- The Mexican government has not shown they are capable of addressing their problems (police brutality, disappearances, crime, political tensions) in an effective manner.
- The Mexican government has shown it is incapable of protecting people who are at a high risk of violence, kidnapping, or murder.

Exh. 4

OOD
PM 25-33
Effective: June 27, 2025

To: All of EOIR
From: Sirce E. Owen, Acting Director SIRCE OWEN Digitally signed by SIRCE OWEN Date: 2025.06.27 10:09:48 -04'00'
Date: June 27, 2025

NEUTRALITY AND IMPARTIALITY IN IMMIGRATION COURT PROCEEDINGS

PURPOSE:	Remind Immigration Judges of their ethical and professional responsibility obligations to treat both parties in a neutral, unbiased, and impartial manner.
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	None

In light of multiple recent situations indicating that Immigration Judges are demonstrating bias or hostility toward one party in Immigration Court proceedings, this Policy Memorandum (PM) reminds Immigration Judges of their ethical and professional responsibility obligations to treat *both* parties in a neutral, unbiased, and impartial manner.

Both federal ethics regulations and EOIR's Ethics and Professionalism Guide for Immigration Judges (Guide) require Immigration Judges to be impartial and remain free from bias in adjudicating cases. *See, e.g.*, 5 C.F.R. §§ 2635.101(b)(8), (14) (requiring Immigration Judges to "act impartially and not give preferential treatment to any private organization or individual" and to "endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards" applicable to individuals employed by the United States Government); Guide, Secs. V (requiring Immigration Judges to "act impartially and . . . not give preferential treatment to any organization or individual when adjudicating the merits of a particular case"), VI (requiring Immigration Judges to "endeavor to avoid any actions that, in the judgment of a reasonable person with knowledge of the relevant facts, would create the appearance that he or she is violating the law or applicable ethical standards"), VIII (prohibiting Immigration Judges from being "swayed by partisan interests or public clamor"), and X (prohibiting Immigration Judges from "in the performance of official duties, by words or conduct, manifest[ing] improper bias or prejudice").

Although many Immigration Judges scrupulously maintain impartiality toward both parties in immigration proceedings, there are some Immigration Judges who appear to believe—based on their own personal policy preferences[1]—that exhibiting bias is justifiable in certain situations, as

[1] An Immigration Judge should adjudicate all cases in accordance with the applicable law based on the evidence and facts presented. An Immigration Judge's personal beliefs or outcome preferences are not appropriate bases on which to decide cases, nor is personal disapproval of one party's actions or the policies of the Government. Thus, an

long as that bias is in favor of an alien and against the Department of Homeland Security (DHS). However, nothing in the applicable ethics regulations or the Guide provides an exception for bias directed against DHS. Bias against DHS is just as corrosive to the integrity of EOIR as bias against aliens. Both parties in immigration court are entitled to a neutral, impartial adjudicator, and EOIR will not tolerate improper animus directed at either party.

Ethically, Immigration Judges cannot be both impartial adjudicators and advocates for one side or the other, and Judges who would prefer to be policy advocates favoring either aliens or DHS should consider transitioning to alternate career paths. Although many Immigration Judges carry out their important responsibilities in a professional and ethical manner, those who do not by demonstrating bias and hostility toward either party may be subject to corrective or disciplinary action.

This PM is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing herein should be construed as mandating a particular outcome in any specific case. Nothing in this PM limits an adjudicator's independent judgment and discretion in adjudicating cases or an adjudicator's authority under applicable law.

Please contact your supervisor if you have any questions.

Immigration Judge who—pursuant to the Judge's own personal policy preferences or disagreements with the Government—would grant a motion filed by one party because the Judge perceives that doing so would benefit the alien, but conversely would deny an identical motion filed by the same party with the same legal basis because the Judge perceives that doing so would instead benefit the Government with whose policies the Judge disagrees, is not adjudicating cases in an appropriate manner. Such unexplained and unacknowledged deviations from past practice not only violate basic principles of administrative law, but may also be evidence of bias, particularly in situations where an Immigration Judge substitutes his or her personal policy preference for a particular outcome in lieu of an evenhanded application of the law.