

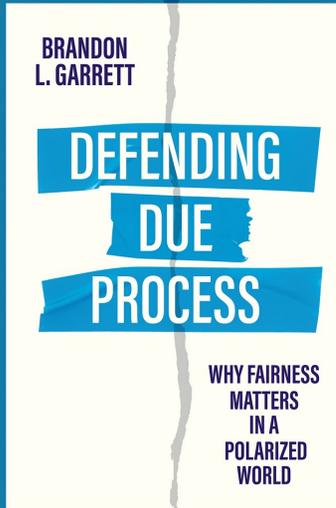


AI, Error Aversions & Defending Due Process

Prof. Brandon L. Garrett, Duke University School of Law
April 8, 2025

'Defending Due Process is stunning in its originality; in every way, a superb book that deserves a wide readership. I know of no other work like it!'

Erwin Chemerinsky, University of California, Berkeley



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polity

BRANDON
L. GARRETT

**DEFENDING
DUE
PROCESS**

WHY FAIRNESS
MATTERS
IN A
POLARIZED
WORLD



A Notice



Medicaid

Your Medicaid benefits for the person(s) listed below will end on May 31, 2023.

Name

C [REDACTED] D [REDACTED]

Chianne D [REDACTED]

Chandler D [REDACTED]

Reason: YOU ARE RECEIVING THE SAME TYPE OF ASSISTANCE FROM ANOTHER PROGRAM

The law that supports this action is:

(FL Admin. Code = R) (FL Statute = S), S414.095



A Firing



An Arrest



A Hearing



An Appeal



Was there Due Process?

There can be no doubt that, at a minimum, the Due Process Clause requires notice and the opportunity to be heard incident to the deprivation of life, liberty or property at the hands of the government.

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950).



Fair Notice under the Medicaid Act

The state must provide notice, under 42 U.S.C. § 431.210, which must contain:

- (a) A statement of what action the agency . . . intends to take and the effective date of such action;
- (b) A clear statement of the specific reasons supporting the intended action.

The notice must also include:

- “[t]he specific regulations that support . . . the action,” and
- An explanation of the right to request a hearing and “the circumstances under which Medicaid is continued if a hearing is requested.” § 431.210(c)-(e).



Medicaid “Unwinding” and Due Process

In March, families like Erin Booth’s received letters from the Florida agency stating their children’s Medicaid cases were being redetermined. (This child was undergoing chemotherapy when Booth received notice.)

“I just feel like the state has failed me because I had to work well through my son’s whole cancer treatment. All I wanted was Medicaid so my son could have his treatment covered, and I wouldn’t have to worry about going bankrupt”

Other families did not receive any notice at all...

In Fall 2023, Attorneys from the National Health Law Program and the Florida Health Justice Project filed a class-action lawsuit.



Houston Fed. Teachers v. Houston Indep. School Dist.

“I have always been devoted to my students and proud of my teaching skills.”

“Houston needs a well-developed system that properly evaluates teachers, provides good feedback and ensures that educators will receive continuous, targeted professional development to improve their performance.”



“The EVAAS score might be erroneously calculated for any number of reasons, ranging from data-entry mistakes to glitches in the computer code itself. Algorithms are human creations, and subject to error like any other human endeavor””



The Blackstone Maxim

“It is better that ten guilty persons escape, than that one innocent suffer.”



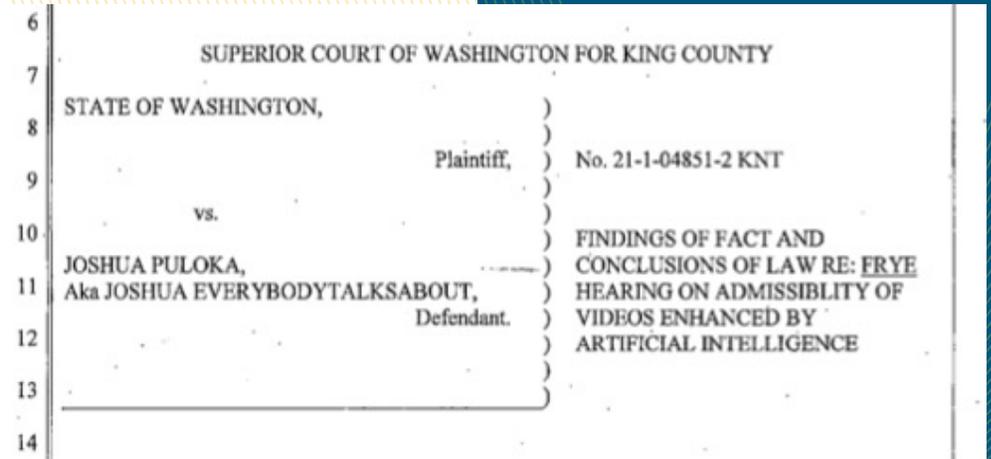
Error Aversions by Demographic Categories and Political Party Affiliation

Error Aversion	Gender		Age			Education			Political Party		
	Women	Men	Below 30	30-50	Over 50	High School Degree or Less	College Degree or Some College	Post-College Degr. or Educ.	Democrat	Republican	Independent
False Conviction	709 (20%)	921 (32%)	153 (26%)	324 (25%)	455 (22%)	124 (17%)	340 (20%)	126 (29%)	868 (31%)	405 (23%)	359 (19%)
False Acquittal	568 (16%)	565 (20%)	118 (20%)	191 (15%)	289 (14%)	106 (14%)	239 (14%)	59 (14%)	470 (17%)	224 (15%)	441 (21%)
Equally Bad	2265 (64%)	1378 (48%)	310 (53%)	767 (60%)	1308 (64%)	522 (69%)	1103 (66%)	253 (58%)	1451 (52%)	957 (62%)	1245 (60%)



- “This Court finds that admission of this AI-enhanced evidence would lead to a confusion of the issues and a muddling of eyewitness testimony, and could lead to a time-consuming trial within a trial about the non-peer-reviewable-process used by the AI model”

March 2024 Ruling



Solving AI's Black Box Problem

Prof. Cynthia Rudin, Duke U.
Interpretable Machine Learning Lab
(The world's top lab in interpretable AI)



Complex AI Can be Reduced to Simple and Interpretable Models

This model was just as predictable as the COMPAS algorithm, which is proprietary and relies on up to 137 inputs. It consisted in this simple statement:

Northpointe Suite
Risk Needs Assessment

Industry leading Risk Needs Assessments,
Your Tools, Your Way.

If the person has either >3 prior crimes, or is 18 to 20 y old and male, or is 21 to 23 y old and has two or three prior crimes, they are predicted to be rear-rested within 2 y from their evaluation, and otherwise not.

E. Angelino, N. Larus-Stone, D. Alabi, M. Seltzer, C. Rudin, Learning certifiably optimal rule lists for categorical data. *J. Mach. Learn. Res.* 18, 1–78 (2018).



A Husky or a ... Flute?



- Left: A photo of a Husky.
- Middle: Same photo with a heat map used by an AI system identifying it as a Husky.
- Right: A heat map by an AI system identifying the photo as a flute.
- Illustration from Cynthia Rudin, “Stop explaining black box machine learning models for high stakes decisions and use interpretable models instead.” May 2019. Nature Machine Intelligence, Vol. I, 206 at 209. Photo credit Chaofen Chen, Duke University.



Key Terms

PNAS

PERSPECTIVE

OPEN ACCESS



Interpretable algorithmic forensics

Brandon L. Garrett^{a,b,1} and Cynthia Rudin^{c,d,e,f,g}

Edited by Thomas Albright, Salk Institute for Biological Studies, La Jolla, CA; received March 1, 2023; accepted May 22, 2023

One of the most troubling trends in criminal investigations is the growing use of “black box” technology, in which law enforcement rely on artificial intelligence (AI) models or algorithms that are either too complex for people to understand or they simply conceal how it functions. In criminal cases, black box systems have proliferated in forensic

In one telling example, a federal judge took the unusual step of ordering that the Office of the Chief Medical Examiner in New York City disclose the source code for its probabilistic genotyping software, used to analyze mixtures of DNA (7). As a result, a series of concerns regarding accuracy came to light, and the software was eventually discontinued (7).

Artificial Intelligence: Machines that perform tasks typically performed by humans and that normally require human intelligence.

Interpretable. Predictive models whose calculations are inherently capable of being understood by people. It provides information regarding the model, the factors used to provide a result, and how those factors were in fact combined to provide a result.

Explainable. Efforts to provide post hoc explanations for models.

Transparent. Providing training data and code to permit testing.



Errors in Administrative Data

- Typographical errors are extremely common.
- In the criminal justice setting: “Errors are evidently pervasive, systematic, frequently related to behaviors and policies of interest, and unlikely to conform to convenient textbook assumptions.” J. Pepper, C. Petrie, S. Sullivan, *Measurement Error in Criminal Justice Data in Handbook of Quantitative Criminology*, A. R. Piquero, D. Weisburd, Eds. (Springer, NY, 2010).
- “Our analysis also suggests that COMPAS scores may often be miscalculated. These kinds of errors can lead to years of extra prison time, or the other extreme, dangerous individuals being released into society.” C. Rudin C. Wang, B. Coker, *The Age of Secrecy and Unfairness in Recidivism Prediction*, HDSR, March 31, 2020.

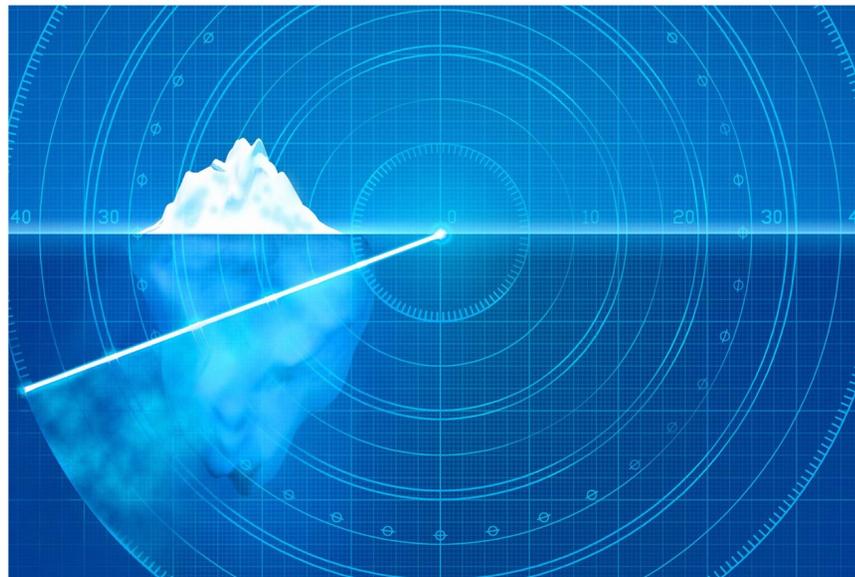


How do legal decisionmakers use quantitative tools and information?

Assessing Risk: The Use of Risk Assessment in Sentencing

by Brandon Garrett and John Monahan

Summer 2019 | Volume 103 Number 2



Studying Shotspotter Pilot in Durham, NC



The ShotSpotter pilot was deployed from December 15, 2022 – December 14, 2023 in a three-square-mile area of Durham with historically comparatively high rates of gun violence.

The report, [*Evaluation of Durham's ShotSpotter Installation: Results of a 12-month Pilot Project*](#), examines the performance of ShotSpotter in the pilot area and is authored by Philip Cook, Professor Emeritus of Public Policy and Economics, Duke University, and Adam Soliman, Assistant Professor of Economics, Clemson University.



Confrontation Rights and AI

- The Supreme Court's Sixth Amendment Confrontation Clause rulings have emphasized the defense right to adequately confront adverse witnesses, including forensic witnesses in court

For a longer discussion:

Brandon L. Garrett & Cynthia Rudin, *The Right to a Glass Box: Rethinking the Use of Artificial Intelligence in Criminal Justice*, Cornell L. Rev. (2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4275661



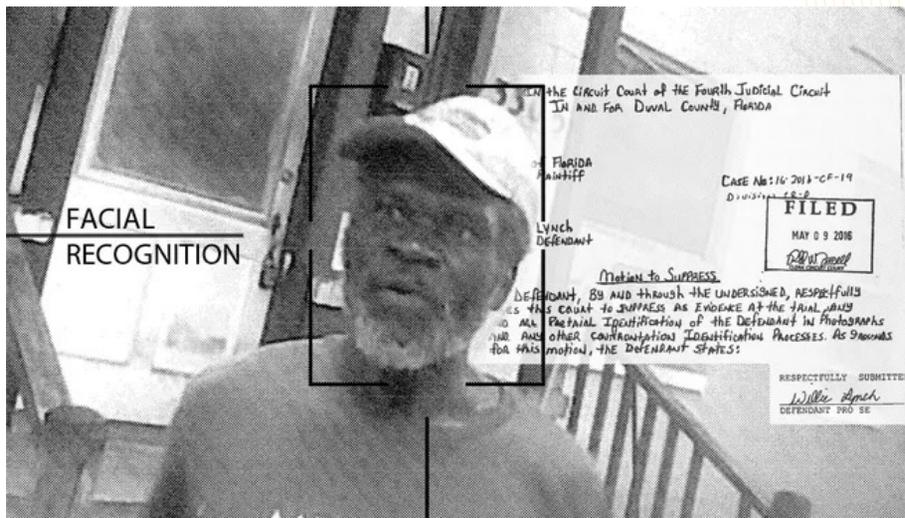
Rule 702, Daubert, and AI

Federal Rule 702 Amendment, eff. Dec. 1, 2023

- Rule 702. Testimony by Expert Witnesses
- A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:
 - (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
 - (b) the testimony is based on sufficient facts or data;
 - (c) the testimony is the product of reliable principles and methods; and
 - (d) ~~the expert has reliably applied~~ expert's opinion reflects a reliable application of the principles and methods to the facts of the case.



Discovery and Black Box AI



- The Advisory Committee to the Federal Rules of Criminal Procedure notes Rule 16 intended to require disclosure of scientific results and tests: “the requirement that the government disclose documents and tangible objects ‘material to the preparation of his defense’ underscores the importance of disclosure of evidence favorable to the defendant.”
- *Brady v. Maryland* obliges prosecutors to disclose to the defense favorable evidence, even in the absence of a request, including evidence in the possession of other government actors.
- *Lynch v. State* (2019) – denied discovery and affirmed on appeal.
- *But: Arteaga v. New Jersey* (2023) – granting discovery re. facial recognition technology



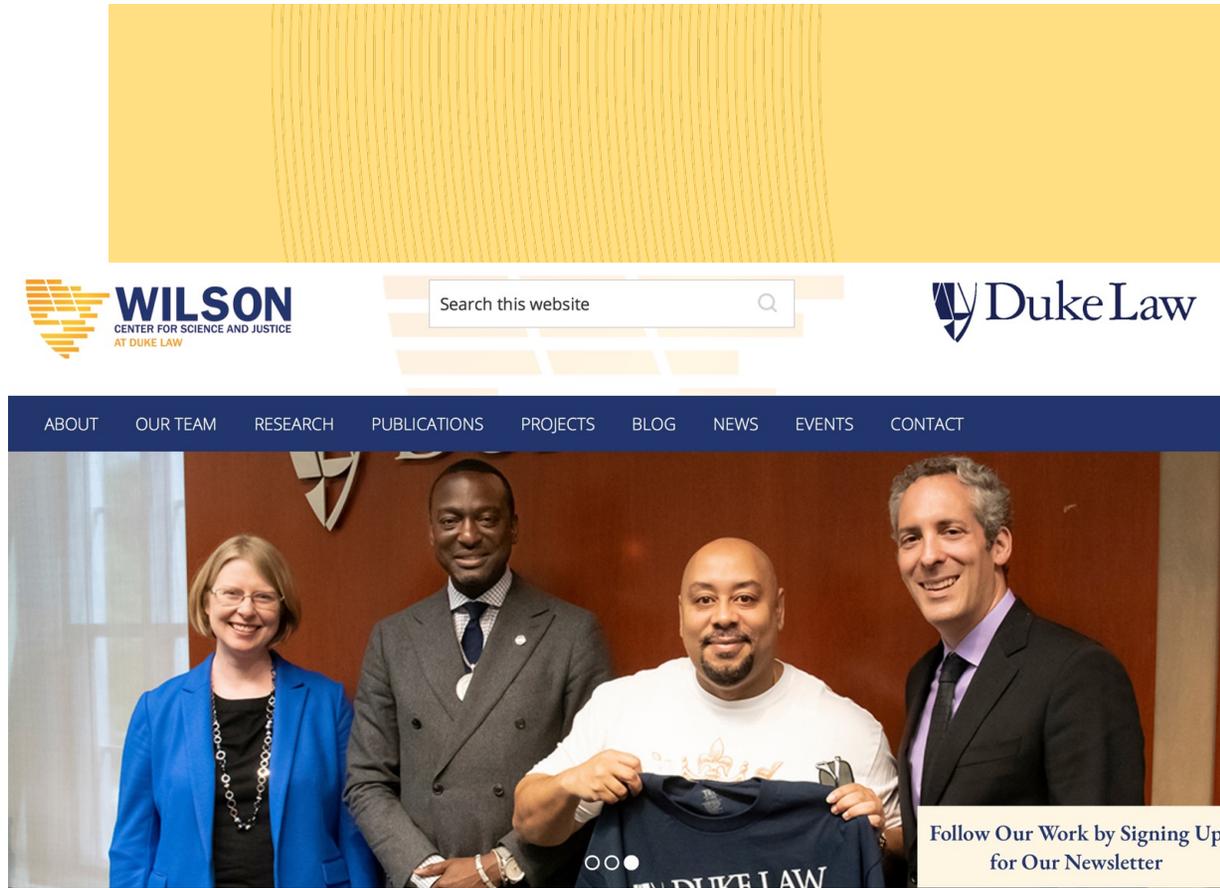
Settling with AI

- “I’m like, do I want to roll the dice knowing that I have children out there? As a father, I see my children hurting. I’m hurting, but I could hurt, right? I could deal with that. But when I see my hurting is affecting my children, I got to be a father. I got to go home to my kid,”
- “People be like, ‘Yo, you had a good thing with your case. Why didn’t you fight all the way?’” Arteaga said. “My question for them was, ‘What would you do if you was me?’”





Thank you!
Questions?



<https://wcsj.law.duke.edu>



Due Process in the Immigration Context

KARLA TORRES SUEIRO, ESQ.

JULY 16, 2025

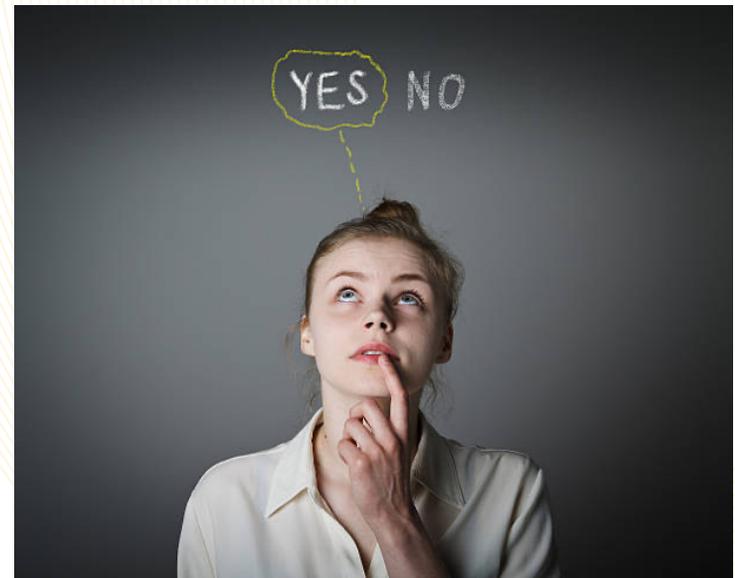
Agenda

- Are non-citizens entitled to due process rights in the U.S.?
- Due process: Immigration Court
- Due process safeguards
- Due process challenges in the immigration context
- Local stories: immigration enforcement and at the state level



Do non-citizens have the right to due process?

- Yes.
- Both citizens and non-citizens in the U.S. have the right to due process.



What does “Due Process” mean for non-citizens in the U.S.?

Right to fair treatment under the law: Fair procedures and treat all individuals with fairness when making decisions that affect their lives, liberty, or property (including non-citizens).

Due process rights are not absolute in immigration proceedings.



Due process in the immigration context

- This includes the right to notice, the opportunity to be heard, the right to challenge government actions in court, among other safeguards.



Due process in the Immigration Context

- U.S. Immigration proceedings, although not subject to the full range of constitutional protections, must conform to the U.S. constitution's requirement of due process.

Notice to Appear

Notice of Hearing

Hearing Date

Full and Fair Hearing



Notice to Appear

Uploaded on: 9/6/2022 at 3:10:44 p.m. (Eastern Daylight Time) Base City: MEM

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

DOB: [REDACTED]

Event No: [REDACTED]

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [REDACTED] IHS: [REDACTED] File No: [REDACTED]

In the Matter of
Respondent: [REDACTED] currently residing at
[REDACTED] (Number, street, city, state and ZIP code) [REDACTED] (Area code and phone number)

You are an arriving alien.
 You are an alien present in the United States who has not been admitted or paroled.
 You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of [REDACTED] and a citizen of [REDACTED];
3. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act;
4. You arrived in the United States at or near [REDACTED].

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:
See Continuation Page Made a Part Hereof

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
 Section 235(b)(1) order was vacated pursuant to: 8CFR 208.30 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:
80 Monroe Avenue Suite 501 Memphis TN 38103 EOIR Memphis, TN
(Complete Address of Immigration Court, including Room Number, if any)

on October 9, 2024 at 8:30 AM to show why you should not be removed from the United States based on the charge(s) set forth above.
(Date) (Time)

[REDACTED]
(Signature and Title of Issuing Officer) (Sign in ink)

Date: September 6, 2022
(City and State)

EOIR-1 of 7

NOTICE OF HEARING IN REMOVAL PROCEEDINGS
IMMIGRATION COURT
201 VARICK ST., 5TH FL RM 507
NEW YORK, NY 10014

RE: [REDACTED] DATE: Sep 22, 2020
FILE: [REDACTED]
TO: [REDACTED]

Your A number

Please take notice that the above captioned case has been scheduled for a
INDIVIDUAL hearing before the Immigration Court on [REDACTED] at [REDACTED] at:

The type
of hearing

201 VARICK ST., Courtroom 5
NEW YORK, NY 10014

Location
of hearing

Date and time
of your hearing

You may be represented in these proceedings, at no expense to the Government,
by an attorney or other individual who is authorized and qualified to represent
persons before an Immigration Court. Your hearing date has not been scheduled
earlier than 10 days from the date of service of the Notice to Appear in order
to permit you the opportunity to obtain an attorney or representative. If you
wish to be represented, your attorney or representative must appear with you at
the hearing prepared to proceed. You can request an earlier hearing in writing.

Failure to appear at your hearing except for exceptional circumstances
may result in one or more of the following actions: (1) You may be taken into
custody by the Department of Homeland Security and held for further
action. OR (2) Your hearing may be held in your absence under section 240(b)(5)
of the Immigration and Nationality Act. An order of removal will be entered
against you if the Department of Homeland Security established by
clear, unequivocal and convincing evidence that a) you or your attorney has
been provided this notice and b) you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT
CORRECT, WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION
COURT NEW YORK, NY THE ATTACHED FORM EOIR-33 WITH YOUR ADDRESS AND/OR
TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS.
EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE
COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE
ON THE ATTACHED FORM EOIR-33. ADDITIONAL FORMS EOIR-33 CAN BE OBTAINED FROM
THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO
OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW
ADDRESS AND/OR TELEPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE
OF ADDRESS." CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE
SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED
SUFFICIENT NOTICE TO YOU AND THESE PROCEEDINGS CAN GO FORWARD IN YOUR ABSENCE.

A list of free legal service providers has been given to you. For
information regarding the status of your case, call toll free 1-800-898-7180
or 240-314-1500. For information on Immigration Court procedures, please
consult the Immigration Court Practice Manual, available at www.usdoj.gov/eoir.

CERTIFICATE OF SERVICE
THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) ELECTRONIC SERVICE (E)
TO: [] CUSTOMER Custodian Officer ADJUDICATOR'S ATT/REP [] DHS
DATE: 9/22/2020 COURT STAFF [] V3
Attachments: [] EOIR-33 [] EOIR-28 [] Legal Services List [] Other

Notice of Hearing

Your A number

Notice to Appear

U.S. Department of Homeland Security

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [REDACTED] FINS #: [REDACTED] File No: [REDACTED]
DOB: [REDACTED] Event No: [REDACTED]

In the Matter of:

Respondent: [REDACTED] currently residing at:
[REDACTED] (Number, street, city and ZIP code) [REDACTED] (Area code and phone number)

- 1. You are an arriving alien.
- 2. You are an alien present in the United States who has not been admitted or paroled.
- 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of HONDURAS and a citizen of HONDURAS;
3. You arrived in the United States at or near [REDACTED], on or about [REDACTED];
4. You were not then admitted or paroled after inspection by an Immigration Officer.

The immigration court
where your hearing will
be scheduled

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:
212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- Section 235(b)(1) order was vacated pursuant to: 8CFR 208.30(f)(2) 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:
5701 Executive Center Drive Suite 400 Charlotte NC US 28212

(Complete Address of Immigration Court, including Room Number, if any)

on a date to be set at a time to be set to show why you should not be removed from the United States based on the charge(s) set forth above.

NICHOLAS E. MUNOZ ACTING PATROL AGENT IN CHARGE
(Signature and Title of Issuing Officer)

Date: April 18, 2018 McAllen, Texas
(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07) N

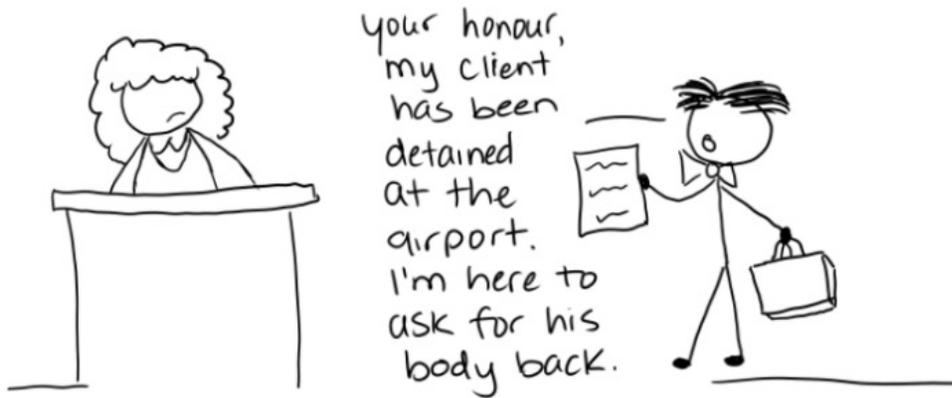
Hearing Date

**Due Process
in the
Immigration
Context**

Fair Hearing

Legal
Representation

HABEAS CORPUS



Latin for "to have the body" - The Writ of Habeas Corpus allows lawyers to ask a judge whether the detention of their client by the state is valid.

Habeas Corpus

Challenges to Due Process

Expedited removal

Detention

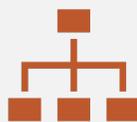
Arresting asylum seekers at immigration courthouses and immigration agencies

Closing immigration court cases and placing non-citizens into a fast-track expedited deportation process

Challenges to Due Process

Safe third
country

Immigration Enforcement at the State Level



SB 6002/HB 6001: Centralized Immigration Enforcement Division



Real-case stories & local trends

Protecting due process for non-citizens

- Educating the public about immigration policies and immigration legal procedures
- Help non-citizens understand their options for securing lawful status
- Access to legal services
- Raise public awareness to promote fair treatment of all non-citizens in the U.S.



Thank
you!

Questions?

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Knoxville, TN 37923
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Email: karla@torressueiro.com