

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 1, 2026

Christopher M. Wolpert
Clerk of Court

ROSA DENISS TORRES-ROLDAN;
JOHN DOE, a minor,

Petitioner,

v.

TODD BLANCHE*, United States
Attorney General,

Respondent.

No. 25-9562
(Petition for Review)

ORDER AND JUDGMENT**

Before **HARTZ, KELLY**, and **CARSON**, Circuit Judges.

Petitioners Rosa Deniss Torres-Roldan and her minor son seek review of a final order of the Bureau of Immigration Appeals (“BIA”) affirming an immigration judge’s (“IJ’s”) decision denying their applications for asylum, withholding of removal, and protection under the regulations implementing the Convention Against

* Todd Blanche became the Attorney General of the United States on August 8, 2026, and he has been substituted as Respondent. *See* Fed. R. App. P. 43(c)(2).

** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Torture (“CAT”). Exercising jurisdiction under 8 U.S.C. § 1252(a), we grant the petition, vacate the BIA’s order, and remand to the BIA with instructions to remand to the IJ for a new hearing.

I. BACKGROUND

A. Factual Background

Ms. Torres-Roldan, her minor son, and her husband, Paul Iglesias Blass, are natives and citizens of Peru. Mr. Iglesias worked for a Peruvian transportation company that arranged bus transportation for clients, including political candidates who traveled to campaign events. At some point, Mr. Iglesias’s boss allegedly directed him to cease providing transportation services for the party of former Peruvian president Pedro Castillo. That decision purportedly resulted in some people attacking the transportation company.

In June 2022, two men on a motorcycle came to the home of Ms. Torres-Roldan and Mr. Iglesias and made death threats to the family. According to Mr. Iglesias, the men were part of a Colombian gang that had dual goals of extorting him for money in connection with a home improvement loan and seeking to have him restore transportation services to Castillo and his campaign.

The men subsequently attacked Mr. Iglesias outside the transportation company, putting a gun in his mouth and breaking his dentures. The men also killed the family’s pets and tortured Mr. Iglesias after he sought help from the police.

Ms. Torres-Roland and her son initially fled to Mexico and then, on July 9, 2022, entered the United States without inspection or admission.

B. Procedural Background

On September 6, 2023, the Department of Homeland Security (DHS) served Ms. Torres-Roland and her son with Notices to Appear (NTA) charging each of them with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i). The following day, DHS placed them in removal proceedings by filing the NTAs with the Denver Immigration Court.

On February 28, 2024, Ms. Torres-Roldan and her son, along with a number of other families, appeared before an IJ. The IJ advised the group of their right to be represented by counsel and provided them with a list of legal aid attorneys they could contact. Following the group advisements, the IJ questioned Ms. Torres-Roldan individually, but did not require her “to state then and there whether . . . she desire[d] representation.” 8 C.F.R. § 1240.10(a)(1).

Ms. Torres-Roldan appeared three more times before an IJ prior to her merits hearing. Although the IJ discussed the possibility of Mr. Iglesias obtaining legal representation to help him decide whether to testify in Ms. Torres-Roldan’s case,¹ the IJ never discussed whether Ms. Torres-Roldan and her son desired their own representation.

¹ At a hearing on October 4, 2024, the IJ asked DHS’s counsel if DHS would consider dismissing the cases against Ms. Torres-Roldan and her son so that they could later be combined with the case against Mr. Iglesias, who entered the United States separately from Ms. Torres-Roldan and her son. DHS ultimately declined to do so.

The merits hearing occurred on February 7, 2025. Ms. Torres-Roldan and her son appeared pro se and Ms. Torres-Roldan testified. Mr. Iglesias also testified. Although the IJ found their testimony credible, the IJ concluded that Ms. Torres-Roldan and her son “failed to establish past persecution and a well-founded fear of future persecution, and that they couldn’t avail themselves to the protection of their home country,” and therefore failed to meet “their burden of proof to show they are refugees.” R. vol. I at 81-82. The IJ in turn concluded that because they “failed to demonstrate eligibility for asylum, they also fail[ed] to meet the stringent standard for withholding of removal under Section 241(b)(3) of the Act.” *Id.* at 82. Finally, the IJ found that Ms. Torres-Roldan and her son “failed to establish” it was “more likely than not that they would be subject to torture at the instigation or with the acquiescence of the Peruvian government” and therefore denied their applications for CAT relief. *Id.*

Ms. Torres-Roldan and her son appealed to the BIA. The BIA affirmed the IJ’s decision.

II. DISCUSSION

“[W]e review the BIA’s decision as the final agency determination and limit our review to issues specifically addressed therein.” *Diallo v. Gonzales*, 447 F.3d 1274, 1279 (10th Cir. 2006). “We consider any legal questions de novo, and we review the agency’s findings of fact under the substantial evidence standard.” *Elzour v. Ashcroft*, 378 F.3d 1143, 1150 (10th Cir. 2004).

Although Ms. Torres-Roldan and her son raise several issues in their petition, we address only one. Specifically, Ms. Torres-Roldan argues that the IJ failed at any time during the five hearings to ask her whether she desired legal representation. As discussed in greater detail below, we agree and conclude that this failure entitles Ms. Torres-Roldan and her son to a remand for a new hearing.

The Department of Justice has implemented a regulation outlining what an IJ must do in a removal proceeding. As relevant here, the IJ is required to “[a]dvice the respondent of his or her right to representation, at no expense to the government, by counsel of his or her own choice authorized to practice in the proceedings *and require the respondent to state then and there whether he or she desires representation.*” 8 C.F.R. § 1240.10(a)(1) (emphasis added). Consistent with this regulation, the BIA has acknowledged that an IJ “must generally (1) inquire specifically as to whether a respondent wishes to continue without a lawyer and (2) receive a knowing and voluntary affirmative response.” *Matter of C-B-*, 25 I. & N. Dec. 888, 890 n.1 (BIA 2012).

We have never addressed whether an IJ’s failure to comply with the regulatory requirement protecting a noncitizen’s right to counsel “merit[s] invalidation of the challenged agency action without regard to whether the alleged violation has substantially prejudiced” the noncitizen.² *Leslie v. Att’y Gen. of U.S.*, 611 F.3d 171,

² In *Michelson v. I.N.S.*, 897 F.2d 465 (10th Cir. 1990), this court rejected the noncitizen’s argument that the lack of appointed counsel constituted a valid ground for challenging his order of deportation “because he ha[d] not shown prejudice which would cast doubt on the fundamental fairness of the proceeding.” *Id.* at 468. But

180 (3d Cir. 2010). But at least two circuits, the Second and Third, have held that a respondent does not have to establish prejudice in these circumstances. Specifically, the Second Circuit has held “that an alien claiming the INS has failed to adhere to its own regulations regarding the right to counsel in a deportation hearing is not required to make a showing of prejudice before he is entitled to relief,” and that “[a]ll that need be shown is that the subject regulations were for the alien’s benefit and that the INS failed to adhere to them.” *Montilla v. I.N.S.*, 926 F.2d 162, 169 (2d Cir. 1991). Similarly, the Third Circuit has held that “a violation of [the fundamental right to counsel] so undermines the structure of the hearing that we must automatically remand.”³ *Aquino v. Att’y Gen.*, 53 F.4th 761, 766 (3d Cir. 2022).

The Fourth and Fifth Circuits, in contrast, have held that a noncitizen must show they were prejudiced by a regulatory violation. *See Soto v. Holder*, 547 F. App’x 414, 415 (5th Cir. 2013) (addressing IJ’s failure to elicit from noncitizen an express statement as to whether he desired representation); *Delgado-Corea v. I.N.S.*, 804 F.2d 261, 262-63 (4th Cir. 1986) (involving failure of IJ to provide noncitizens with a list of free legal services available for the place where their deportation hearing was to be held).

Michelson is distinguishable because it did not involve the agency’s failure to adhere to its own regulations.

³ These decisions are based on the *Accardi* doctrine, which “provides that when an agency fails to follow its own procedures or regulations, that agency’s actions are generally invalid.” *Orellana v. Bondi*, 141 F.4th 560, 566 (4th Cir. 2025) (internal quotation marks omitted); *see United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

We need not decide which of these positions to adopt because, even if we were to conclude that a showing of prejudice was required, our review of the record in this case persuades us that Ms. Torres-Roldan and her son were prejudiced by the IJ's failure to ask Ms. Torres-Roldan whether she desired to be represented by counsel. Specifically, we conclude that, at a minimum, an attorney could have, through competent questioning, helped to clarify Mr. Iglesias's testimony at the merits hearing regarding the events in question, their potential connection to political affiliations, and the alleged complicity of the local police in the events.⁴

III. CONCLUSION

We grant the petition for review, vacate the BIA's order, and remand to the BIA with instructions to remand to the IJ for a new hearing. We also grant Ms. Torres-Roldan's motion for leave to proceed in forma pauperis.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge

⁴ We are not saying that Ms. Torres-Roldan and her son are entitled to relief. Rather, we conclude only that the assistance of counsel could have materially altered Ms. Torres-Roldan's presentation at the merits hearing.