**UNITED STATES DISTRICT COURT**
**DISTRICT OF VERMONT**

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| **Jane DOE,**[1]<br><br>Petitioner/Plaintiff,<br><br>v.<br><br>**U.S. DEPARTMENT OF HOMELAND SECURITY; KRISTI NOEM**, Secretary of the U.S. Department of Homeland Security, in her Official capacity; **THERESA MESSIER**, Superintendent, Chittenden Regional Correctional Facility, in her official capacity,<br><br>Respondents/Defendants. | Case No. 2:25-cv-00240-CR<br><br>**PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** |

## INTRODUCTION

1. This is a petition for a writ of habeas corpus and complaint for declaratory and injunctive relief on behalf of Jane Doe (Ms. Doe), a research scientist at Harvard University, who is presently detained in Chittenden, Vermont by U.S. Immigration and Customs Enforcement (ICE) following the unlawful cancellation of her valid research visa and purported issuance of an expedited removal order by U.S. Customs and Border Protection (CBP) at Boston Logan International Airport on February 16, 2025. Both CBP and ICE have refused to provide Ms. Doe's counsel with copies of the alleged final order of removal and the sworn statement taken from her at the time of entry in violation of her statutory and regulatory rights. The position of Respondent-Defendant U.S. Department of Homeland Security (DHS) is that Ms. Doe cannot be

[1] The complaint is filed under a pseudonym to protect Petitioner-Plaintiff from the persecution she fears in her country of origin. Undersigned counsel will file a motion for leave to appear under a pseudonym as expeditiously as possible and disclose her identity to the Court and opposing counsel.

released because she expressed a fear of return to Russia, and this must await an interview before an asylum officer to determine whether her fear is credible before they will consider release on parole. However, U.S. Citizenship and Immigration Services (USCIS), the entity responsible for conducting that credible fear interview, has refused to schedule it despite an expedited request to do so.

2. This matter arises from Ms. Doe's inadvertent failure to declare on a customs form non-hazardous, noninfectious, and non-toxic frog embryos that she was bringing to the United States at the request of Dr. Leond Peshkin, the leader of the research group at Harvard Medical School under whose leadership she works. The law provides a process and penalties for failing to disclose articles on a customs form as well as remittance of liability. There was no cause for CBP to instead follow an entirely different process, that of expedited removal in which CBP erroneously looked beyond Ms. Doe's valid research visa, canceled that visa, issued a baseless expedited removal order, apprehended her, and is continuing to detain her. ICE and CBP have compounded their errors by refusing to provide counsel with documentation of the encounter. Moreover, USCIS has yet to expedite the interview in which Ms. Doe can demonstrate her fear of deportation to Russia is credible and thereafter qualify for release from detention.

3. Accordingly, to vindicate Ms. Doe's statutory, constitutional, and regulatory rights, this Court should grant the instant petition for a writ of habeas corpus pursuant to 8 U.S.C. § 1252(e)(4) to require that DHS place Ms. Doe in removal proceedings before an immigration judge and/or reinstate her valid J-1 visa (Count I), issue an order compelling CBP and ICE to release to counsel all paperwork related to the order (Count II), or, alternatively, issue an order compelling USCIS to expeditiously schedule and conduct a credible fear interview

(Count III). Moreover, this Court should exercise its authority to order DHS not to transfer Ms. Doe out of this District and away from counsel while this case is pending.

## JURISDICTION

4. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*. and the Tariff Act of 1930, 19 U.S.C. §§ 1202, 1683g.

5. This Court has habeas jurisdiction under 8 U.S.C. § 1252(e)(2) (habeas corpus proceedings), 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Under 8 U.S.C. § 1252(e)(2)(B), this Court has jurisdiction to determine whether, in fact, the removal order against Ms. Doe was lawful such that she was "ordered removed under [8 U.S.C. § 1225(b)(1)]." Under 8 U.S.C. § 1252(a)(4)(B), this Court is authorized to "require [Ms. Doe] be provided a hearing in accordance with [8 U.S.C. § 1229a]" in which she can "thereafter obtain judicial review of any resulting final order of removal pursuant to [8 U.S.C. § 1252(a)(1)]." The Court may also grant relief pursuant to the habeas corpus statutes, 28 U.S.C. § 2241 *et seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

6. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1361 (Mandamus Act). The government has waived its sovereign immunity pursuant to 5 U.S.C. § 702. The Court may grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-02, 5 U.S.C. §§ 702, 706, 28 U.S.C. § 1361, and 28 U.S.C. § 1651.

## VENUE

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e), because this is a

civil action in which Respondents-Defendants are officers or employees of the United States, acting in their official capacity, and Ms. Doe is currently detained at the Chittenden Regional Correctional Facility in Chittenden, Vermont, which is within the jurisdiction of this District; a substantial part of the events or omissions giving rise to her claims occurred in this District, and no real property is involved in this action.

**REQUIREMENTS OF 28 U.S.C. § 2243**

8. With respect to Ms. Doe's habeas claim, the Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to Respondents "forthwith," unless Ms. Doe is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

9. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

**PARTIES**

10. Petitioner-Plaintiff Jane Doe is native of Russia and resident of Boston, Massachusetts. She has been conducting research at Harvard University since May 2023 pursuant to a valid J-1 exchange visitor visa. She is currently detained at the Chittenden Regional Correctional Facility in Chittenden, Vermont.

11. Respondent-Defendant U.S. Department of Homeland Security is the federal agency responsible for implementing and enforcing the Immigration and Nationality Act and the

Tariff Act of 1930. DHS oversees its component agencies, including U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services. Relevant here, CBP is responsible for inspection and admission of noncitizens arriving in the United States, ICE is responsible for the detention of noncitizens, and U.S. Citizenship and Immigration Services' asylum office is responsible for conducting interviews of noncitizens who express a fear of return to their country of origin.

12. Respondent-Defendant Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, she is responsible for implementation and enforcement of the Immigration and Nationality Act and Tariff Act of 1930. Ms. Noem is responsible for oversight of CBP, ICE, and USCIS and is a legal custodian of Ms. Doe.

13. Respondent-Defendant Theresa Messier is the Superintendent of the Chittenden Regional Correctional Facility, and she has physical custody of Ms. Doe pursuant to the facility's contract with ICE to detain noncitizens. Ms. Messier is a legal custodian of Ms. Doe.

## LEGAL FRAMEWORK

### *Process and Penalties for Failure to Declare*

14. The law governing the process and penalties for failure to declare an article on a customs form upon entry to the United States is the Tarriff Act of 1930, also known as the Smoot-Hawley Act. Pursuant to 19 U.S.C. § 1497, the statute provides:

> (a) In general
> (1) Any article which—
> (A) is not included in the declaration and entry as made or transmitted; and
> (B) is not mentioned before examination of the baggage begins—
> (i)in writing by such person, if written declaration and entry was required, or
> (ii)orally, if written declaration and entry was not required;

> shall be subject to forfeiture and such person shall be liable for a penalty determined under paragraph (2) with respect to such article.
> (2) The amount of the penalty imposed under paragraph (1) with respect to any article is equal to—
> (A) if the article is a controlled substance, either $500 or an amount equal to 1,000 percent of the value of the article, whichever amount is greater; and
> (B) if the article is not a controlled substance, the value of the article.

15. The implementing regulations provide that CBP may seize "[a]ny article in the baggage of a passenger arriving from a foreign country which is not declared" and "the personal penalty prescribed by section 497, Tariff Act of 1930 (19 U.S.C. 1497), *shall* be demanded from the passenger." 19 C.F.R. § 148.18(a) (emphasis added). Furthermore, if CBP elects not to seize the article "a claim for the personal penalty *shall* be made against the person who imported the article without declaration." *Id.* (emphasis added).

16. The regulations and guidelines further permit remission or mitigation of liability in the form of forfeiture of the personal penalty and forfeiture of property. 19 C.F.R. § 148.18(b); Guidelines for Disposition of Violations of 19 U.S.C. 1497, available at https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/Mitigation-Guidelines-Seizures-Penalties-Passenger-Failure-to-Declare.pdf (last visited Feb. 23, 2025); Appendix A to Part 171—Guidelines for Disposition of Violations of 19 U.S.C. 1497, available at https://www.ecfr.gov/current/title-19/chapter-I/part-171/appendix-Appendix%20A%20to%20Part%20171 (last visited Feb. 23, 2025).

***Expedited Removal and Credible Fear Interviews***

17. The expedited removal statute provides that the process begins—and often effectively concludes—with an inspection by an immigration officer. The officer must, first, determine if the individual is a noncitizen who is inadmissible because he or she has engaged in

certain kinds of fraud or lacks valid entry documents. *See* 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)).

18. If the officer concludes that the individual is inadmissible under an applicable ground, the officer "shall," with the concurrence of a supervisor, 8 C.F.R. § 1235.3(b)(7), order the individual removed "without further hearing or review unless the [noncitizen] indicates either an intention to apply for asylum . . . or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i).

19. At any time during the expedited removal process, the officer may permit the individual to withdraw her application for admission and allow the person to depart the country without issuing an expedited removal order. 8 U.S.C. § 1225(a)(4).

20. For those who express a fear of return to their countries of origin, the expedited removal statute provides a limited additional screening. But the additional screening does not remotely approach the type of process that asylum seekers receive in regular immigration proceedings before an immigration judge under 8 U.S.C. § 1229a.

21. During the inspection process, if an individual indicates an intention to apply for asylum or expresses fear of return to his or her country of origin, the immigration officer must refer the individual for a rudimentary screening interview with an asylum officer, referred to as a "credible fear" interview, to determine whether the individual should be able to apply for asylum and related humanitarian relief. 8 U.S.C. § 1225(b)(1)(A)(ii), (B); 8 C.F.R. §§ 235.3(b)(4), 208.30(d)-(e).

22. To prevail at the credible fear interview, the applicant must show "a significant possibility, taking into account the credibility of the statements made by the [noncitizen] in support of the [noncitizen's] claim and such other facts as are known to the officer, that the [noncitizen] could establish eligibility for asylum." 8 U.S.C. § 1225(b)(1)(B)(v).

23. Applicants who satisfy the credible fear standard have their expedited removal orders cancelled by operation of law and are placed into regular removal proceedings under 8 U.S.C. § 1229a, where they have the opportunity to apply for asylum and other relief from removal, present and cross-examine evidence before an immigration judge (IJ), preserve objections, and appeal any adverse decision to the Board of Immigration Appeals and court of appeals. 8 C.F.R. § 208.30(f); *see also* 8 U.S.C. § 1225(b)(1)(B)(ii).

24. Applicants who do not pass the credible fear interview may request review of the decision by an IJ, but do not receive a full hearing or any subsequent administrative appellate review. 8 U.S.C. § 1225(b)(1)(B)(iii)(II)-(III); *see also* 8 C.F.R. § 208.30(g)(1).

25. During the inspection and credible fear stages of expedited removal, DHS detains the noncitizen. *See* 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV); 8 C.F.R. § 235.3(b)(2)(iii). In *Jennings v. Rodriguez*, the Supreme Court held that individuals in expedited removal who demonstrate a credible fear are not statutorily eligible for bond hearings. 583 U.S. 281, 297-303 (2018).

26. An expedited removal order comes with significant consequences beyond removal itself. Noncitizens with expedited removal orders are subject to a five-year bar on admission to the United States unless they qualify for a discretionary waiver. 8 U.S.C. § 1182(a)(9)(A)(i); 8 C.F.R. § 212.2.

27. Congress provided limited habeas review in individual cases. Relevant here, a federal district court may review whether the individual "was ordered removed under 8 U.S.C. § 1225(b)(1). *See* 8 U.S.C. § 1252(e)(2)(B). Although the statute provides that such review must be limited to "whether such an order in fact was issued and whether it relates to the petitioner" and may not include review of whether a noncitizen "is actually inadmissible or entitled to any

relief from removal," *see* 8 U.S.C. § 1252(e)(5), if the Court finds in the petitioner's favor, the court can order placement in removal proceedings under 8 U.S.C. § 1229a, *see* U.S.C. § 1252(e)(4)(B).

28. In *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), the Supreme Court upheld a lack of habeas jurisdiction where the noncitizen petitioner entered the United States without inspection and then challenged flaws in the credible fear proceeding and sought a "new opportunity to apply for asylum" and "the opportunity to remain lawfully in the United States." 591 U.S. at 115, 119. Concurring in the judgement, Justice Breyer expressed concern about future readings of the decision to foreclose *all* habeas claims, including a claim of "natural-born U.S. citizen[ship]," "a claim that rogue immigration officials forged the record of a credible-fear interview that . . . never happened," or a claim that an asylum officer made a "dead-wrong legal interpretation." *Id.* at 151 (Breyer, J., concurring in the judgment).

***Statutory and Regulatory Requirements to Disclose Entry-Related Records***

29. The Immigration and Nationality Act mandates the disclosure of all records related to Ms. Doe's entry and expedited removal proceeding. It provides:

> In any removal proceeding under part IV of this subchapter against any person, the burden of proof shall be upon such person to show the time, place, and manner of his entry into the United States, but in presenting such proof *he shall be entitled* to the production of his visa or other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry in the custody of the Service.

8 U.S.C. § 1361 (emphasis added). Expedited removal proceedings under 8 U.S.C. § 1225(b) is in Part IV of the subchapter. *See also* 8 U.S.C. § 1229a(c)(2) (providing noncitizens "shall have access to" a "visa or other entry document, if any, and any other records and documents" "pertaining to the [noncitizen's] admission or presence in the United States" in meeting their burden of proof in removal proceedings).

30. The regulations implement these statutory rights:

> Service upon and action by attorney or representative of record.
>
> (a) *Representative capacity.* Whenever a person is required by any of the provisions of this chapter to give or be given notice; to serve or be served with any paper other than a warrant of arrest or a subpoena; to make a motion; to file or submit an application or other document; or to perform or waive the performance of any act, such notice, service, motion, filing, submission, performance, or waiver shall be given by or to, served by or upon, made by, or requested of the attorney or representative of record, or the person himself if unrepresented.

*See* 8 C.F.R. § 292.5(a). In immigration cases, a signed Form G-28 (Notice of Entry of Appearance as Attorney or Accredited Representative) is proof of attorney-client relationship.

## STATEMENT OF FACTS

31. Ms. Doe is a 30-year-old research scientist born in Russia. On May 11, 2023, she entered the United States on a valid J-1 visa. A J-1 visa is a non-immigrant visa that allows people to participate in exchange-visitor programs in the United States. The programs are intended to promote cultural exchange and international cooperation. Research scholars and professors regularly hold J-1 status.

32. Ms. Doe has been conducting groundbreaking scientific research at Harvard University under Dr. Leond Peshkin, a Principal Research Scientist in Systems Biology and a leading scholar in the fields of embryology and the biology of aging. Exhibit A.

33. Since May 2023, Ms. Doe has traveled in and out of the United States on several occasions without issue. She has never violated the terms or conditions of her nonimmigrant status.

34. In late January 2025, Ms. Doe traveled to Europe for personal reasons.

35. Prior to her return from the trip, Dr. Peshkin asked Ms. Doe to bring histological samples of frog embryos from his scientific collaborators at the *Institut Curie Centre de*

*Recherche* in France back to Harvard so that their lab could continue processing and analyzing data from them. Exhibit A. The samples were non-hazardous, noninfectious, and non-toxic, intended solely for fundamental research purposes. Exhibit B.

36. Dr. Peshkin's request for Ms. Doe to transport the samples in person stemmed from his prior experience in shipping similar samples that were either seriously delayed or lost in transit. Exhibit A.

37. Having no prior experience transporting biological samples, Ms. Doe was unfamiliar with U.S. customs requirements regarding these samples. She simply placed the samples in her luggage and did not declare them to CBP at the time of her entry on Sunday, February 16, 2024, at Boston Logan International Airport.

38. At the airport, Ms. Doe presented her valid J-1 visa to the inspecting CBP officer, who then placed a J-1 admission stamp in Ms. Doe's passport indicating that she was admitted to the United States as a J-1 visa holder.

39. At the luggage conveyor belt, Ms. Doe was approached by another CBP officer and escorted to a room for questioning and examination of her luggage.

40. Upon discovery the samples following a search of her luggage, and despite her attempts to explain, the CBP officer failed to pursue the statutory and regulatory process for failure to declare an article in luggage. Rather, the officer marked Ms. Doe's J-1 visa in her passport as "cancelled."

41. There was no basis for the CBP officer to cancel Ms. Doe's J-1 visa. It was valid and she had never violated the terms or conditions of J-visa status.

42. The CBP officer then went on to present Ms. Doe with a choice: to withdraw her application for admission and apply for a new visa overseas or be subjected to expedited removal and barred from admission to the United States for five years.

43. Ms. Doe requested that her admission be withdrawn and asked to return to Paris, France, from whence her journey originated.

44. The CBP officer continued to question Ms. Doe, asking her whether she had a fear of returning home. Ms. Doe stated that she had a valid Schengen visa (which allows her entry to 29 countries in Europe, including France) and had no fear of returning to France, but did have a fear of returning to Russia, where she faced past persecution for her political activities.

45. CBP subsequently apprehended and detained Ms. Doe.

46. During questioning, CBP officers created Form I-867A (Record of Sworn Statement) from Ms. Doe. *See* 8 C.F.R. §§ 235.3(b)(2), (b)(4).

47. CBP then issued Form I-860 (Notice and Order of Expedited Removal) alleging that Ms. Doe is subject to expedited removal under 8 U.S.C. § 1225(b)(1) for being inadmissible under 8 U.S.C. § 1182(a)(7) for lacking a valid entry document. The portion of the form given to Ms. Doe is only the notice and determination of inadmissibility. The bottom portion of the form, containing the expedited removal order signed by a supervisory officer, is not complete. Exhibit C.

48. Neither CBP nor ICE have provided counsel with a completed Form I-860. However, on information and belief, the bottom portion of the form was completed and signed, and the purported expedited removal order was issued on February 16, 2025.

49. Ms. Doe was then transferred to ICE custody, where she now awaits her credible fear interview. Exhibit D.

50. On Wednesday, February 19, 2025, undersigned counsel Gregory Romanovsky contacted David W. Johnston, Supervisory Detention and Deportation Office in St. Albans, Vermont to request all documents related to Ms. Doe's interactions with CBP. Officer Johnston told Mr. Romanovsky that he needed to work with CBP to get the requested documentation.

51. On Thursday, February 20, 2025, Mr. Romanovsky emailed the Chief CBP Officer at Boston Logan International Airport and requested the sworn statement and any additional documentation related to the expedited removal order. Exhibit E. The Chief CBP Officer instructed Ms. Romanovsky counsel to "work with ERO with this." *Id.* "ERO" stands for Enforcement and Removal Operations, a subdivision within ICE.

52. Mr. Romanovsky then emailed Officer Johnston in St. Albans, Vermont, and requested this sworn statement. Exhibit F. To date, neither Officer Johnston nor anyone else at the ICE ERO office in St. Albans has respond to counsel's inquiry.

53. On Friday, February 21, 2025, Mr. Romanovsky submitted a request to the Acting Field Officer Director of the Boston ERO Field Office to release Ms. Doe on parole under 8 U.S.C. § 1182(d)(5). Exhibit G. The Boston ERO Field Office has not responded to this request.

54. On the same day, February 21, 2025, Mr. Romanovsky submitted a request to the USCIS Newark Asylum Office to expedite the scheduling of Ms. Doe's credible fear interview. Exhibit H. The Newark Asylum Office has not responded to counsel's request.

55. On information and belief, and consistent with ICE's policy and practice of transferring detained noncitizens to larger immigration facilities in the Southern part of the United States, ICE is likely to imminently transfer Ms. Doe from Vermont and away from counsel at any time.

56. On information and belief, ICE may transfer Ms. Doe to Guantanamo Bay.

57. The cancellation of Ms. Doe's valid J-1 visa and her absence from the research group at Harvard is harming the research being conducted and the public interest in the results of that research. Finding a replacement for her "might not be feasible at all, and at best will take many months and arrest [] progress toward the aims funded and expected by the NIH's Director office ORIP (Office of Research Infrastructure Programs)." Exhibit A.

## CLAIMS FOR RELIEF

### COUNT ONE

**Violation of 19 U.S.C. § 1497, 8 U.S.C. § 1225(b), and implementing regulations, and Administrative Procedure Act based on CBP's Cancellation of Ms. Doe's Valid Visa and Failure to Follow Lawful Procedures**

58. The allegations in the above paragraphs are realleged and incorporated herein.

59. Upon discovering that Ms. Doe failed to disclose an article on a customs form, CBP was required to follow the process set forth in 19 U.S.C. § 1497, the implementing regulations, and associated guidelines. This process is mandatory.

60. CBP had no authority to bypass this mandatory process.

61. CBP had no authority to look beyond Ms. Doe's valid nonimmigrant visa to make an inadmissibility determination under 8 U.S.C. § 1182(a)(6)(C) or (a)(7).

62. CBP had no authority to cancel Ms. Doe's valid nonimmigrant visa. In so doing, CBP action was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," "contrary to constitutional right, power, privilege, or immunity," "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," and "(D) without observance of procedure required by law" in violation of 5 U.S.C. § 706(2)(A)-(D).

63. Ms. Doe's failure to disclose an article on customs form does not render the noncitizen inadmissible under 8 U.S.C. § 1182(a)(6)(C) or (a)(7).

64. Ms. Doe's agreement to withdraw her application for admission to the United States to return to France, a country to which she has a valid visa, does not constitute immigrant intent.

65. Ms. Doe's expression of fear of return to her country of origin does not constitute immigrant intent, especially, where, as here, Ms. Doe has a valid visa to enter France and agreed to withdraw her application for admission to the United States and return to France.

66. Because CBP bypassed the lawful process it was required to follow upon discovering the failure to disclose the frog embryos, it was prohibited from making an inadmissibility determination under 8 U.S.C. § 1182(a)(7). In other words, CBP lacked the legal authority to make the § 1182(a)(7) determination and to issue an expedited removal order. *See* 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii) (citing 8 U.S.C. §§ 1182(a)(6)(C), (a)(7)).

67. Because Ms. Doe held a valid J-1 visa, CBP was prohibited from looking beyond that visa to make an inadmissibility determination under 8 U.S.C. § 1182(a)(7).

68. Because CBP has no authority to cancel Ms. Doe's valid nonimmigration visa without a basis in law or fact, this Court must find that CBP acted unlawfully and set aside the cancellation. *See* 5 U.S.C. § 706(2).

69. Alternatively, because Ms. Doe was not lawfully subject to expedited removal proceedings, this Court must order Respodents-Defendants "to require that [she] be provided a hearing in accordance with section 1229a of [8 U.S.C.]." 8 U.S.C. § 1252(e)(4).

## COUNT TWO

### Violation of Administrative Procedure Act, 5 U.S.C. § 706(1), Based on CBP and ICE's Failure to Provide Counsel with the Expedited Removal Order and Related Paperwork

70. The allegations in the above paragraphs are realleged and incorporated herein.

71. Under the APA, federal agencies are required to conclude matters presented to

them "within a reasonable time." 5 U.S.C. § 555(b). The APA further provides that federal courts "shall . . . compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

72. CBP and ICE have a nondiscretionary duty to provide counsel with the expedited removal order, record of sworn statement, and associated paperwork. *See* 8 U.S.C. § 1361 and 8 C.F.R. § 292.5(a); *cf.* 8 U.S.C. § 1229a(c)(2).

73. CBP and ICE have not provided those documents to counsel despite repeated requests.

74. By failing to provide counsel with those documents, Respondents-Defendants have "unlawfully withheld or unreasonably delayed" the adjudicative and administrative functions delegated to them by law in violation of 5 U.S.C. § 706(1).

75. Ms. Doe is entitled to relief under the APA in the nature of an order compelling Respondents-Defendants to immediately produce the expedited removal order, record of sworn statement, and associated paperwork. 5 U.S.C. § 706(1).

**COUNT III**

**Violation of Administrative Procedure Act, 5 U.S.C. § 706(1), Based on USCIS's Failure to Expeditiously Schedule and Conduct Credible Fear Interview in Light of Harm to Ms. Doe, the Public, and Likelihood of Transfer Away from Counsel**

76. The allegations in the above paragraphs are realleged and incorporated herein.

77. Under the APA, federal agencies are required to conclude matters presented to them "within a reasonable time." 5 U.S.C. § 555(b). The APA further provides that federal courts "shall . . . compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

78. Respondents-Defendants have a nondiscretionary duty to schedule and conduct a

credible fear interview within a reasonable time. Absent relief on Count I of this action, passing a credible fear interview is necessary to allow Ms. Doe to qualify for release from detention either by ICE or by an IJ.

79. USCIS has not conducted a credible fear interview for over one week in violation of 5 U.S.C. § 706(1).

80. Considering relevant factors, including the health and welfare of Ms. Doe, the public interest in the research she is conducting, the lack of evidence that expediting the agency's action would harm competing priorities, and the risk of being transferred away from counsel, USCIS's delay is unreasonable in this case. *See Telecomms. Rsch. & Action Ctr. v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984)); *see also* 5 U.S.C. § 555(b) ("With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it.").

81. By failing to provide counsel with those documents, Defendants have "unlawfully withheld or unreasonably delayed" the adjudicative and administrative functions delegated to them by law in violation of 5 U.S.C. § 706(1).

82. Ms. Doe is entitled to relief under the APA in the nature of an order compelling Defendants to immediately schedule an interview and conduct a credible fear interview. 5 U.S.C. § 706(1).

## PRAYER FOR RELIEF

Wherefore, Ms. Doe respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents-Defendants to show cause why this habeas petition should not be granted within three days.

(3) Declare Respondents-Defendants cancellation of Ms. Doe's valid nonimmigrant visa unlawful and Order Respondents-Defendants to set it aside;

(4) Issue a Writ of Habeas Corpus pursuant to 8 U.S.C. § 1252(b)(4) ordering Respondents-Defendants to place Ms. Doe in removal proceedings under 8 U.S.C. § 1229a;

(5) Order Respondents-Defendants to immediately produce the expedited removal order, record of sworn statement, and associated paperwork to counsel;

(6) In the alternative, order Respondents-Defendants to immediately schedule and promptly conduct a credible fear interview;

(7) Award Petitioner-Plaintiff attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(8) Grant any further relief this Court deems just and proper.

Respectfully submitted,

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**Application for pro hac vice admission forthcoming*

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Dated: February 23, 2025