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Hector Reyes Carmona

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

HÉCTOR REYES CARMONA,

Petitioner,

vs.

PAM BONDI, in her Official Capacity,
U.S. Attorney General; KRISTI NOEM,
in her Official Capacity, U.S.
Department of Homeland Security;
UNKNOWN, in her / his Official
Capacity, Acting Director, U.S.
Immigration and Customs Enforcement
("ICE"); TODD LYONS, in his Official
Capacity, Enforcement and Removal
Operations ("ERO"); JOHN E. CANTÚ,
in his Official Capacity, Phoenix Field
Office U.S. Immigration and Customs
Enforcement ("ICE"); and UNKNOWN,
in her / his Official Capacity, Warden or
Authorized Person Having Actual
Custody of Petitioner,

Respondents.

Case No.

Agency No. [REDACTED]

**PETITION FOR WRIT OF
HABEAS CORPUS**

(Assigned to _____)

Pet. For Writ of Habeas Corpus
Case No. _____

INTRODUCTION

1. Petitioner, Hector Reyes Carmona (“Petitioner”), moves this Court to issue a Writ of Habeas Corpus to compel Respondents to issue an order staying removal during the pendency of Petitioner’s motion to reopen based on the ineffective assistance of his prior counsel Mary Margaret “Margo” Cowan.

SUMMARY OF THE ARGUMENT

2. Petitioner is subject to a final order of removal which renders him constructively “in custody” for purposes of the Immigration and Nationality Act (“INA”).
3. Ineffective assistance of counsel (“IAC”) during removal proceedings is a denial of a noncitizen’s Fifth Amendment due process rights. A noncitizen who has been ordered removed has the statutory right to file a motion to reopen, the purpose of which is to safeguard a noncitizen’s due process rights through proper adjudication of his claim.
4. Petitioner’s motion to reopen based on ineffective assistance of counsel is pending with the Board of Immigration Appeals (“BIA”). Any attempt to effectuate Petitioner’s order of removal before the BIA has properly adjudicated the motion, or before Petitioner has filed an appeal, would result in a denial of his due process rights under the Fifth Amendment.
5. This Court has jurisdiction to stay the execution of Petitioner’s order of removal during the pendency of his motion to reopen because Petitioner does not challenge the order of removal itself; rather, his request for a stay arises under independent constitutional grounds.

CUSTODY

6. Petitioner is subject to a final order of removal entered on April 8, 2022, upon the BIA's dismissal of his appeal of the immigration judge's denial of his 42B Application for Cancellation of Removal. He is therefore constructively "in custody" for the purposes of the INA. *Nakaranurak v. U.S.*, 68 F.3d 290, 293 (9th Cir. 1995) (holding that the Ninth Circuit has "broadly construed 'in custody' to apply to situations in which an alien is not suffering any actual physical detention; *i.e.*, so long as he is subject to a final order of deportation, an alien is deemed to be 'in custody' for purposes of the INA[.]").

JURISDICTION AND VENUE

7. This case arises under the Fifth Amendment to the United States Constitution; the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq*; the regulations implementing the INA's removal provisions; 8 U.S.C. § 1231, and the Administrative Procedures Act ("APA"), 5 U.S.C. § 701 *et seq*.

8. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 2241 (Habeas Corpus) and Article I § 9, Clause 2 of the United States Constitution ("Suspension Clause"), and 28 U.S.C. § 1331, as the Petitioner is presently in custody under color of the authority of the United States.

9. This Court may also exercise jurisdiction under 28 U.S.C. § 1361 ("Mandamus Clause"), the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651, to protect Petitioner's rights under the Due Process

1 Clause of the Fifth Amendment to the United States Constitution and under
2 applicable federal law.

3
4 10. Venue is properly with the U.S. District Court for the District of Arizona
5 pursuant to 28 U.S.C. § 1391(e) because Petitioner resides in Tucson, Arizona,
6 which is within the geographical jurisdiction of the U.S. District Court for the
7 District of Arizona, and because the events or omissions giving rise to this claim
8 occurred there. Further, this is a civil action in which the Respondents are
9 employees or officers of the United States. There is no real property involved in
10 this action.
11

12
13 **PARTIES**

14 11. Petitioner **Hector Reyes Carmona** is a native and citizen of Mexico who
15 currently resides in Tucson, Arizona, pending execution of his final order of
16 removal.
17

18 12. Respondent **Pam Bondi** is the Attorney General of the United States and the
19 most senior official in the U.S. Department of Justice (“DOJ”). She has the
20 authority to interpret the immigration laws and adjudicate removal cases. The
21 Attorney General delegates this responsibility to the Executive Office for
22 Immigration Review (“EOIR”), which administers the immigration courts and
23 the Board of Immigration Appeals (“BIA”). She is named in her official
24 capacity.
25

26 13. Respondent **Kristi Noem** is the Secretary of the Department of Homeland
27 Security (“DHS”). She has authority over the detention and departure of
28

1 noncitizens, like Petitioner, because she administers and enforces immigration
2 laws pursuant to section 402 of the Homeland Security Act of 2002. 107 Pub L.
3 296 (November 25, 2003). In this role, Respondent Noem has “control direction,
4 and supervision” of all employees of DHS, including Respondent Cantú. See 8
5 U.S.C. § 1003(a)(2). She is named in her official capacity.
6
7

8 14. Respondent **Unknown** is the Acting Director for United States Immigration and
9 Customs Enforcement (“ICE”). She / he is in charge of the day-to-day operations
10 of Homeland Security Investigations Agents who are the principle investigative
11 component of ICE as well as removal operations officers. She / he is named in
12 her / his official capacity.
13

14 15. Respondent **Todd Lyons** is the Acting Executive Director of Enforcement and
15 Removal Operations (“ERO”). He has authority over the detention and removal
16 of noncitizens, like Petitioner, because he oversees Custody Management,
17 Enforcement, and Field Operations, including ERO’s 25 field offices, and its
18 non-detained docket. He is named in his official capacity.
19

20 16. Respondent **John E. Cantú** is the Phoenix Field Office Director for
21 Enforcement and Removal Operations (“ERO”), U.S. Immigration and Customs
22 Enforcement (“ICE”), which has administrative jurisdiction over Petitioner’s
23 case. As such, Respondent **Cantú** is the federal official most directly responsible
24 for overseeing removal orders; he is a legal custodian of Petitioner and is named
25 in his official capacity.
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17. Respondent, **Unknown**, is the warden or authorized person having actual custody of Petitioner. As such she / he is the immediate physical custodian of Petitioner. She / he is named in her / his official capacity.

FACTS

18. Petitioner was born in Mexico and is a citizen of that country. His mother brought him to the United States without inspection on September 1st, 1993, when he was two years old. He has not left the country since. *See* Exh. A, Motion to Reopen, Tab A (Petitioner's 42B Application for Cancellation of Removal).

19. Petitioner is married to a U.S. Citizen and has four U.S. citizen children. *Id.*, Tab E (Petitioner's Declaration). He is the owner of a successful Tucson boxing gym. *Id.*, Tab GG (Boxing Reyes Academy LLC Business Documents).

20. On January 29, 2019, Petitioner was charged with inadmissibility pursuant to INA § 212(a)(6)(A)(i) for being present in the United States without having been admitted or paroled and placed in removal proceedings. *Id.*, Tab L (Notice to Appear).

21. Petitioner was represented by Ms. Mary Margaret ("Margo") Cowan before Tucson Immigration Court; Ms. Cowan's organization, Keep Tucson Together, prepared and filed a 42B Application for Cancellation of Removal, based upon hardship to his three U.S. citizen children and his U.S. citizen wife, who were his only qualifying relatives at that time. *Id.* (Petitioner's Motion to Reopen) at 4-5.

22. During the entirety of his removal proceedings, Ms. Cowan never spoke with

1 Petitioner. *Id.* at 5. Ms. Cowan did not appear at any of Petitioner's preliminary
2 court hearings, nor did she prepare him for those hearings. *Id.* Instead, every
3 time Petitioner showed up to his hearings, he was represented by a different
4 attorney. *Id.*

5
6 23. Petitioner experienced significant difficulties communicating with Ms. Cowan,
7 as she did not take his calls, and he constantly had to follow up with her assistants
8 to inquire as to the status of his case. *Id.*

9
10 24. Neither Ms. Cowan nor anyone else at KTT explained to Petitioner for which
11 form of relief he was applying, nor did they review with him any of the
12 applications or documents that were submitted to the court on his behalf. *Id.*;
13 Tab E (Respondent's Declaration).

14
15 25. Prior to Petitioner's final hearing on the merits of his claim for relief, one of Ms.
16 Cowan's volunteers, Ray, called him and told him to gather witnesses to testify
17 at the final court hearing. *Id.* at 5. Ms. Cowan did not speak to, interview, or
18 prepare any of the witnesses for testimony. *Id.*

19
20 26. Neither Ms. Cowan nor any other attorney from KTT spoke with Petitioner prior
21 to the day of his hearing. *Id.* Ms. Cowan did not prepare Petitioner for his final
22 hearing to decide his 42B Application for Cancellation of Removal, nor did she
23 investigate his claim or present sufficient evidence on his behalf. *Id.*

24
25 27. In fact, Ms. Cowan did not even appear at Petitioner's final hearing on December
26 6, 2019. *Id.* Rather, the attorney who did appear – whom Petitioner had never
27 met – was running late and showed up only 15 minutes before the hearing to
28

1 speak with Petitioner. *Id.* This was Petitioner's only "preparation" for his
2 hearing.
3

4 28. Needless to say, at the final hearing Petitioner did not understand what was
5 happening and felt completely unprepared. *Id.* at 5-6. The immigration judge
6 ("IJ") denied his application as a matter of discretion and ordered him removed
7 on this date. *Id.* at 6; Tab N (EOIR IJ Removal Order); Tab P (BIA Decision).
8

9 29. When the IJ denied his application, the attorney representing Petitioner did not
10 explain the significance of the denial; instead, he simply told Petitioner that his
11 "only option" was to appeal the case. *Id.*, Exh. A, Motion to Reopen, at 6; *see*
12 *also* Tab E (Declaration of Respondent).
13

14 30. Ms. Cowan represented Petitioner in the appeal to the BIA. Exh. A, Motion to
15 Reopen, at 6. On December 23, 2019, Ms. Cowan – through a different attorney
16 – timely filed Form EOIR-26, Notice of Appeal with the BIA, indicating that
17 she would file a separate written brief or statement after filing the Notice of
18 Appeal. *Id.*
19

20 31. In the appeal, Ms. Cowan raised only the issue of hardship to Petitioner's U.S.
21 citizen wife and (then) three U.S. citizen children, without challenging the
22 dispositive issue in the immigration judge's denial – discretion.¹ *Id.* Petitioner
23 did not know that Ms. Cowan had not raised this essential issue to the BIA. *Id.*
24
25
26

27 ¹ Though the Board decision notes that a brief was filed in support of the appeal,
28 Ms. Cowan did not provide a copy of that brief in Petitioner's file.

1 32. On April 8, 2022, the BIA dismissed Petitioner's appeal, finding that because
2 neither the brief on appeal, nor the Notice to appeal, challenged the decision of
3 the IJ regarding discretion, Petitioner "waived the opportunity to appeal the
4 decision regarding this issue." Exh. A, Motion to Reopen, Tab P (BIA Decision).
5 The BIA concluded that because "the discretion issue is dispositive of the
6 respondent's eligibility for cancellation of removal," the BIA "affirm[ed] the
7 denial of that relief." *Id.*

8
9
10 33. Following the dismissal of the BIA appeal, Ms. Cowan failed to advise Petitioner
11 that failure to raise the dispositive issue of discretion on appeal could be grounds
12 for ineffective assistance of counsel, and that he could work with a different
13 attorney to file a motion to reopen his proceedings on that basis. Exh. A, Motion
14 to Reopen, at 6-7.

15
16 34. Instead, on May 3, 2022, Ms. Cowan proceeded to file a petition for review of
17 the BIA's decision on Petitioner's behalf (though she styled it as a pro se
18 petition). *Id.* at 7.

19
20 35. On September 23, 2022, the Ninth Circuit issued an order dismissing Petitioner's
21 petition for review on the basis that it "lacked jurisdiction to review any
22 challenge to the agency's denial of cancellation of removal in the exercise of
23 discretion because petitioner did not exhaust it before the agency." *Id.*, Tab I,
24 (Ninth Circuit Order). The court further found that the "agency was not required
25 to consider whether petitioner demonstrated exceptional and extremely unusual
26 hardship to a qualifying relative as its discretionary denial was dispositive." *Id.*
27
28

1 36. On November 15, 2022, the Ninth Circuit Mandate issued. *Id.*

2
3 37. During this time and in the months following, Petitioner became increasingly
4 frustrated by the lack of communication from Ms. Cowan's office. Exh. A,
5 Motion to Reopen, Tab E (Petitioner's Declaration). Despite many phone calls,
6 Petitioner was unable to speak with Ms. Cowan, and the only information he
7 received from her staff was, "you're good for now if you get a letter from ICE
8 call us." *Id.*

9
10 38. This answer "just wasn't good enough" for Petitioner, so in December 2023, he
11 began looking for new counsel. *Id.*

12
13 39. It was a full four months before Petitioner was able to obtain a copy of his
14 immigration file from Ms. Cowan's office, but upon obtaining the file in April
15 2024, he contracted with counsel at Green Evans-Schroeder, PLLC to represent
16 him. *Id.*; Tab A, Motion to Reopen, at 7.

17
18 40. On June 28, 2024, through undersigned counsel, Petitioner filed a Motion to
19 Reopen with the BIA on the basis of ineffective assistance of counsel by prior
20 attorney Ms. Cowan, and on the basis of previously unavailable material
21 evidence, namely, the birth of his youngest U.S. citizen child, Vedzaira, after
22 conclusion of removal proceedings in his case. Exh. A, Motion to Reopen, at 7.

23
24 41. Petitioner now faces imminent removal to Mexico. As Petitioner's motion to
25 reopen based on ineffective assistance of counsel remains pending before the
26 BIA, he has not yet received a full and fair hearing in which he has been
27 represented by competent counsel.
28

1 42. Executing Petitioner's order of removal before the BIA adjudicates his motion
2 to reopen and before Petitioner presents an appeal, would be a violation of his
3 Fifth Amendment due process rights.
4

5 43. It should be noted that Petitioner's case is one of many, as part of ongoing
6 disciplinary action against Ms. Cowan for "violat[ing] her duties to her clients
7 and to the legal system by failing to provide competent and reasonably diligent
8 representation, by engaging in frivolous behavior, and by engaging in conduct
9 that prejudiced the administration of justice and undermined the integrity of the
10 adjudicative process." Exh. D, Order of Reciprocal Discipline from the Supreme
11 Court of Arizona at 2 (citing the BIA Disciplinary Decision for Ms. Cowan).
12
13

14 44. On July 7, 2023, Ms. Cowan was "suspended from practice before the Board of
15 Immigration Appeals, the Immigration Courts, and DHS for a period of two
16 years" on the basis of such behavior. Exh. A, Motion to Reopen, Tab F (BIA
17 Disciplinary Decision for Ms. Cowan) at 14.
18

19 45. Later that year, on December 7, 2023, the Supreme Court of Pennsylvania issued
20 a two-year suspension of Ms. Cowan's license in that commonwealth, reciprocal
21 with this Board. Exh. C, Order of Reciprocal Discipline from the Supreme Court
22 of Pennsylvania.
23

24 46. On October 25, 2024, the Supreme Court of Arizona issued its own Order of
25 Reciprocal Discipline, holding that a June 7, 2023, Board of Immigration
26 Appeals' order suspending Ms. Cowan from practice in the immigration courts
27 and at the BIA for two years "should be imposed in Arizona[]" because "[t]he
28

1 ethical violations adjudicated in the federal proceeding would also constitute
2 ethical violations in Arizona.” Exh. B, Respondent’s Supplemental Filing to
3 Motion to Reopen and Request for Stay of Removal, Exh. C (Order of
4 Reciprocal Discipline from the Supreme Court of Arizona) at 2.

5
6 47. Within a few months of this order, on February 7, 2025, the Arizona Supreme
7 Court suspended Ms. Cowan for a further six months and one day pursuant to an
8 Agreement for Discipline by Consent based on a number of separate ethical
9 violations. *Id.*, Exh. B (Order Accepting Agreement for Discipline by Consent).

10
11 48. Shortly thereafter, on February 13, 2025, the State Bar of Arizona issued a letter to
12 Respondent addressing his IAC complaint against Ms. Cowan. The Bar acknowledged
13 “legitimate” ethical concerns in Respondent’s complaint but stated that since Ms.
14 Cowan had received two long-term suspensions (one from the BIA and the other from
15 the Arizona Supreme Court), they “believe[d] that the existing suspensions [would]
16 adequately serve the purposes of discipline[.]” *Id.*, Exh. A (Decision Letter from the
17 State Bar of Arizona).

18
19 49. Despite the Arizona Supreme Court’s decision not to pursue Respondent’s claim
20 against Ms. Cowan, this letter of acknowledgement of IAC further legitimizes this
21 claim and clearly demonstrates that it is one of many that make up a protracted pattern
22 of ineffective practices and ethical violations that Ms. Cowan committed against her
23 clients.

24
25 50. Lastly, on February 24, 2025, Respondent submitted to this Board a Supplemental Brief
26 in Support of his Motion to Reopen and Request for Stay of Removal. In his
27 supplemental filing, Respondent added to previous supplements the October 25, 2024,
28

1 Arizona Supreme Court Order of Reciprocal Discipline, the February 7, 2025, Order
2 Accepting Agreement for Discipline by Consent, and the February 13, 2025, Decision
3 Letter from the State Bar of Arizona, as material evidence that was not previously
4 available and that goes directly to the heart of his claim.
5

6 **LEGAL ARGUMENT**

7 51. The Ninth Circuit has established that a noncitizen in deportation proceedings
8 has a right to “a full and fair hearing of his claims and a reasonable opportunity
9 to present evidence on his behalf.” *Salgado Diaz v. Ashcroft*, 395 F.3d 1158,
10 1162 (9th Cir. 2005) (citing *Colmenar v. INS*, 210 F.3d 967 (9th Cir. 2000)).
11 Removal cannot be effectuated absent “proceedings conforming to traditional
12 standards of fairness encompassed in due process of law.” *Arreola Arreola v.*
13 *Ashcroft*, 383 F.3d 956, 958-59 (9th Cir. 2004) (abrogated on other grounds by
14 *Morales-Izquierdo v. Gonzalez*, 486 F.3d 484 (9th Cir. 2007)).
15

16 52. “Ineffective assistance of counsel in a deportation proceeding is a denial of due
17 process under the Fifth Amendment if the proceeding was so fundamentally
18 unfair that the alien was prevented from reasonably presenting his case.” *Ortiz*
19 *v. INS*, 179 F.3d 1148, 1153 (9th Cir. 1999) (quoting *Lopez v. INS*, 775 F.2d
20 1015, 1017 (9th Cir. 1985)).
21

22 53. A noncitizen who has been ordered removed has the statutory right to file and
23 receive a decision on a motion to reopen in his case; this includes the “exhaustion
24 of all appeals[.]”. *See* 8 U.S.C. § 1229a(c)(7).
25
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1 54. A motion to reopen is an “important safeguard of [an] alien’s rights,” the purpose
2 of which “is to ensure a proper and lawful disposition of the alien’s claims.”
3 *Diouf v. Napolitano (Diouf II)*, 634 F.3d 1081, 1087 (9th Cir. 2011), citing *Dada*
4 *v. Mukasey*, 554 U.S. 1, 18 (2008) (internal quotation marks omitted).

6 55. A motion to reopen is the proper avenue through which to pursue a claim of
7 ineffective assistance of counsel in removal proceedings. *Mohammed v.*
8 *Gonzalez*, 400 F.3d 785, 792 (9th Cir. 2005). *See also Iturribarria v. INS*, 321
9 F.3d 889 (9th Cir. 2003) (holding that evidence of ineffective assistance of
10 counsel is “not as a practical matter discoverable until [a petitioner] review[s]
11 his file with new counsel[,]” and “therefore fits within the requirements for a
12 motion to reopen, as set forth in 8 C.F.R. § 3.2(c).”).

15 56. Under the REAL ID Act of 2005, jurisdiction over habeas proceedings properly
16 lies with a District Court when the proceeding does not present “a direct
17 challenge to [a noncitizen’s] order of removal[,]” but rather where the challenge
18 arises under independent “constitutional claims or questions of law.” *Sing v.*
19 *Gonzalez*, 499 F.3d 969, 977-78 (9th Cir. 2007).

21 57. Staying an order of removal during the pendency of a noncitizen’s motion to
22 reopen on the basis of IAC is one such independent constitutional claim; only
23 through proper adjudication of such a motion may a noncitizen’s Fifth
24 Amendment due process rights be satisfied.
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1 58. Because removal would create significant barriers to Petitioner's ability to
2 pursue further litigation of his motion to reopen based on IAC, failing to stay his
3 removal would, in effect, deny him his constitutional right to be heard.
4

5 **IRREPARABLE INJURY**

6 59. Denial of the Fifth Amendment right to a full and fair hearing is an irreparable
7 injury.
8

9 60. Petitioner will be denied his Constitutional right to a full and fair hearing and
10 thus will suffer irreparable injury if his removal order is effectuated before his
11 motion to reopen is adjudicated and he has had the opportunity to appeal.
12

13 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

14 61. For habeas claims, exhaustion of administrative remedies is prudential rather
15 than jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A
16 court may exercise its discretion and waive the prudential exhaustion
17 requirement if "administrative remedies are inadequate or not efficacious,
18 pursuit of administrative remedies would be a futile gesture, irreparable injury
19 will result, or the administrative proceedings would be void." *Id.* (quoting *Laing*
20 *v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks
21 omitted)). This Court should exercise its discretion to waive the requirement of
22 agency exhaustion and reach the issue of staying Petitioner's order of removal.
23

24 62. Petitioner has an unknown and finite number of days before ICE executes his
25 removal order and sends him to Mexico.
26
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1 63. The Board of Immigration Appeals has not immediately adjudicated Petitioner's
2 motion to reopen. To wait for the BIA to review and decide Petitioner's motion
3 to reopen could take months or years, during which time Petitioner could be
4 physically removed. Thus, administrative remedies are inadequate and requiring
5 their exhaustion would result in irreparable injury.
6

7
8 **CAUSES OF ACTION**

9 **COUNT ONE**

10 **VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT**

11 64. The INA provides a mechanism by which individuals ordered removed can ask
12 the agency to consider material previously unavailable, including claims of
13 ineffective assistance of counsel, and vacate the existing order of removal. *See*
14 INA § 240(c)(7); 8 U.S.C. § 1229a(c)(7); *see also Iturribarria v. INS*, 321 F.3d
15 889 (9th Cir. 2003).
16

17 65. When an agency reopens the case, the existing removal order is vacated. *Nken*
18 *v. Holder*, 556 U.S. 418, 429 n.1 (2009).
19

20 66. The Supreme Court has recognized that a "motion to reopen is an 'important
21 safeguard' intended 'to ensure a proper and lawful disposition' of immigration
22 proceedings." *Kukana v. Holder*, 558 U.S. 233, 242 (2010) (quoting *Dada v.*
23 *Mukasey*, 554 U.S. 1, 18 (2008)).
24

25 67. A noncitizen has a statutory right to file one motion to reopen his case. *See Reyes*
26 *Mata v. Lynch*, 135 S.Ct. 2150, 2153 (2015); *Dada*, 554 U.S. at 4-5.
27
28

68. The removal of Petitioner during the pendency of his motion to reopen violates Petitioner's statutory right to have an adequate opportunity to proceed with litigating his motion to reopen, and to receive adjudication said motion. *See Chhoeun v. Marin*, 306 F.Supp.3d at 1157.

69. The filing of a motion to reopen does not automatically stay deportation. 8 C.F.R. § 1003.23(b)(1)(v).

70. The removal of Petitioner during the pendency of his motion to reopen violates Petitioner's statutory right to have an adequate opportunity to proceed with litigating his motion to reopen and to receive adjudication of his motion to reopen. *See Chhoeun*.

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT – PROCEDURAL DUE PROCESS DENIAL OF RIGHT TO REOPEN REMOVAL ORDERS ON ACCOUNT OF INEFFECTIVE ASSISTANCE OF COUNSEL

71. Petitioner re-alleges the foregoing paragraphs as if set forth fully herein.

72. Procedural due process requires that the government be constrained before it acts in a way that deprives individuals of life or liberty interests protected under the Due Process Clause of the Fifth Amendment.

73. Petitioner has not received his core procedural entitlement—he has not had an opportunity to have his claim heard at a meaningful time or in a meaningful manner with respect to his claim of ineffective assistance of counsel as put forth in his motion to reopen.

74. Removing Petitioner without giving him this opportunity violates the due process guarantee of the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Enjoin Respondents from removing Petitioner during the pendency of his motion to reopen on the basis of ineffective assistance of counsel ("IAC"); due process requires that Petitioner be protected from removal until such time as the BIA adjudicates the motion, and Petitioner has had the opportunity to file an appeal.
- (3) Enjoin Respondents from transferring Petitioner outside the jurisdiction of Arizona and / or the Tucson Field Office.
- (4) Award Petitioner his costs and reasonable attorney's fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable statute; and
- (5) Grant such further relief as the Court deems just and proper.

Dated: March 7, 2025

Respectfully submitted,

s/ Jesse Evans-Schroeder

Jesse Evans-Schroeder, Esq.
Counsel for Petitioner