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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. 4:25-cv-00110-JGZ--JR

Agency No. A 

**MOTION FOR TEMPORARY
RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION;**

**POINTS AND AUTHORITIES IN
SUPPORT OF MOTION**

(Assigned to Hon. Jennifer G Zipps)

1 Pursuant to Federal Rule of Civil Procedure 65, Hector Reyes Carmona
2 ("Petitioner" or "Mr. Reyes Carmona") hereby applies for a temporary restraining
3 order and order to show cause regarding a preliminary injunction, commanding
4 Respondents to immediately issue an order staying removal during the pendency
5 of Petitioner's motion to reopen based on the ineffective assistance of his prior
6 counsel Mary Margaret "Margo" Cowan. This Application is based upon the
7 following Memorandum of Points and Authorities, Petitioner's Petition for Writ
8 of Habeas Corpus, and the Exhibits filed in support thereof.
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10
11 **MEMORANDUM OF POINTS AND AUTHORITIES**
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13 Petitioner incorporates by reference the facts, law, and argument set forth in
14 the pleadings simultaneously filed with this court.

15 **I. Factual Background and Procedural History**
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17 Petitioner is a citizen and national of Mexico whose mother brought him to
18 the United States without inspection on September 1, 1993, when he was two years
19 old. He has not left the country since. Petitioner is married to a U.S. citizen and
20 has four U.S. citizen children. He is the owner of a successful Tucson boxing gym.

21 On January 29, 2019, Petitioner was charged with inadmissibility pursuant
22 to INA § 212(a)(6)(A)(i) for being present in the United States without having
23 been admitted or paroled and placed in removal proceedings. He is now subject to
24 a final order of removal which renders him constructively "in custody" for
25 purposes of the Immigration and Nationality Act ("INA"). Since June 28, 2024,
26 Petitioner has had a motion to reopen his removal proceedings based on the
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1 ineffective assistance of his prior counsel Ms, Mary Margarent ("Margo") Cowan
2 and based on changed circumstances pending before the Board of Immigration
3 Appeals ("BIA").

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

10
11 During the entirety of his removal proceedings, Ms. Cowan never spoke
12 with Petitioner. She did not prepare him for or appear at any of his hearings; rather,
13 Petitioner was represented by a different attorney from Ms. Cowan's organization
14 at each of his hearings. Unable to reach Ms. Cowan by phone, Petitioner repeatedly
15 followed up with her assistants to inquire as to the status of his case. Neither Ms.
16 Cowan nor anyone at her organization explained to Petitioner for which form of
17 relief he was applying, nor did they review with him any of the applications or
18 supporting documents that were submitted to the court on his behalf.

19
20 One week prior to Petitioner's merit hearing, one of Ms. Cowan's
21 volunteers, Ray, contacted Petitioner and requested that he gather witnesses to
22 testify. However, Ms. Cowan never spoke with, interviewed, or prepared any of
23 the witnesses prior to the merit hearing, nor did she speak with or prepare
24 Petitioner. Indeed, Ms. Cowan never even appeared the December 6, 2019, merit
25 hearing. Rather, a different attorney whom Petitioner had never met arrived at the
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1 immigration court 15 minutes in advance of the hearing and spoke briefly with
2 Petitioner. During the final hearing, Petitioner did not understand what was
3 happening and felt completely unprepared.
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5 The immigration judge ("IJ") denied Petitioner's application for
6 cancellation of removal as a matter of discretion and ordered him removed. The
7 attorney representing Petitioner did not explain the significance of the denial. He
8 only told Petitioner that his "only option" was to appeal. When Petitioner's fourth
9 child and new qualifying relative was born, Ms. Cowan failed to inform Petitioner
10 of the possibility of filing a motion to reopen proceedings on the basis of changed
11 circumstances. She proceeded to represent Petitioner only in his appeal of the IJ's
12 decision to the BIA.
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15 In her appeal, Ms. Cowan raised only the issue of hardship to Petitioner's
16 U.S. citizen wife and (then) three U.S. citizen children, without challenging the
17 dispositive issue in the immigration judge's denial – discretion. Petitioner was
18 unaware that Ms. Cowan had failed to raise this critical issue on appeal.
19

20 On April 8, 2022, the BIA dismissed Petitioner's appeal, finding that
21 because neither the brief on appeal, nor the Notice to appeal, challenged the
22 decision of the IJ regarding discretion, Petitioner "waived the opportunity to
23 appeal the decision regarding this issue." The BIA concluded that because "the
24 discretion issue is dispositive of the respondent's eligibility for cancellation of
25 removal," the BIA "affirm[ed] the denial of that relief."
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28 Following the dismissal of the BIA appeal, Ms. Cowan failed to advise

1 Petitioner that failure to raise the dispositive issue in his case in the appeal could
2 be grounds for ineffective assistance of counsel, and that he could work with a
3 different attorney to file a motion to reopen his proceedings on that basis. Instead,
4 on May 3, 2022, Ms. Cowan proceeded to file a petition for review of the BIA's
5 decision on Petitioner's behalf (though she styled it as a pro se petition).
6

7
8 On September 23, 2022, the Ninth Circuit issued an order dismissing
9 Petitioner's petition for review on the basis that it "lacked jurisdiction to review
10 any challenge to the agency's denial of cancellation of removal in the exercise of
11 discretion because petitioner did not exhaust it before the agency." The court
12 further found that the "agency was not required to consider whether petitioner
13 demonstrated exceptional and extremely unusual hardship to a qualifying relative
14 as its discretionary denial was dispositive." On November 15, 2022, the Ninth
15 Circuit Mandate issued.
16

17
18 During this time and in the months following, Petitioner became
19 increasingly frustrated by the lack of communication from Ms. Cowan's office.
20 Despite many phone calls, he was unable to speak with Ms. Cowan, and the only
21 information that he received from her staff was, "you're good for now if you get
22 a letter from ICE call us." Petitioner found this answer wanting, so in December
23 2023 he began looking for new counsel. It was a full four months before Petitioner
24 was able to obtain a copy of his immigration file from Ms. Cowan's office, but
25 upon obtaining the file in April 2024, he contracted with counsel at Green Evans-
26 Schroeder, PLLC to represent him.
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1 On June 28, 2024, through undersigned counsel, Petitioner filed a Motion
2 to Reopen with the BIA on the basis of ineffective assistance of counsel by prior
3 attorney Ms. Cowan, and on the basis of previously unavailable material evidence,
4 to wit, the birth of his youngest U.S. citizen child, Vedzaira, after conclusion of
5 removal proceedings in his case.
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7
8 Petitioner now faces imminent removal to Mexico. As Petitioner's motion
9 to reopen based on ineffective assistance of counsel remains pending before the
10 BIA, he has not yet received a full and fair hearing in which he has been
11 represented by competent counsel.
12

13 It should be noted that Petitioner's case is one of many, as part of ongoing
14 disciplinary action against Ms. Cowan for "violat[ing] her duties to her clients and
15 to the legal system by failing to provide competent and reasonably diligent
16 representation, by engaging in frivolous behavior, and by engaging in conduct that
17 prejudiced the administration of justice and undermined the integrity of the
18 adjudicative process." Exh. D, Order of Reciprocal Discipline from the Supreme
19 Court of Arizona at 2 (citing the BIA Disciplinary Decision for Ms. Cowan).
20

21 On July 7, 2023, Ms. Cowan was "suspended from practice before the
22 Board of Immigration Appeals, the Immigration Courts, and DHS for a period of
23 two years" on the basis of such behavior. Exh. A, Motion to Reopen, Tab F (BIA
24 Disciplinary Decision for Ms. Cowan) at 14.
25

26 Later that year, on December 7, 2023, the Supreme Court of Pennsylvania
27 issued a two-year suspension of Ms. Cowan's license in that commonwealth,
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1 reciprocal with this Board. Exh. C, Order of Reciprocal Discipline from the
2 Supreme Court of Pennsylvania.
3

4 On October 25, 2024, the Supreme Court of Arizona issued its own Order
5 of Reciprocal Discipline, holding that a June 7, 2023, Board of Immigration
6 Appeals' order suspending Ms. Cowan from practice in the immigration courts
7 and at the BIA for two years "should be imposed in Arizona[]" because "[t]he
8 ethical violations adjudicated in the federal proceeding would also constitute
9 ethical violations in Arizona." Exh. B, Respondent's Supplemental Filing to
10 Motion to Reopen and Request for Stay of Removal, Exh. C (Order of Reciprocal
11 Discipline from the Supreme Court of Arizona) at 2.
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14 Within a few months of this order, on February 7, 2025, the Arizona
15 Supreme Court suspended Ms. Cowan for a further six months and one day
16 pursuant to an Agreement for Discipline by Consent based on a number of separate
17 ethical violations. *Id.*, Exh. B (Order Accepting Agreement for Discipline by
18 Consent).
19

20 Shortly thereafter, on February 13, 2025, the State Bar of Arizona issued a
21 letter to Respondent addressing his IAC complaint against Ms. Cowan. The Bar
22 acknowledged "legitimate" ethical concerns in Respondent's complaint but stated
23 that since Ms. Cowan had received two long-term suspensions (one from the BIA
24 and the other from the Arizona Supreme Court), they "believe[d] that the existing
25 suspensions [would] adequately serve the purposes of discipline[.]" *Id.*, Exh. A
26 (Decision Letter from the State Bar of Arizona).
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1 Despite the Arizona Supreme Court's decision not to pursue Respondent's
2 claim against Ms. Cowan, this letter of acknowledgement of IAC further
3 legitimizes this claim and clearly demonstrates that it is one of many that make up
4 a protracted pattern of ineffective practices and ethical violations that Ms. Cowan
5 committed against her clients.
6

7 Lastly, on February 24, 2025, Respondent submitted to this Board a
8 Supplemental Brief in Support of his Motion to Reopen and Request for Stay of
9 Removal. In his supplemental filing, Respondent added to previous supplements
10 the October 25, 2024, Arizona Supreme Court Order of Reciprocal Discipline, the
11 February 7, 2025, Order Accepting Agreement for Discipline by Consent, and the
12 February 13, 2025, Decision Letter from the State Bar of Arizona, as material
13 evidence that was not previously available and that goes directly to the heart of
14 his claim.
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17 Petitioner prays that this Court stay his removal during the pendency of his
18 motion to reopen on the basis of ineffective assistance of counsel; due process
19 under the Fifth Amendment requires that Petitioner be protected from removal
20 until such time as the BIA adjudicates the motion, and Petitioner has had the
21 opportunity to file an appeal.
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24 **II. Law and Argument**

25 “A preliminary injunction is an extraordinary and drastic remedy” that “is
26 never granted as of right.” *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008). The
27 party seeking the injunction “must establish that he is likely to succeed on the
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1 merits, that he is likely to suffer irreparable harm in the absence of preliminary
2 relief, that the balance of equities tips in his favor, and that an injunction is in the
3 public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7,
4 20 (2008); *see also Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d
5 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary
6 restraining order standards are “substantially identical”). Even if Petitioner does
7 not show a likelihood of success on the merits, the Court may still grant a
8 temporary restraining order if Petitioner raises “serious questions” as to the merits
9 of his claims, the balance of hardships tips “sharply” in his favor, and the
10 remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*,
11 632 F.3d 1127, 1131-32 (9th Cir. 2011).

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15 **A. Petitioner Is Likely to Succeed in His Claim That a Failing to**
16 **Stay His Removal Would Result in a Violation of His Fifth**
17 **Amendment Due Process Rights.**

18 Mr. Reyes Carmona’s case calls on this Court to hold that removing him
19 prior to the adjudication of his motion to reopen and his exhaustion of the appeals
20 process would violate his Fifth Amendment due process right to a full and fair
21 hearing.

22 It is well established that a noncitizen in removal proceedings is entitled to
23 a Fifth Amendment due process protection, including a “full and fair hearing ...
24 and a reasonable opportunity to present evidence on his behalf.” *Salgado Diaz v.*
25 *Ashcroft*, 395 F.3d 1158, 1162 (9th Cir. 2005) (citing *Colmenar v. INS*, 210 F.3d
26 967 (9th Cir. 2000). Critical to the right to a full and fair hearing is representation
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1 by competent counsel; in immigration removal proceedings, ineffective assistance
2 of counsel results in a due process violation “if the proceeding was so
3 fundamentally unfair that the alien was prevented from reasonably presenting his
4 case.” *Ortiz v. INS*, 179 F.3d 1148, 1153 (9th Cir. 1999) (quoting *Lopez v. INS*, 775
5 F.2d 1015, 1017 (9th Cir. 1985)). A motion to reopen is the proper avenue through
6 which to pursue a claim of ineffective assistance of counsel in removal
7 proceedings, thereby upholding the noncitizen’s constitutional rights. *Mohammed*
8 *v. Gonzalez*, 400 F.3d 785, 792 (9th Cir. 2005).

11 To determine the procedural protections due, the Court must balance three
12 factors: (1) the private interest affected; (2) the risk of erroneous deprivation
13 through the procedures used and the value of additional safeguards; and (3) the
14 government’s interest, including the burdens of additional procedural
15 requirements. *See Matthews v. Eldridge*, 424 US 319, 335 (1976).

18 1. The Private Interest Affected

19 Here, Petitioner’s constitutional right to a full and fair hearing was violated
20 when his prior counsel’s ineffective assistance prevented him from presenting his
21 case and resulted in a final order of deportation. Removing him before he has been
22 able to engage in “proceedings conforming to traditional standards of fairness
23 encompassed in due process of law[]” would further violate his constitutional
24 rights. *See Arreola Arreola v. Ashcroft*, 383 F.3d 956, 958-59 (9th Cir. 2004)
25 (abrogated on other grounds by *Morales-Izquierdo v. Gonzalez*, 486 F.3d 484 (9th
26 Cir. 2007).
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1 Petitioner has an unknown and finite number of days before ICE executes
2 his removal order and sends him to Mexico. The Supreme Court of the United
3 States has long recognized that deportation “visits a great hardship on the
4 individual and deprives him of the right to stay and live and work in this land of
5 freedom.” *Bridges v. Wixon*, 326 U.S. 135, 154 (1945). For this reason,
6 “[m]eticulous care must be exercised lest the procedure by which he is deprived
7 of that liberty not meet the essential standards of fairness.” *Id.* Removing
8 Petitioner before he receives a decision on his motion to reopen would create
9 significant barriers to continued litigation, hampering his statutory right to exhaust
10 the appeals process, and further depriving him of his constitutional right to a full
11 and fair hearing. *See* 8 U.S.C. § 1229a(c)(7); *see also Poghosyan v. Wolf*, 2020
12 U.S. Dist. LEXIS 208448, *9-10 (granting Petitioner’s TRO and enjoining his stay
13 of removal because removal before adjudication of his motion to reopen based on
14 IAC “would effectively deny [Petitioner] his right to be heard.”).¹

15 Like the Petitioner in *Poghosyan*, Mr. Reyes Carmona is subject to a final
16 order of removal while his motion to reopen based on IAC remains pending before
17 the BIA. Equally, Petitioner does not challenge the order of removal itself; rather,
18 he requests “an order enjoining and staying his removal” to allow him time to
19 exercise his constitutional right to be heard. 2020 U.S. Dist. LEXIS 208448, *4.
20 Only by remaining in the United States to await adjudication of his motion to
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22 ¹ While not binding precedent, the case is highly persuasive.

1 reopen and to exhaust the appeals process may Petitioner rectify the violation of
2 his constitutional due process right that resulted from his prior counsel's
3 ineffective assistance.
4

5 **2. The Risk of Erroneous Deprivation**

6 The exceptional circumstances of Petitioner's case create a high risk of
7 erroneous deprivation absent a preliminary injunction and temporary restraining
8 order by this Court. Petitioner is subject to a final order of deportation and as such
9 is at risk of being removed from the United States at any moment. Receiving
10 proper adjudication of his motion to reopen based on ineffective assistance of
11 counsel is fundamental to his Fifth Amendment due process right to a full and fair
12 hearing; as such, removal would result in a violation of this right.
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15 **3. The Government Interest**

16 The relief that Petitioner seeks does not impinge on the government's
17 interest. Petitioner has resided in the United States for thirty-three (33) years, since
18 he was a toddler. He has not, on information and belief, committed an aggravated
19 felony during this time. He has not attempted to abscond from immigration
20 authorities and does not pose a threat to the public. Thus, any minimal
21 inconvenience to the government caused by staying Petitioner's removal
22 throughout litigation of his motion to reopen cannot outweigh Petitioner's due
23 process interests.
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B. Petitioner Faces Irreparable Harm Absent Relief from This Court.

Mr. Reyes Carmona will suffer irreparable harm absent a temporary restraining order enjoining the government from effectuating the final order of removal. “It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury.” *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal quotation marks omitted). Thus, a finding that Mr. Reyes Carmona is likely to succeed on the merits of his due process claim also means that he has “carried [his] burden as to irreparable harm.” *Id.* at 995. It is therefore clear that Mr. Reyes Carmona will suffer irreparable harm unless this Court intervenes.

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C. The Balance of Equities and Public Interest Sharply Favor Petitioner.

The Supreme Court has found that the balance of equities and the public interest merge in immigration cases because Respondents are both the opposing litigants and the public interest representatives. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Additionally, the public has an interest in upholding constitutional rights. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.”).

The balance of equities and public interest tip sharply in Petitioner’s favor. On the one side, Mr. Reyes Carmona faces deprivation of his constitutional rights

1 above and beyond that which he already suffered because of his prior counsel's
2 ineffective assistance. Such a continued violation of constitutional rights
3 necessarily weighs against the public interest.
4

5 On the other side, any harm to the government should the temporary
6 restraining order be granted is negligible at best. Petitioner merely requests a brief
7 delay of any potential removal in order to give him the opportunity to fully litigate
8 his claim. Ordering Respondents to simply refrain from removing him until the
9 Board of Immigration Appeals has adjudicated his motion to reopen based on IAC
10 and until he has exhausted the appeals process is hardly an imposition or a burden.
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13 Finally, Mr. Reyes Carmona asks this Court to find that Petitioner has
14 complied with the requirements of Rule 65, Fed.R.Civ.P., for the purposes of
15 granting a Temporary Restraining Order. Pursuant to Rule 65(b)(1), this Court
16 may issue a Temporary Restraining Order without written or oral notice to the
17 adverse party or its attorney only if a) specific facts in an affidavit ... clearly show
18 that immediate and irreparable injury, loss or damage will result to the petitioner
19 before the adverse party can be heard in opposition; and 2) the petitioner's attorney
20 certifies in writing any efforts made to give notice and the reasons why it should
21 not be required.
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24 Here, Mr. Reyes Carmona respectfully submits that sufficient notice has
25 been given to Respondents since the Interim United States Attorney for the
26 District of Arizona has been provided with a copy of the instant motion. *See*
27 Exhibit A, Letter from Jesse Evans-Schroeder to Timothy Courchaine, March 10,
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1 2025. The U.S. Attorney's Office represents Respondents in civil litigation in
2 which they are named as Defendants or Respondents. While proper service may
3 not have been made on Respondents' counsel, for the purpose of Rule 65(b)(1),
4 this Court should find that written notice has, in fact, been provided to the adverse
5 party. In the event this Court finds that not to be the case, it should nevertheless
6 find that the requirements of Rule 65(b)(1)(A) and (B) have been met. *See* Exhibit
7 B, Affidavit of Jesse Evans-Schroeder.
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10 **III. Conclusion and Prayer for Relief**

11 For the foregoing reasons, this Court should hold that Petitioner is likely to
12 succeed on the merits of his Petition for Writ of Habeas Corpus, that he is likely
13 to suffer irreparable harm in the absence of preliminary relief, that the balance of
14 equities tips in his favor, and that the requested injunction is in the public interest.
15 Specifically, Petitioner requests that this Court enter the following findings and
16 orders:
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- 18
19 A. That the Petitioner requires a stay of removal
20 B. That a temporary restraining order is necessary to ensure that
21 Respondents do not continue to violate Petitioner's constitutional
22 rights;
23 C. That Respondents must be enjoined immediately from effectuating
24 the final order of removal;
25 D. That Petitioner is entitled to an award of attorney's fees under the
26 Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412; and
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2 E. That this Court grant any other relief that it deems necessary and
3 proper.
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5 Dated: March 10, 2025 Respectfully submitted,
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7
8 s/ Jesse Evans-Schroeder
9 Jesse Evans-Schroeder, Esq.
10 Counsel for Petitioner
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