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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DARWIN ANTONIO AREVALO MILLAN, on his own behalf and on behalf of all others similarly situated

Petitioner-Plaintiff,

vs.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Respondents-Defendants.

Case No.: 5:25-cv-01207

PETITIONER-PLAINTIFF'S MOTION TO RECONSIDER EMERGENCY *EX PARTE* APPLICATION FOR WRIT OF MANDAMUS, ISSUANCE OF WRIT OF HABEAS CORPUS WITH DECLARATORY RELIEF, AND PERMANENT INJUNCTION

PETITIONERS-PLAINTIFFS' MOTION TO RECONSIDER EMERGENCY *EX PARTE* APPLICATION FOR WRIT OF MANDAMUS, ISSUANCE OF WRIT OF HABEAS CORPUS WITH DECLARATORY RELIEF, AND PERMANENT INJUNCTION

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INTRODUCTION AND BACKGROUND

This is a motion to reconsider the Court's decision to deny Petitioner-Plaintiff Darwin Antonio Arevalo Millan's ("Petitioner") *ex parte* application. The Order that Petitioner is asking to be reconsidered was filed June 20, 2025 and entered on June 23, 2025. ECF No. 40. It appears that this Order is a functional suspension of the writ through a *Jennings v. Rodriguez*-inspired addition to the "swarm of *ad hoc* rules the Court only divines when it wants a case to be dismissed," which "is irrebuttable feudalism." Joshua J. Schroeder, *The Body Snatchers: How the Writ of Habeas Corpus Was Taken from the People of the United States*, 35 QUINNIPIAC L. REV. 1, 23 (2016).

Here, mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A) "must end" after "a proceeding under section 1229a of this title" occurs. Jennings v. Rodriguez, 583 U.S. 281, 296 (2018). As long as the proceeding under § 1229a ends, the detention must end, regardless of the finality of the decision. *Id.*; 8 U.S.C. § 1158(d)(5)(A)(iv) (noting that a decision in EOIR marks the "completion of removal proceedings before an immigration just under section 1229a"). If an order of removal were to have been granted through § 1229a, the completion of this habeas corpus proceeding along with any appeal would depend upon the non-finality of the order of removal. *Cf.* Camarillo-Martinez v. Garland, 2024 U.S. App. LEXIS 13902, *2 (9th Cir. 2024). No such legal designation of an asylum grant as similarly non-final is contemplated by the statute, regulations, or by the Respondents' own opinion in *Matter of M-S-*, newly cited by the Court Order. ECF No. 40, at 6 (erroneously notating *Matter of M-S-* as a BIA decision rather than an A.G. decision (citing Matter of M-S-, 27 I&N Dec. 509, 514 (A.G. 2019)).

In *Matter of M-S-*, the Respondents issued "a Notice of Custody Determination (DHS Form I-286)," which was not issued here. *Matter of M-S-*, 27 I&N Dec. at 514. Here, Petitioner legally remains paroled, he was not issued any warrant or other

document indicating why he is detained or that his parole was revoked. ECF No. 1, at 3. He was only told that he was detained as a member of TdA, which the Government did not deny or rebut with evidence here. *Id.*

According to § 1229a, the proceedings adjudicated thereunder are decided by "[a]n immigration judge." 8 U.S.C. § 1229a(a)(1). The law is conspicuously singular here, naming *one* judge to decide the entire § 1229a proceeding. *Id.* As such, § 1229a proceedings do not include subsequent adjudications by the Board of Immigration Appeals ("BIA") or the Attorney General ("AG"), which is statutorily confirmed at 8 U.S.C. § 1158(d)(5)(A)(iii–iv), i.e., the INA explicitly and unequivocally states that § 1229a proceedings are over when the Immigration Judge ("IJ") rules.

The proceedings decided pursuant to § 1229a decide grounds of inadmissibility and deportability under § 1182(a) and § 1227(a) respectively. 8 U.S.C. § 1229a(a)(2). According to § 1229a, the review of the IJ in the Executive Office for Immigration Review ("EOIR") "shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States." 8 U.S.C. § 1229a(a)(3). As § 1225(b)(2)(A) only refers to a determination of admissibility, § 1182(a) is the relevant decision made in EOIR here.

According to 8 U.S.C. § 1182(a)(1–10), ten grounds for inadmissibility could have been raised at Petitioner's removal proceeding in EOIR: (1) Health-Related Grounds; (2) Criminal and Related Grounds; (3) Security and Related Grounds (including "Terrorist activities"); (4) Public Charge; (5) Labor Certification and Qualifications for Certain Immigrants; (6) Illegal Entrants and Immigration Violators; (7) Documentation Requirements; (8) Ineligible for Citizenship; (9) Aliens Previously Removed; (10) Miscellaneous (including practicing polygamists, guardians required to accompany helpless aliens, international child abductors, unlawful voters, and former citizens who renounced citizenship to avoid taxation).

The determination in EOIR granting asylum and denying the Government's request to issue an order of removal also necessarily must have decided these ten issues in Petitioner's favor if they are not mentioned in the order. ECF No. 30, Exh. A. Here, the only basis for inadmissibility mentioned in the IJ Order is § 1182(a)(7)(A)(i)(II), and none other. *Id.* The appeal in BIA cannot re-determine these issues. 8 U.S.C. § 1229a(a)(3) (noting the IJ ruling, not the BIA on appeal, is the exclusive way admissibility is to be determined here).

Petitioner's adjudicated inadmissibility pursuant to § 1182(a)(7)(A)(i)(II) regards Petitioner's lack of "a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter" etc. ECF No. 30, Exh. A. However, a grant of asylum creates admissibility under 8 U.S.C. § 1157, which specifically renders this ground of inadmissibility inapplicable. *Id.*; 8 U.S.C. § 1157(c)(3) ("The provisions of . . . (7)(A) of section 1182(a) of this title shall not be applicable to any alien seeking admission to the United States under this subsection"). Therefore, for all the foregoing reasons the Reply was correct when it argued that the IJ's grant of asylum here does undoubtedly mean that Petitioner is admissible. ECF No. 40, at 6 (expressly denying this argument from the Reply). According to *Jennings* itself, at the very minimum, Petitioner's detention "must end." *Jennings*, 583 U.S. at 296.

Moreover, it appears that § 1229a proceedings are final, meaning ended or complete, upon a decision by the judge in EOIR. 8 U.S.C. § 1158(d)(5)(A)(iii). Any administrative appeal shall be filed within 30 days of a decision granting or denying asylum, or "within 30 days of ***completion*** of removal proceedings before an immigration judge under section 1229a of this title." 8 U.S.C. § 1158(d)(5)(A)(iv) (emphasis added). Final or not, the Immigration & Nationality Act ("INA") clearly states that the proceedings under § 1229a are complete before those proceedings may be appealed, and it seems to say that it is a "final administrative adjudication of the

asylum application" that is subject to an appeal. 8 U.S.C. § 1158(d)(5)(A)(iii). Admittedly, the language could be read both ways regarding the issue of finality as the next phrase says: "not including administrative appeal." *Id.* However, the issue here is not one of finality, but of whether § 1229a proceedings are now over, ended, or complete, which this same provision unambiguously acknowledges. *Id.*

In other words, finality is irrelevant to 8 U.S.C. § 1225(b)(2)(A) as this basis for detention ends when the § 1229a proceedings end and the statute clearly and unambiguously states that the § 1229a proceedings are now over. *Id.* An appeal taken pursuant to 8 U.S.C. § 1158 is clearly not referred to or included by 8 U.S.C. § 1225(b)(2)(A) as a basis for continued detention. *Id.* As argued in the Reply and as officially mandated in post-*Chevron* decision *Corner Post*, the unambiguous statutory text of the INA must be applied here according to Justice Gorsuch's wise counsel: "If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them." Niz-Chavez v. Garland, 593 U.S. 155, 172 (2021), *quoted at* ECF No. 1, at 12; Corner Post, Inc. v. Board of Governors, 603 U.S. 799, 823 (2024) ("'[P]leas of administrative inconvenience . . . never 'justify departing from the statute's clear text.'" (quoting *Niz-Chavez*, 593 U.S. at 169 (quoting Pereira v. Sessions, 585 U.S. 198, 217 (2018)))).

Even if 8 U.S.C. § 1229a encompassed an appeal of § 1229a proceedings that unequivocally made Petitioner admissible, 8 U.S.C. § 1225(b)(2)(A) only mandates detention in after "the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). The examining officer referenced here is presumably either an ICE or CBP Officer empowered to interview arriving aliens to determine credible fear, though the IJ clearly precluded any other possible conclusion by such an officer than that Petitioner is admissible here as correctly argued in the Reply. ECF No. 40, at 6.

No evidence or notice of any other examining immigration officer determination was provided on or off the record to Petitioner's counsel. ECF No. 1, at 3. The Respondents' Opposition Brief skates around this characterization by erroneously citing 8 U.S.C. § 1225(b)(2)(A) as if it were a general basis for detention, even where its express provisions preclude detention.

As noted several times by Petitioner, he was granted legal entry into the United States and his examining officer did *not* determine that he was "not clearly and beyond a doubt entitled to be admitted." *Id.*; ECF No. 40, at 6. He was, therefore, not subject to mandatory detention and he was paroled into the country. ECF No. 1, at 1. During the lawful duration of his parole pending an asylum determination in EOIR, he was arrested pursuant to Proclamation 10903 and given only oral notice of this reason with no other reason given such that *no* due process was issued to Petitioner or his counselors that cancelled out his lawfully issued parole decision or any other process under INA to explain his current detention. *Id.* ("There is no reason for Darwin to be in custody.").

Petitioner was granted asylum pursuant to his 8 U.S.C. § 1229a hearing, after which his detention, if it is pursuant to 8 U.S.C. § 1225(b)(2)(A), must end. ECF No. 30, Exh. A; *Jennings*, 583 U.S. at 296. Nevertheless, Petitioner remains detained pending appeal of his 8 U.S.C. § 1229a hearing according to the Court's June 20, 2025 Order alone, which has no legal foundation. ECF No. 40. To be sure, there are bases to keep an immigrant detained pending the appeal of an order of removal, but the Respondents did not claim those bases here, nor has Respondent given Petitioner notice that they are invoking those bases other than an oral statement to Petitioner that he is subject to Proclamation 10903. ECF No. 1, at 3. Moreover, the facts of *Jennings* are distinguished here, because that case involved detention after a non-final order of removal was issued, not a grant of asylum which appears to be final under the law. *Jennings*, 583 U.S. at 299. In such distinguished cases, *Arteaga-Martinez*

requires the Court to decide the constitutional issues duly raised in this tribunal. Johnson v. Arteaga-Martinez, 596 U.S. 573, 583 (2022) ("'[W]e are a court of review, not of first view.'").

I. NEW EVIDENCE AND CIRCUMSTANCES

We are now aware, that the military is now officially manning the Adelanto ICE Processing Center including the facility where Petitioner resides. Schroeder Decl. Specifically, we are aware that the Sunburst Division, also known as the 40th Infantry Division, is physically guarding, patrolling, and manning posts at the Adelanto ICE Processing Center. *Id.* The Ninth Circuit temporarily allowed Respondents discretion to wield military force in the execution of immigration laws in Los Angeles and at the Adelanto ICE Processing Center. Newsom v. Trump, 2025 U.S. App. LEXIS 15180, *44 (9th Cir. 2025). These officers are armed for war, are dressed in full tactical gear, are directed by Respondents, and carry military style long guns and other weapons needed to engage the enemy. Schroeder Decl.

Over the weekend, President Trump appeared to violate the War Powers Act of 1973 by engaging Iran with U.S. military forces without giving notice to Congress as required by law. 50 U.S.C. § 1541 *et seq.*; *see* Kevin Liptak et al., *How Trump Quietly Made the Historic Decision to Launch Strikes in Iran*, CNN (June 22, 2025, 9:09 PM), https://www.cnn.com/2025/06/22/politics/trump-iran-strike-decision-inside. The War Powers Act appears to require (1) 48-hours' notice after such a strike, (2) 48-hours' notice (apparently) before such a strike, and (3) a general direction that the President must consult Congress if at all possible prior to and during such a strike. 50 U.S.C. §§ 1542, 1543(a), 1543a. Now, new enemy aliens may be added to those already named in Proclamation 10903, but here it may be accomplished without notice, proclamation, or any explanation regarding what law or constitutional provisions justify war powers according to what appears to be the President's personal war in Iran. Liptak, *supra*. As notice and an opportunity to be

heard is not even being extended to Congress to assert its constitutionally protected war powers by Respondents in a foreign war, and as Senator Padilla himself was detained for questioning these war powers in Los Angeles, it appears that the President's personal wars are likely create more litigants similar to Petitioner here by explicitly refusing to comply with due process. *Id.*; ECF No. 30, Mem. Pts. & Auth. at 9 (noting Senator Padilla's arrest).

Again, the heart of this case is the Due Process requirement that notice and an opportunity to be heard is given. ECF No. 1, at 4. No notice was given to Petitioner of the specific INA basis for which he is being detained, nor did the Respondents clarify that Petitioner is not TdA or being held under Proclamation 10903. *Id.* at 3; Schroeder, Decl. As Petitioner doubts that the INA is justifying his detention, because there is no provision noticed to Petitioner or cited by the Respondents that appears to allow or mandate his detention now, no argument was raised about INA, 8 U.S.C. § 1225(b)(2)(A) in the original *ex parte*—which clearly does not mandate detention of Petitioner now. *See generally* ECF No. 30, Mem. Pts. & Auth. In fact, it appears that the Court Order of June 20, 2025 is the sole legal justification for Petitioner's continued detention pursuant to sheer equitable powers of this Court wielded with such inequity that it attempts to hide its shame in the law. ECF No. 40. But there is nowhere in the law that allows this result. The Court's stated position to the contrary, that Petitioner's detention is not indefinite, is belied by the fact that removal proceedings have concluded and are now, by law, over. *Id.* at 7–8.

II. AN UNPRECEDENTED JUDICIAL SUSPENSION OF THE WRIT

Alarmingly, the Court made the Order of June 20, 2025 with knowledge that there was potentially no legal basis to justify Petitioner's detention here. *See generally* ECF No. 30, Mem. Pts. & Auth. However, the Court was not moved by Respondents to find a legal basis, nor could the Court provide the notice Respondents failed to give Petitioner about its legal and constitutional bases for continuing to

detain Petitioner. *See generally* ECF No. 37. Yet, the Court nonetheless decided that there was legal basis to detain Petitioner indefinitely even after he was determined to be a refugee with no possible legal basis for inadmissibility and without notice from the Respondents regarding why.[1] ECF No. 40, at 6–7.

The Court knew that Petitioner is a civilian and that if the writ of habeas corpus can be suspended for Petitioner it can be suspended in a similar way for any civilian in America as if *Toth v. Quarles* was never decided. United States *ex rel.* Toth v. Quarles, 350 U.S. 11, 23 (1955), *cited by* ECF No. 39, at 12. It, furthermore, knew that it had the power to act pursuant to *Boumediene v. Bush*, and it knew that its decision not to decide the constitutional issues here was not forced by *Jennings*. Boumediene v. Bush, 523 U.S. 723, 786 (2008), *cited by* ECF No. 39, at 15. And yet, the Court chose to suspend the Great Writ of habeas corpus for no discernable reason especially as there is no motion or application before the court filed by Respondents asking the Court to suspend here. ECF No. 40, at 6–7; *cf.* Schroeder, *supra*, at 23.

This error was horrifically emphasized by the Court's *sua sponte* reliance upon the Respondent's own opinion in *Matter of M-S-*, which was *not* a Board of Immigration Appeals ("BIA") decision—it was a decision made by Attorney General William Barr whose seat is now held by Respondent Attorney General Pam Bondi—both serving under President Trump. *Matter of M-S-*, 27 I&N Dec. *Matter of M-S-* was mistakenly cited in the Order of June 20, 2025 as a BIA decision rather than an A.G. decision. ECF No. 40, at 6 ("Thus, an applicant may remain in custody pending any such appeal. *See Matter of M-S-*, 27 I&N 509, 517 (BIA 2019)."). The deference of the Court directly to Respondents regarding the legal concept of finality is arbitrary, capricious, and violates the separation of powers as well as controlling precedent in *Loper Bright*, *Jarkesy*, and *Corner Post*. Loper Bright Enters. v.

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[1] The Court maintained that the Petitioner is not indefinitely detained without any foreseeable end-date to his detention, and without requiring proof from Respondents regarding when, if ever, he will be released. Schroeder, Decl.

Raimondo, 603 U.S. 369, 412 (2024) ("*Chevron* is overruled."); SEC v. Jarkesy, 603 U.S. 109, 140 (2024); *Corner Post*, 603 U.S. at 823; ECF No. 30, Mem. Pts. & Auth. at 11–12.

Nothing about finality or administrative adjudications, here, are a basis to upend the Great Writ of habeas corpus as was done on June 20, 2025, apparently on the Court's own motion. *Cf.* ECF No. 40. Here, the Court's task was to determine whether the law was being followed and whether there was a suspension of the writ afoot. ECF No. 30, Mem. Pts. & Auth. at 18–19. This collateral investigation is not the burden of Petitioner to prove, nor is it endeavored upon for the Petitioner's benefit. *Id.*

In fact, we are here *solely* to vindicate the legitimacy of the Respondents in their detention of Petitioner. *Id.* Yet, to date, no proper notice of the legal and constitutional bases of detention has been served on Petitioner or his counselors. Schroeder, Decl. No proper legal basis was provided for continued detention even in the Opposition Brief, which itself did not contain a legitimate legal basis for detention. ECF. No. 37. Therefore, the legitimacy of Respondents was openly damaged by the Court's functional suspension of the writ of habeas corpus at the behest of Respondents who are presently self-destroying under this Court's watch. ECF No. 40, at 6–7; *cf.* Schroeder, *supra*, at 23.

The Court refused to issue a writ of habeas corpus indefinitely, according to an opinion of Respondents, while Respondents appeal themselves to themselves. ECF No. 40, at 6–7; Schroeder, Decl. To be clear, the EOIR, IJ, and the BIA are employees of Respondents Department of Justice and Attorney General Pam Bondi, while the prosecutors in EOIR that will potentially appeal Petitioner's case to these Respondents are employed by and are Respondents Department of Homeland Security and Secretary of Homeland Security Kristi Noem. There is no separation of powers protecting Petitioner's grant of asylum here, nor is there a logical timeline

regarding when this supposed appeal will end, or any right to speedy process here. Schroeder, Decl.

Meanwhile, the Court Order required Petitioner to provide legal authority for the Court to issue habeas corpus release here. ECF No. 40, at 7 (relying upon Respondents as authorities, solely because "Arevalo provides no authority to support the proposition that an appealable decision is somehow also a conclusive decision for the purpose of 8 U.S.C. § 1225(b)(2)(A)"). Despite the fact that Respondents' opposition brief is not the proper posture to raise an unnoticed basis for detention, that Petitioner had only 24-hours to reply to this new apparent basis for Petitioner's detention, and that Petitioner did in fact provide proper basis in the law—this is the exact opposite of the right question here. *See, e.g.*, Boumediene v. Bush, 553 U.S. 723, 746 (2008) (extending common law habeas corpus pursuant to the constitution's requirements itself, even when appearing to strike down the statutory basis for habeas corpus review). Habeas corpus favors release, *unless* it can be shown that the law justifies detention, which is stated several times over in several ways in the papers filed in support of this relief. *Ex parte* Bollman, 8 U.S. 75, 136 (1807) (noting that discharge pending "fresh proceedings against" the petitioners is the proper remedy), *cited by* ECF No. 30, Mem. Pts. & Auth. at 18.

Without legal justification for detention, this Court *must* issue habeas corpus to release Petitioner even if the habeas corpus statute itself is stricken down in the process. ECF No. 1, at 14 ("The Court may grant relief pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 2243; the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; the All Writs Act, 28 U.S.C. § 1651; the APA 5 U.S.C. § 706, and the Court's inherent equitable powers."). The Order, as it appears *not* to find statutory authority to justify detention, but only a perceived lack of statutory justification for release, should have issued the writ according to its own terms according to the authorities by which this petition was originally opened for review. *Id.*; ECF No. 40, at 7. In fact, the Court

can and must do this upon a *de novo* review of facts, including evidence that a lower court is overrun by a mob such that its process is nothing "more than an empty shell." Estep v. United States, 327 U.S. 114, 141 (1946) (Frankfurter, J., concurring) (quoting Frank v. Mangum, 237 U.S. 309, 346 (1915) (Holmes, J., dissenting)), *cited by* ECF 30, at 19.

Here, it appears that there is no statutory law clarifying whether asylum grants are not final, but there are statutory provisions that clearly say that the basis for detention is now over because the § 1229a proceeding is complete and a final adjudication as to § 1229a. 8 U.S.C. § 1158(d)(5)(A)(iii–iv). The Respondents could only find that *in their own opinion*, humanitarian relief is not final as the only administrative decisions it could find regarding finality involved bond determinations. ECF No. 37, at 7 (citing *Matter of E-Y-F-G-*, 29 I&N Dec. 103, 104 (BIA 2025)). This Court's order went further by citing Respondent Department of Justice and the office of the Attorney General now held by Respondent Pam Bondi to make an inference upon an inference here. ECF No. 40, at 6 ("Thus, an applicant may remain in custody pending any such appeal. *See Matter of M-S-*, 27 I&N 509, 517 (BIA 2019)."). If the Court is set on making inferences, perhaps the proper habeas corpus doctrine should have been constitutional avoidance doctrine and the related doctrine that implied repeals are disfavored—both of which are before the Court here. ECF No. 30, Mem. Pts. & Auth. at 13; ECF No. 1, at 18 (citing Boumediene v. Bush, 553 U.S. 723, 746 (2008) (majority opinion) (quoting INS v. St. Cyr, 533 U.S. 289, 301 (2001)); *Ex parte* Yerger, 75 U.S. 85, 105 (1868) ("Repeals by implication are not favored.")).

If there was a statutory basis for refugee determinations not to be final when the IJ rules, the Respondents presumably would have cited to it. Such a basis for defining humanitarian relief as non-final does not exist and must apparently be negatively inferred from the phrase "final administrative adjudication of the asylum

application, not including administrative appeal." 8 U.S.C. § 1158(d)(5)(A)(iii). The less doubtful way of reading this provision is that administrative adjudications pursuant to § 1229a are completed, ended, or final after the IJ rules. 8 U.S.C. § 1158(d)(5)(A)(iii–iv). In fact, the Respondents' own opinions which refer to bond decisions appear to ultimately stem from the non-finality of orders of removal pending appeal in order to stay removals until all judicial process is complete as referenced in the Reply. ECF No. 39, at 9.

Moreover, the Court's order of June 20, 2025 lacks jurisdiction under the zipper clause, 8 U.S.C. § 1252(b)(9), to reconsider a grant of asylum here. However, this clause does not preclude this Court from ordering release when the Respondents do not clarify in notices duly issued to Petitioner regarding the legal basis for their detention. 8 U.S.C. § 1252(b)(9). In other words, the zipper clause does not subsume or replace the Due Process Clause, nor could it. *Id.*; A.A.R.P. v. Trump, No. 24A1007, slip op. at 7 (2025) (per curiam) (citing The Japanese Immigrant Case, 189 U.S. 86, 99–100 (1903) (extending "notice and an opportunity to be heard" to all immigrants pursuant to "the Fifth Amendment of the Constitution")).

Here, no notice was given, and the Petitioner does not dispute the results of his 8 U.S.C. § 1229a proceeding, which he wants enforced immediately. ECF No. 30, Mem. Pts. & Auth. at 16 ("It is impossible to tell exactly why Respondents continue to hold Petitioner as there has been no due or proper notice given."). Previously, Petitioner was paroled and given permission to work in the United States pending his EOIR hearing. ECF No. 1, at 4. And now that that proceeding is statutorily complete, any detention under 8 U.S.C. § 1225(b)(2)(A) "must end." ECF No. 30, Exh. A; *Jennings*, 583 U.S. at 296. There is no other basis for detention cited or claimed by Respondents except for Proclamation 10903 off the record, except for general references to other bases for detention involving national security and crime that Respondents did not raise in Petitioner's removal proceedings, which was the

exclusive venue for them to do so. 8 U.S.C. § 1229a(a)(3); ECF No. 30, Exh. A. Now, because of the Court's Order of June 20, 2025, this Court's order and *not* the INA will be used to detain refugees against the law. ECF No. 40, at 6 (paradoxically interpreting a provision for mandatory detention, 8 U.S.C. § 1225(b)(2)(A), to include discretionary detention pursuant to *Matter of M-S-*);

Again, deference here is now prohibited by the U.S. Supreme Court. *Loper Bright*, 603 U.S. at 412 ("*Chevron* is overruled."). Not to mention that in this context, citing the *Matter of M-S-* as authority appears to make Respondents a judge in this Court over their own case, which is a candid violation of the separation of powers that habeas corpus is meant to monitor that the Court was previously warned of in oral arguments. Exh. B (noting "the maxim that you shall not be a judge in your own case" (*nemo iudex in cuasa sua*) as something EOIR violates); Dr. Bonham's Case [1610] 8 Co. Rep. 114a, 118a (Eng.) ("*aliquis non debet esse Judex in propria causa*" – a person ought not to be a judge in their own cause). Indeed, *Corner Post, Inc. v. Board of Governors* cited directly to immigration law cases *Pereira v. Sessions* and *Niz-Chavez v. Garland* for the right decision here, which is an application of the unambiguous statutory text rather than the opinion of Respondents. Niz-Chavez v. Garland, 593 U.S. 155, 172 (2021), *quoted at* ECF No. 1, at 12; Corner Post, Inc. v. Board of Governors, 603 U.S. 799, 823 (2024) ("'[P]leas of administrative inconvenience . . . never 'justify departing from the statute's clear text.'" (quoting *Niz-Chavez*, 593 U.S. at 169 (quoting Pereira v. Sessions, 585 U.S. 198, 217 (2018)))); ECF No. 30, Mem. Pts. & Auth. at 11–12.

To be clear, there are several bases by which the Respondents can terminate or review or destroy Petitioner's legal status. *See, e.g.*, 8 U.S.C. § 1158(c)(2). The Respondents have reserved an appeal for example, which is merely one of many paths it can take to remove Petitioner even after he is declared a refugee. 8 U.S.C. § 1158(d)(5)(A)(iv). But the fact that Petitioner is now legally and officially a refugee

in the United States requires this Court to issue habeas corpus now to release Petitioner pending legitimate action by Respondents to change his current legal status that imbues undoubted admissibility that completely undermines and ends the statutory basis for continued detention that Respondents say they are relying upon without notice or an opportunity to be heard. ECF No. 30, Exh. A.

Petitioner clearly established that Petitioner will be irreparably prejudiced and that the moving party is without fault. ECF No. 40, at 5 (citing *Mission Power Engineering Co. v. Continental Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995)). The Respondents did not argue otherwise in their opposition. *See* ECF No. 37. In fact, Petitioner repeatedly argued that irreparable harm and prejudice will and is befalling Petitioner every day he is not released from detention at no possible fault of Petitioner as he was not even given notice regarding why he is detained. ECF No. 30, Mem. Pts. & Auth. at 22–26. Petitioner, furthermore, maintains good reason to believe that engaging with Respondents directly can only damage Petitioner even more and that further communications with Respondents, who are presently on a war footing with potentially all immigrants, will be counterproductive. ECF No. 30, Mem. Pts. & Auth. at 10. Counsel attempted to contact Respondents to inquire about Petitioner's continued detention, which does not seem to be justified by the law and did not receive any communication regarding the legal basis of detention outside of the Opposition Brief. Schroeder, Decl.

CONCLUSION

The U.S. Supreme Court repeatedly held that the Due Process Clause requires notice or an opportunity to be heard. Here, Respondents have given no notice to Petitioner. The asylum grant, moreover, appears to require the AG to grant him approval to work in the United States, which is a requirement that Respondents secure Petitioner's ancient right of life vindicated by Lord Coke in his *Institutes*. 3 EDWARD COKE, INSTITUTES *181–83 (noting that the Exchequer Chamber, Privy

Council, Star Chamber and other administrative tribunals of England violated the right of life when they took "the upper millstone to pledge, because [they] taketh a mans life to pledge"). Petitioner's right of life was taken without due process of law by taking the upper millstone to pledge, which is to take Petitioner's life to pledge. 8 U.S.C. § 1158(c)(1)(B) (mandating that "the Attorney General . . . shall authorize [Petitioner] to engage in employment in the United States and provide [Petitioner] with appropriate endorsement of that authorization").

Here, the Court's Order of June 20, 2025 runs counter to Justice Gorsuch's controlling decision in *Niz-Chavez* that was reaffirmed in post-*Chevron* case law. Again, there is no legal basis cited by Respondents to continue detaining Petitioner. Therefore, Petitioner's *ex parte* request for habeas corpus to issue should be granted and similar relief should be extended to his class members under the law.

Respectfully Submitted on June 25, 2025

/s/ Joshua J. Schroeder
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Attorney for Darwin Antonio Arevalo Millan

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Darwin Antonio Arevalo Millan, certifies that this brief contains 5,043 words, and complies with the word limit of L.R. 11-6.1.

DATED: June 25, 2025

By: /s/ Joshua J. Schroeder
Joshua J. Schroeder
Attorney for Petitioner-Plaintiff

Exhibit A

DECLARATION OF ATTORNEY JOSHUA J. SCHROEDER FOR DARWIN ANTONIO AREVALO MILLAN

I, Joshua J. Schroeder, declare under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. I am an attorney duly licensed to practice law in the State of California and in the Central District of California and I represent Darwin Antonio Arevalo Millan ("Darwin") in his habeas corpus proceedings. I have personal knowledge of the facts stated herein and if called to testify, I could and would competently testify hereto.
2. To date, no notice was given to either myself or, to my knowledge, Attorney Joshua Goldenstein, or, to my knowledge, Darwin explaining the legal and constitutional basis of his detention.
3. To date, no notice was given to either myself or, to my knowledge, Attorney Joshua Goldenstein, or, to my knowledge, Darwin explaining that Darwin's parole was revoked.
4. To date, it appears that Darwin still has a favorable parole decision that remains unrevoked and that legally allows him to be released, even prior to his asylum hearing.
5. Respondents' reservation of appeal is an appeal before Respondents, which Respondents will have complete control over and to which there is no known statutory mandate requiring a certain end date.
6. For example, in or around the year 2021 I drafted an appeal of an in abstentia order of removal of an infant, which was only decided by the Board of Immigration Appeals ("BIA") at the beginning of 2025. If the Order of June 20, 2025 remains in effect, that infant may be mandatorily detained without its mother, which is not result contemplated by the law or this Court. Such an infant would be detained indefinitely. Moreover, the BIA decisions may now

be referred by Respondents to the A.G. or appealed to the Ninth Circuit, which can indefinitely stall such an appeal process through its shadow docket or otherwise delay it for an indefinite period. I know of no right to speedy process of BIA appeals.

7. I attempted to retrieve notice from Respondents prior to filing this ex parte application, and to date have not heard anything from them off the record except for an email acknowledging receipt of my initial request and asking for a more detailed request, which I also provided them.
8. The Court Order of June 20, 2025 is categorically wrong about Petitioner's present detention being definite. I know of no definite end date to his detention now that his § 1229a process is over. The law does not appear to provide one anywhere I look. It appears to me that this Court invented a new basis for indefinite detention out of whole cut cloth here, out of its sheer equitable powers.
9. I consulted Attorney Goldenstein through email, phone, and text regarding his visits to the Adelanto ICE Processing Center, and his meetings with Darwin who both confirmed that the 40th Division of the National Guard is staffing and guarding the Adelanto ICE Processing Center and related facilities. They are known as the Sunburst Division, because they wear a patch depicting a sunburst that both Attorney Goldenstein and Darwin witnessed. They are armed with weapons of war including long guns and other military gear.

I, Joshua J. Schroeder, swear under penalty of perjury that the forgoing declaration is true and correct to the best of my knowledge and recollection.

Dated: June 25, 2025

/s/ Joshua J. Schroeder
Joshua J. Schroeder

Exhibit B

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE JOHN W. HOLCOMB, JUDGE PRESIDING

DARWIN ANTONIO AREVALO MILAN, Plaintiff, Vs. DONALD TRUMP, ET AL., Defendants.	No. CV25-01207-JWH

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MOTION HEARING

SANTA ANA, CALIFORNIA

FRIDAY, MAY 30, 2025

MIRIAM VELIZ BAIRD, CSR 11893, CCRA
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MR. SCHROEDER: And I just -- one nonspeculative thing is that it really -- I think if they would do that, they would have to contradict what they put in their papers, because what they've argued is that they have access to both the war powers and peace powers at the same time.

08:57AM

They haven't explained that my client isn't subject to war powers, and I think that's what they would really have to explain -- how exactly my client is only subject to civil enforcement of immigration law.

08:57AM

I can explain this to the Court. One thing you learn when you start training for immigration humanitarian stuff in administrative law, like fully administrative, is that the reason why your client doesn't have a right to counsel, because there's so many things that you -- in your heart it just hurts because you learn in law school you have all these rights.

08:58AM

When you go into immigration law, they don't have a right to counsel. The proceedings are inquisitorial, as in the Star Chamber or the Spanish Inquisition, and non-adversarial. And Boumediene v. Bush says when it's non-adversarial, the Court has a strong reason to assert jurisdiction.

08:58AM

And there's several basic things like the maxim that you shall not be a judge in your own case. At least in San Francisco when I was doing these cases, you would see the

08:58AM

government side, which is the prosecutor, and the judge come in through the same door, and it just feels wrong.

Then at the beginning of your defensive removal case, you concede everything, and they expect you to. And if you don't, they get mad at you. Some immigration lawyers have tried to contest, well, my client isn't from there. They're from somewhere else -- or something. Or, prove your case.

But that's not how it works. They don't really have to prove their case. You just concede everything and then argue for an exception, which is the humanitarian relief or whatnot. That's what the focus of those Courts are. But it's completely divorced from any idea of process that -- like this.

08:59AM THE COURT: Well, okay. I appreciate that that frustrates you and your clients, but that is the system, correct? I mean, there's nothing I can do about that in the sense of -- I gotta follow the law.

MR. SCHROEDER: Of course.

08:59AM THE COURT: And immigration law is what it is. It gives the executive tremendous discretion as I understand it. There are a few things that are reviewable by an Article III Court like this one. That's simply the law. So therefore, what? I'm going to follow the law.

09:00AM MR. SCHROEDER: Yeah. So first of all, as I was