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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 DARWIN ANTONIO AREVALO
12 MILLAN, on his own behalf and on behalf
13 of all others similarly situated

14 *Petitioner-Plaintiff,*

15 vs.

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

19 *Respondents-Defendants.*

Case No.: 5:25-cv-01207

**PETITIONER-PLAINTIFF'S FIRST
AMENDED 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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28 FIRST AMENDED MOTION TO RECONSIDER PETITIONER-PLAINTIFF'S 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

On June 20, 2025, this Court filed an Order denying Petitioner-Plaintiff Darwin Antonio Arevalo Millan's ("Petitioner") *ex parte* applications for issuance of the writ of habeas corpus, writ of mandamus, and permanent injunction. ECF No. 40. As the Court did not intend to issue a lawless and boundless permission to the Government to detain Petitioner and all similarly situated individuals, it must reconsider and reverse its order here. *Id.* (expressing intent to preclude indefinite detention). As it stands, the 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) (Schroeder).

LEGAL BACKGROUND

Here, mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A) "must end" after "a proceeding under section 1229a." *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018); 8 U.S.C. § 1158(d)(5)(A)(iv) (noting that a decision in the Executive Office for Immigration Review ("EOIR") marks the "completion of removal proceedings before an immigration just under section 1229a"). In the Court's favored decision *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. 509, 514 (A.G. 2019). 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 Tren de Aragua ("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 § 1229a proceeding decides grounds of inadmissibility and deportability under § 1182(a) and § 1227(a)

1 respectively. 8 U.S.C. § 1229a(a)(2). According to § 1229a, the review of the IJ in the
2 EOIR “shall be the sole and exclusive procedure for determining whether an alien
3 may be admitted to the United States.” 8 U.S.C. § 1229a(a)(3). As § 1225(b)(2)(A)
4 only refers to a determination of admissibility, § 1182(a) is the relevant provision
5 here.

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

15 The determination in EOIR granting asylum and denying the Government’s
16 request to issue an order of removal also necessarily must have decided these ten
17 issues in Petitioner’s favor if they are not mentioned in the order. ECF No. 30, Exh.
18 A. Here, the only basis for inadmissibility mentioned in the IJ Order is
19 § 1182(a)(7)(A)(i)(II), and none other. *Id.* The appeal in Board of Immigration
20 Appeals (“BIA”) cannot re-determine these issues. 8 U.S.C. § 1229a(a)(3) (noting
21 the IJ ruling is the exclusive way admissibility is to be determined).

22 Inadmissibility pursuant to § 1182(a)(7)(A)(i)(II) regards a lack of “a valid
23 unexpired immigrant visa, reentry permit, border crossing identification card, or other
24 valid entry document required by this chapter” etc. ECF No. 30, Exh. A. However, a
25 grant of asylum creates admissibility under 8 U.S.C. § 1157, which specifically
26 renders this ground of inadmissibility inapplicable. *Id.*; 8 U.S.C. § 1157(c)(3) (“The
27 provisions of . . . (7)(A) of section 1182(a) of this title shall not be applicable to any
28

1 alien seeking admission to the United States under this subsection.”). Therefore, the
2 Reply was correct when it argued that the IJ’s grant of asylum here does undoubtedly
3 mean that Petitioner is admissible. ECF No. 40, at 6 (expressly denying this argument
4 from the Reply).

5 Moreover, it appears that § 1229a proceedings are final, meaning ended or
6 complete, upon a decision by the judge in EOIR. 8 U.S.C. § 1158(d)(5)(A)(iii). Any
7 administrative appeal shall be filed within 30 days of a decision granting or denying
8 asylum, or “within 30 days of **completion** of removal proceedings before an
9 immigration judge under section 1229a of this title.” 8 U.S.C. § 1158(d)(5)(A)(iv)
10 (emphasis added). Final or not, the Immigration & Nationality Act (“INA”) clearly
11 states that the proceedings under § 1229a are complete before those proceedings may
12 be appealed, and it seems to say that it is a “final administrative adjudication of the
13 asylum application” that is subject to an appeal. 8 U.S.C. § 1158(d)(5)(A)(iii).
14 Admittedly, the language could be read both ways regarding the issue of finality as
15 the next phrase says: “not including administrative appeal.” *Id.* However, the issue
16 here is not one of finality, but of whether § 1229a proceedings are now over, ended,
17 or complete, which this same provision unambiguously acknowledges. *Id.*

18 In other words, finality is irrelevant to 8 U.S.C. § 1225(b)(2)(A) as this basis
19 for detention ends when the § 1229a proceedings end and the statute clearly and
20 unambiguously states that the § 1229a proceedings are now over. *Id.* An appeal taken
21 pursuant to 8 U.S.C. § 1158 is clearly not referred to or included by 8 U.S.C.
22 § 1225(b)(2)(A) as a basis for continued detention. *Id.* As argued in the Reply and as
23 officially mandated in post-*Chevron* decision *Corner Post*, the unambiguous statutory
24 text of the INA must be applied here according to Justice Gorsuch’s wise counsel: “If
25 men must turn square corners when they deal with the government, it cannot be too
26 much to expect the government to turn square corners when it deals with them.” *Niz-*
27 *Chavez v. Garland*, 593 U.S. 155, 172 (2021), *quoted at ECF No. 1, at 12*; *Corner*

1 Post, Inc. v. Board of Governors, 603 U.S. 799, 823 (2024) (“[P]leas of
2 administrative inconvenience . . . never ‘justify departing from the statute’s clear
3 text.’” (quoting *Niz-Chavez*, 593 U.S. at 169 (quoting *Pereira v. Sessions*, 585 U.S.
4 198, 217 (2018)))).

5 Even if 8 U.S.C. § 1229a encompassed an appeal of § 1229a proceedings that
6 unequivocally made Petitioner admissible, 8 U.S.C. § 1225(b)(2)(A) only mandates
7 detention in after “the examining immigration officer determines that an alien seeking
8 admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C.
9 § 1225(b)(2)(A). The IJ clearly precluded any other possible conclusion by such an
10 officer than that Petitioner is admissible here as correctly argued in the Reply. ECF
11 No. 40, at 6. No evidence or notice of any other examining immigration officer
12 determination was provided on or off the record to Petitioner’s counsel. ECF No. 1,
13 at 3. The Respondents’ Opposition Brief skates around this characterization by
14 erroneously citing 8 U.S.C. § 1225(b)(2)(A) as if it were a general basis for detention,
15 even where its express provisions preclude detention.

16 As noted several times by Petitioner, he was granted legal entry into the United
17 States and his examining officer did *not* determine that he was “not clearly and
18 beyond a doubt entitled to be admitted.” *Id.*; ECF No. 40, at 6. He was, therefore,
19 not subject to mandatory detention and he was paroled into the country. ECF No. 1,
20 at 1. During the lawful duration of his parole pending an asylum determination in
21 EOIR, he was arrested pursuant to Proclamation 10903 and given only oral notice of
22 the Government’s allegation that he is a member of TdA with no other reason given
23 in any medium such that *no* due process was issued to Petitioner or his counselors
24 that cancelled out his lawfully issued parole. *Id.*

25 Petitioner was granted asylum pursuant to his 8 U.S.C. § 1229a hearing, after
26 which his detention, if it is pursuant to 8 U.S.C. § 1225(b)(2)(A), must end. ECF No.
27 30, Exh. A; Jennings, 583 U.S. at 296. Nevertheless, Petitioner remains detained

1 pending appeal of his 8 U.S.C. § 1229a hearing according to the Court's June 20,
2 2025 Order alone, which has no legal foundation. ECF No. 40. To be sure, there are
3 bases to keep an immigrant detained pending the appeal of an order of removal, but
4 the Respondents did not claim those bases in their Response here, nor has Respondent
5 given Petitioner notice that they are invoking those bases other than an oral statement
6 to Petitioner that he is subject to Proclamation 10903. ECF No. 1, at 3. Even if
7 Respondents did claim these bases, it has not complied with § 1229a by seeking to
8 vindicate those claims before an IJ as is *exclusively* required by § 1229a.

9 Moreover, the facts of *Jennings* are distinguished here, because that case
10 involved detention after a non-final order of removal was issued, not a grant of
11 asylum which appears to be final under the law. *Jennings*, 583 U.S. at 299. In such
12 distinguished cases, *Arteaga-Martinez* requires the Court to decide the constitutional
13 issues duly raised in this tribunal. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 583
14 (2022) (“[W]e are a court of review, not of first view.”). It was clear error to avoid
15 *Arteaga-Martinez* by extending *Jennings* when it is explicitly limited here. *Id.*

16 **I. LEGAL STANDARD**

17 Reconsideration “should be denied ‘absent highly unusual circumstances,
18 unless the district court is presented with newly discovered evidence, committed clear
19 error, or if there is an intervening change in controlling law.’” ECF No. 42, at 2
20 (quoting *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873,
21 880 (9th Cir. 2009)); Local Rule 7-18. All these requirements were met by the
22 original emergency motion to reconsider, and the Respondents-Defendants
23 (“Respondents”) do not dispute these standards, did not argue otherwise, and likely
24 they will not argue otherwise here. However, major legal and factual changes
25 occurred since the original motion for reconsideration was filed that that must be
26 addressed herein. *See, e.g., Trump v. CASA*, No. 24A884, slip op. (2025).

1 **II. NEW LAW, EVIDENCE, AND CIRCUMSTANCES**

2 This Part includes materially the same paragraphs as the original in sub-parts
3 (c) and (d) regarding new circumstances and developments with new headings, and
4 the rest is now as amended here.

5 (a) Respondents Directly Offered Petitioner \$1,000 to Self-Deport and
6 Admitted that Detaining Petitioner Is Now Unlawful

7 Just before midnight on June 26, 2025, Petitioner’s counsel learned that a
8 settlement offer of \$1,000 was relayed to Petitioner when Petitioner’s wife relayed
9 this information to Attorney Joshua Goldenstein. 2d Schroeder Decl. Respondents
10 communicated this settlement offer to end this case directly to Petitioner without
11 communicating it to Petitioner’s counsel. *Id.* The only way we knew about this
12 settlement offer was through communications with Petitioner and his wife. *Id.*

13 As a result, we are not confident that Respondents’ counsel has control, open
14 communication with, or authority from Respondents to settle or to communicate such
15 settlements to Petitioner’s counsel. *Id.* Counsels for Petitioner have not received any
16 settlement communication. *Id.* To our knowledge, Petitioner denied Respondents’
17 attempt to end this case by skirting this Court and Petitioner’s counselors. *Id.*

18 This attempt to short circuit this Court’s process is a violation of ethical duties
19 that may rise to criminality. Cal. R. Prof. Conduct § 4.2; ABA Model R. Prof.
20 Conduct § 4.2; 18 U.S.C. § 402; 18 U.S.C. §§ 1512–13. If Respondents’ counselors
21 knew about, participated in, or directed Respondents’ attempt to settle without
22 communicating with Petitioners’ counsel, because they wanted to prematurely end
23 this litigation, they may be implicated for crimes of obstruction and other serious
24 offenses. 18 U.S.C. § 402; 18 U.S.C. §§ 1512–13. At this time we do not have any
25 evidence to this effect. 2d Schroeder Decl.

26 After receiving an offer to self-deport, Petitioner was told by a Department of
27 Homeland Security Official (“DHS”) that his Immigration and Customs Enforcement

1 (“ICE”) Officer should release him from Adelanto ICE Processing Center under the
2 law due to his asylum grant. *Id.* This Official clearly agreed with Petitioner’s habeas
3 corpus arguments here, and appears not to be read into the Government’s novel
4 arguments here. *Id.* We are aware that employees of Respondents admitted that, by
5 law, Petitioner should not be detained now. *Id.*

6 (b) Respondents’ Notice of Appeal Received on June 27, 2025¹

7 We have received notice of appeal of Petitioner’s credibility, circumvention of
8 lawful pathways bar, and an unclear evidentiary issue involving the IJ’s failure to
9 require more evidence to be submitted. Exh. D. We have no notice of any claim
10 regarding there being a lack of evidence or insufficient basis for granting asylum
11 here. *Id.* (appealing a novel issue about requiring Petitioner to provide “reasonably
12 available evidence” that the Government withheld from Petitioner’s counsel, had in
13 its possession, and did not duly submit to EOIR). It strongly appears that this appeal
14 is being argued solely to keep Petitioner detained under this Court’s Order that will
15 likely not prevail under the clear error standard. *Id.*

16 Meanwhile, it appears that Respondents are pursuing the deportation of
17 refugees along the lines of the deportations occurring pursuant to a stay the
18 Respondents received in the *DHS v. D.V.D.* case. *DHS v. D.V.D.*, No. 24A1153, slip
19 op. (2025). In fact, when Respondents “lose before the immigration judge” they may
20 now “decline to appeal, and promptly thereafter deport the noncitizen to a country of
21 the Government’s choosing.” *Id.* at 16 (Sotomayor, J., dissenting). Here, the grant of
22 asylum only assures that Petitioner will not be removed to Venezuela, where the
23 Government argued Petitioner is removable, and Petitioner thereby depends upon the
24 fact that § 1229a is an *exclusive* process for issuing a non-expedited order of removal
25 determining to ensure he is not removed elsewhere. 8 U.S.C. §§ 1158(c)(1)(A)

26
27 ¹ Counsel Joshua Schroeder received this notice on June 27, 2025 from Attorney Goldenstein, but it says it was filed on
28 June 24, 2025.

(prohibiting the Attorney General from removing Petitioner to Venezuela only), 1229a(a)(3). Accordingly, 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"); 3 EDWARD COKE, INSTITUTES *181–83 (noting that the 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").

After *D.V.D.*, we are aware that Petitioner is under a new threat of being removed anywhere other than Venezuela, in contravention of § 1229a. *DHS v. D.V.D.*, No. 24A1153, slip op. at 16 (2025) (Sotomayor, J., dissenting). As Justice Sotomayor alarmingly noticed in dissent: "The consequences of [Respondents'] view is that what happens in removal proceedings simply does not matter." *Id.* at 16 (Sotomayor, J., dissenting). Petitioner has not received notice that he is safe from third country removal. 2d Schroeder Decl.

(c) Military Presence at Adelanto ICE Processing Center

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.

(d) Effect of Respondent President Trump's Flouting of the War Powers Act to Due Process Claims Such as This

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

1 allow or mandate his detention now, no argument was raised about INA, 8 U.S.C.
2 § 1225(b)(2)(A) in the original *ex parte*—which clearly does not mandate detention
3 of Petitioner now. *See generally* ECF No. 30, Mem. Pts. & Auth. In fact, it appears
4 that the Court Order of June 20, 2025 is the sole legal justification for Petitioner’s
5 continued detention pursuant to sheer equitable powers of this Court wielded with
6 such inequity that it attempts to hide its shame in the law. ECF No. 40. But there is
7 nowhere in the law that allows this result. The Court’s stated position to the contrary,
8 that Petitioner’s detention is not indefinite, is belied by the fact that removal
9 proceedings have concluded and are now, by law, over. *Id.* at 7–8.

10 (e) Disturbing News Reports Regarding Suicides, Deaths, and Health
11 Crises at Adelanto ICE Processing Center

12 As noted in the Petition, this case arose in part because of a COVID scare at
13 the Desert View Annex, which is a part of the facilities comprising the Adelanto ICE
14 Processing Center. ECF No. 1, at 3–4. We are now aware of disturbing reports of
15 suicides, deaths, serious injuries, and new health crises at Adelanto ICE Processing
16 Center. Jenny Jarvie & Nathan Solis, *Moldy Food, Dirty Towels: Critics Warn of*
17 *Inhumane Conditions at California’s Largest Detention Center*, L.A. TIMES (June 20,
18 2025, 3: 00 AM), [https://www.latimes.com/california/story/2025-06-20/unsanitary-](https://www.latimes.com/california/story/2025-06-20/unsanitary-overcrowded-and-inhumane-red-flags-raised-about-conditions-in-adelanto-detention-center)
19 [overcrowded-and-inhumane-red-flags-raised-about-conditions-in-adelanto-detention-](https://www.latimes.com/california/story/2025-06-20/unsanitary-overcrowded-and-inhumane-red-flags-raised-about-conditions-in-adelanto-detention-center)
20 [center](https://www.latimes.com/california/story/2025-06-20/unsanitary-overcrowded-and-inhumane-red-flags-raised-about-conditions-in-adelanto-detention-center). These appear to result from the Adelanto ICE Processing Center’s old
21 policies, which it never resolved. Management Alert—Issues Requiring Action at the
22 Adelanto ICE Processing Center in Adelanto, California, OIG-18-86 (Sept. 27, 2018),
23 <https://www.oig.dhs.gov/sites/default/files/assets/Mga/2018/oig-18-86-sep18.pdf>.

24 (f) Effect of *Trump v. CASA* Ruling

25 On June 27, 2025, the U.S. Supreme Court decided *Trump v. CASA* in a 6-3
26 decision rejecting so called “universal injunctions.” *Trump v. CASA*, No. 24A884,
27

1 slip op., at 4 (2025).² The *CASA* decision does not preclude this Court from reaching
2 the merits including the question of whether Respondents’ position is unlawful and/or
3 unconstitutional, which would apply nationally if such a judgment were entered. *Id.*
4 However, *CASA* appears to break up the merger of law and equity that controlled this
5 Court prior, preferring instead to apply equity as it existed on July 4, 1776. *Id.* at 5–6.
6 The dissenting opinions criticized *CASA* as freezing in amber equity as it existed in
7 1789, when the Judiciary Act was enacted, but the opposite is actually true. *Id.* at 10
8 (“Not so. . . . [E]quity is flexible.”).

9 It appears that *CASA* flexibly compliments the other cases cited here that end
10 the administrative state, including *Loper Bright*, *Corner Post*, and *Jarkesy*. *Loper*
11 *Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024); *SEC v. Jarkesy*, 603 U.S. 109,
12 140 (2024); *Corner Post*, 603 U.S. at 823; ECF No. 30, Mem. Pts. & Auth. at 11–12.
13 The merger of law and equity in 1938 used the Rules Enabling Act of 1934 to freeze
14 common law and equity in the amber known as legal positivism. J.H. BAKER & SF.C.
15 MILSOM, *SOURCES OF ENGLISH LEGAL HISTORY: PRIVATE LAW TO 1750*, at 68 (2013)
16 (“‘The forms of action we have buried,’ said Maitland at the turn of the twentieth
17 century, ‘but they still rule us from their graves.’ Yet the posthumous rule of the
18 forms of action has tended towards a tyranny which in life they were never permitted
19”). Now, the U.S. Supreme Court decided that the equity applied here must be
20 nothing more or less than that which existed at the founding. *CASA*, No. 24A884, at
21 13 (judging the Federal Rules according to what “would still be recognizable to an
22 English Chancellor”); *cf.* *Schroeder*, *supra*, at 35, 46 (arguing that habeas corpus
23 statutes “ought to be construed under the liberal equity touted by Federal Rule of
24 Civil Procedure 2 and *Trespass on the Case* to overrule *Teague* for a more liberal
25 expansion of federal habeas review of unalienable human rights that necessarily arise

26
27 ² The result of *CASA* requires Petitioner to modify his requests now in this amended motion, and to simultaneously file a
28 new motion to certify class here. The preliminary injunction class is proper and is not touched by *CASA*.

1 from the facts” (citing J.H. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 80
2 (3d Ed. 1990) (“For most purposes the new remedies were but subdivisions of one
3 form of action.”)).

4 In the United States, the founders identified Lord Coke as the premier authority
5 on the common law of England—and yet they were not afraid to correct him where
6 he erred. 2 COLLECTED WORKS OF JAMES WILSON 1048–51 (Kermit L. Hall & Mark
7 David Hall eds., 2007). And Coke did err in *Calvin’s Case*. *Id.* To summarize, Coke
8 thought that conquered peoples were infidels who were “perpetual enemies” and
9 therefore “till new laws be established, the conqueror shall judge them according to
10 natural equity.” *Id.* at 1049.

11 In fact, the royalists long claimed that “the common law of England, as such,
12 has no allowance or authority in the American plantations,” which the founders
13 forcefully decried as “the bastard child of this bastard mother, begotten on her by the
14 Commentaries on the laws of England.” *Id.* James Wilson further demonstrated that
15 the equity and common law of America is distinguishable—especially on the topics
16 discussed in this case—to the policies of Great Britain: “What a very different spirit
17 animates and pervades her American sons! Indeed it is proper that it should be so.
18 The insulated policy of the British nation would . . . ill befit the expansive genius of
19 our institutions.” *Id.* at 1051.

20 The final determination regarding the issue of geographic limitations on
21 common law and equity is *Boumediene v. Bush*. ECF No. 1, at 10–11. There, the
22 Supreme Court denied the geographic limitations instituted by *Rex v. Cowle*,
23 *Somerset’s Case*, and *Campbell v. Hall*. *Boumediene v. Bush*, 523 U.S. 723, 751
24 (2008) (“The prudential barriers that may have prevented the English courts from
25 issuing the writ to Scotland and Hanover are not relevant here.” (distinguishing *Rex*
26 *v. Cowle* (1759) 2 Burr. 834, 854–56 (Eng.))); *cf.* Schroeder, *supra*, 58. The Court’s
27 failure to do so in previous cases caused *Dred Scott* and the Civil War, which gave
28

1 rise to the citizenship clause litigated in *CASA*. *CASA*, No. 24A884, at 1 (Sotomayor,
2 J., dissenting); *cf.* *Dred Scott v. Sandford*, 60 U.S. 393, 467 (1857) (slavery case)
3 (Nelson, J., concurring) (citing *Somerset's Case* for the geographic limitation of a
4 right for slaves to be free), *explained by* ECF No. 1, at 62–63. After *CASA*,
5 permanent injunctions are appropriate, but the cart must go behind the horse.
6 Petitioner hereby modifies his request for relief accordingly.

7 (g) Effect of *DHS v. D.V.D.* Opinion in Connection With Order

8 We are now aware that Respondents are rushing to remove immigrants during
9 the *D.V.D.* stay, without first receiving final orders of removal pursuant to § 1229a, to
10 places like South Sudan, Djibouti, and wherever else. 2d Schroeder Decl.; *D.V.D.*, No.
11 24A1153, at 5–6 (Sotomayor, J., dissenting). *D.V.D.* appears to teach that overbroad
12 classes should not be granted even when it appears that Respondents are admittedly
13 not following § 1229a's exclusive procedures. *D.V.D.*, No. 24A1153, at 1. First, if a
14 class is too broadly granted on a nation-wide basis, the Court of Appeals or the U.S.
15 Supreme Court could issue a stay, or deny a stay, that essentially locks out any other
16 member of the class from filing habeas corpus to vindicate their rights prior to being
17 removed from the United States. *See id.* at 18 (Sotomayor, J., dissenting) ("Plaintiff's
18 merely seek access to notice and process, so that, in the event the Executive makes a
19 determination in their case, they learn about it in time to seek an immigration judge's
20 review."). We are aware of at least one individual presently being removed under
21 *D.V.D.*, who is unable to enter the federal courts to vindicate her rights prior to being
22 removed. 2d Schroeder Decl.

23 (h) Amended Request for Relief Based On These Developments

24 Petitioner withdraws as much as he can, the previous requests for *ex parte*
25 relief and asserts the following amended request, without withdrawing the motion or
26 the bases of relief asserted under the Due Process Clause, Suspension Clause, and
27 related laws. In addition, Petitioner requests that he be ordered released pursuant to

1 the express statutory provisions of the Immigration and Nationality Act as put before
2 the Court in Respondents' Opposition Brief despite it being improper argument
3 without notice. He requests that the Court grant a separate class certification
4 according to a new class certification request filed in conjunction with this motion.
5 He requests that class wide relief be tailored to compliance with the law according to
6 declaratory judgements as a matter of law on the merits.

7 **III. AN UNPRECEDENTED JUDICIAL SUSPENSION OF THE WRIT**

8 Alarmingly, the Court made the Order of June 20, 2025 with knowledge that
9 there was potentially no legal basis to justify Petitioner's detention here. *See*
10 *generally* ECF No. 30, Mem. Pts. & Auth. However, the Court was not moved by
11 Respondents to find a legal basis, nor could the Court provide the notice Respondents
12 failed to give Petitioner about its legal and constitutional bases for continuing to
13 detain Petitioner. *See generally* ECF No. 37. Yet, the Court nonetheless decided that
14 there was legal basis to detain Petitioner indefinitely even after he was determined to
15 be a refugee with no possible legal basis for inadmissibility and without notice from
16 the Respondents regarding why.³ ECF No. 40, at 6–7.

17 The Court knew that Petitioner is a civilian and that if the writ of habeas corpus
18 can be suspended for Petitioner it can be suspended in a similar way for any civilian
19 in America as if *Toth v. Quarles* was never decided. United States *ex rel.* Toth v.
20 Quarles, 350 U.S. 11, 23 (1955), *cited by* ECF No. 39, at 12. It, furthermore, knew
21 that it had the power to act pursuant to *Boumediene v. Bush*, and it knew that its
22 decision not to decide the constitutional issues here was not forced by *Jennings*.
23 *Boumediene*, 523 U.S. at 786, *cited by* ECF No. 39, at 15. And yet, the Court chose
24 to suspend the Great Writ of habeas corpus for no discernable reason. ECF No. 40, at
25 6–7; *cf.* Schroeder, *supra*, at 23.

26
27 ³ The Court maintained that the Petitioner is not indefinitely detained without any foreseeable end-date to his detention,
28 and without requiring proof from Respondents regarding when, if ever, he will be released. Schroeder, Decl.

1 In fact, the Court relied upon the Respondent's own opinion in *Matter of M-S-*,
2 without any party citing that opinion for review. *Matter of M-S-*, 27 I&N Dec. The
3 Order mistakenly cited *Matter of M-S-*, according to its own research, as a BIA
4 decision rather than an A.G. decision. ECF No. 40, at 6 ("Thus, an applicant may
5 remain in custody pending any such appeal. *See Matter of M-S-*, 27 I&N 509, 517
6 (BIA 2019)."). The deference of the Court directly to Respondents regarding the legal
7 concept of finality is arbitrary, capricious, and violates the separation of powers as
8 well as controlling precedent in *Loper Bright*, *Jarkesy*, and *Corner Post*. *Loper*
9 *Bright*, 603 U.S. at 412 ("*Chevron* is overruled."); *Jarkesy*, 603 U.S. at 140; *Corner*
10 *Post*, 603 U.S. at 823; ECF No. 30, Mem. Pts. & Auth. at 11–12.

11 Nothing about finality or administrative adjudications, here, are a basis to
12 upend the Great Writ of habeas corpus. *But see* ECF No. 40. Here, the Court's task
13 was to determine whether the law was being followed and whether there was a
14 suspension of the writ afoot. ECF No. 30, Mem. Pts. & Auth. at 18–19. This
15 collateral investigation is not the burden of Petitioner to prove, nor is it endeavored
16 upon for the Petitioner's benefit. *Id.*

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

26 The Court refused to issue a writ of habeas corpus indefinitely, according to an
27 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;

1 28 U.S.C. § 2243; the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; the All
2 Writs Act, 28 U.S.C. § 1651; the APA 5 U.S.C. § 706, and the Court’s inherent
3 equitable powers.”). The Order, as it appears *not* to find statutory authority to justify
4 detention, but only a perceived lack of statutory justification for release, should have
5 issued the writ according to its own terms according to the authorities by which this
6 petition was originally opened for review. *Id.*; ECF No. 40, at 7. In fact, the Court
7 can and must do this upon a *de novo* review of facts, including evidence that a lower
8 court is overrun by a mob such that its process is nothing “more than an empty shell.”
9 *Estep v. United States*, 327 U.S. 114, 141 (1946) (Frankfurter, J., concurring)
10 (quoting *Frank v. Mangum*, 237 U.S. 309, 346 (1915) (Holmes, J., dissenting)), *cited*
11 *by* ECF 30, at 19.

12 Here, it appears that there is no statutory law clarifying whether asylum grants
13 are not final, but there are statutory provisions that clearly say that the basis for
14 detention is now over because the § 1229a proceeding is complete and a final
15 adjudication as to § 1229a. 8 U.S.C. § 1158(d)(5)(A)(iii–iv). The Respondents could
16 only find that *in their own opinion*, humanitarian relief is not final as the only
17 administrative decisions it could find regarding finality involved bond
18 determinations. ECF No. 37, at 7 (citing *Matter of E-Y-F-G-*, 29 I&N Dec. 103, 104
19 (BIA 2025)). This Court’s order went further by citing Respondent Department of
20 Justice and the office of the Attorney General now held by Respondent Pam Bondi to
21 make an inference upon an inference here. ECF No. 40, at 6 (“Thus, an applicant
22 may remain in custody pending any such appeal. *See Matter of M-S-*, 27 I&N 509,
23 517 (BIA 2019).”). If the Court is set on making inferences, perhaps the proper
24 habeas corpus doctrine should have been constitutional avoidance doctrine and the
25 related doctrine that implied repeals are disfavored—both of which are before the
26 Court here. ECF No. 30, Mem. Pts. & Auth. at 13; ECF No. 1, at 18 (citing
27 *Boumediene v. Bush*, 553 U.S. 723, 746 (2008) (majority opinion) (quoting *INS v.*

1 St. Cyr, 533 U.S. 289, 301 (2001)); *Ex parte* Yerger, 75 U.S. 85, 105 (1868)
2 (“Repeals by implication are not favored.”)).

3 If there was a statutory basis for refugee determinations not to be final when
4 the IJ rules, the Respondents presumably would have cited to it. Such a basis for
5 defining humanitarian relief as non-final does not exist and must apparently be
6 negatively inferred from the phrase “final administrative adjudication of the asylum
7 application, not including administrative appeal.” 8 U.S.C. § 1158(d)(5)(A)(iii). The
8 less doubtful way of reading this provision is that administrative adjudications
9 pursuant to § 1229a are completed, ended, or final after the IJ rules. 8 U.S.C.
10 § 1158(d)(5)(A)(iii–iv). In fact, the Respondents’ own opinions which refer to bond
11 decisions appear to ultimately stem from the non-finality of orders of removal
12 pending appeal in order to stay removals until all judicial process is complete as
13 referenced in the Reply. ECF No. 39, at 9.

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

23 Here, no notice was given, and the Petitioner does not dispute the results of his
24 8 U.S.C. § 1229a proceeding, which he wants enforced immediately. ECF No. 30,
25 Mem. Pts. & Auth. at 16 (“It is impossible to tell exactly why Respondents continue
26 to hold Petitioner as there has been no due or proper notice given.”). Previously,
27 Petitioner was paroled and given permission to work in the United States pending his
28

1 EOIR hearing. ECF No. 1, at 4. And now that that proceeding is statutorily complete,
2 any detention under 8 U.S.C. § 1225(b)(2)(A) “must end.” ECF No. 30, Exh. A;
3 Jennings, 583 U.S. at 296. There is no other basis for detention cited or claimed by
4 Respondents except for Proclamation 10903 off the record, except for general
5 references to other bases for detention involving national security and crime that
6 Respondents did not raise in Petitioner’s removal proceedings, which was the
7 exclusive venue for them to do so. 8 U.S.C. § 1229a(a)(3); ECF No. 30, Exh. A.
8 Now, because of the Court’s Order of June 20, 2025, this Court’s order and *not* the
9 INA will be used to detain refugees against the law. ECF No. 40, at 6 (paradoxically
10 interpreting a provision for mandatory detention, 8 U.S.C. § 1225(b)(2)(A), to include
11 discretionary detention pursuant to *Matter of M-S-*);

12 Again, deference here is now prohibited by the U.S. Supreme Court. *Loper*
13 *Bright, 603 U.S. at 412* (“*Chevron* is overruled.”). Not to mention that in this
14 context, citing the *Matter of M-S-* as authority appears to make Respondents a judge
15 in this Court over their own case, which is a candid violation of the separation of
16 powers that habeas corpus is meant to monitor that the Court was previously warned
17 of in oral arguments. Exh. B (noting “the maxim that you shall not be a judge in your
18 own case” (*nemo iudex in causa sua*) as something EOIR violates); Dr. Bonham’s
19 Case [1610] 8 Co. Rep. 114a, 118a (Eng.) (“*aliquis non debet esse Judex in propria*
20 *causa*” – a person ought not to be a judge in their own cause). Indeed, *Corner Post,*
21 *Inc. v. Board of Governors* cited directly to immigration law cases *Pereira v. Sessions*
22 and *Niz-Chavez v. Garland* for the right decision here, which is an application of the
23 unambiguous statutory text rather than the opinion of Respondents. *Niz-Chavez v.*
24 *Garland, 593 U.S. 155, 172* (2021), *quoted at ECF No. 1, at 12*; *Corner Post, Inc. v.*
25 *Board of Governors, 603 U.S. 799, 823* (2024) (“[P]leas of administrative
26 inconvenience . . . never ‘justify departing from the statute’s clear text.’” (quoting
27

1 *Niz-Chavez*, 593 U.S. at 169 (quoting *Pereira v. Sessions*, 585 U.S. 198, 217
2 (2018))))); ECF No. 30, Mem. Pts. & Auth. at 11–12.

3 To be clear, there are several bases by which the Respondents can terminate or
4 review or destroy Petitioner’s legal status. *See, e.g.*, 8 U.S.C. § 1158(c)(2). The
5 Respondents have reserved an appeal for example, which is merely one of many
6 paths it can take to remove Petitioner even after he is declared a refugee. 8 U.S.C.
7 § 1158(d)(5)(A)(iv). But the fact that Petitioner is now legally and officially a refugee
8 in the United States requires this Court to issue habeas corpus now to release
9 Petitioner pending legitimate action by Respondents to change his current legal status
10 that imbues undoubted admissibility that completely undermines and ends the
11 statutory basis for continued detention that Respondents say they are relying upon
12 without notice or an opportunity to be heard. ECF No. 30, Exh. A.

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

1 **CONCLUSION**

2 The Court's June 20, 2025 Order should be vacated, and Petitioner's *ex parte*
3 request for habeas corpus to issue should be granted pursuant to legitimate
4 government action including notice and an opportunity to be heard regarding the
5 actual bases of detention here.

6
7 Respectfully Submitted on June 30, 2025

8 /s/ Joshua J. Schroeder

9 Joshua J. Schroeder
10 SchroederLaw
11 Attorney for Darwin Antonio
12 Arevalo Millan
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2 **CERTIFICATE OF COMPLIANCE**

3
4 The undersigned, counsel of record for Darwin Antonio Arevalo Millan,
5 certifies that this brief contains 6,909 words, and complies with the word limit of L.R.
6 11-6.1.

7
8 DATED: June 30, 2025

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