IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Z.N. and her minor children M.E. and K.E., *Petitioners*, v. SAM OLSEN, Field Office Director for U.S. Immigration and Customs Enforcement, in his official capacity; TODD M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity; DONALD J. TRUMP, President of the United States, in his official capacity, *Respondents*.	No. 1:25-cv-7284

MOTION FOR A STAY OF
REMOVAL AND TEMPORARY RESTRAINING ORDER

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

INTRODUCTION

Petitioners are a family that suffered persecution and fears future persecution if deported to Iran. Petitioners move for a temporary restraining order and preliminary relief under Federal Rule of Civil Procedure 65. They ask this Court to temporarily restrain Respondents from: 1) removing them from the United States to Iran or any other country; and 2) transferring Petitioners outside of the jurisdiction of the Northern District of Illinois pending the resolution of this case. In the alternative, should the Court deny Petitioners' request for injunctive relief, at a minimum it should order Respondents to show cause within three days establishing why this habeas petition should not be granted.

Both requests are proper under *Nken v. Holder*, 556 U.S. 418 (2009) or the All Writs Act. As discussed below, Petitioners are asylum-seekers from Iran who have not yet been given an opportunity to have their application for protection considered and who nonetheless appear to be facing summary removal to Iran or a third country where they will face persecution directly or where they will face involuntary return to Iran. Given that the government has not yet afforded them a chance to seek asylum, Petitioners are likely to prevail on the merits of their arguments that this removal would be illegal, in violation of 8 U.S.C. § 1158. And the harm that they face if removed to Iran, whether directly or via a third country, is life and death.

FACTUAL BACKGROUND

Petitioner Z.N. is a mother and former professor who entered the United States in February 2025, to seek asylum with her two minor children, Petitioners M.E. and K.E., and her young adult daughter, S.E.[1] They fled Iran to escape the physical, psychological, and sexual abuse by Z.N.'s ex-husband and threats of violence due to Z.N.'s criticism of the government.

[1] The details in this factual background are principally taken from Z.N.'s asylum application, which was filed with this court as an exhibit to Petitioners' motion to proceed under pseudonym.

Before she fled Iran, Z.N.'s ex-husband, who is the father of her children, physically and psychologically abused her throughout their marriage. Z.N. divorced her ex-husband and moved far away in an attempt to protect herself and her children from him. But even after the divorce, her ex-husband continued to harm and threaten her. Z.N.'s ex-husband did not want their children to live with Z.N., so he isolated and intimidated her. After Z.N. and her children moved away, he found them and forced them to return to live closer to him so he could see his children.

Z.N.'s eldest child, her daughter S.E., disclosed to her that Z.N's ex-husband was sexually abusing her. This devastated Z.N. She feared that if she reported her ex-husband to the police, her ex-husband would find out and harm her. When he found out that Z.N. knew about his sexual abuse of their daughter, her ex-husband threatened to kill Z.N. if she reported him to the police, specifically saying that he would "remove [Z.N.] from this earth." As a university professor with strong ties within the religious community of Iran and a member of Hirasat, an organization that supports the government and enforces strict adherence to Iranian law, Z.N.'s ex-husband could harm her and her children with impunity.

In addition to fleeing this gender-based violence, Z.N. fled Iran because her work and activism put her and her children at risk. Z.N. was a professor of Farsi Literature and Culture at the University of Birjand from 2007 until 2024. As a result, she became a target for the Iranian regime because she supported open discussion and free thought as a vocal critic of the Iranian government. In addition, Z.N. is a Muslim who disagrees with the Iranian government's interpretation of Islam and its oppression of women. She became increasingly vocal in her opposition to the Iranian regime following the death of Mahsa Amini, a Kurdish-Iranian woman who died following her arrest by the morality police for not wearing a hijab. Because Z.N. allowed her students to discuss Mahsa Amini's death and voice their grief in the classroom, even after being forbidden to do so by the university leadership, she was forced into early retirement.

Fearing that she would be killed by her husband for protecting her children, or detained, tortured, and killed by the Iranian government for her public criticism of their regime, Z.N. fled Iran with her three children in December 2024. Z.N. and her three children entered the United States from Mexico without being inspected at a port of entry.

The family entered the United States in Texas on or about February 21, 2025, to seek asylum. They were initially detained by Respondents. Following their entry to the United States, Z.N. and her two minor children were initially separated from Z.N.'s eldest child, 19-year-old S.E., and then reunited after several weeks in a family detention center in Karnes County, Texas. On approximately April 1, 2025, Petitioners were paroled from DHS custody and settled in Illinois, while Z.N's eldest child S.E. has remained in DHS custody.

DHS issued Petitioners Notices to Appear (NTAs), which is the formal charging document that serves to initiate removal proceedings under INA § 240, 8 U.S.C. § 1229a.[2] That document, however, only becomes operative when the government presents the charging document to the immigration court. DHS has not yet provided the NTA to the immigration court in this case, and thus has not yet initiated removal proceedings. The NTA issued to Petitioners alleges that they are inadmissible because they did not possess a valid entry document required by the Immigration and Nationality Act (INA) and entered the U.S. without inspection by an immigration officer. The NTAs do not indicate that Petitioners have been referred to immigration court following the completion of a credible fear interview and though Z.N. reports having had some form of an interview, it is unclear if she in fact had a credible fear interview.[3]

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[2] The NTA issued to Petitioners is also attached to their motion to proceed under pseudonym.

[3] On January 20, 2025, President Trump issued a proclamation that suspended asylum access at the U.S.-Mexico border. 90 Fed. Reg. 8333. People who entered after that date generally did not receive credible fear interviews but may instead have been given screening for protection under the Convention Against Torture (CAT). *See RAICES v. Noem,* 25-cv-00306, Dkt. No.43-6 (D.D.C.

Petitioners applied for asylum by filing Form I-589 with United States Citizenship & Immigration Services (USCIS). They applied with USCIS because—for people whose NTAs are not-yet lodged with the immigration courts—this is the only manner to begin the asylum process and comply with the one-year filing deadline for asylum seekers. *See* 8 U.S.C. § 1158(a)(2)(B).

Upon their release from immigration custody, Petitioner Z.N. was given an electronic GPS monitor and instructed to comply with various reporting obligations with the Intensive Supervision Appearance Program (ISAP). With one exception, discussed below, Z.N. has been compliant with the terms of her release. The circumstances of that exception appear to have been what led to Z.N. and her children being taken into custody. Specifically, on or about June 13, 2025, Petitioners received a notification that they needed to report for a check-in at a DHS field office the following day. On information and belief, until recently, it had not been practice for ISAP to instruct noncitizens to appear at an immigration office instead of an ISAP office, and it likewise had not been practice to instruct a noncitizen to appear with just one-day's notice.

Petitioner Z.N. missed the notice to report because she had the flu. Upon seeing the notification, she sent a message requesting a later check-in appointment. She never received a response to her request. Later that week, Petitioner Z.N. attempted to appear in person at the address from the notification during normal business hours. Z.N. was not permitted to complete her reporting obligations at that time, apparently because the building was closed, at least to people attempting to appear without an appointment. Despite this diligence, Petitioners were detained by DHS on June 27, 2025, at their home. They are currently in DHS custody. On information and

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Mar. 24, 2025) (Guidance instructing officers to provide only a CAT screening to individuals who declare their fear of persecution).Those screenings are not equivalent to credible fear interviews, and it does not appear that Petitioners ever received immigration court review of whatever interview they did have, which would be consistent with that interview being a CAT screening and not a credible fear interview. *Id.*

belief they are being held at a hotel in the custody of DHS, where they were transferred after being taken to an ICE office, presumably in Broadview, Illinois.[4]

LEGAL STANDARD

Courts deciding whether to grant a TRO or preliminary injunction weigh four factors: (i) they will suffer irreparable harm unless the injunction is issued; (ii) they have a substantial likelihood of prevailing on the merits; (iii) the threatened injury outweighs any harm that the preliminary injunction may cause the opposing party; and (iv) the injunction will not adversely affect the public interest. *Winter v. Nat'l Res. Defense Council, Inc.*, 555 U.S. 7, 20 (2008). The Supreme Court has held that these same factors apply when assessing a noncitizen's request for a stay of removal. *See Nken v. Holder*, 556 U.S. 418, 434 (2009). In the Seventh Circuit, once the moving party establishes "some likelihood of succeeding on the merits" and that irreparable harm will occur in the absence of a TRO, the court performs a sliding scale evaluation of the factors which requires a lesser showing on the other factors if an individual demonstrates greater likelihood of success on the merits or that their irreparable harm outweighs any anticipated harm from a TRO. *Cassell v. Snyders*, 900 F.3d 539 (7th Cir. 2021).

This Court may also stay Petitioners' removal under "the All Writs Act, 28 U.S.C. § 1651(a), [which] empowers a district court to issue injunctions to protect its jurisdiction." *SEC v. Vision Commc'ns, Inc.*, 74 F.3d 287, 291 (D.C. Cir. 1996); *see A.A.R.P. v. Trump*, 605 U. S. ____ (May 16, 2025) (relying on the All Writs Act in case involving Venezuelan nationals removed to El Salvador, stating, "We had the power to issue injunctive relief to prevent irreparable harm to the applicants and to preserve our jurisdiction over the matter."). District courts, relying

[4] Attorneys working with undersigned counsel were in communication with Petitioners until their arrival at Broadview, but at some point during their stay at Broadview Z.N.'s phone was confiscated. Counsel has been unable to speak to Z.N. since that time.

on this Act, "may preserve the court's jurisdiction or maintain the status quo by injunction pending review of an agency's action through the prescribed statutory channels." *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966); *see Lindstrom v. Graber*, 203 F.3d 470, 474–76 (7th Cir. 2000).

ARGUMENT

I. Petitioners will suffer irreparable harm absent a TRO and a Stay of Removal.

"The authority to grant stays has historically been justified by the perceived need 'to prevent irreparable injury to the parties or to the public' pending review." *Nken*, 556 U.S. at 432. Removal to persecution and torture is precisely the sort of irreparable injury that a stay of removal is intended to foreclose. *Id.* at 436 (addressing "a public interest" in preventing removal "to countries where [noncitizens] are likely to face substantial harm"). The persecution and torture Z.N. faces if removed should receive significant weight as this Court balances the injunction factors. *Id.* at 434 (describing irreparable harm as one of the "most critical" stay factors).

Although "the burden of removal alone" is insufficient to demonstrate irreparable harm, the Supreme Court's analysis was based on the premise that people who are removed "may continue to pursue their petitions for review" from abroad and may be "afforded effective relief by facilitation of their return" if they prevail. *Id.* at 435. Those premises are not present here for numerous reasons. If Z.N. and her children are removed either to Iran or a third country, it has become clear that the United States government will not willingly participate in "the facilitation of their return" if they prevail. *See Abrego Garcia v. Noem,* No. 25-1404, 2025 WL 1135112, at *2 (4th Cir. Apr. 17, 2025) (U.S. government "disclaim[s] any authority and/or responsibility to return Abrego Garcia" despite Supreme Court affirmance of district court order directing the government to facilitate his return). Moreover, the harms that Z.N. and her family face are sufficiently severe that it is unlikely that they will be *able* to return to the United States.

First, Z.N. and her minor children, M.E. and K.E., face physical and sexual harm, including death, if they are forced to return to Iran. Z.N.'s ex-husband has already abused Z.N. throughout their marriage, [redacted] and threatened to kill Z.N. These kinds of harms are only likely to intensify if Z.N. is returned to Iran and her husband learns of her return following this attempt to seek protection in the United States. If he takes such action, it will go unpunished. Iranian law does not prohibit domestic violence or spousal rape [redacted]. Department of State, Iran 2023 Human Rights Report (April 22, 2024), https://bit.ly/4ewdaQe. While rape outside of marriage is criminalized, the Department of State report on human rights in Iran has found that "[m]ost rape victims likely did not report the crime because they feared official retaliation or punishment for having been raped, including charges of indecency, immoral behavior, or adultery, which carried the death penalty." *Id.* Furthermore, following a divorce, Iranian law provides mothers with custody of their child until age seven, but fathers maintain guardianship rights at all ages and gain physical custody after a child turns seven. *Id.* If Z.N. and her children are forced to return to Iran, the legal system would not prevent her abusive ex-husband from taking her children and continuing to harm Z.N.

Z.N. also risks arrest, detention, torture, and death from the Iranian government because of her vocal criticism of the death of Mahsa Amini, a young Kurdish woman who died in police custody after her arrest for allegedly failing to properly wear a hijab. According to United Nations investigators, Iranian authorities have "killed, tortured and raped women, men and children in a brutal repression" of protests following Amini's death. Nick Cumming-Bruce, Iran's 2022 Protest Crackdown Included Killings, Torture, and Rape, U.N. Finds, N.Y. TIMES (March 8, 2024), https://bit.ly/3TgLvJq. As in Z.N.'s case, Iranian universities have purged professors who have spoken out against Ms. Amini's death and the government's has detained and killed dissenters. Farnaz Fassihi, As Anniversary of Women's Uprising Nears, Iran Cracks Down, N.Y. TIMES (Sept.

1, 2023), http://bit.ly/4exhnmS. Given that she has publicly denounced Ms. Amini's death and has voiced her opposition to the Iranian government's treatment of women, for which she was expelled from her university employment, Z.N. faces further harm from the Iranian government as part of its crackdown on dissent if she were forced to return to Iran.

In addition to these personalized harms, Petitioners face irreparable legal harm in the event of their removal and in the event of their transfer out of the jurisdiction of this Court. That is because the violation of an individual's constitutional rights is an irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976). Indeed, "[m]ost courts consider the infringement of a constitutional right enough and require no further showing of irreparable injury." *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado,* 916 F.3d 792, 805–06 (10th Cir. 2019) (citing *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012)); *Connecticut Dept. of Environmental Protection v. O.S.H.A.*, 356 F.3d 226, 231 (2d Cir. 2004) ("[W]e have held that the alleged violation of a constitutional right triggers a finding of irreparable injury.") (internal quotations and citations omitted).

Here, Petitioners face a deprivation of their right to seek protection and to the procedural protections afforded to people in full removal proceedings under 8 U.S.C. § 1229a. Notably, transfer out of the jurisdiction of this Court is also likely to deprive Petitioners of access to counsel. Petitioners are unable to afford the cost of private legal representation. Undersigned work for a nonprofit organization, and the majority of their legal services (including asylum representation) are available only to people in Illinois, (or in some cases in Indiana). And if Petitioners are transferred out of this district, Petitioners may be transferred to a district where undersigned counsel are not admitted to practice, which could also create more complex remedies questions.

II. Petitioners are likely to succeed on the merits.

The appropriate standard for likelihood of success on the merits is "some likelihood." *Mays v. Dart*, 974 F.3d 810, 822 (7th Cir. 2020); *Singer Mgmt. Consultants, Inc. v. Milgram*, 650 F.3d 223, 229 (3d Cir. 2011) (en banc) (internal quotation marks omitted) ("[L]ikelihood of success on the merits" means that a plaintiff has "a reasonable chance, or probability, of winning . . . A likelihood does not mean more likely than not."). Petitioners meet this standard.

At this stage, Respondents have not informed Petitioners of the basis for their detention, nor why it is their position that Petitioners are amenable to removal. All of the possibilities are illegal because Petitioners have never been given an opportunity to seek asylum. The asylum statute, 8 U.S.C. § 1158, provides a broad right to seek asylum to noncitizens present in the United States. It requires that "[a]ny [noncitizen] who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . .), irrespective of such [noncitizen's] status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title." *Id.* at § 1158(a)(1). Petitioners entered the United States to seek asylum, but Respondents are attempting to leave them with no ability to do so.

Additionally, though Respondents have not yet told Petitioners or undersigned counsel the basis upon which they believe detention is appropriate in this context, Petitioners surmise that they are being detained under 8 U.S.C. § 1225, which is improper in this context.

A. Respondents appear to be poised to deport Petitioners under the Presidential Proclamation without having afforded them an opportunity to seek asylum.

Because Petitioners entered the United States in February 2025, Respondents may argue that their detention and removal is pursuant to the President's January 20, 2025, Proclamation, which suspended all asylum access for people at the southern U.S. border. 90 Fed. Reg. 8333. Indeed, it appears that S.E.—Petitioner Z.N.'s adult daughter—is being detained pending removal under the Proclamation. *See S.E. v. Noem*, 1:25-cv-01108-JDB, (D.D.C. filed Apr. 11, 2025).

Reliance on the Proclamation to justify removal without access to the asylum process is unlawful.[5]

The Proclamation claims that, pursuant to 8 U.S.C. §§ 1182(f) and 1185(a), "the entry into the United States" of noncitizens engaged in the purported "invasion across the southern border is detrimental to the interests of the United States" and that such entry "shall be suspended" until the President issues a "finding that the invasion at the border has ceased." It claims to authorize the suspension of *all provisions* of the INA, including explicitly the asylum statute, 8 U.S.C. § 1158, and the mandatory provisions providing more restrictive refugee protections in the form of withholding of removal under 8 U.S.C. § 1231(b)(3). The government has also relied on the Proclamation to remove or repatriate individuals. Some of those removals and repatriations are occurring under the putative authority of the expedited removal statute, 8 U.S.C. § 1225, even though the government is not observing the procedures outlined in that statute that are meant to govern asylum consideration and detention for people who express a fear of return. Others subject to the Proclamation face removal or repatriation under the purported authority of the Proclamation itself. *RAICES v. Noem,* 25-cv-00306, Dkt. No.43-6 (D.D.C. Mar. 24, 2025).

[5] The Proclamation is currently subject to litigation challenging its lawfulness on a national, class-wide basis. *See RAICES v. Noem,* 25-cv-00306 (D.D.C. argued Apr. 29, 2025). Summary judgment is fully briefed in that matter, and a decision could be released imminently. Petitioners briefly summarize the arguments presented in *RAICES* but believe that that case is a more appropriate vehicle for resolution of the overall legality of the Proclamation. (In the interest of transparency, the National Immigrant Justice Center is cocounsel for the putative class in *RAICES*). To the extent that Respondents are relying on the Proclamation for their detention and removal authority in this case, Petitioners seek to stay these proceedings pending the outcome of that case or, in the alternative, they seek an agreement from Respondents not to remove Petitioners pursuant to the proclamation pending the outcome of this case. This is an approach that the government has acquiesced to in other cases, including apparently the case of S.E., Z.N.'s adult daughter. *See S.E. v. Noem*, 1:25-cv-01108-JDB, Dkt. No 10 (D.D.C. Apr. 22, 2025) (dissolving a TRO filing "given defendants' commitment not to remove S.E. pursuant to Proclamation 10888 during the pendency of this action"); *Tabatabaeifar v. Scott*, 2:25-cv-01238-GMS-MTM, Dkt. No. 54 (D. Ariz. June 23, 2025) (holding case in abeyance pending decision in *RAICES*).

Section 1182(f) does not authorize removal or detention at all. While the provision authorizes the President to "suspend" or "restrict[]" the "entry" into the United States, it does not mention removal. Other INA provisions that authorize removals do so explicitly. *See, e.g.*, 8 U.S.C. § 1225(b)(1)(A)(i), (b)(1)(B)(iii) (authorizing removal "without further hearing or review" in certain circumstances); *see also id.* § 1231(a)(1)(A) (providing for execution of removal "when a [noncitizen] is ordered removed"). Section 1182(f) likewise does not mention detention.

Section 1182(f) does not give the President authority to override statutory protections enacted by Congress for individuals seeking asylum. Indeed a D.C. District Court held as much when confronted with a different proclamation limiting access to asylum issued by President Trump in 2018. *See O.A. v. Trump*, 404 F. Supp. 3d 109 (D.D.C. 2019). In that case the Court rightly noted that the 2018 Proclamation was "not premised on any authority to alter or supplant the rules that Congress specified in § 1158." *Id.* at 151. The statutory text, the INA's structure, and relevant principles of statutory construction all confirm the observation in *O.A.* that Sections 1182(f) and 1185(a)(1) do not grant the President authority to override the INA's statutory mandates for the protection of noncitizens.

Had Congress intended Section 1182(f) to authorize the President to override the asylum statute or other statutory protections, it would have said so explicitly. The INA is replete with provisions—including in Section 1182 itself and neighboring sections—that permit or require certain actions "notwithstanding" other statutes. *See, e.g.*, 8 U.S.C. § 1182(d)(3)(B)(i) (specifying judicial review procedure "[n]otwithstanding any other provision of law"). Section 1182(f) includes no such authority. The Proclamation's boundless view of Section 1182(f) would also render nonsensical the specific limits that Congress imposed on the Executive Branch's power to restrict asylum. Congress authorized DHS and DOJ to establish new limitations on asylum eligibility—but only "by regulation," and only "consistent with" the asylum statute. 8 U.S.C.

§ 1158(b)(2)(C). But according to the Proclamation, so long as the President acts directly via Section a Proclamation under Section 1182(f), rather than indirectly through the DHS Secretary and the Attorney General, he need not go through notice-and-comment and may create even new asylum limits that violate the asylum statute itself—thus "sidestep[ping] the statutory restriction[s] on [his agencies'] authority." *See O.A.*, 404 F. Supp. 3d at 151. And nothing in the INA suggests that Congress intended that unlikely result here.

For similar reasons, 8 U.S.C. § 1185(a)(1)—cannot make the Proclamation lawful. That provision is typically invoked in conjunction with Section 1182(f), as in the 2018 Proclamation that yielded the O.A. case. See 2018 Proclamation, Preamble, 83 Fed. Reg. at 67753. And as the Supreme Court and the government have recognized, Section 215(a)(1) "'substantially overlap[s]' with [Section 212(f)]." *Trump v. Hawaii*, 585 U.S. 667, 683 n.1 (2018). Indeed, the Executive Branch has expressly disavowed that Section 1185(a)(1) empowers the President to "impose [a] condition and limitation on asylum eligibility." 89 Fed. Reg. at 81164 n.56.

B. Respondents cannot rely on pre-Proclamation credible fear procedures to justify Petitioners' amenability to removal.

To the extent Respondents argue that Petitioners received a credible fear interview already, they cannot now rely on that credible fear interview to conclude that Petitioners are amenable to removal because that interview would have occurred under the Securing the Border Rule, which has since been vacated. On June 4, 2024, the Securing the Border Rule took effect, and it made people who entered the country without an appointment using a Smart Phone application called CBP One presumptively ineligible for asylum. *Securing the Border*, 89 Fed. Reg. 48710, 48730-31, 48737 (June 7, 2024). By the time Petitioners entered in February 2025, President Trump had completely cancelled the CBP One Program, meaning Petitioners could not have entered with such an appointment. DHS, CBP Removes Scheduling Functionality in CBP One App,

https://www.cbp.gov/newsroom/national-media-release/cbp-removes-scheduling-functionality-cbp-one-app (Jan. 21, 2025). A judge vacated the Securing the Border Rule on May 9, 2025, reasoning in part, that the Rule impermissibly deprived asylum seekers of the opportunity to seek asylum. *See Las Americas Immigrant Advocacy Center v. DHS*, ___ F.Supp. ____, 2025 WL 1403811, *14 (D.D.C. 2025) ("Congress could not have been more clear that asylum is available to noncitizens who enter the United States outside ports of entry."). Thus any interview the Petitioners received pursuant to that rule is not valid, and Petitioners must be afforded a new CFI that complies with the expedited removal statute.

C. To the extent that Respondents have detained and seek to remove Petitioners under the expedited removal statute, doing so is impermissible.

To the extent that Respondents have cancelled the NTAs that they issued to Petitioners and now seek to detain them despite having previously granted them parole, doing so is impermissible.

In 1996, Congress established expedited removal to "substantially shorten and speed up the removal process" for certain noncitizens arriving without immigration documents, *Make the Rd. N.Y. v. Wolf*, 962 F.3d 612, 618 (D.C. Cir. 2020), by allowing an immigration officer to order noncitizens subject to expedited removal removed "without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i). But the applicability of expedited removal is subject to important caveats and may only be applied to a noncitizen who "has not been admitted or paroled into the United States." 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

DHS has discretion to grant parole "on a case-by-case basis for urgent humanitarian reasons." 8 U.S.C. § 1182(d)(5). And it appears that DHS used that authority to release Petitioners in April of 2025. When a person is released on parole, they generally receive a document—a Notice to Appear— instructing them to appear in removal proceedings initiated under 8 U.S.C. § 1229a, which is what happened in Petitioners' case. In fact, the Board of Immigration Appeals recently

held, in a published opinion, that parole is the "only exception" by which someone in Petitioners' posture may be released in the United States. *See Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025).

Thus, because Petitioners were released on parole, they cannot be subject to expedited removal. 8 U.S.C. § 1225(b)(1)(A)(iii)(II). The verb tense used matters: the statute does not require that the person be presently in the United States subject to parole. Instead, it makes it clear that once DHS exercises its discretion to parole a Petitioner, that person ceases to be amendable to expedited removal. Courts have upheld this distinction. *See, e.g., Doe v. Noem*, No. 1:25-CV-10495-IT, 2025 WL 1099602, at *16–*17 (D. Mass. Apr. 14, 2025); *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019).

Respondents may argue that someone who is paroled into the United States has not been admitted. *See, e.g., Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958) (stating that "[t]he parole of [noncitizens] seeking admission is simply a device through which needless confinement is avoided . . . was never intended to affect an [noncitizen's] status"). That is true but irrelevant. Expedited removal is available where a person has not been "admitted *or paroled*." The use of or and the listing of admission and parole in the disjunctive makes it clear that a person who has been paroled into the United States—as is Petitioners' case—is not subject to expedited removal.

Second, Respondents' use of expedited removal in a case like this presents serious due process violations because Petitioners were issued NTAs and have been moving forward with the legal process for seeking asylum. To the extent that Respondents' position is that they may remove any person who has been served an NTA from the full removal process and revert to expedited removal proceedings at any time, that position is deeply flawed. The logical extension of such a position is that any person who was once an applicant for removal or who was once amenable to expedited removal can *always* be placed into expedited removal and detained under that statute. Thus, someone like Petitioner could have completed removal proceedings before an immigration

judge, appealed to the Board of Immigration Appeals and won remand only to have his case dismissed for placement in expedited removal, even after years of legal process and a successful remand. This scenario illustrates why Petitioners cannot be processed in the same way as a true applicant for admission on the threshold of entry into the United States. For the latter category, the Supreme Court has heled that noncitizens "seeking *initial* admission to the United States[,]" have limited access to constitutional protections. *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (emphasis added). That conclusion is extended beyond its breaking point, though, in a situation like this one where the individual has been permitted entry into the United States, afforded a legal process to seek asylum, and is in the middle of complying with that process.

Because Petitioners are not subject to expedited removal, they cannot be detained under 8 U.S.C. § 1225. Instead, their detention would need to comport with the requirements of 8 U.S.C. § 1226(a). Section 1226(a) provides a noncitizen "may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States" unless the person is subject to mandatory detention as described later in that section. People who are detained under this authority can be released on bond, and some courts have held that the burden is on the government to establish that a person in such a situation is a flight risk and danger to the community. *See Hulke v. Schmidt,* 572 F. Supp. 3d 593, 602-03 (E.D. Wisc. 2021) (holding that habeas petitioner was "entitled to a bond redetermination hearing at which the Government must prove by clear and convincing evidence that [Petitioner] poses a danger to the community or (2) prove by a preponderance of the evidence that [he] poses a flight risk").

Respondents have not even tried to meet that burden, and they could not in this case given that Petitioners have voluntarily complied with all legal requirements of the immigration process, and exercised due diligence to reschedule or attend their appointment with immigration that they missed after being called with just one day's notice. Z.N. readily acknowledges that she did miss

an appointment, but she attempted to comply with the requirements by requesting a new check-in date and by going to the immigration office where she had been instructed to present herself.

Therefore, Petitioners are likely to succeed on the merits of their claim that Respondents' detention of Petitioners is contrary to law and violates her right to due process. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678 (2001).

D. Statutory and Constitutional fair process rules require that Petitioners be permitted to continue in full removal proceedings.

DHS has discretion to place someone into expedited removal proceedings or to bypass those proceedings and place the person into full removal proceedings under INA § 240, 8 U.S.C. § 1229a. That is apparently what happened in this case, when Respondents served Petitioners with a NTA for full removal proceedings. In this scenario, a person will generally be paroled into the United States under 8 U.S.C. § 1182(d)(5) to await the adjudication of their asylum applications.

The INA provides that unless otherwise specified, 8 U.S.C. § 1229a proceedings are "the sole and exclusive procedure for determining whether [a noncitizen] may be admitted to the United States or, if the [noncitizen] has been so admitted, removed from the United States." *Id.* § 1229a(a)(3). In these regular removal proceedings, noncitizens have the right to counsel, to present evidence, to cross-examine witnesses, and to appeal, if necessary, to the Board of Immigration Appeals and a federal court of appeals. 8 U.S.C. §§ 1229, 1229a, 1252(a), (b); 8 C.F.R. §§ 1003.12-1003.47. They also have substantially more time to gather evidence, consult with counsel, develop arguments, and otherwise prepare. A noncitizen in regular removal proceedings may submit a "defensive" asylum application to the immigration judge as a form of relief from removal. 8 C.F.R. § 208.2(b).

In addition, the statute has specific rules governing a situation of disagreement between immigration officials about whether to allow a noncitizen to enter the country. Here, Petitioners were initially paroled by a DHS official and placed into full removal proceedings. A second official cannot simply overturn the decision made by the first official. Rather, "such challenge shall operate to take the [noncitizen] whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(4). It appears, under information and belief, that the latter immigration official failed to apply the rule of § 1225(b)(4), instead moving to summarily remove the Petitioners, in violation of the statute.

Simply put, Respondents have violated Petitioners' statutory and constitutional right to fair process by offering them access to the full removal process and then taking that offer away. To date, they have not attempted to justify doing so with any citation to statute or regulation, and there is no circumstance that they could take such an action that would be consistent with due process.

III. A balance of the equities favors a TRO.

The final inquiry requires weighing the "four factors together to determine if a [TRO] is warranted." *Int'l Ass'n of Fire Fighters, Loc. 365 v. City of E. Chicago*, 56 F.4th 437, 446 (7th Cir. 2022). "This balancing process involves a 'sliding scale' approach: the more likely the plaintiff is to win on the merits, the less the balance of harms needs to weigh in his favor, and vice versa." *Mays*, 974 F.3d at 818. Given the strong showing of irreparable harm by the Petitioners and the lack of harm to the Respondents, Petitioners have far exceeded the low threshold for demonstrating likelihood of success on the merits. *Mays*, 974 F.3d at 822.

The public interest and harm to the opposing party factors "merge" in cases brought against the government. *See Nken,* 556 U.S. at 435. Although there is "always a public interest in the prompt execution of removal orders," there is a countervailing "public interest in preventing [noncitizens] from being wrongfully removed." *Id.* at 427. Z.N. and her children would suffer

grave—indeed, likely life-threatening—harm if removed. Therefore, in this case, the consequences of wrongful removal far outweigh the public interest in efficiently executing removal orders. Moreover, it is in the public interest that courts take care to ensure that the laws of this country are faithfully executed, and the public interest therefore supports the use of an unlawful detention and removal authority—whichever of the options described—to detain and remove Petitioners.

IV. A Stay and TRO are appropriate to preserve the Court's jurisdiction.

"[T]he All Writs Act, 28 U.S.C. § 1651(a), empowers a district court to issue injunctions to protect its jurisdiction." *S.E.C. v. Vision Commc's, Inc.*, 74 F.3d 287, 291 (D.C. Cir. 1996). This includes the power "to stay agency action in order to preserve its prospective jurisdiction." *In re NTE Connecticut, LLC*, 26 F.4th 980, 987 (D.C. Cir. 2022) (internal quotation omitted). Using that authority, courts routinely issue writs "in aid of jurisdiction" to enjoin conduct that, if "'left unchecked, would have . . . the practical effect of diminishing the court's power to bring the litigation to a natural conclusion.'" *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1102 (11th Cir. 2004). This includes the government's physical removal of a plaintiff or other obstructions of the court's jurisdiction. *E.g. Kurnaz v. Bush*, 2005 WL 839542, at *2 (D.D.C. 2005) (invoking the AWA to limit the government's ability to transfer Guantánamo detainees to foreign countries due to likelihood that "once such a transfer is effected, the court would lose its jurisdiction" over the detainee's underlying challenge to his detention); *Lindstrom v. Graber*, 203 F.3d 470, 474-76 (7th Cir. 2000) (stating that the All Writs Act would justify staying an extradition that would terminate the district court's jurisdiction over his habeas challenge to the extradition).

When a party invokes the All Writs Act to preserve the court's jurisdiction, they do not need to show a likelihood of success on the merits of their complaint. There need be only a "proceeding . . . the integrity of which is being threatened by someone else's action or behavior." *Klay*, 376 F.3d at 1100; *accord U.S. v. New York Tel. Co.*, 434 U.S. at 174 (affirming the grant of

an injunction under the All Writs Act without discussing the traditional preliminary injunction factors).

The authority afforded by the All Writs Act is compelling here as it relates to Petitioners' request to for a stay of their removal, but it is even more pertinent to their request that the Court enjoin the Respondents from moving them from the Northern District of Illinois. That is because, if Petitioners remain detained but are transferred to a different location, such a transfer stands to deprive this Court of jurisdiction to entertain this case. It also creates potential concerns with Petitioners' access to counsel, as mentioned in Part I above. Accordingly, because the All Writs Act, is intended as a tool to ensure that Courts can continue to hear cases presented to them, it is particularly relevant this aspect of Petitioners' request.

CONCLUSION

For the foregoing reasons, Petitioners request that this Court grant them a temporary restraining order or preliminary injunction that both stays their removal pending the outcome of these proceedings and prevents their transfer to a location outside of the jurisdiction of this Court.

Dated: June 29, 2025

Respectfully submitted,

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