STEPHEN W. MANNING, OSB # 013373
stephen@innovationlawlab.org
TESS HELLGREN, OSB # 191622
tess@innovationlawlab.org
JORDAN CUNNINGS, OSB # 182928
jordan@innovationlawlab.org
NELLY GARCIA ORJUELA, OSB #223308
nelly@innovationlawlab.org
INNOVATION LAW LAB
333 SW 5th Ave., Suite 200
Portland, OR 97204-1748
Telephone: +1 503-922-3042

Attorneys for Petitioner

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Portland Division

L-J-P-L-, an adult,

Petitioner,

v.

CAMMILLA WAMSLEY, Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO");TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE"); U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY; and PAMELA BONDI, Attorney General of the United States,

Respondents.

Case No. 25-cv-01390-IM

Agency No. A XXX-XXX-629

PETITIONER'S REPLY IN SUPPORT OF MOTION TO RECONSIDER

I. INTRODUCTION

As of this filing, L-J-P-L- has been detained for 57 days under a legal theory that the federal agencies sued in this case know is wrong. They have asserted to this Court differently, but the facts of their actions show otherwise. On or about September 17, 2025, Respondents tried to deport L-J-P-L-. Respondent DHS flew him from the United States to El Salvador and then to Guatemala. In Guatemala, DHS realized that the deportation was a "mistake" because the 1229a immigration proceedings they launched against L-J-P-L- on February 15, 2024, were still pending before the immigration court. Respondents' sixteen-page response and two supporting declarations fail to acknowledge, let alone address, this most crucial – and uncontested – fact that has developed since this Court's August 22 Order. *See* ECF 47-49.

This crucial fact undermines the Respondents' entire legal theory supporting the detention of L-J-P-L-. The Immigration and Nationality Act ("INA") permits sequential proceedings, not concurrent. Respondents' attempt to justify Petitioner's detention by arguing that reinstatement proceedings could concurrently be used against L-J-P-L- *despite* the INA's command that § 1229a proceedings are the "sole and exclusive" proceedings was wrong when they asserted it to this Court, it is wrong now, and the facts that have evolved since then prove it. [1]

[1] This case is not the only immigration case in which Respondents have recently represented a position to a federal court that is later shown to be incorrect. Last month, government counsel argued before the District Court for the District of Columbia that it was "fairly outrageous" for plaintiffs to sue over the attempted deportations of hundreds unaccompanied Guatemalan minors, because the children's parents had requested their return. However, about a week later, the district court found that the government's position had "crumbled like a house of cards" as there was "no evidence before the Court that the parents of these children sought their return" or, indeed, could even be located. *L.G.M.L. v. Noem*, Case No. 25-2942, Dkt. 49 at 1 (D.D.C. Sept. 18, 2025).

Respondents may not continue to detain Petitioner under the custody authority in 8 U.S.C. § 1231(a) – nor did they have the legal authority to do so when they detained Petitioner on August 7, 2025. This Court should reconsider its August 22 Order and grant the writ of habeas corpus.

II. ADDITIONAL FACTS

On September 25, 2025, at approximately 12:00pm PT, Petitioner filed his Motion for Reconsideration with this Court following Petitioners' efforts to confer with Respondents' counsel. *See* ECF 39 at 1, n. 1; Declaration of Tess Hellgren in Support of Petitioner's Reply ("Hellgren Decl,") ¶¶ 7-15. Petitioner's Motion was supported by his Declaration, describing facts including how he was placed on a deportation flight, flown to Guatemala, and then returned to detention in Camp East Montana at Fort Bliss because Respondents' officers acknowledged that his deportation during pending removal proceedings was a "mistake". ECF 40.

Minutes after filing Petitioner's motion and declaration on September 25, Petitioner's counsel received a phone call from Petitioner's wife, communicating that another detainee had told her that Petitioner had been removed from the detention facility at Fort Bliss. *Id.* ¶ 16. As Petitioner's location was not shown in the ICE Detainee Locator, Petitioner's counsel corresponded with Respondents' counsel and learned shortly before 5:00pm PT that Petitioner had been returned to the Northwest ICE Processing Center ("NWIPC") in Tacoma, Washington. *Id.* ¶ 19, Ex. C.

Unbeknownst, at the time, to his counsel, Petitioner was taken by guards from the warehouse where he was detained at Fort Bliss at approximately 3:00am on the morning of September 25. Petitioner's Declaration in Support of Petitioner's Reply ("Pet. Decl.") ¶ 4. The guards told him that he was being deported and placed him on a plane. *Id.* After boarding, however, Petitioner was informed by an officer that he was *not* being deported – instead, he was being taken

to back to Washington state. *Id.* ¶ 5. When the plane landed, Petitioner asked why he had been brought back to Seattle. *Id.* ¶ 7. He was told by an ICE officer that he could not yet be deported, because he had "two cases" and would "still have to see a judge in Seattle." *Id.*. Petitioner was then returned to the Northwest Immigration Processing Center ("NWIPC") in Tacoma, Washington. *Id.*

On September 26, 2025, guards came to Petitioner's detention pod in NWIPC and read off a list of names, including Petitioner's. *Id.* ¶ 9. An ICE officer spoke to the group of detainees about "a program where the U.S. government would give us $1,000 to voluntarily accept deportation." *Id.* The officer then spoke individually with Petitioner to ask if he would accept the $1,000. *Id.* Petitioner informed the officer that he did not want to, as he still had to see a judge. *Id.*

That same day, September 26, the Court clarified that Respondents' response to Petitioner's motion "should focus on addressing Petitioner's new factual allegations in the Motion for Reconsideration" including "Petitioner's ongoing Section 1229a proceedings in immigration court" and "whether those facts would now affect Petitioner[']s rights". ECF 46.

On October 1, 2025, Respondents filed their Response to Motion for Reconsideration ("Response"), ECF 47, along with declarations of Respondents' counsel Ariana Garousi ("Garousi Decl."), ECF 48, and Supervisory Detention and Deportation Officer Christopher Sica, ECF 49 ("Sica Decl."). Officer Sica states that following this Court's August 22 Order, Petitioner was transferred on September 13 to Florence, Arizona; Petitioner was transferred on September 15 to El Paso, Texas; and Petitioner was transferred on September 25 back to NWIPC. Sica Decl. ¶¶ 5-6, 8. Officer Sica further attests that on September 16, "DHS filed a Motion to Sever with EOIR", which remains pending. *Id.* ¶ 7. Officer Sica mentions neither Petitioner's halted deportation nor his subsequent detention at Camp East Montana in Fort Bliss. In the entirety of Respondents'

October 1 filings, the sole reference to these facts is made in Respondents' inclusion and quotation of the e-mail from Petitioner's counsel to Respondent's counsel, which Respondents raise in the context of their arguments that Petitioner's counsel failed to confer. *See* Response at 6; Garousi Decl. at 6, Ex. C.

III. ARGUMENT

A. Petitioner's counsel complied with LR 7-1.

Respondents primarily respond to the Motion for Reconsideration by claiming that Petitioner's counsel failed to confer with them in good faith before filing the motion, as required by LR-7-1(a). Their assertion is incorrect because Petitioner's counsel made a good faith effort to confer with Respondents before filing the motion. Separately, Petitioner's counsel complied with LR 7-1(b) by speaking with Respondents' counsel of record Susanne Luse, who declined to confer. Regardless, the Court may, in the interest of judicial efficiency, exercise its discretion and consider the motion on its merits.

1. Petitioner's counsel complied with LR 7-1(a) by making a good faith attempt to confer with Respondents.

Petitioner's counsel attempted to confer in good faith. Petitioner's counsel diligently sought to confer with Respondents' counsel as soon as they were able to confirm the new facts that are the basis for Petitioner's motion. The relevant timeline here is not, as Respondents argue, "the fact that Petitioner's counsel was aware of the Court's Order denying the petition since August 22". Response at 7. As Respondents correctly note, motions to reconsider are neither a typical nor an expected practice. *See* Response at 3-4 (correctly noting high threshold for a motion to reconsider, which requires "highly unusual circumstances" such as "new discovered evidence"). It was only on September 18, nearly a month after this Court's Order, that Petitioner's counsel learned third-

hand about the core fact motivating the motion: Petitioner's aborted deportation. Hellgren Decl. ¶ 3. This relevant information was relayed not by Respondents or their counsel, but by a man on Petitioner's deportation flight, whom Petitioner asked to contact his wife, who then contacted Petitioner's counsel. *Id.* Petitioner's counsel took prompt efforts to locate their client and to establish communication with him, which, because of limited access to counsel at the detention facility, took until Tuesday, September 23. *Id.* ¶ 4. It was finally on Wednesday, September 24 – the day before filing the motion to reconsider – that Petitioner's counsel was able to speak with Petitioner through a Mam interpreter to definitively confirm the facts of Petitioner's experience that form the basis of Petitioner's motion and to obtain his consent to file it. *Id.* ¶ 5. Petitioner's counsel promptly contacted Respondents' counsel at the opening of business hours the next day to confer on his motion to reconsider and an accompanying motion to seal exhibits of Petitioner's declaration. Hellgren Decl. ¶ 7.

Respondents accuse Petitioner's counsel of bad faith because the "alleged urgency of Petitioner's filing does not excuse Petitioner's counsel from meaningfully conferring as required under the Local Rules." Response at 7. But Local Rule 7-1(a) requires good faith *attempts* to confer; where such attempts are made, the Rule appropriately allows for a party to proceed with filing their motion with a summary of conferral efforts – which Petitioner's counsel did.[2] The multiple phone calls and detailed e-mail sent by Petitioner's counsel were extended in good faith, in compliance with both the form and spirit of Local Rule 7-1(a). Respondents' accusations to the contrary ignore the ethical obligations of Petitioner's counsel to zealously represent the interests

---

[2] While Respondents take issue with how Petitioner's counsel's LR 7-1 certification "characterizes" their conferral efforts, they do not – and cannot – dispute that Petitioner's counsel accurately summarized their conferral attempts in footnote 1 of Petitioner's motion. *See* ECF 39, n. 1.

of their client. *See* American Bar Association, Model Rule 1.3, Comment ("A lawyer must . . . act with . . . zeal in advocacy upon the client's behalf."). Having just confirmed that Petitioner had been returned to the United States from a failed removal flight and was being held in concerning detention conditions in a warehouse in Fort Bliss, where he was suffering untreated medical issues, and having additionally learned that he was missing from the ICE Detainee Locator, Petitioner's counsel responsibly and appropriately felt compelled to file this motion to reconsider expeditiously before Respondents attempted to transfer or remove Petitioner again.[3] *See* Hellgren Decl. ¶ 6, 12.

Petitioner does not dispute that for most motions, delaying conferral by a few more hours on the same day to accommodate opposing counsel's pre-existing commitments is a reasonable request. But as Petitioner's counsel endeavored to outline in her e-mail, the facts leading to this motion were far from ordinary, and the concerns about Petitioner's imminent removal were unique.[4] Indeed, Petitioner's counsel learned minutes after filing Petitioner's motion that Petitioner had been removed from Fort Bliss without notice to his counsel in the middle of the night and, as communicated to Respondents' counsel, feared that he was facing another attempted removal to Guatemala or another third country. Hellgren Decl. ¶ 16. For Respondents to suggest that these fears were in bad faith is misinformed, at best. *See Id.* ¶ 12 (describing client's transfer to Guantanamo Bay after his detention facility disappeared from the ICE Detainee Locator). It was only after Petitioner's counsel explicitly requested information on their client's location that

---

[3] Other than citing the e-mail from Petitioner's counsel, Respondents continue to fail to acknowledge, let alone engage with, any of these facts.

[4] Similarly, the facts and circumstances of the recent government shutdown have resulted in similar short conferral timelines requested by government counsel on motions to stay cases pending before this Court and the Ninth Circuit Court of Appeals. *See* Hellgren Decl. ¶ 20.

Respondents' counsel informed them Petitioner was in fact being returned to Washington state. Hellgren Decl. ¶ 19, Ex. C.

Where a good faith effort has been made to confer, this Court has, in its discretion, proceeded to consider a filing on its merits. *See, e.g., Terry v. Hodges,* 2024 WL 95104, at *4 (D.Or. 2024) ("declin[ing] to deny the motion on the basis of a failure to confer" where it was "apparent that a good faith effort was made to honor the spirit of the Local Rule"). Moreover, this Court has been "less concerned with the formal requirements of conferral . . . [w]here the parties' interests are particularly disparate with respect to a given motion [and] conferral is less likely to produce meaningful agreement and resolution." *See Larry v. Schmid*, 2011 WL 7163040, at * 3 (D.Or. 2011) (declining to deny a motion based on alleged noncompliance with LR-7-1(a)). Here, Respondents are engaged in a large-scale deportation project and have consistently asserted (as they do again in their response) that they may proceed with reinstating Petitioner's removal order regardless of his ongoing removal proceedings. *See* ECF 47. Formal conferral would have been very unlikely to produce any meaningful resolution of this matter, and "the court will not enforce LR 7.1(a) where conferral clearly would be futile". *See Bowers v. Experian Information Solutions, Inc.*, 2009 WL 2136632, at *3 (D.Or. 2009).

2. Petitioner's counsel complied with LR 7-1(b) when counsel of record declined to confer.

Separately, Petitioner's counsel also complied with LR 7-1(b). LR7-1 can be satisfied by certifying that the opposing party refused to confer, as is the case here and as Petitioner noted in his motion. *See* ECF 39 at 2 n.1. On the morning of September 25, after leaving voicemails with Respondents' counsel Ms. Garousi, Petitioner's counsel reached Respondent's counsel Susanne Luse on the phone. Hellgren Decl. ¶¶ 8-9. Ms. Luse expressly declined to confer and requested that Petitioner's counsel confer with her co-counsel, which Petitioner's counsel then attempted to

do. *Id.* ¶¶ 9-10, 13-4. Respondents characterize Ms. Luse as having "appeared in this case only to respond to the Court's order at ECF 5 before AUSAs Garousi and Feldman entered appearance in the matter." Response at 6. But Ms. Luse remained – and, indeed, remains – as lead counsel of record in this matter. Had Ms. Luse withdrawn from the case, Petitioner's counsel would not have contacted her. Indeed, the LR 83-8(a) requires the U.S. Attorneys, like all lawyers, to "cooperate" with opposing counsel "in all phases of the litigation process," which includes requests to confer. Given that Ms. Luse failed to do so here by expressly declining to confer, the Court should find LR 7-1(b)'s requirement to be satisfied.

3. Even if the Court determines that Petitioner's counsel did not comply with LR 7-1, under the circumstances motivating Petitioner's filing the Court should consider the motion on the merits.

Even if the Court determines that Petitioner's counsel did not attempt to confer in good faith and that Respondents' counsel did not decline to confer, the Court should consider the motion on the merits, as it has discretion to do in the interest of judicial efficiency. This Court has declined to dismiss a motion for failure to comply with LR-7-1(a) when, as is the case here, "the issues related to conferral are fully briefed" and there would be no benefit to the court in denying the motion on the narrow procedural ground. *Strong v. City of Eugene*, 2015 WL 2401395, at *2 (D.Or. May 19, 2015).

The cases cited by Respondents do not suggest otherwise or are distinguishable on the facts. In *Ekeya v. Shriners Hospital for Children, Portland*, the Court concluded that the Plaintiff should not recover the otherwise-recoverable time spent preparing an attorney's fee motion for failure to comply with LR-7-1(a)(1) but proceeded to substantively consider the motion and grant attorney fees. 2017 WL 3707396, at *2 (D.Or. Aug. 28, 2017). *Accord Cruz v. United States,* 2025 WL 50024, at *2 (considering a motion on the merits "even though Defendant should have sought

a more meaningful conferral with Plaintiff"); *Williams v. Lincoln Nat. Life Ins. Co.*, 121 F. Supp. 3d 1025, 1029-30 (D.Or. 2015) (considering a motion to transfer venue on the merits despite Defendants' failure to confer). In *Chalice Vineyards, L.L.C. v. United States*, the U.S. Attorney's office waited to reach out to confer until 3:39 pm the day preceding the deadline to file a response to a complaint "after already receiving a thirty-day extension of time" to answer, and while simultaneously conferring with Plaintiffs about a motion to dismiss the same case. 2025 WL 1446274, at *5 (D.Or. May 20, 2025). This case is entirely distinguishable; as described *supra*, Petitioner was not filing a required answer for which he had already received an extension, but a motion necessitated by Respondents' own exceptional conduct which Petitioner's counsel was only able to definitively confirm from their client the day before filing the motion.

B. Respondents fail to acknowledge the crucial fact of Petitioner's halted deportation, which warrants the Court's reconsideration of its August 22 Order.

In its September 26 Order, this Court clearly instructed Respondents to engage with Petitioner's new factual allegations. ECF 46. Instead, Respondents reiterate their legal arguments without grappling with the main impetus for Petitioner's motion: that Respondents' actions implicitly concede that they cannot deport Petitioner on his reinstated removal order while his immigration court proceedings remain pending, demonstrating that in fact – if not in argument before this Court – Respondents recognize the "sole and exclusive" nature of 1229a proceedings once commenced. Because Petitioner remains in § 1229a proceedings, he is subject to Respondents' § 1226(a) custody authority – not their authority under § 1231(a). *See Padilla-Ramirez v. Bible*, 882 F.3d 826, 831 (9th Cir. 2017) (explaining that § 1226(a) "applies only while 'a decision on whether the [noncitizen] is to be removed from the United States' is 'pending'", citing 8 U.S.C. § 1226(a)).

1. Respondents' aborted removal of Petitioner demonstrates their own understanding that his § 1229a proceedings are the "sole and exclusive" proceedings that currently govern his removability.

Respondents claim that Petitioner bases his motion on "events wholly irrelevant to the detention authority Respondents asserted over Petitioner on August 7". ECF 47 at 11. But they entirely fail to respond to- or even acknowledge- the factual developments that prompted the filing of this motion: that Petitioner remains unlawfully detained because Respondents *attempted to remove him and brought him back to the United States because of his ongoing proceedings under § 1229a.* *See* ECF 40 ¶¶ 11-14 (describing L-J-P-L-'s removal to Guatemala and then return to the United States, during which an immigration officer told him there had been "a mistake"); Indeed, since Petitioner's transfer to the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington the same day his Motion to Reconsider was filed, Respondents' agents have told him that he was brought back because he has a pending proceeding in the immigration court. Pet. Decl. ¶ 7.

Respondents' Response fails to wrestle with, or even mention, any of this. The supporting declaration of ICE ERO Officer Christopher Sica describes Petitioner's transfer out of NWIPC to El Paso, Texas on September 15, 2025, and his return to NWIPC on September 25, 2025, without disclosing that Respondents flew him to El Salvador and then to Guatemala before, in correcting their "mistake", they brought him back to the United States. *See* ECF 49 ¶¶ 6-8. Respondents' presentation of Officer Sica's selective history of Petitioner's detention transfers omits precisely the facts that this Court requested them to address.

Respondents, despite explicit invitation, do not contest the fact that they attempted to deport Petitioner and returned him to the United States because of his pending immigration proceedings. The new facts before the Court are thus a concession by Respondents that Petitioner's § 1229a proceedings not only remain pending, they prevent the concurrent reinstatement of his

prior removal order unless and until they are terminated. Before this Court's August 22 Order, Respondents argued during oral argument that the dismissal of Petitioner's § 1229a proceedings were effectively a fait accompli, soon to be accomplished, that would not impede the simultaneous progress of his reinstatement procedures under § 1231.E. The new facts before the Court demonstrate that this was untrue. Over a month after this Court's Order, Petitioner's removal proceedings remain open; as of the filing of Petitioner's motion, Respondents had not even renewed their motion to dismiss proceedings in immigration court. ECF 45, Ex. A. And even if the immigration court grants dismissal, Petitioner's § 1229a proceedings would not be definitively terminated until he has exhausted his administrative appeal process to the Board of Immigration Appeals, as the government has conceded in other habeas actions before this Court. *See J-C-R-M- v. Wamsley*, Case No. 3:25-cv-00990-SI, ECF 16 at 3 (D.Or. July 29, 2025) (explaining that "[b]ecause Petitioner subsequently appealed the dismissal of his 1229a proceedings, the dismissal is not a final order" and citing 8 C.F.R. § 1003.39); *id.* at 5-6 (acknowledging that adjudicating administrative appeals of immigration proceedings, on average, "could take over a year"). In that way, this case parallels the procedural sleight of hand that Respondents sought to accomplish in *O-J-M- v. Bostock*, in which respondents wrongly claimed a separate custody authority while the petitioner remained in pending § 1229a proceedings. *O-J-M- v. Bostock,* 2025 WL 1943008 (D. Or. July 14, 2025).

2. L-J-P-L's detention has never been authorized by 8 U.S.C. § 1231.

Petitioner's 57 days of executive detention have never been authorized by statute. Respondents cite *Padilla-Ramirez* as their singular authority for the finality of Petitioner's reinstated removal order, and thus, their authority for Petitioner's detention. *See* Response at 10. But *Padilla-Ramirez* refutes their argument, as it actually outlines the proper order of actions and

proceedings: first, §1229a proceedings through their administrative finality; second, the reinstated order of removal, which may lead to withholding-only proceedings.

The question presented in L-J-P-L-'s case is whether DHS may concurrently move against the same person at the same time in two different proceedings: reinstatement proceedings under § 1231(a)(5) and, concurrently, removal proceedings under § 1229a. While *Padilla-Ramirez* did not directly address that issue, the facts of the case demonstrate the INA conceives of reinstatement proceedings as sequential. *Padilla-Ramirez v. Bible*, 882 F.3d 826, 829 (9th Cir. 2017). The noncitizen in *Padilla-Ramirez* was *not* already in immigration proceedings under 8 U.S.C. § 1229a when his removal order was reinstated. *See id.* Instead, the proceedings in *Padilla-Ramirez* were sequential, not concurrent. *Padilla-Ramirez* was in 1229a removal proceedings in 1999. *Id.* He was removed to El Salvador in 2010 based on an order issued in those 1229a removal proceedings. *Id.* Then, several years later, "ICE discovered that Padilla-Ramirez had re-entered the country illegally" and "promptly reinstated Padilla-Ramirez's original removal order[.]" *Id.* Then, in sequence, withholding-only removal proceedings were initiated. *Id.*; *see* 8 C.F.R § 1208.31(g).

Here, the reason that Respondents placed Petitioner in removal proceedings in February 2024 is a question of fact that the Court need not resolve to grant the motion and the petition.[5] During oral arguments, Respondents assumed that the § 1229a proceedings commenced against

---

[5] Respondents posit that this decision was a mistake, but the record here contains no sworn statement from the officer who made that determination; the record equally supports the proposition that it was a discretionary decision *not* to separate Petitioner and his young daughter, who has never received a prior removal order. In any event, the rationale behind that choice need not be resolved in these proceedings, as Petitioner does not contest that Respondents may seek to undo their decision to place Petitioner in § 1229a proceedings – as they are seeking to do by filing a motion to terminate Petitioner's still-pending immigration court proceedings. Should the Court find this fact relevant to its determination of the case, the Court should permit the Petitioner limited discovery to resolve this fact.

L-J-P-L- on February 15, 2024, were a mistake because DHS could have reinstated the prior removal order instead. They argued that the decision to initiate § 1229a proceedings was a mistake, it is assumed or implied, because DHS was not aware of the prior removal order. But that fact, even if true (and Petitioner contests it; Petitioner asserts that DHS was aware of his prior removal order and chose to initiate § 1229a proceedings in lieu of § 1231(a)(5) proceedings), does not relieve Respondents from the INA's "sole and exclusive" command. To be sure, the Respondents are not without remedy. In fact, they are pursuing the remedy that the INA provides: dismissal of the 1229a proceedings. *See* ECF 45, Ex. A, B. Whether those proceedings should be dismissed is a question reserved to the immigration court, and then through the appeals process and eventually judicial review through a petition for review to the courts of appeal.

Respondents decided to place Petitioner in § 1229a proceedings when he entered the United States with his young daughter in 2024.[6] ECF 32, Ex. B. Whether this decision was an error or an exercise of discretion, when Respondents chose to initiate Petitioner's § 1229a removal proceedings before the immigration court, the immigration court took "sole and exclusive" jurisdiction over Petitioner's removability unless and until his case is decided. As a result, until there is a final ruling in Petitioner's immigration proceedings, Petitioner cannot be removed – nor can he be detained under § 1231(a), as the plain terms of § 1226 continue to govern. *Padilla*, 882 F.3d at 829 (recognizing that 8 U.S.C. § 1226(a) is the custody authority that properly applies when removability is still being determined).

---

[6] Petitioner's individual situation is unique from most cases in which removal orders are reinstated, in which Respondents use their discretion to reinstate a prior order of removal at the time of a subsequent entry to the United States *instead of* initiating § 1229a proceedings. Particularly given Petitioner's unique facts, upholding his right to his still-pending § 1229a proceedings would result neither in "absurdity" nor in a "windfall" for "[a]ny noncitizen who illegally reenters the United States after having been previously removed". Response at 11.

Respondents argue that their fumbled attempts to terminate Petitioner's §1229a proceedings are immaterial to their ability to reinstate Petitioner's removal order, because reinstatement is not a "proceeding". ECF 47 at 12-14. This defense misses Petitioner's argument, which is not about the form but the *sequence* of reinstatement: when a noncitizen is in active removal proceedings, which are the "sole and exclusive" forum for determining his removability, he cannot simultaneously be removed. Respondents' halted attempt to deport Petitioner admits as much. *See* Pet. Decl. ¶ 2. Nor does *Morales-Izquierdo v. Gonzales*, 486 F.3d 484 (9th Cir. 2007), say otherwise. *Morales-Izquierdo* concludes that "Congress did not consider removal and reinstatement to be equivalent", pointing out differences in the processes including the varying rights, procedures, and involvement of an immigration judge. Petitioner does not dispute the differences in these two types of proceedings; indeed, their differences underscore the need for Petitioner to not be denied the procedural protections of his pending § 1229a proceedings. But nothing in *Morales-Izquierdo* addresses the sequence of these proceedings – that is where Congress has clearly spoken, in declaring § 1229a proceedings, when initiated, to be the "sole and exclusive" manner of determining removability.

Respondents have the authority to detain Petitioner while he remains in active § 1229a proceedings – but that custody authority lies under § 1226, not § 1231. *Padilla*, 882 F.3d at 829. In seeking to justify Petitioner's detention under the terms of § 1231, Respondents assert an authority they do not yet have – and their own actions since the Court's Order concede as much.

C. Separately, this Court should reconsider its Order based on new or previously overlooked facts that demonstrate how Respondents violated Petitioner's due process rights.

1. Respondents' failure to interpret Petitioner's notice of reinstatement into Mam violated his due process rights and caused him prejudice.

Respondents "do not concede that Petitioner's Form I-871 Notice of Intent/Decision to Reinstate Prior Order needed to be translated into or explained in Mam." Response at 9 n. 3. But Petitioner has explained his limited understanding of Spanish, which he describes as "rudimentary" and used for "simple interactions in daily life".[7] ECF 30 ¶ 2. The relevant standard for fundamental fairness, is "competent translation" in "a language the [noncitizen] understands"– not, as Respondents suggest, "a language Petitioner has some understanding of." *Compare* ECF 39 at 10-11 (citing standards) *with* Response at 9, n. 3. The fact that Petitioner also did not receive correct interpretation of his 2024 Notice to Appear, *see* Response at 9, a separate due process violation, does not somehow cure the lack of interpretation of Petitioner's Form I-871.[8]

Petitioner was prejudiced by his lack of competent interpretation because he had no opportunity to contest the reinstatement of his prior removal order. Had he been given an opportunity to respond in his native language, Petitioner could have raised with Respondents many of the facts later raised before this Court – including that notwithstanding his prior order, Respondents had *already* used their discretion to place him in immigration court proceedings when he entered with his young daughter, who would otherwise have been separated from him; that he had always been forthright about his immigration history, including referencing his prior removal order on his asylum application; and that he and his daughter were actively seeking protection together before the Seattle Immigration Court. 8 C.F.R. § 241.8 explicitly envisions that after a noncitizen makes such a statement, an officer "shall consider whether the [noncitizen]'s statement

---

[7] Indeed, Petitioner was delayed in filing this motion by an additional day his counsel needed to obtain the Mam interpretation necessary to fully and accurately confirm his declaration before submitting new facts to this Court.

[8] Though the validity of Petitioner's NTA is not at issue in this case, its lack of competent interpretation could similarly form a basis for legal challenge by his immigration counsel in Petitioner's 8 U.S.C. § 1229a proceedings.

warrants reconsideration of the determination." Had Petitioner done so, there is every possibility that Respondents would have reconsidered their determination in deference to his pending removal proceedings – or, at minimum, followed the correct procedural steps to seek to first sever and dismiss his § 1229a proceedings before reinstating his prior removal order, thus preventing Petitioner's unlawful custody and the proceedings before this Court.

This Court's August 22 Order was prefaced on its determination that Respondents had complied with the requirements of 8 C.F.R. § 241.8(b) in reinstating Petitioner's prior removal order, from which Respondents' subsequent alleged custody authority arose. Reconsideration is thus independently warranted on the basis of Petitioner's lack of competent translation, which deprived him of the opportunity to contest the reinstatement determination in violation of his due process rights.

2. Because Respondents deprived Petitioner of access to counsel in his reasonable fear interview, prejudice is presumed.

Though a showing of prejudice is generally required in order to prove a due process violation, *see Rodriguez-Jimenez v. Garland*, 20 F.4th 434, 440 (9th Cir. 2021), an immigrant need not show prejudice when wrongly denied access to counsel. *See, e.g.*, *Usubakunov v. Garland*, 16 F.4th 1299, 1307 (9th Cir. 2021) (holding that a petitioner wrongly denied access to counsel due, in part, to barriers inherent to immigrant detention and language access issues, need not show prejudice); *Orozco-Lopez v. Garland*, 11 F.4th 764, 779 (9th Cir. 2021) ("[W]here a non-citizen's statutory right to counsel has been denied, as in [this] case, he need not show prejudice."); *Montes-Lopez v. Holder*, 694 F.3d 1085, 1093-94 (9th Cir. 2012) (same).

Respondents do not contest that they denied Petitioner access to counsel in the reasonable fear interview process, despite being aware of his representation and having been explicitly ordered by this Court to report on the timely conduct of the interview. ECF 38. Respondents

arranged for the reasonable fear interview to happen and served Petitioner, a *knowingly* represented party, with notice that said interview would happen on August 28, 2025; the interview was later rescheduled to August 29. Response at 3, n.1. However, that interview ultimately took place on neither of those days, but instead on September 4, 2025, over the telephone, with Respondents declining to notify Petitioner's counsel and insisting to him that counsel was unnecessary. ECF 41 ¶ 11. And since that time, Respondents have again engaged with Petitioner – a known represented party – in the absence of his counsel to offer him $1,000 if he accepts his deportation.[9] Pet. Decl. ¶ 9. Respondents have thus continued to violate Petitioner's due process rights even during the reasonable fear process that was subject to oversight and ordered to happen expeditiously by this Court.

IV. CONCLUSION

Petitioner has now been detained by Respondents without a lawful statutory basis for 57 days. Since the Court's Order on August 22, Respondents have deprived Petitioner of access to counsel, transferred him thousands of miles, attempted and then halted his unlawful deportation, failed to provide him with medical care, and finally offered him $1,000 to agree to his own removal.

For the reasons set forth above and in his September 25 Motion to Reconsider, Petitioner respectfully requests that the Court reconsider its August 22 Order and grant the writ of habeas

---

[9] Moreover, this is not the first case on which Respondents have communicated with known represented parties in the course of a habeas petition in immigration proceedings directly connected to the litigation. *See O-J-M- v. Bostock*, No. 3:25-CV-944-AB, Hearing Tr. at 30, available at https://innovationlawlab.org/media/071425_OJM-v.-Bostock.pdf (Court asking government counsel to "[t]ell me your thoughts on an agent contacting a represented party about ongoing litigation and asking that person to waive rights related to that ongoing litigation outside the presence of counsel.").

corpus, ordering his release from unlawful executive detention. Petitioner has introduced newly discovered evidence that the Court's August 22 Order was based on Respondents' misrepresentations of their authority to execute the reinstatement of Petitioner's prior removal order while his § 1229a proceedings remained pending, undermining the Court's conclusion that Respondents could lawfully access their § 1231(a) custody authority in these particular circumstances. Separately, reconsideration is appropriate due to clear error in overlooking Respondents' lack of competent interpretation in reinstating Petitoiner's removal order and due to new evidence of Petitioner's deprivation of counsel in his reinstatement process. Because Respondents have not contested any of the significant new facts that warrant reconsideration, Petitioner respectfully submits that the Court may grant the writ without further argument by the parties.

Dated: October 3, 2025.

/s/ Stephen W. Manning

STEPHEN W. MANNING, OSB # 013373
stephen@innovationlawlab.org
smanning@ilgrp.com
TESS HELLGREN, OSB # 191622
tess@innovationlawlab.org
JORDAN CUNNINGS, OSB # 182928
jordan@innovationlawlab.org
NELLY GARCIA ORJUELA, OSB #223308
nelly@innovationlawlab.org

INNOVATION LAW LAB
333 SW 5th Ave., Suite 200
Portland, OR 97204-1748
Telephone: +1 503-922-3042

Attorneys for Petitioner