CRAIG H. MISSAKIAN (CABN 125202)
United States Attorney
PAMELA T. JOHANN (CABN 145558)
Chief, Civil Division
JEVECHIUS D. BERNARDONI (CABN 281892)
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-7224
Facsimile: (415) 436-6748
jevechius.bernardoni@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

MARINA JIMENEZ GARCIA,

Petitioner,

v.

SERGIO ALBARRAN, *et al.*,

Respondents.

Case No. 4:25-cv-06916-YGR

RESPONSE TO ORDER TO SHOW CAUSE

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I. Introduction

On February 10, 2026, the Court ordered Respondents to show cause why they should not be held in civil contempt for purported violations, "either in fact or in spirit," of three court orders. ECF No. 35 ("Order to Show Cause"). The underlying habeas petition asks the Court to order Respondents to immediately release Petitioner from detention and prohibit her re-arrest without a hearing to contest that re-arrest before a neutral decisionmaker. ECF No. 1 ("Pet.") ¶ 8; *see also id.* at Prayer for Relief. On its face, the Petition does not seek an injunction preventing Respondents from either (1) moving to dismiss her removal proceedings or (2) placing Petitioner in expedited removal proceedings. Instead, the Petition simply asks the Court to release Petitioner from her then-custody and enjoin her re-detention without the process Petitioner claims she is due.

Consistent with the requests for relief in the Petition and in Petitioner's own motion for temporary restraining order, Judge Lee issued a temporary restraining order enjoining Respondents from "re-detaining Petitioner without notice and with a pre-deprivation hearing before a neutral decisionmaker." ECF No. 6. After preliminary injunction motion briefing, this Court issued an order enjoining Respondents from "re-detaining petitioner without notice and a pre-deprivation hearing before a neutral decisionmaker where the government bears the burden of proving by clear and convincing evidence that changed circumstances render her a danger to the community or a flight risk, and that no conditions other than her detention would be sufficient to prevent such harms." ECF No. 7. By their plain terms, neither of these orders precludes Respondents from moving to dismiss Petitioner's removal proceedings or placing Petitioner in expedited removal proceedings.

Moreover, there is no dispute that, following the temporary restraining order and the preliminary injunction order, Petitioner has *not* been detained by Respondents (much less detained without a pre-deprivation hearing before a neutral decisionmaker). To be sure, ICE filed a motion to dismiss removal proceedings on August 20, 2025 (ECF No. 31-1 ("Auer Decl.") ¶ 11) and then placed Petitioner in expedited removal proceedings on October 6, 2025 after an immigration judge granted ICE's motion to dismiss (*id.* ¶ 13), but Petitioner *has not been detained* as part of those expedited removal proceedings. And because she was apprehended less than 100 air miles from the United States-Mexican international

border on the same day she entered the United States, Petitioner has *always* been subject to expedited removal. *See* 69 Fed. Reg. 48879 (2004); Auer Decl. ¶ 13.

Under these undisputed facts, Respondents have fully complied with both the letter and the spirit of all three orders identified in the Order to Show Cause.

II. Legal Standard

"The standard for finding a party in civil contempt is well settled: The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court. The burden then shifts to the contemnors to demonstrate why they were unable to comply." *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir. 2002) (quoting *F.T.C. v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999)). "Since an injunctive order prohibits conduct under threat of judicial punishment, basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed." *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974). To provide an adequate foundation for a contempt finding, an "injunction must be clear enough on its face to give . . . notice that the behavior is forbidden." *Clark v. Coye*, 60 F.3d 600, 604 (9th Cir. 1995); *see also Perez v. RMRF Enters.*, No. 13-cv-80059-SI, 2014 WL 3869935, at *2 (N.D. Cal. Aug. 6, 2014) ("The disobeyed order that serves as the basis for a finding of civil contempt must be clear in its commands") (citing *Balla v. Idaho State Bd. of Corr.*, 869 F.2d 461, 465 (9th Cir. 1989)).

A party can be found in contempt even though the "strict letter" of the injunction "may not have been disregarded." *Epic Games, Inc. v. Apple Inc.*, 161 F.4th 1162, 1176 (9th Cir. 2025) (quoting *Institute of Cetacean Research v. Sea Shepherd Conservation Society (Sea Shepard)*, 774 F.3d 935, 949 (9th Cir. 2014)). However, "[i]n contempt proceedings[,] . . . a decree will not be expanded by implication or intendment beyond the meaning of its terms," and those terms must be "read in the light of the issues and the purpose for which the suit was brought." *Terminal R.R. Ass'n of St. Louis v. United States*, 266 U.S. 17, 29 (1924). "[A]ll ambiguities are resolved in favor of the person subject to the injunction." *Clark*, 60 F.3d at 604 (citation omitted). The Ninth Circuit "forbid[s] contempt sanctions when the contested action was 'based on a good faith and reasonable interpretation' of the court's order[.]" *Oracle USA, Inc. v. Rimini St., Inc.*, 81 F.4th 843, 851 (9th Cir. 2023) (quoting *United States v. DAS Corp.*, 18 F.4th 1032, 1039 (9th Cir. 2021)).

III. Respondents Are In Full Compliance With All Of The Identified Court Orders

A. Respondents Complied With The Temporary Restraining Order In Both Letter And Spirit

Judge Lee's temporary restraining order provides as follows:

> For the foregoing reasons, **IT IS HEREBY ORDERED** that Petitioner's Motion for Temporary Restraining Order is **GRANTED** to preserve the status quo pending further briefing and a hearing on this matter. Respondents are **ORDERED** to immediately release Petitioner from Respondents' custody and **ENJOINED AND RESTRAINED** from re-detaining Petitioner without notice and a pre-deprivation hearing before a neutral decisionmaker, and from removing her from the United States.

ECF No. 6. This order does not mention—not once—the words "expedited removal," and its plain terms do not prohibit Respondents from moving to dismiss Petitioner's removal proceeding.

Respondents fully complied with the clear text of this order. First, Respondents released Petitioner from custody on August 17, 2025, the same day the temporary restraining order issued. ECF No. 7. Second, at no point since the temporary restraining order issued on August 17, 2025 have Respondents detained Petitioner, much less "without notice and a pre-deprivation hearing." Third, Respondents have not removed Petitioner from the United States. There is thus no violation "in fact" of the temporary restraining order. *See* Order to Show Cause at 2.

Nor have Respondents violated the "spirit" of the temporary restraining order. *Id.* As an initial matter, Judge Lee's temporary restraining order never mentions the phrase "expedited removal," nor does it prohibit Respondents from moving to dismiss the removal proceedings. The Supreme Court has observed that "basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed." *Schmidt*, 414 U.S. at 476; *Clark*, 60 F.3d at 604 (an "injunction must be clear enough on its face to give . . . notice that the behavior is forbidden"). Respondents cannot have reasonably understood Judge Lee's temporary restraining order to forbid conduct that was never mentioned in that decision. In this respect alone, this case is a far cry from this Court's decision in *Epic Games, Inc. v. Apple Inc.*, 781 F. Supp. 3d 943 (N.D. Cal. 2025). There, the Court found that "it is ludicrous to expect any court to repeat the contents of a 180-page order issued in conjunction with a simultaneously issued one-paragraph injunction. The latter flows from the former. To suggest otherwise strains credulity." *Id.* at 990. Here, however, the opposite scenario is presented; the contours of—and the conduct enjoined by—Judge Lee's

temporary restraining order is laid out in the order itself, and the five-page decision that preceded it discusses the basis for that order; this discussion does not mention "expedited removal" and it does not seek to prevent Respondents from moving to dismiss the removal proceedings (notwithstanding the fact that Judge Lee clearly was aware of Respondents' intention to do so). *See* ECF No. 6 at 2 (noting that "the government moved to dismiss its case seeking Petitioner's removal").

In fact, it would have been inappropriate for Judge Lee to issue such an order because Petitioner's motion for temporary restraining order neither asks for nor justifies that relief. *See* ECF Nos. 4-5. Further, Judge Lee would not have had jurisdiction to issue such an order even if Petitioner had asked for it because a habeas court has no jurisdiction to dictate how ICE conducts immigration proceedings. *See* 8 U.S.C. § 1252(g) (subject to specific exceptions not at issue here "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter"); *see also* 8 U.S.C. § 1252(e); 8 U.S.C. § 1252(a)(2)(A); *Linarez v. Garland*, No. 24-cv-488, 2024 WL 4656265, at *5 (M.D. Pa. Sept. 24, 2024), *report and recommendation adopted sub nom. Cordon-Linarez v. Garland*, No. 24-cv-00488, 2024 WL 4652824 (M.D. Pa. Nov. 1, 2024) ("Simply put, a petition for habeas corpus in the district court is not the appropriate avenue to pursue the relief sought by the petitioner in this case. Despite Linarez's attempts to remove his claim from the purview of the specific and clearly defined jurisdiction stripping immigration statutes enacted by Congress, at base, he asks this Court to review DHS's decision to commence expedited removal proceedings against him. This we may not do."). As such, the injunctive provisions of Judge Lee's order (which themselves do not prohibit a motion to dismiss removal proceedings or mention expedited removal) cannot be interpreted to cover conduct that was neither discussed in nor prohibited by the body of the decision and which the district court would not have had jurisdiction to enjoin in the first place. *Epic Games, Inc.*, 781 F. Supp. 3d at 990. The contested action here was based on Respondents' "good faith and reasonable interpretation of" the temporary restraining order, and Ninth Circuit precedent teaches that contempt sanctions are "forbid[den]" in such circumstances. *Oracle USA, Inc.*, 81 F.4th at 851.

The result is no different if the Court considers the broader purpose of this habeas Petition instead of the relief requested in Petitioner's motion for temporary restraining order and the text of Judge Lee's

decision and order. *See Terminal R.R. Ass'n of St. Louis*, 266 U.S. at 29 (an injunction cannot "be expanded by implication or intendment beyond the meaning of its terms," and those terms must be "read in the light of the issues and the purpose for which the suit was brought"). Petitioner framed her request for habeas relief in simple terms: she sought "a writ of habeas corpus ordering the government to immediately release her from his [sic] ongoing, unlawful detention, and prohibiting her re-arrest without a hearing to contest that re-arrest before a neutral decisionmaker." Pet. ¶ 8. This is not a request for injunctive relief prohibiting Respondents from moving to dismiss removal proceedings or placing Petitioner in expedited removal proceedings. Similarly, the Prayer for Relief asks the Court to (1) "[a]ssume jurisdiction over this matter," (2) "[i]ssue a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody," (3) "[d]eclare that Petitioner's arrest and detention violate the Due Process Clause of the Fifth Amendment," (4) "[e]njoin Respondents from transferring Petitioner outside this district or deporting Petitioner pending these proceedings," (5) "[e]njoin Respondents from re-detaining petitioner unless his [sic] re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving by clear and convincing evidence, that Petitioner is a flight risk or a danger to the community," (6) "[a]ward Petitioner her costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act and 28 U.S.C. § 2412," and (7) "[g]rant such further relief as the Court deems just and proper." Again, none of the elements of Petitioner's requested relief seeks an injunction preventing Respondents from moving to dismiss Petitioner's removal proceedings or placing her in expedited removal. Petitioner clearly knew how to frame a request for injunctive relief (*see* Prayer for Relief ¶¶ 4-5), but her Petition *does not* seek injunctive relief related to the motion to dismiss removal proceedings and it does not seek to enjoin the institution of expedited removal. Accordingly, given that the purpose of this Petition—as framed by Petitioner herself—is to obtain Petitioner's immediate release and a requirement that any re-detention follow a pre-detention hearing (conditions with which Respondents indisputably have complied), Judge Lee's temporary restraining order cannot "be expanded by implication or intendment beyond the meaning of its terms" to include an obligation not to move to dismiss removal proceedings or initiate expedited removal. *Terminal R.R. Ass'n of St. Louis*, 266 U.S. at 29.

The Order to Show Cause emphasizes the language in Judge Lee's temporary restraining order indicating that that temporary relief was issued "to preserve the status quo." Order to Show Cause at 2. But Judge Lee's reference to the "status quo" must be read in the broader context of that decision, which simply ordered Petitioner released and enjoined Respondents from re-detaining her without a pre-deprivation hearing—Judge Lee's order does not prohibit Respondents from moving to dismiss the removal proceedings or placing Petitioner in expedited removal. *See Epic Games, Inc.*, 781 F. Supp. 3d at 990. As such, the reference to the "status quo" cannot be interpreted to incorporate concepts (dismissal and initiation of expedited removal) that were not at issue in the decision itself. In any event, the reference to "status quo" cannot be interpreted to prevent Respondents from continuing to process Petitioner's immigration case, issues over which (as discussed above) district courts do not have jurisdiction. *See* 8 U.S.C. § 1252(g); 8 U.S.C. § 1252(e); 8 U.S.C. § 1252(a)(2)(A); *Linarez*, 2024 WL 4656265, at *5. In a similar posture, Judge Gilliam, Jr. recently declined to find a violation of an almost identically worded temporary restraining order when, following issuance of that temporary restraining order, the government required a petitioner to attend a check in. *De La Garza v. Albarran*, No. 4:25-cv-10305 (N.D. Cal.) at ECF No. 15 ("Upon his release, ICE provided paperwork requiring Petitioner to check in at ICE's office on Monday, December 8. Petitioner suggests that this procedure somehow runs contrary to the Court's prior order. The Court disagrees, and does not find that any further order is appropriate on the current record."). And to the extent there is any remaining question about what "status quo ante" could refer to in the underlying purpose of these proceedings, Petitioner herself supplied that context in her motion for temporary restraining order:

> Petitioner respectfully requests the Court grant a TRO **to restore the *status quo ante*** that (1) immediately releases her from Respondents' custody and enjoins Respondents from re-detaining her absent further order of this Court; (2) in the alternative, immediately releases her from Respondents' custody and enjoins Respondents from re-detaining her unless they demonstrate at a pre-deprivation bond hearing, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community such that her physical custody is required; and (3) prohibits the government from transferring her out of this District and/or removing her from the country until these habeas proceedings have concluded.

ECF No. 5 at 18. Thus, as framed by Petitioner, the *status quo ante* was *not* to prevent Respondents from moving to dismiss Petitioner's removal proceedings; instead, the *status quo ante* was to immediately

release Petitioner and enjoin Respondents from re-detaining her without a pre-deprivation bond hearing. That is what Judge Lee's temporary restraining order did, and Respondents fully complied.

B. Respondents Complied With The Preliminary Injunction Order In Both Letter And Spirit

This Court's preliminary injunction order provides, in relevant part, as follows:

> Respondents are **ENJOINED AND RESTRAINED** from re-detaining petitioner without notice and a pre-deprivation hearing before a neutral decisionmaker where the government bears the burden of proving by clear and convincing evidence that changed circumstances render her a danger to the community or a flight risk, and that no conditions other than her detention would be sufficient to prevent such harms. . . . Respondents are **ENJOINED** from transferring Petitioner out of this district or deporting her pending these habeas proceedings.

ECF No. 22. This order also does not prohibit Respondents from placing Petitioner in expedited removal proceedings.

Respondents fully complied with the plain terms of this order as well. First, at no point since the preliminary injunction order issued on August 29, 2025 have Respondents detained Petitioner, much less have they re-detained her "without notice and a pre-deprivation hearing[.]" Second, Respondents have not transferred Petitioner out of this district or deported her pending these habeas proceedings. There is thus no violation "in fact" of the preliminary injunction order. *See* Order to Show Cause at 2.

Respondents also have not violated the "spirit" of the preliminary injunction order for the same reasons they did not violate the spirit of the temporary restraining order. *Supra* Part III.A. Again, the text of the preliminary injunction order itself does not mention "expedited removal." And although the body of the preliminary injunction decision includes background references to "expedited removal," the decision itself does not purport to enjoin Respondents from placing Petitioner in expedited removal. *Compare Epic Games, Inc.*, 781 F. Supp. 3d at 990 (holding that an injunction order need not repeat the clear contents of a substantive decision). And, again, this Court is divested of jurisdiction by statute from dictating how Respondents conduct immigration proceedings, 8 U.S.C. § 1252(g); 8 U.S.C. § 1252(e); 8 U.S.C. § 1252(a)(2)(A), and the Court thus would not have had jurisdiction to issue such an injunction. As such, Respondents' interpretation of the preliminary injunction order not to prevent the initiation of expedited removal proceedings—a injunction that the Court would have been without jurisdiction to issue—was "reasonable" and "in good faith." *Oracle USA, Inc.*, 81 F.4th at 851. Further, to the extent

the preliminary injunction order was intended to prevent Respondents from placing Petitioner in expedited removal proceedings, Respondents did not have "explicit notice of precisely what conduct is outlawed." *Schmidt*, 414 U.S. at 476; *Clark*, 60 F.3d at 604 (an "injunction must be clear enough on its face to give . . . notice that the behavior is forbidden."); *Perez*, 2014 WL 3869935, at *2 ("The disobeyed order that serves as the basis for a finding of civil contempt must be clear in its commands"). Finally, the terms of the preliminary injunction order must be "read in the light of the issues and the purpose for which the suit was brought," *Terminal R.R. Ass'n of St. Louis*, 266 U.S. at 29, and the Petition again does not seek an injunction preventing Respondents from placing Petitioner in expedited removal (nor could it). *Supra* Part III.A; 8 U.S.C. § 1252(g); 8 U.S.C. § 1252(e); 8 U.S.C. § 1252(a)(2)(A). At base, whether the "spirit" of the preliminary injunction order sought to enjoin expedited removal proceedings is, at best, an ambiguity that must "be resolved in favor of the person subject to the injunction." *Clark*, 60 F.3d at 604.

C. Respondents Complied With The *Make The Road* Stay In Both Letter And Spirit

Finally, the Order to Show Cause notes that Petitioner's Traverse argues that Respondents violated a district court order in *Make the Rd. New York v. Noem*, No. 25-cv-190, 2025 WL 2494908 (D.D.C. Aug. 29, 2025) ("*Make the Road*"). Order to Show Cause at 2. Petitioner's argument is based on a misunderstanding of the expedited removal designation applicable to Petitioner. The *Make the Road* stay applies only to the most recent expansion of expedited removal authority—the "2025 Designation"—and is inapplicable to Petitioner, who was placed in expedited removal pursuant to an earlier designation—the "2004 Designation"—that the *Make the Road* decision expressly clarifies remains in effect.

To qualify for expedited removal, a noncitizen must, *inter alia*, be "arriving in the United States" or within a class that the Secretary of Homeland Security ("Secretary") has designated for expedited removal. The Secretary (and earlier, the Attorney General) has designated categories of noncitizens for expedited removal under Section 1225(b)(1)(A)(iii) on five occasions prior to the 2025 Designation at issue in *Make the Road*. First, in 1997, the Attorney General, consistent with 8 U.S.C. § 1225(b)(1)(A)(i), issued a regulation applying expedited removal to aliens arriving in the United States at a port of entry and aliens interdicted in international or United States waters. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed.

Reg. 10,312 (Mar. 6, 1997). She also established a mechanism for later designations of aliens subject to expedited removal. 8 C.F.R. § 235.3(b)(1)(ii).

Second, in 2002, the Immigration and Naturalization Service (INS) Commissioner designated for expedited removal aliens "who arrive in the United States by sea, . . . who are not admitted or paroled" into the United States, and who "have not been physically present in the United States continuously for the two-year period prior to the determination of inadmissibility under" the designation. *Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act*, 67 Fed. Reg. 68,924 (Nov. 13, 2002).

Third, relevant to Petitioner, in 2004, the Secretary of Homeland Security authorized DHS officials to apply expedited removal to certain individuals encountered within 100 air miles of the border and within fourteen days of their date of illegal entry regardless of the alien's arrival method. *Designating Aliens for Expedited Removal*, 69 Fed. Reg. 48,877-01 (Aug. 11, 2004) (the "2004 Designation"). The 2004 Notice explained that, to focus limited resources "upon unlawful entries that have a close spatial and temporal nexus to the border," the 2004 designation did not implement "the full nationwide expedited removal authority available to DHS." *Id.* at 48,879.

Fourth, in 2017, the Secretary extended all prior designations to Cuban nationals, who had previously been exempted from expedited removal. *See Eliminating Exception To Expedited Removal Authority for Cuban Nationals Encountered in the United States or Arriving by Sea*, 82 Fed. Reg. 4902-02 (Jan. 17, 2017).

Fifth, in 2019, the Acting Secretary of Homeland Security invoked Section 1225(b)(1)(A)(iii)(I) to designate as subject to expedited removal "aliens determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States, and who have not affirmatively shown, to the satisfaction of an immigration officer, that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility," who were not covered by previous designations. *Designating Aliens for Expedited Removal*, 84 Fed. Reg. 35,409-01 (July 23, 2019). In 2022, the 2019 Designation was rescinded, reducing the scope of expedited removal to that provided by the 2002, 2004, and 2017

Designations. *Rescission of the Notice of July 23, 2019, Designating Aliens for Expedited Removal*, 87 Fed. Reg. 16,022 (Mar. 21, 2022).

Most recently, on January 24, 2025, the Acting Secretary of Homeland Security published a Federal Register notice rescinding the 2022 Rescission Notice, 87 Fed. Reg. 16,022, and restoring the scope of expedited removal to "the fullest extent authorized by Congress." *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). The notice enabled DHS "to place in expedited removal, with limited exceptions, aliens determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown, to the satisfaction of an immigration officer, that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility," who were not covered by previous designations. *Id.* at 8139-40.

Here, Plaintiff falls within the 2004 Designation because she was detained *less than* 100 air miles from the border on the same day she crossed the border. Auer Decl. ¶¶ 5, 13. Put another way, Petitioner was apprehended by an immigration officer within 100 air miles of the border within 14 days of her entry. Thus, from the moment she was detained near the border on the same day she crossed the border, Petitioner has been subject to expedited removal under the 2004 Designation. 69 Fed. Reg. 48879 (2004). When ICE instituted expedited removal proceedings on October 6, 2025, it was under the 2004 Designation. Auer Decl. ¶ 13.

It is only the 2025 Designation that was stayed by the *Make the Road* decision. The *Make the Road* order unambiguously establishes that the stay *does not* apply to "previous designations by which DHS has applied expedited removal to noncitizens who . . . are detained within 14 days of arriving and within 100 miles of the border;" that carve-out includes the 2004 Designation pursuant to which ICE processed Petitioner for expedited removal. *Make the Road*, 2025 WL 2494908, at *8 (clarifying that the stay applies only to individuals "who are detained *more than* 100 miles from the border and who have been present in the country *for at least 14 days but less than two years*") (emphasis added); *see also* Auer Decl. ¶ 13. Thus, the *Make the Road* stay does not affect ICE's authority to commence expedited removal proceedings for individuals, like Petitioner, who fall within the 2004 Designation.

In suggesting that the *Make the Road* stay applies generally to "people who had been living in the United States for over 14 days but less than two years," ECF No. 34 ("Traverse") at 2, Plaintiff omits critical language that makes clear that the *Make the Road* decision does *not* apply to individuals like Plaintiff who were initially encountered and detained within 14 days of their arrival and are therefore subject to the 2004 Designation:

> Nothing in the Court's opinion, then, affects previous designations by which DHS has applied expedited removal to noncitizens who . . . are detained within 14 days of arriving and within 100 miles of the border. The *only* things challenged are the 2025 Designation and the Huffman Memorandum implementing that designation. The Court therefore only addresses the lawfulness of applying expedited removal to noncitizens who are detained more than 100 miles from the border and who have been present in the country for at least 14 days but less than two years.

Make the Road, 2025 WL 2494908, at *8 (emphasis in original).

Nor does the fact that Petitioner was not placed in expedited removal proceedings immediately after she was detained near the border on the same day of her entry into the United States mean that she somehow is no longer covered by the 2004 Designation. Petitioner has always been subject to expedited removal under a prior designation due to the timing and place of her initial encounter. Neither the 2004 Designation nor *Make the Road* carves out individuals from the 2004 Designation who are not immediately placed in expedited removal. *Make the Road* instead clarifies that "nothing" in the opinion "affects previous designations," including the 2004 Designation that applies to Petitioner. *Make the Road*, 2025 WL 2494908, at *8 (further specifying that the decision "*only* addresses the lawfulness of applying expedited removal to noncitizens who are detained more than 100 miles from the border and who have been present in the country for at least 14 days but less than two years"). To the contrary, the governing regulations authorize DHS to initiate expedited removal *at any time* for an individual—like Petitioner—who fit the criteria. *See* 8 C.F.R. § 235.3(b)(1)(ii) ("The Commissioner shall have the sole discretion to apply the provisions of section 235(b)(1) of the Act, *at any time*, to any class of aliens described in this section) (emphasis added).

Simply stated, the 2025 Designation—the only designation stayed by the *Make the Road* decision—was irrelevant to Petitioner's placement in expedited removal proceedings here, and therefore the stay on the 2025 Designation did not affect DHS's authority to place Petitioner in expedited removal

proceedings under the 2004 Designation. Petitioner's arguments to the contrary are untethered to the language and context of *Make the Road*.

IV. Conclusion

For the foregoing reasons, Respondents request that the Court discharge the Order to Show Cause and decline to issue sanctions.

DATED: February 12, 2026

Respectfully submitted,

CRAIG H. MISSAKIAN
United States Attorney

/s/ Jevechius D. Bernardoni
JEVECHIUS D. BERNARDONI
Assistant United States Attorney

Attorneys for Respondents