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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MARINA JIMENEZ GARCIA, Petitioner, v. SERGIO ALBARRAN[1], Field Office Director of the San Francisco Immigration and Customs Enforcement Office; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the United States Department of Homeland Security, PAMELA BONDI, Attorney General of the United States, acting in their official capacities, Respondents.	CASE No. 4:25-cv-06916-YGR **PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE**

[1] Sergio Albarran is Automatically Substituted as a Defendant in This Matter Pursuant to Rule 25(D) of the Federal Rules of Civil Procedure.

INTRODUCTION

From the day they arrested Petitioner at immigration court, Respondents' conduct in this case has reflected a disregard for Petitioner's dignity and human rights.[2] This conduct includes violating (1) Judge Eumi K. Lee's Order Granting the Temporary Restraining Order, (2) the Court's Order Granting Preliminary Injunction, and (3) Judge Jia M. Cobb's Order in *Make the Road New York*. The Court should thus hold Respondents in civil contempt.

ARGUMENT

I. Respondents violated the Order Granting TRO issued on August 17, 2025.

Respondents violated the Order Granting TRO issued on August 17, 2025, in both fact and spirit, by moving to dismiss Petitioner's removal proceedings on August 20, 2025 and then instituting expedited removal proceedings against Petitioner on October 6, 2025.

Petitioner arrived at immigration court on August 15, 2025 for her master calendar hearing. Docket 32 (Respondents' Return to Writ of Habeas Corpus) at 3. At the time, Respondents were engaged in an "aggressive new enforcement campaign targeting people who [were] in regular removal proceedings in immigration court." (Petition for writ of habeas corpus) at 8. "The first step of this enforcement operation typically t[ook] place inside the immigration court" where "DHS attorneys orally file[d] a motion to dismiss the proceedings." *Id.* "The next step of DHS's new campaign t[ook] place outside the courtroom…When an individual exit[ed] their immigration hearings, ICE officers—typically masked and in plainclothes—immediately arrest[e]d the person and detain[ed] them." *Id.* at 9. "Once the person ha[d] been transferred to a detention facility, the government place[d] the individual in expedited removal." *Id.*

[2] "[B]y shunting objections into the dead-end of legality, the administration obscures its grotesque abuse of power." *See* Joseph Margulies, *The Moral Stupefaction of the American Public*, Boston Review, https://www.bostonreview.net/articles/the-moral-stupefaction-of-the-american-public/.

1 Petitioner's case followed a slightly different trajectory because she is a monolingual
2 indigenous language speaker. Before the government attorney could move to dismiss her
3 immigration removal proceedings, the Immigration Judge continued her case because he could not
4 find a Mam interpreter. *See* Dkt. 5-1 (Declaration of Diana Mariscal) at 1. However, ICE agents still
5 arrested Petitioner as she exited the courtroom. *Id.* Petitioner filed a habeas petition and motion for
6 temporary restraining order that same day. Dkt. 32 at 3. Two days later, Judge Eumi K. Lee issued a
7 temporary restraining order. Dkt. 6 (Order Granting Temporary Restraining Order).
8
9 Judge Lee clearly stated that the TRO was granted "to preserve the status quo pending
10 further briefing and a hearing on this matter." *Id.* at 5. She elaborated that "[t]he status quo refers to
11 'the last uncontested status which preceded the pending controversy.'" *Id.* at 4 (internal citations
12 omitted). She specified that, here, the status quo meant restoring Petitioner to the "the moment prior
13 to her likely illegal detention." *Id.* The moment prior to Petitioner's detention, Petitioner was in full
14 removal proceedings and subject to discretionary detention under 8 U.S.C. § 1226(a). Dkt. 22
15 (Order Granting Preliminary Injunction) at 2. Anything less than that would not be the status quo.
16
17 On August 20, 2025, while the TRO was still in effect, "ICE filed, in immigration court, a
18 motion to dismiss the underlying immigration removal proceedings." Dkt. 32 at 3. On October 6,
19 2025, Respondents placed Petitioner in expedited removal proceedings under 8 U.S.C. § 1225(b)(1).
20 *Id.*
21
22 Respondents claim that they "cannot have reasonably understood Judge Lee's temporary
23 restraining order to forbid conduct that was never mentioned in that decision." Dkt. 36 (Response to
24 Order to Show Cause) at 3. However, this argument is unconvincing. If the status quo permitted
25 Respondents to engage in the conduct underlying the unlawful detention, then the term would have
26 little meaning. In addition, if the government had any doubt about the scope of the order, it could
27 have – and should have – sought clarification from the Court. "[A] party's subjective belief that
28 [they] w[ere] complying with an order ordinarily will not insulate [them] from civil contempt if that

belief was objectively unreasonable." *Epic Games, Inc. v. Apple Inc.*, 161 F.4th 1162, 1178–79 (9th Cir. 2025) (internal quotation and citation omitted).

Respondents also argue that the TRO 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." Response at 3–4. However, Judge Lee's reference to the status quo should have been enough. There is no "objectively reasonable" interpretation of preserving the status quo that would permit a party to weaken the other party's position by continuing to engage in the challenged conduct and then using that position against them. *See Taggart v. Lorenzen*, 587 U.S. 554, 557 (2019). But that is what happened here. Specifically, Respondents not only subjected Petitioner to expedited removal in violation of the TRO, but they used it as a reason to argue that the Court should deny the habeas petition in the merits briefing. Dkt. 32 at 4.

Moreover, Respondents argue that Judge Lee did not have jurisdiction to prevent the government from moving to dismiss the removal proceedings. Response at 4 (citing 8 U.S.C. § 1252(g); 8 U.S.C. § 1252(e); 8 U.S.C. § 1252(a)(2)(A).) However, if the government had arguments about jurisdiction, the proper course of action would be to raise them in the merits briefing of the habeas petition; not as a reason to ignore a court order.

Regardless, the government's jurisdiction arguments are without merit. The Supreme Court has "previously rejected as 'implausible' the Government's suggestion that §1252(g) covers 'all claims arising from deportation proceedings' or imposes "a general jurisdictional limitation." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020) (citing *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999).)

Here, although Petitioner's claims may "arise from" the government's decision to move to dismiss removal proceedings and institute expedited removal proceedings, the specific conduct Petitioner is challenging is the government's unilateral reclassification of her detention authority from 8 U.S.C. § 1226(a) to 8 U.S.C. § 1225(b). *See* Dkt. 34 (Petitioner's Traverse in support of

Petition for Writ of Habeas Corpus) at 7–8. This is similar to the petitioner in *Noori v. Larose*, who challenged "the legality of the revocation of humanitarian parole in violation of the law and dismissal of ongoing removal proceedings without due process." No. 25-cv-1824-GPC-MSB, 2025 U.S. Dist. LEXIS 194953, at 16 (S.D. Cal. Oct. 1, 2025). There, the court found the § 1252(g) bar did not apply because "agency action is not 'specified ... to be in the discretion' of the official where the action 'was not performed in accordance with the mandatory ... procedures.'" *Id.* (quoting *Sharkey v. Quarantillo*, 541 F. 3d 75, 86 (2d Cir. 2008).) Here, Petitioner is also not challenging Respondents' discretion to place her in expedited removal; rather she is challenging Respondents' arbitrary revocation of her protected liberty interest. *See Jaraba Oliveros v. Kaiser*, No. 25-cv-07117-BLF, at *11 (N.D. Cal. Sept. 18, 2025).

Similarly, § 1252(e) permits "[c]hallenges on validity of the system," including "whether the statute's expedited removal section, or any regulation implementing it, is constitutional." *Coal. for Humane Immigrant Rights v. Noem*, No. 25-cv-872 (JMC), 2025 U.S. Dist. LEXIS 148615, at *12 (Aug. 1, 2025). Petitioner is also not challenging a final expedited removal order under § 1252(a)(2)(A). There are thus no jurisdiction bars that apply.

Respondents also argue that Petitioner's prayer for relief did not include "a request for injunctive relief prohibiting Respondents from moving to dismiss removal proceedings or placing Petitioner in expedited removal proceedings." Response at 5. However, Petitioner asked the Court to "[d]eclare that Petitioner's arrest and detention violate the Due Process Clause of the Fifth Amendment." Subjecting Petitioner to expedited removal falls within this purview because Petitioner would not be subject to mandatory detention under § 1225(b)(1) if the government did not place her in expedited removal. Petitioner also requested that the Court "[g]rant such further relief as the Court deems just and proper," which includes Judge Lee's order to preserve the status quo. Pet. at 15. In sum, the Court should thus find Respondents violated the Order Granting TRO issued on August 17, 2025.

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II. Respondents violated the Order Granting Preliminary Injunction issued on August 29, 2025.

Respondents also violated the Order Granting Preliminary Injunction issued on August 29, 2025, in both fact and spirit, by moving to dismiss Petitioner's removal proceedings on August 20, 2025 and then instituting expedited removal proceedings against Petitioner on October 6, 2025.

The Court's order was crystal clear. The Court unambiguously stated: "the government cannot now proceed under Section 1225, but must maintain its course under Section 1226 which provides protected liberty interests." Dkt. 22 at 9.

Respondents argue that the Court's order "does not prohibit Respondents from placing Petitioner in expedited removal." Response at 7. However, the above text undermines that claim. There is thus no "objectively reasonable basis" for Respondents to conclude that they were permitted to proceed under Section 1225. *See Taggart v. Lorenzen*, 587 U.S. at 557.

In the rest of this section, Respondents offer no new arguments for why they did not violate the Court's preliminary injunction order other than what has been addressed above. However, Respondents are on even shakier ground here given the clarity of the Court's order. Respondents thus violated the Order Granting Preliminary Injunction issued on August 29, 2025.

III. Respondents violated Judge Jia M. Cobb's order issued on August 29, 2025 in *Make the Road New York*

Respondents also violated the federal district court's stay in *Make the Road New York v. Noem* by placing Petitioner in expedited removal proceedings within 14 days and two years after she entered the United States, which is covered by the 2025 Designation. *See* No. 25-cv-190 (JMC), 2025 U.S. Dist. LEXIS 169432, at *15 (D.D.C. Aug. 29, 2025) (citing Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025).)

The *Make the Road* stay challenges the expansion of expedited removal to apply nationwide to noncitizens "who have been continuously present in the United States for at least 14 days but for less than two years" under the 2025 Designation. *See id.*

Respondents argue they placed Petitioner in expedited removal proceedings pursuant to the 2004 Designation, which authorizes DHS to initiate expedited removal only against people encountered within 100 miles of a U.S. international land border and within 14 days of their initial entry into the United States. *See* Response at 8 (referencing *Designating Aliens for Expedited Removal*, 69 Fed. Reg. 48877 (Aug. 11, 2004)).

Under the expedited removal statute, the DHS Secretary may designate and apply expedited removal to noncitizens who "ha[ve] not been admitted or paroled into the United States, and who ha[ve] not affirmatively shown, to the satisfaction of an immigration officer, that the [noncitizen] has been physically present in the United States continuously for the 2-year period *immediately prior to the date of the determination of inadmissibility* under this subparagraph." 8 U.S.C. § 1225(b)(1)(A)(i), (b)(1)(A)(iii)(II) (emphasis added).

The determination of inadmissibility is at the heart of the expedited removal process, in which a DHS officer is tasked with the solemn role of objective adjudicator traditionally afforded to judges or other neutral arbiters, without judicial oversight. A proper inadmissibility determination is a condition precedent for DHS to initiate expedited removal proceedings. *See id.*

To make an inadmissibility determination under § 1225(b)(1)(A)(iii)(II), DHS must follow the multi-step implementing regulations. *See* 8 C.F.R. § 235.3(b)(2). Those regulations require DHS to take testimony in the form of an interview recorded by the officer as a "sworn statement" by the noncitizen regarding all pertinent "facts of the case" on Form I-867A&B; "advise" the noncitizen of the charges against them on a Form I-860, the Notice and Determination of Expedited Removal; serve those forms on the noncitizen; and screen the noncitizen for a credible fear of persecution. *See id.*; *see also* Customs and Border Protection Inspector's Field Manual, Chapter 17.15 (Feb. 10,

2006).[3] The regulations make clear that DHS "shall" take these steps "[i]n every case in which the expedited removal provisions will be applied." 8 C.F.R. § 235.3(b)(2).

DHS does not take the steps needed to make a determination of inadmissibility under § 1225(b)(1)(A)(iii)(II) when it issues an NTA in immigration court. It does not take a sworn statement or issue Form I-860. Rather, an NTA contains only an allegation of inadmissibility, see Form I-862 Notice to Appear, that can be disputed by the noncitizen in immigration court, *see* 8 C.F.R. § 1240.8. An NTA is thus a charge of inadmissibility, not a determination of inadmissibility. *See* 8 U.S.C. § 1229(a)(1).

Here, DHS did not take the steps needed to make a determination of inadmissibility under § 1225(b)(1)(A)(iii)(II) within 14 days of encountering Petitioner at the border. DHS did not make an inadmissibility determination until October 6, 2025, after Petitioner had been living in the United States for one year and ten months. *See* Exhibit 1, Form I-860 (Determination of Inadmissibility). Respondents thus missed their 14-day window to initiate expedited removal proceedings against Petitioner under the 2004 Designation. *See* § 1225(b)(1)(A)(iii)(II).

The 2004 Designation allows DHS to exercise "only that portion of the authority granted by the statute that bears close temporal and spatial proximity to illegal entries at or near the border." *See* 69 Fed. Reg. 48879. It is meant to be "employed against those [noncitizens] who are apprehended immediately proximate to the land border and have negligible ties or equities in the U.S." *Id.* If DHS can apply the 2004 Designation anywhere at any time, then the designation would be meaningless. Applying expedited removal without any regard for temporal or geographical locations also implicates due process concerns, which is the reason for the *Make the Road Stay*. *See* 2025 U.S. Dist. LEXIS 169432, at *15. Respondents' initiation of expedited removal proceedings against Petitioner thus falls within the 2025 Designation. *See id.*

[3] Am. Immigr. Laws. Ass'n, CBP Inspector's Field Manual (Feb. 10, 2006), https://perma.cc/WW3D-W3HW.

Accordingly, Respondents violated Judge Jia M. Cobb's order issued on August 29, 2025 in *Make the Road New York*. *See id.* All told, the Court should hold Respondents in contempt for violating the three orders in fact and spirit.

CONCLUSION

For the foregoing reasons, the Court should hold Respondents in civil contempt.

Date: February 13, 2026

Respectfully Submitted,

/s/ Jordan Weiner
Jordan Weiner