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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
Phoenix Division

IBRAKHIM BOLOTKANOV, an adult,

Petitioner,

v.

JOHN CANTU, Phoenix 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.

Agency No. AXXX-XXX-956

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Bolotkanov is a national of Kyrgyzstan who opposes the Kyrgyz government.
2. Fearing for his life, he came to the United States to seek protection.
3. Petitioner Bolotkanov was released into the United States by Respondents; Petitioner then applied for asylum before the U.S. immigration authorities. Respondents commenced removal proceedings against Petitioner in immigration court, entitling Petitioner to present an asylum claim with the due process rights under 8 U.S.C. § 1229a.
4. Yet, in a deceptive sleight of hand, Respondents now seek to eject Petitioner from Petitioner's own asylum case; to detain Petitioner. Respondents do so based not on Petitioner's personal circumstances or individualized facts but because of Respondents' interpretation of President Trump's whim and categorical determination that, the Fifth Amendment notwithstanding, noncitizens are not entitled to due process.
5. But Respondents cannot evade the law so easily. The law which they purport to use to rapidly remove Petitioner does not authorize their actions, and the U.S. Constitution requires the Respondents provide Petitioner at minimum with the rights available to Petitioner when Petitioner filed an application for asylum.

6. Accordingly, to vindicate Petitioner's rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner asks this Court to find that Respondents' attempts to detain and deport Petitioner are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing Petitioner's transfer out of this district.

JURISDICTION

7. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq..
8. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
9. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

VENUE

10. Venue is proper because Petitioner is in Respondents' custody in Eloy, Arizona. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).

11. For these same reasons, divisional venue is proper under LRCiv 5.1(b).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

12. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

13. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

14. Petitioner is "in custody" for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

PARTIES

15. Petitioner is a 40-year-old citizen of Kyrgyzstan. Petitioner is present within the state of Arizona as of the time of the filing of this petition.

16. Respondent John Cantu is the Field Office Director for the Phoenix Field Office, Immigration and Customs Enforcement and Removal Operations ("ICE"). The Phoenix Field Office is responsible for local custody decisions

relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens. Respondent Cantu is a legal custodian of Petitioner.

17. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent John Cantu and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Noem is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States.

19. Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

20. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to noncitizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens.

21. Respondent U.S. Department of Homeland Security is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

22. This action is commenced against all Respondents in their official capacities.

LEGAL FRAMEWORK

Detention under 8 U.S.C. § 1226(a) and § 1225(b)(2)

23. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.

24. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

25. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

26. Last, the Act also provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C.§ 1231(a)–(b).

27. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

28. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1,139 Stat.

3 (2025).

29. Following enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

30. Thus, in the decades that followed, most people who entered without inspection—unless they were subject to some other detention authority—received bond hearings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

31. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, which "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

32. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that,

by default, such people are afforded a bond hearing under subsection (a). Section 1226, therefore, leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

33. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C.§ 1225(b)(2)(A).

34. The only exception permitting the release of aliens detained under § 1225(b) is the parole authority provided by § 1182(d)(5)(A). Parole into the United States employs a legal fiction whereby noncitizens are physically permitted to enter the country but are nonetheless "treated," for legal purposes, "as if stopped at the border." *Department of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020), *quoting Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953).

35. Noncitizens paroled into the United States are in a fundamentally different and less protected position than "those who are within the United States after an entry, irrespective of its legality." *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958). Individuals detained as inadmissible upon inspection at the border can only be paroled into the United States "'for urgent humanitarian reasons or significant public benefit.'" *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018), *quoting* 8 U.S.C. § 1182(d)(5)(A), see also *Rocha Rosado v.*

Figueroa, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025). Because there is no record finding that Bolotkanov was released into the United States for urgent humanitarian reasons or significant public benefits, his "discretionary" release was a conditional parole, or release on recognizance.

36. Release on recognizance is not a form of "parole into the United States" based on "humanitarian" grounds or "public benefit," but rather a form of "conditional parole" from detention upon a charge of removability, authorized by 8 U.S.C. 1226(a)(2)(B). *See Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115-16 (9th Cir. 2007) (holding a non-citizen released on an "Order of Release on Recognizance" must necessarily have been detained and released under § 1226, *inter alia* because they were not an "arriving alien" under the regulations governing § 1225).

37. The distinction between parole pursuant to § 1225 and conditional parole pursuant to § 1226 reflects more than an immigration officer's choice of paperwork. Although both forms of relief are styled as "parole," these two mechanisms serve fundamentally different purposes.

38. Parole "into the United States" under § 1182(d)(5)(A), permits a noncitizen to physically enter the country, subject to a reservation of rights by the government that it may continue to treat the non-citizen "as if stopped at the border." *Thuraissigiam*, 591 U.S. at 139.

39. Conditional parole provides a mechanism of release on recognizance,

without payment of a bond, at the discretion of the government. *See Rivera v. Holder*, 307 F.R.D. 539, 553 (W.D. Wash. 2015).

40. The record demonstrates that in October of 2018, Bolotkanov was placed in removal proceedings pursuant to 8 U.S.C. § 1229 by a Notice to Appear. Because Petitioner was placed into removal proceedings pursuant to § 1229, an alternative process to that stated in § 1225, his release in 2018 and his current detention are pursuant to § 1226, not § 1225. This conclusion is supported by the fact that the DHS Officer ordering Petitioner detained on May 13, 2025, cited INA § 236, i.e., 8 U.S.C. § 1226.

41. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner.

FACTUAL BACKGROUND

42. Petitioner is a citizen and national of Kyrgyzstan born on [redacted] 1985.

43. Petitioner was threatened by the Kyrgyz government for his political beliefs.

44. Fearing for his life, he sought protection in the United States.

45. On or about December 23, 2017, Petitioner came to the San Ysidro Port of entry in California to seek asylum. Respondents released him into the United States on his own recognizance, based on Petitioner's individual facts and circumstances under 8 U.S.C. § 1182(d)(5).

46. On or about November 2, 2018, Respondents initiated removal proceedings against Petitioner under 8 U.S.C. § 1229a in Lumpkin, Georgia and filed his Notice to Appear.

47. Respondents alleged that Petitioner was inadmissible to the United States under 8 U.S.C. 1182(a)(7)(A)(i)(I) and commanded that Petitioner appear for a hearing in the immigration court in Lumpkin, Georgia at an unknown date and unknown time.

48. After his release, Petitioner moved to reside in California. Petitioner successfully moved to change the venue of his immigration court case to Van Nuys, California.

49. Petitioner applied for asylum before the Van Nuys Immigration Court on or about May 7, 2018.

50. On [redacted] 2019, Petitioner's first U.S. citizen child was born in California. On [redacted] 2021, Petitioner's second U.S. citizen child was born in California.

51. Petitioner appeared for his scheduled immigration court hearing on January 10, 2024, where an Immigration Judge ("IJ") terminated the removal proceedings upon Petitioner's motion based on a defective Notice to Appear pursuant to *Matter of Fernandes*, 28 I&N, Dec.605 (BIA 2022).

52. On April 2, 2024, Petitioner filed his second application for Asylum, Withholding of Removal, Form I-589, which remains pending as of the filing of this petition (Receipt number: ZLA2472983840).

53. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order (EO) setting out a series of interior

immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The "Protecting the American People Against Invasion" EO instructs the DHS Secretary "to take all appropriate action to enable" ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures including through the use of mass detention.

54. On January 21, 2025, Acting Deputy Secretary of DHS Benjamin Huffman issued for public inspection and effective immediately a designation expanding the scope of expedited removal to apply nationwide and to certain noncitizens who are unable to prove they have been in the country continuously for two years. On January 24, 2025, DHS published a Notice that expanded the application of expedited removal. Office of the Secretary, Dep't of Homeland Security, *Designating Aliens for Expedited Removal*, 15 Fed. Reg. 8139 ("January 2025 Designation"). The designation was "effective on" January 21, 2025.

55. The January 2025 Designation expands the pool of noncitizens who can be subjected to the summary removal process substantially to include noncitizens who are apprehended anywhere in the United States and who have not been in the United States continuously for more than two years. *Id.* at 8140.

56. The January 2025 Designation does not state that it applies to noncitizens

who were in the United States before its effective date.

57. On May 13, 2025, while driving his truck, Petitioner was arrested near Andrade, CA and placed in custody on a warrant issued under Section 236.

58. On May 19, 2025, the DHS issued a new NTA charging the respondent under §212(a)(7)(A) and initiated removal proceedings.

59. On May 19, 2025, Petitioner, through his Counsel, filed a request for bond redetermination.

60. On May 30, 2025, Petitioner attempted to set a Bond Hearing before the Eloy Immigration Court. However, the IJ denied jurisdiction over Petitioner's case, claiming that he was an "arriving alien," meaning "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport." 8 C.F.R. § 1001.1 (q).

61. Petitioner, through Undersigned Counsel, objected to the Immigration Judge's finding, arguing that the hearing was for a custody redetermination, and that his custody was not as an arriving alien, since he had been living in the United States for eight years prior to detention. Petitioner also cited documents showing that he was no longer an arriving alien; documents detailing the circumstances surrounding his detention; and the "Notice of

Custody Determination" issued by the Department of Homeland Security, which clearly does not identify him as an arriving alien. Despite these assertions, the Immigration Judge disregarded the latter document after DHS's counsel affirmed that it was a "clerical typo."

62. On May 30, 2025, during the master hearing held concurrently with the bond hearing, Respondents moved to dismiss Petitioner's case entirely, and the IJ dismissed the proceedings. Respondents stated that they sought to terminate the case to place Petitioner in the expedited removal proceedings.

63. On June 2, 2025, Petitioner filed an appeal with the BIA. As of the date of the filing of this petition, the BIA has not issued any decision.

64. On information and belief, Petitioner avers that Respondents concealed the basis for dismissal from the immigration court and from Petitioner because the purpose was to divest Petitioner of Petitioner's due process rights in Petitioner's properly filed asylum application.

65. On information and belief, Respondents are using the immigration detention system as a means to punish individuals for asserting rights under the Refugee Act.

CLAIMS FOR RELIEF
COUNT ONE
Violation of Fifth Amendment Right to Due Process

66. Petitioner restates and realleges all paragraphs as if fully set forth here.

67. Petitioner's detention by DHS violates his rights under the Due Process

Clause of the Fifth Amendment to the United States Constitution.

68. Immigration detention violates due process if it is not reasonably related to the purpose of ensuring a noncitizen's removal from the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92, 699-700 (2001); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Where removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and is unlawful. *See id.* at 699-700.

69. The Supreme Court has also established that noncitizens in deportation or removal proceedings are just as entitled to due process protections as anyone else. *See Zadvydas*, 533 U.S. at 690 (2001) ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]" any "person . . . of . . . liberty . . . without due process of law.'").

70. Here, there is no reason to justify Petitioner's detention. Petitioner has been living in the United States for eight years, where he has very strong ties to the community (two U.S. citizen children).

71. Petitioner has also been unable to have a bond hearing before an Immigration Court, because the Court previously denied jurisdiction to hear his custody redetermination request. Therefore, Petitioner is being held in custody without the possibility of having his case reviewed by an Immigration Judge – despite not being subject to mandatory detention.

72. In *Jennings v. Rodriguez*, the Supreme Court makes a clear distinction

between noncitizens who are detained while entering the country and noncitizens who are already present in the United States. *Jennings v. Rodriguez*, 804 F. 3d 106. The opinion of the Supreme Court recognizes that "§ 1226 applies to aliens already present in the United States. . .." and that "§ 1226(a) authorizes the Attorney General to arrest and detain an alien 'pending a decision on whether the alien is to be removed from the United States.'" § 1226(a). As long as the detained alien is not covered by § 1226(c), the Attorney General "may release" the alien on "bond . . . or conditional parole." § 1226(a). Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention. *See* 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1).

73. The Ninth Circuit has long recognized that individuals held in detention under § 1226(a) have the right to a bond hearing in which the government needs to show by clear and convincing evidence that continued detention is justified. *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022).

74. Here, Petitioner has been living in the United States for eight years prior to his detention, and the reason for his current detention is not related to his first detention as an "applicant for admission." In the present case, there is not the issue of a continued detention of someone who is trying to enter the country, but rather a new detention – on a new warrant – for someone who has been in the country for eight years.

75. The Notice of Custody Determination issued by the Department of

Homeland Security states that the Petitioner was detained under Section 236 of the Immigration and Nationality Act. The document clearly shows that Petitioner is detained under §1226(a).

76. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they previously entered the country without being admitted. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231. *See Rocha Rosado v. Figueroa*, 2025 WL 2349133, (D. Ariz. Aug. 13, 2025).

77. Petitioner was placed in removal proceedings pursuant to 8 U.S.C. § 1229 by a Notice to Appear in October of 2018. Because Petitioner was placed into removal proceedings pursuant to § 1229, an alternative process to that stated in § 1225, his release in 2018 and his current detention are pursuant to § 1226, not § 1225. This conclusion is supported by the fact that the Deportation Officer ordering Petitioner detained on May 13, 2025, cited INA § 236, i.e., 8 U.S.C. § 1226.

78. The only exception permitting the release of aliens detained under § 1225(b) is the parole authority provided by § 1182(d)(5)(A). Parole into the United States employs a legal fiction whereby noncitizens are physically permitted to enter the country but are nonetheless "treated," for legal purposes, "as if stopped at the border." *Department of Homeland Sec. v. Thuraissigiam*, 591

U.S. 103, 139 (2020), *quoting Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953).

79. Noncitizens paroled into the United States are in a fundamentally different and less protected position than "those who are within the United States after an entry, irrespective of its legality." *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958). Individuals detained as inadmissible upon inspection at the border can only be paroled into the United States "'for urgent humanitarian reasons or significant public benefit.'" *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018), *quoting* 8 U.S.C. § 1182(d)(5)(A). Because there is no evidence that Petitioner was released into the United States for urgent humanitarian reasons or significant public benefits, his "discretionary" release must be construed as conditional parole, or release on recognizance.

80. Release on recognizance is not a form of "parole into the United States" based on "humanitarian" grounds or "public benefit," but rather a form of "conditional parole" from detention upon a charge of removability, authorized by 8 U.S.C. 1226(a)(2)(B). *See Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115-16 (9th Cir. 2007) (holding a non-citizen released on an "Order of Release on Recognizance" must necessarily have been detained and released under § 1226, inter alia because they were not an "arriving alien" under the regulations governing § 1225); *Rocha Rosado v. Figueroa*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025).

81. Parole "into the United States" under § 1182(d)(5)(A), permits a non-citizen

to physically enter the country, subject to a reservation of rights by the government that it may continue to treat the non-citizen "as if stopped at the border." *Thuraissigiam*, 591 U.S. at 139.

82. Conditional parole provides a mechanism of release on recognizance, without payment of a bond, at the discretion of the government. *See Rivera v. Holder*, 307 F.R.D. 539, 553 (W.D. Wash. 2015).

83. The record regarding Bolotkanov's lack of detention during his removal proceedings beginning in 2018, after inspection at the border, through May of 2025, can only be construed as demonstrating that he was conditionally paroled into the United States. *See Matter of Cabrera-Fernandez*, 28 I.&N. Dec. 747, 749 (B.I.A. 2023) (holding an immigration judge erred in treating release on recognizance of noncitizens "detained soon after their unlawful entry" as constructive humanitarian parole where the government had not followed the "procedures for parole under [section 1182(d)(5)]"). *See also Martinez v. Hyde*, ___ F. Supp. 3d ___, No. CV 25-11613, 2025 WL 2084238, at *3-4 (D. Mass. July 24, 2025).

84. Given the fact Bolotkanov was "present in the United States" long before he was taken into custody a second time in 2025 (the first time being at the border in 2017), it would make no sense to talk about admitting him into the United States or allowing him to "enter" the United States in 2025. Petitioner was already in the U.S. for eight years, and he has been in the U.S. with the knowledge and approval of the Department of Homeland Security.

85. In contrast to Section 1225, Section 1226(a) clearly provides that the Attorney General or their representative "may release" a noncitizen who is inadmissible on "bond … or conditional parole." 8 U.S.C. § 1226(a)(1)-(2).

86. Therefore, because Petitioner's presence in the United States after his inspection and release into the United States in February of 2018, and after his Notice to Appear hearing, has been on a conditional parole pursuant to § 1226, the IJ's 2025 determination that he was without jurisdiction to reconsider Petitioner 's detention, and Petitioner 's detention itself in the absence of a bond hearing to determine if he poses a danger to community or a flight risk, violated his Fifth Amendment Due Process rights under the Constitution.

COUNT TWO

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A). Not in Accordance with Law and in Excess of Statutory Authority Violation of 8 C.F.R. § 239.2(c)

87. Petitioner restates and realleges all paragraphs as if fully set forth here.

88. Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "not in accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction, authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

89. Once a removal proceeding has been initiated, regulations enumerate the reasons for which proceedings may be dismissed at 8 C.F.R. § 239.2(a). In considering a motion to dismiss, the Immigration Judge must make "an informed adjudication . . . based on an evaluation of the factors underlying the [DHS] motion." *Matter of G-N-C-*, 22 I&N Dec at 284.

90. The initiation of expedited removal proceedings is not an enumerated ground upon which a removal proceeding may be dismissed.

91. Under the APA, an agency must provide "reasoned explanation for its action" and "may not depart from a prior policy sub silentio or simply disregard rules that are still on the books." *FCC v. Fox Television Stations*, Inc., 556 U.S. 502, 515 (2009).

92. On information and belief, Respondents have decided to dismiss Petitioner's removal proceedings because of their intent to eliminate the due process rights available to Petitioner in § 1229a removal proceedings. This basis is not among the reasons to seek dismissal permitted by 8 C.F.R. § 239.2(a).

93. In deciding to dismiss Petitioner's removal proceedings in order to subject Petitioner to expedited removal, Respondents further violated the APA by "entirely fail[ing] to consider an important aspect of the problem" – namely, the important procedural rights that Petitioner relied on in § 1229a immigration court proceedings. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also Dep't of Homeland Sec. v. Regents of the Univ. of California,* 591 U.S. 1, 24-33

(2020) (holding that rescission of immigration policy without considering "particular reliance interests" is arbitrary and capricious in violation of the APA).

94. Because the dismissal of Petitioner's § 1229a proceedings was not made in furtherance of an enumerated reason set forth in the regulations, and because Respondents failed to consider Petitioner's reliance on the procedural rights of § 1229a immigration proceedings, Respondents' use of the January 2025 expedited removal designation is unlawful.

COUNT THREE

Violation of Fifth Amendment Right to Due Process

Procedural Due Process

95. Petitioner restates and realleges all paragraphs as if fully set forth here.

96. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

97. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

98. While asylum is a discretionary benefit, the right to apply is not. 8 U.S.C.§ 1158(a)(1). Any 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." *Id.*

99. Because the denial of the right to apply for asylum can result in serious harm or death, the statutory right to apply is robust and meaningful. It includes the right to legal representation, and notice of that right, *see id.* §§ 1229a(b)(4)(A), 1362, 1158(d)(4); the right to present evidence in support of asylum eligibility, *see id.* § 1158(b)(1)(B); the right to appeal an adverse decision to the Board of Immigration Appeals and to the federal circuit courts, *see id.* §§ 1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a decision determining removability, *see id.* § 1229a(c)(6)-(7).

100. Expedited removal, in contrast, severely limits the availability of such rights.

101. Interviews occur on an exceedingly fast timeline; review of a negative interview decision by an immigration judge must occur within seven days of the decision. *See* 8 C.F.R. § 1003.42.

102. While there is a right to "consult" with an attorney or another person about the credible fear interview process, *see* 8 U.S.C. § 1225(b)(1)(B)(iv) *and* 8 C.F.R. §§ 208.30(d)(4), 235.3(b)(4)(i)(B), (ii), the consultation "shall not unreasonably delay the process." The consultant may be "present" during the interview but may only make a "statement" at the end of the interview *if*

permitted by the asylum officer. 8 C.F.R. § 208.30(d)(4). The immigrant subject to expedited removal may present evidence "if available", *id.* —often an impossibility given the fast timeline and the default of detention during the process. *See generally* Heidi Altman, et al., *Seeking Safety from Darkness: Recommendations to the Biden Administration to Safeguard Asylum Rights in CBP Custody*, Nov. 21, 2024, https://www.nilc.org/wp-content/uploads/2024/11/NILC_CBP-Black-Hole-Report_112124.pdf (describing the obstruction of access to counsel for people undergoing credible fear screenings in Customs and Border Protection custody).

103. Review of a negative credible fear decision by an immigration judge is limited. "A credible fear review is not as exhaustive or in-depth as an asylum hearing in removal proceedings," and there is no right to submit evidence, as it may be admitted only at "the discretion of the immigration judge." Immigration Court Practice Manual, Chpt. 7.4(d)(4)(E). After denial of a credible fear interview and affirmance by a judge, removal is a near certainty; the immigrant is ineligible for other forms of relief from removal.

104. In sum, applying for asylum in removal proceedings comes with a panoply of greater protections when compared with seeking asylum in expedited removal. *See Immigrant Defenders Law Center v. Mayorkas*, 2023 WL 3149243, at *29 (C.D. Cal. Mar. 15, 2023) ("Individuals in regular removal proceedings enjoy far more robust due process protections [than

those in expedited removal] because Congress has conferred additional statutory rights on them.").

105. Here, Respondents deprived Petitioner of the bundle of rights associated with his pending asylum application. Because of his legal interest in his pending asylum application, this violated due process. *See generally Mathews v. Eldridge,* 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

COUNT FOUR

Violation of Fifth Amendment Right to Due Process

Illegal Retroactive Application of Expedited Removal Designation

106. Petitioner restates and realleges all paragraphs as if fully set forth here.

107. Administrative rules "will not be construed to have retroactive effect unless their language requires this result." *Landgraf v. USI Film Products*, 511 U.S. 244, 272 (1994). When a "new provision attaches new legal consequences to events completed before its enactment" the new provision is not retroactive unless it is unmistakably clear. *Id.* at 270.

108. Applying the January 2025 expedited removal designation to Petitioner's entry to the United States to seek asylum would attach new legal consequences, including the loss of significant rights related to Petitioner's right to seek asylum.

109. The January 2025 designation does not unmistakably apply to individuals who entered the United States prior to its effective date of January 21, 2025.

Office of the Secretary, Dep't of Homeland Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139. The designation's language thus does not "require that it be applied retroactively." *See INS v. St Cyr*, 533 U.S. 289, 291 (2001).

110. Nor does the statutory language that the designation purports to derive from, 8 U.S.C. § 1225(b)(1)(A)(iii), include any language indicating Congressional intent to allow retroactive effect. *See St. Cyr*, 533 U.S. at 316 (requiring statutory language to be "so clear that it could sustain only one interpretation").

111. At the time of Petitioner's entry on or about December 23, 2017, the only individuals who could be placed in expedited removal proceedings were individuals "encountered within 100 air miles of the border and within 14 days of their date of entry." *See* Office of the Secretary, Dep't of Homeland Security, Rescission of the Notice of July 23, 2019, Designating Aliens for Expedited Removal, 87 Fed. Reg. 16022 (Mar. 21, 2022). To the extent that Respondents ever had the legal authority to reclassify Petitioner from § 1229a proceedings to expedited removal proceedings, that authority expired 14 days after Petitioner's entry date.

112. Accordingly, Respondents are unlawfully subjecting Petitioner to expedited removal.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the

following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that Petitioner's re-detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;

(4) Declare that Respondents' application of the January 2025 Designation to Petitioner is illegal;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;

(6) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;

(7) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(8) Grant any further relief this Court deems just and proper.

Dated: August 20, 2025

/s/ Eli Goldmann
Eli Goldmann, OSB# 200145
6664 Coral Springs Cir
Las Vegas, NV 89108
Telephone: 503-893-9243
Attorney for Petitioner

STATEMENT UNDER 28 U.S.C. § 2242

I, Eli Goldmann, attorney for the petitioner in the above-entitled proceeding, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Petition for Writ of Habeas Corpus and, based on information and belief and records reasonably available to me, verify that its contents are true and correct to the best of my knowledge.

Date: August 20, 2025

/s/ Eli Goldmann
Eli Goldmann
Attorney for Petitioner