

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
El Paso Division**

Enzzo Enmanuel de Jesus Lopez-Arevalo,

Petitioner,

v.

MARISA FLORES, El Paso Field Office
Director, Immigration and Customs
Enforcement and Removal Operations
("ICE/ERO"); TODD LYONS, Acting
Director of Immigration Customs and
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, *in their official capacities*,

Respondents.

Case No. 3:25-cv-00337-KC

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS AND REQUEST
FOR EMERGENCY TEMPORARY
RESTRAINING ORDER**

ORAL ARGUMENT REQUESTED

Expedited Hearing Requested

VERIFIED AMENDED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Enzzo Enmanuel de Jesus Lopez-Arevalo ("Petitioner" or "Mr. Lopez") came to this country fleeing Venezuelan security forces and government-affiliated gangs who targeted him for protesting against Venezuelan President Nicolas Maduro. Petitioner was released as an alternative to detention from immigration custody upon entry and eventually applied for asylum. Only years after Petitioner entered the United States and was released, and over a year after he initially applied for asylum, Respondents commenced removal proceedings against him in immigration court. On August 8, 2025, Petitioner duly showed up for his day in court. At that

hearing, the Government dismissed the removal case against him. However, just outside the courtroom, Respondents detained Petitioner and sent him to “Alligator Alcatraz,” a detainment facility in southern Florida. Shortly thereafter, Petitioner was transferred to the El Paso Services Processing Center in El Paso, Texas. Confusion, subsequently, followed over Petitioner’s location. At the time of the initial habeas petition’s filing, counsel was unable to verify which detention facility Petitioner was being held at. The online detainee locator stated that Petitioner was held at the El Paso Enhanced Hardened Facility. Counsel had also been previously informed, on August 22, Petitioner was detained at a “soft-sided” facility in El Paso, but there was no publicly available information on any such facility and, thus, could not be verified. The petition, therefore, stated that Petitioner was at El Paso Services Processing Center in El Paso, Texas. Now that counsel has open communication with ICE and the ability to contact Petitioner, counsel can state that after being moved between several detention facilities in and around El Paso, Petitioner is now at Camp East Montana at Fort Bliss in El Paso, Texas.

2. Petitioner is in custody despite having done everything that was required of him. He filed his asylum application, he paid his fees, he disclosed any derogatory information, and he waited for the United States Citizenship and Immigration Services (“USCIS”) to make a decision on his case.

3. On September 4, 2025, incident to a bond review hearing, the Government disclosed a Notice of Order of Expedited Removal for Petitioner, dated August 21, 2025. *See* Exhibit 5 to Petitioner’s September 4, 2025 Reply (ECF No. 18) filed in the instant proceedings. The Notice of Order of Expedited Removal purports to rely on the Government’s expedited removal authority pursuant to section 235(b)(1) of the Immigration and Nationality Act, codified at 8 U.S.C. § 1225(b)(1), to initiate expedited removal proceedings against Petitioner. The August

21, 2025 Notice is not a Final Order of expedited removal, since it has not been executed by an applicable supervisory official. The Notice states that Petitioner entered the United States at or near Calexico, CA, on or about August 8, 2022—more than three years prior to the Government’s initiation of expedited removal proceedings on August 21, 2025.

4. USCIS is part of the same agency as Immigration and Customs Enforcement (“ICE”): the Department of Homeland Security (“DHS”). Despite this, ICE now has detained and transferred Petitioner away from his home of the last several years so that they can deport him. ICE detained Petitioner, prepared him for removal, and, on information and belief, coerced him into signing deportation papers, despite Petitioner’s having made an asylum application and a Board of Immigration Appeals (“BIA”) appeal challenging his current detention. ICE has also ignored advocacy from the Maryland Office of Attorney General to release him as an essential witness for an ongoing investigation and prosecution of labor traffickers who unlawfully trafficked Petitioner.

5. Non-citizens are entitled to due process under the U.S. Constitution, and Respondents cannot evade the law. The U.S. Constitution requires that Respondents provide *at least* the rights available to Petitioner when he filed his application for asylum.

6. Accordingly, to vindicate Petitioner’s rights, this Court should grant the instant petition for a writ of habeas corpus and maintain the emergency Temporary Restraining Order (“TRO”) issued by this Court on August 26, 2025, stopping the planned deportation while this petition is pending. This action asks this Court to find that Respondents’ actions were arbitrary, capricious, an abuse of discretion, and not in accordance with law, and to immediately issue an order preventing Petitioner’s transfer out of this district and out of the country. It further asks this Court to order Petitioner’s immediate release from ICE custody, since ICE lacks any statutory

authorization to proceed under expedited removal proceedings, and has voluntarily dismissed the ordinary removal proceeding that was pending against him on August 8, 2025.

JURISDICTION

7. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), as Petitioner is “in custody” for the purpose of § 2241 because he is arrested and detained by Respondents.

8. The federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas corpus claims by individuals challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018).

9. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2231 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

10. Venue is proper because Petitioner is currently in Respondents’ custody in El Paso, Texas. 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).

PARTIES

11. Enzo Lopez (“Petitioner”) is a 39-year old citizen of Venezuela. At least until the Government’s recent voluntary dismissal of his original removal proceedings, Petitioner has been

an active applicant for asylum. He is a resident of Miami, Florida, and is present within the state of Texas as of the time of the filing of this petition.

12. Respondent Marisa Flores is the Director of the El Paso Field Office, Immigration and Customs Enforcement and Removal Operations (“ICE/ERO”). The El Paso 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 non-citizens. The El Paso Field Office’s area of responsibility includes all West Texas and New Mexico, *see* <https://www.ice.gov/field-office/el-paso-field-office>. Respondent Flores is a legal custodian of Petitioner.

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

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

15. 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.

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

17. 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.

18. This petition commences against all Respondents in their official capacities.

LEGAL STANDARD

19. The writ of habeas corpus extends to cases where a person is “in custody under or by color of the authority of the United States,” or when a person is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(1), (3).

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

21. 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).

LEGAL FRAMEWORK

I. Asylum in the United States

22. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides the right to apply for asylum to individuals seeking a safe haven in the United States. The purpose of the Refugee Act is to enforce the “historic policy of the United States to respond to the urgent

needs of persons subject to persecution in their homelands.” Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

23. The “motivation for the enactment of the Refugee Act” was the United Nations Protocol Relating to the Status of Refugees, “to which the United States had been bound since 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432–33 (1987). The Refugee Act reflects a legislative purpose “to give ‘statutory meaning to our national commitment to human rights and humanitarian concerns.’” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

24. The Refugee Act established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.

25. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to non-citizens who satisfy the definition of “refugee.” Under that definition, individuals generally are eligible for asylum if they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion and if they are unable or unwilling to return to avail themselves of the protection of their homeland because of that persecution or fear. 8 U.S.C. § 1101(a)(42)(A).

26. Although a grant of asylum may be discretionary, the right to apply for asylum is robust. The right necessarily includes the right to counsel, at no expense to the government, *see* 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the right to counsel, *see* 8 U.S.C. § 1158(d)(4), and the right to access information in support of an application, *see* 8 U.S.C. § 1158(b)(1)(B) (placing the burden on the applicant to present evidence to establish eligibility).

27. Non-citizens seeking asylum are guaranteed due process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

II. Removal and Expedited Removal from the United States

28. Under Title 8 of the U.S. Code, which governs immigration, removal proceedings for noncitizens such as Mr. Lopez generally include full immigration court hearings, the opportunity for appellate review before the Board of Immigration Appeals, and federal court review. See 8 U.S.C. § 1229a; *id.* § 1252(a). Such removal proceedings are known as “Section 240 proceedings.”

29. Statutes specifically prohibit removal of persons to countries where they face persecution or torture. Specifically, § 1231(b)(3)(A), entitled “Restriction on removal to a country where [noncitizen’s] life or freedom would be threatened,” reads:

Notwithstanding paragraphs [b](1) and [b](2), the Attorney General may not remove [a non-citizen] to a country if the Attorney General decides that the [non-citizen’s] life or freedom would be threatened in that country because of the [non-citizen’s] race, religion, nationality, membership in a particular social group, or political opinion.”

8 U.S.C. § 1231(b)(3)(A).

30. Non-citizens who are applicants for asylum are entitled to a full hearing in immigration court before they can be removed from the United States. 8 U.S.C. 1229a. Consistent with due process, non-citizens may seek administrative appellate review before the Board of Immigration Appeals of removal orders entered against them and judicial review in federal court upon a petition for review. 8 U.S.C. § 1252(a) *et seq.*

31. In 1996, Congress created “expedited removal” as a truncated method for rapidly removing certain non-citizens from the United States with very few procedural protections. 8 U.S.C. § 1225(b)(1). Because there are few procedural protections, expedited removal applies narrowly to only those non-citizens who are admissible to the United States because they engaged in fraud or misrepresentation to procure admission or other immigration benefits, 8 U.S.C. §

1182(a)(6)(C), or who are applicants for admission without required documentation, 8 U.S.C. § 1182 (a)(7). No other person may be subjected to expedited removal. 8 C.F.R. § 253.3(b)(1), (b)(3).

32. Non-citizens subjected to expedited removal are ordered removed by an immigration officer “without further hearing or review.” 8 U.S.C. § 1225(b)(1)(A)(i). That officer must determine whether the individual has been continuously present in the United States for less than two years; is a non-citizen; and is inadmissible because he or she has engaged in certain kinds of fraud or lacks valid entry documents “at the time of . . . application for admission.” *See* 8 U.S.C. § 1225(b)(1)(A)(i), (iii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)).

33. Otherwise, if the officer concludes that the individual is inadmissible under an applicable ground, the officer “shall,” with the simple concurrence of a supervisor, 8 C.F.R. § 253.3(b)(7), order the individual removed “without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution.” 8 U.S.C. § 1225(b)(1)(A)(i).

34. Thus, a low-level DHS officer can order the removal of an individual who has been living in the United States with virtually no administrative process—just completion of cursory paperwork—based only on the officer’s own conclusions that the individual has not been admitted or paroled, that the individual has not adequately shown the requisite continuous physical presence, and that the individual is inadmissible on one of the two specified grounds.

35. Once a determination on inadmissibility is made, removal can occur rapidly, within twenty-four hours.

36. Asylum is not an admission to the United States and an applicant for asylum, while they must be physically present in the United States to apply, need not apply for or seek admission to the United States. *Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013).

37. For those who fear return to their countries of origin, the expedited removal statute provides a limited additional screening. But the additional screening, to the extent that it occurs, does not remotely approach the type of process and the rights available to asylum seekers in regular Section 240 immigration proceedings.

38. An expedited removal order comes with significant consequences beyond removal itself. Non-citizens who are issued expedited removal orders are subject to a five-year bar on admission to the United States unless they qualify for a discretionary waiver. 8 U.S.C. § 1182(a)(9)(A)(i); 8 C.F.R. § 212.2. Similarly, non-citizens issued expedited removal orders after having been found inadmissible based on misrepresentation are subject to a lifetime bar on admission to the United States unless they are granted a discretionary exception or waiver. 8 U.S.C. § 1182(a)(6)(C).

39. Expedited removal only applies to non-citizens who are inadmissible on one of two specified grounds: 8 U.S.C. § 1182(a)(6)(C), which applies to those who seek to procure immigration status or citizenship via fraud or false representations, or § 1182(a)(7), which applies to non-citizens who, “at the time of application for admission,” fail to satisfy certain documentation requirements. 8 U.S.C. § 1225(b)(1)(A)(1). If DHS seeks to remove non-citizens based on other grounds, they must afford the non-citizen a full hearing before an immigration judge. *See* 8 C.F.R. § 253.3(b)(1), (3).

40. Within this set of non-citizens, by statute, the Government’s expedited removal applies only to two narrower categories: “(1) noncitizens ‘arriving in the United States,’ and (2) noncitizens who ‘ha[ve] not been admitted or paroled into the United States’ and cannot affirmatively show that they have been ‘physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.’” *Make*

the Road New York v. Kristi Noem, Case No. 1:25-cv-190 (JMC), 2025 WL 2494908, at *8 (D.D.C. Aug. 29, 2025) (citing 8 U.S.C. § 1225(b)(1)(A)(i)-(iii)). Petitioner falls wholly outside of this statute, as he has been continuously present in the U.S. for more than two years prior to the date the ICE commenced expedited removal proceedings.

41. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a non-citizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

III. Government Custody and Detention

42. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

43. Arbitrary civil detention is categorically unconstitutional. The Due Process Clause requires that any deprivation of Mr. Lopez’s liberty serve, at minimum, a legitimate purpose. *See Reno v. Flores*, 507 U.S. 292, 306 (1993); *see also id.* at 302 (explaining that infringements on fundamental liberty rights violate due process unless they are “narrowly tailored to serve a compelling state interest”).

44. The recognized governmental interests justifying civil immigration detention are twofold: (1) “preventing flight”—for the purpose of ensuring a noncitizen is present for immigration proceedings and, where ordered, removal—and (2) “protecting the community.” *Zadvydas*, 533 U.S. at 690. As applied to any individual in custody, when immigration detention does not serve one of these purposes, it is unconstitutionally arbitrary.

45. Civil detention for the purpose of punishment also violates due process. *Wong Wing v. United States*, 163 U.S. 228, 237 (1896); *Magluta v. Samples*, 375 F.3d 1269, 1273 (11th Cir. 2004). When there has been no criminal conviction, “if a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless— a court permissibly may infer that the purpose of the governmental action is punishment.” *Magluta*, 375 F.3d at 1273 (quoting *Bell v. Wolfish*, 441 U.S. 520, 539 (1979)); see *J.G. v. Warden*, 501 F. Supp. 3d 1331, 1337 (M.D. Ga. 2020) (“[T]he Government has ‘no . . . punitive interest’ in civil confinement, and [a person in immigration detention] ‘may not be punished.’” (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992))). An “intent to punish” is also separately “sufficient to show unconstitutional pretrial punishment.” *Magluta*, 375 F.3d at 1273. Any intent to punish, such as for the purpose of retribution or general deterrence, is impermissible without criminal process. See *Kansas v. Hendricks*, 521 U.S. 346, 361–62 (1997) (explaining “the two primary objectives of criminal punishment” are retribution and deterrence).

FACTUAL BACKGROUND

46. Petitioner is a citizen of Venezuela. He was born in 1986 in the state of Yaracuy, Venezuela.

47. Petitioner was an active political protestor of the Venezuelan government, ruled by President Nicolas Maduro. Those who dissent against President Maduro’s regime are targeted by government security forces and can suffer severe injury or death. The government also enlists *colectivos*, Maduro-affiliated gangs, to execute hundreds of killings. Mr. Lopez protested against President Maduro’s government and became the target of Maduro’s security forces. This targeting forced him to give up his livelihood and flee Venezuela.

48. On August 8, 2022, Petitioner came to the port of entry near Calexico, California, to seek asylum. Mr. Lopez presented himself to immigration officials at the border and remained in government custody until August 10, 2022, when immigration authorities interviewed him and decided to release him. Mr. Lopez applied for asylum and withholding of removal and has been pursuing actively his asylum claim, including as of the date of his August 8, 2025 hearing in the original removal proceeding.

49. Shortly after being released into the United States, Mr. Lopez was recruited to work for a construction company called Angel Storage Construction LLC (“Angel Storage”). Unbeknownst to Mr. Lopez, this construction company engaged in labor trafficking of recent migrants from Latin America; Mr. Lopez became one of many victims to fall prey to Angel Storage. Mr. Lopez was trapped in this trafficking nightmare for approximately two months—from September to November 2022—before escaping on November 12, 2022.

50. Thereafter, in 2023, Mr. Lopez was a part of a group of plaintiffs that filed a lawsuit against Angel Storage and its perpetrators under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 *et seq.*, relevant state wage laws, and the Trafficking Victims Protection Reauthorization Act (“TVPRA”), 18 U.S.C. §§ 1581 *et seq.*, in the United States District Court for the Eastern District of Virginia. In 2024, Mr. Lopez and the other plaintiffs received a favorable default judgment that found Mr. Lopez was a victim of labor trafficking and awarded compensatory and punitive damages for violations of the FLSA and TVPRA. Despite this favorable judgment, Angel Storage has so far evaded payment.

51. Mr. Lopez and other victims of Angel Storage also reported this labor trafficking to the Department of Homeland Security’s Homeland Security Investigations (“HSI”). Despite a

several-hour interview related to the trafficking, HSI decided not to investigate further or prosecute the case.

52. Mr. Lopez is in the process of reporting the trafficking to another law enforcement office—the Maryland Office of the Attorney General (“MD OAG”). MD OAG has opened an investigation into Angel Storage’s labor trafficking. On information and belief, MD OAG believes Mr. Lopez to be a valuable witness of this trafficking as they investigate and prosecute these labor traffickers.

53. Because Mr. Lopez is an adjudicated victim of labor trafficking, Mr. Lopez has also worked with pro bono counsel to complete and file a Form I-914 application for a T nonimmigrant visa, a visa establishing legal status for victims of trafficking. This was delivered to USCIS through FedEx on August 7, 2025.

54. Respondents commenced removal proceedings against Mr. Lopez and commanded that he appear for a hearing on August 8, 2025, with the Miami Immigration Court.

55. Petitioner appeared for his hearing on August 8, 2025. ICE terminated their prosecution of Mr. Lopez, and the judge then dismissed the removal proceedings.

56. After exiting the courtroom and while in the courtroom lobby, several ICE agents arrested Petitioner. They did not provide him any process or access to counsel. The ICE agents did not offer him any opportunity to be heard prior to arresting and detaining him.

57. Petitioner was then sent to the detention center known as “Alligator Alcatraz” in southern Florida. Petitioner spent approximately 5 days there.

58. Petitioner was then sent halfway across the country to El Paso, Texas. As of the date of this filing, Petitioner is still detained in El Paso.

59. On information and belief, Petitioner was coerced into signing deportation papers on August 21, 2025. On information and belief, ICE agents and/or representatives told Petitioner that if he didn't sign the papers, he would be deported to Mexico. On information and belief, Petitioner then signed the deportation papers.

60. Petitioner has no criminal history.

61. On August 22, 2025, Petitioner filed his original Verified Petition for Writ of Habeas Corpus and Request for Emergency Temporary Restraining Order (ECF No. 1), challenging his detention by ICE.

62. On August 26, 2025, this Court issued an Order granting the requested Temporary Restraining Order (ECF No. 11), effective through September 8, 2025 at 11:59 pm, ordering Respondents not to remove or deport Petitioner from the United States, or transfer him to any facility outside the boundaries of the Western District of Texas.

63. On August 29, 2025, in *Make the Road New York v. Kristi Noem*, Case No. 1:25-cv-190 (JMC), 2025 WL 2494908, at *8 (D.D.C. Aug. 29, 2025), Judge Cobb of the United States District Court for the District of Columbia issued an Order pursuant to Section 705 of the Administrative Procedure Act (APA) (5 U.S.C. § 705), staying the Government's 2025 Designation and Implementing Guidance, which pertain the Government's current initiative to expand application of expedited removal to a broader category of noncitizens than had previously been subject to that procedure, in particular, noncitizens present in the United States for at least fourteen days but less than two years—*i.e.*, the outermost bounds of the statutory authorization for expedited removal. In this Order, Judge Cobb discussed extensively the fact that under the law, non-citizens continuously present in the United States for more than two years are not subject to expedited removal under the statute, and that notwithstanding that clear-cut legal lack of

authorization, the Government's recent initiative had swept in significant numbers of non-citizens (like Petitioner in this case) who are ineligible for expedited removal, contrary to due process. *Id.* at *25, 29, 33-36. Although the Government asked the court to stay the effectiveness of its order, Judge Cobb denied that request. On September 2, 2025, the Government filed a Notice of Appeal of Judge Cobb's Order to the United States Court of Appeals for the District of Columbia Circuit.

64. On September 2, 2025, Respondents submitted their Response to the Petition, in accordance with this Court's briefing schedule.

65. On September 4, 2025, the immigration judge in Petitioner's original removal action (which the Government voluntarily dismissed on August 8, 2025) conducted a bond review hearing. At the bond review hearing, the immigration judge held that the immigration court had no jurisdiction over Petitioner's detention on two grounds: First, that he was detained under 8 U.S.C. § 1225(b) and is undergoing expedited removal proceedings, over which the immigration court does not have jurisdiction, and second, that there was no warrant for the Petitioner's detention issued relating to Petitioner's pending appeal of the dismissal of his ordinary removal proceeding before the Board of Immigration Appeals. The same morning of the bond review hearing, DHS submitted the Notice of Order of Expedited Removal discussed in Paragraph 3 *supra* to the docket in the ordinary removal proceeding. As noted above, that Notice initiated expedited removal proceedings as of August 21, 2025, and placed the date of Petitioner's arrival in the United States on August 8, 2022, more than three years earlier.

66. On September 4, 2025, Petitioner filed his Reply brief in this proceeding. In his Reply brief, Petitioner informed the Court and Respondents of recent litigation in this judicial district, *El Gamal v. Noem*, Case No. SA-25-CV-00664-OLG, 2025 WL 1857593, at *2 (W.D. Tex. July 2, 2025), in which the Government conceded that the INA does not permit the use of

expedited removal for noncitizens who have been physically present in the United States for more than two years.

67. Petitioner's Reply Brief also advised the Court and Respondents of Petitioner's recent award of Continued Presence, a law enforcement tool provided for by statute designed to protect witnesses who are assisting human trafficking prosecutions from deportation. (ECF No. 18 at 4). The Continued Presence program is administered by the Center for Countering Human Trafficking within DHS, the same Department that houses ICE. Under the statutory framework for Continued Presence, 22 U.S.C. § 7105(c)(1), such individuals shall, to the extent practicable, "Not be detained in facilities inappropriate to their status as crime victims." Further, implementing regulations codified at 28 C.F.R. § 1100.31(b) provide: "To the extent practicable and allowed by law, *alternatives to formal detention of victims of severe forms of trafficking in persons should be considered in every case.* However, if detention is *required*, victims of severe forms of trafficking in persons in federal custody, to the extent practicable, shall not be detained in facilities inappropriate to their status as crime victims. The responsible official shall make all efforts, where appropriate and practicable, to house those victims separately from those areas in which criminals are detained" (emphasis added).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process Procedural Due Process

68. Petitioner restates and realleges all paragraphs as fully set forth herein.

69. Petitioner is in custody "under or by color of the authority of the United States" and in custody "in violation of the Constitution or laws . . . of the United States." 28 U.S. § 2241.

70. The Due Process Clause of the Fifth Amendment to the U.S. Constitution forbids the government from depriving any person of liberty without due process of law. U.S. CONST. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690.

71. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693.

72. Due process requires that government action be rational and non-arbitrary. See *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

73. 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.*

74. 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).

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

76. Because Petitioner has been continuously present in the United States for more than two years prior to Respondents' purported commencement of expedited removal proceedings, he is ineligible for expedited removal, and thus his detention under that purported color of authority lacks any valid legal authorization, in violation of the Due Process clause of the 5th Amendment to the Constitution. Moreover, in the event that the Respondents purported to issue a final order of removal of Petitioner in reliance on expedited removal, any such order pursuant to a statutory authority that on its face (and by the Government's own admission) does not apply would be "prohibited as a matter of law," 8 U.S.C. § 1252(f)(2).

77. 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.

78. 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.").

79. Here, because ICE officials have not informed Petitioner that he has certain protected rights and interests associated with his asylum claim while simultaneously detaining him and coercing him to sign deportation papers, Petitioner has been deprived of the due process required to protect Mr. Lopez's legal interest in his asylum application that was pending in the

original removal proceeding that the Government recently dismissed. *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 TWO
Violation of Habeas Corpus

80. Petitioner restates and realleges all paragraphs as fully set forth herein.

81. Individuals in immigration detention have the right to challenge the legality of their detention.

82. Petitioner has filed a BIA appeal to challenge his detention. Despite this appeal pending before immigration courts, as is Petitioner's right under 8 U.S.C. § 1252(a) *et seq.*, ICE officials coerced Petitioner into signing what Petitioner understood to be deportation papers by making him believe that if he didn't sign, he would be deported to a country he doesn't know. Thus, any action by Respondents to remove Petitioner from the district or from the country will violate Petitioner's right to habeas corpus. *See* U.S. CONST. art. I, § 9, cl. 2 (Suspension Clause); 28 U.S.C. § 2241. As noted above, because the immigration judge has disclaimed any jurisdiction over Petitioner's detention in light of Respondents' purported invocation of expedited removal authority, this proceeding is the only available means for Petitioner to obtain relief from his unlawful detention.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Honorable Court:

- a. Assume jurisdiction over this matter;
- b. Order Respondents to show cause why a writ of habeas corpus should not be granted within three days, as laid out in 28 U.S.C. § 2243;

- c. Order that as part of their filing showing cause why the Petition should not be granted, Respondents provide all documents relevant to efforts made to deport Mr. Lopez to Venezuela, Mexico, or any other country;
- d. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;
- e. Grant a writ of habeas corpus ordering Respondents to immediately release Mr. Lopez from their custody;
- f. Enter a temporary restraining order preventing Respondents from deporting Mr. Lopez to Venezuela, Mexico, or any other country;
- g. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Mr. Lopez;
- h. Declare that Respondents' acts to remove Mr. Lopez violate the Due Process Clause of the Fifth Amendment;
- i. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
- j. Grant such further relief as this Court deems just and proper.

Dated: September 8, 2025

Respectfully submitted,

/s/ Megan McDowell

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Verification

I declare under penalty of perjury that the facts set forth in the foregoing Verified Amended Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

/s/ Megan McDowell

Date: September 08, 2025

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant, the undersigned certifies and states that true and correct copies of this **Amended Petition for Writ of Habeas Corpus** (23 pages) will be served upon all counsels of record via the online CM/ECF system, on or before September 8, 2025.

/s/ Megan McDowell

Megan McDowell

DC Bar No. 1767135

Pro Hac Vice Forthcoming

Attorney for the Petitioner