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10 UNITED STATES DISTRICT COURT
11
12 SOUTHERN DISTRICT OF CALIFORNIA

13 KARLENIS MENDEZ LOS SANTOS,

14 Petitioner-Plaintiff,

15 v.

16 CHRISTOPHER J. LAROSE, Senior
17 Warden, Otay Mesa Detention Center, San
18 Diego, California;
19 PATRICK DIVVER, Field Office Director,
20 San Diego Office of Detention and
21 Removal, U.S. Immigrations and Customs
22 Enforcement; U.S. Department of
23 Homeland Security;
24 TODD M. LYONS, Acting Director,
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
KRISTI NOEM, Secretary, U.S.
Department of Homeland Security;
PAM BONDI, Attorney General of the
United States;

Respondents-Defendants.

Case No.: '25CV2216 TWR MSB

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW
CAUSE WITHIN THREE DAYS;
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Challenge to Unlawful Incarceration
Under Color of Immigration Detention
Statutes; Request for Declaratory and
Injunctive Relief

1 Petitioner KARLENIS MENDEZ LOS SANTOS petitions this Court for a writ of
2 habeas corpus under 28 U.S.C. § 2241 to remedy Respondents' detaining her unlawfully,
3 and states as follows:

4 **INTRODUCTION**

- 5
- 6 1. Petitioner, Karlenis Mendez Los Santos (Ms. Mendez Los Santos) is a twenty-
7 three-year-old woman detained at the Otay Mesa ICE Detention Center in San
8 Diego, California.
- 9 2. She submits this habeas petition under 28 U.S.C. § 2241 for a judicial check on
10 Respondents' administrative decisions to detain her under 8 U.S.C. § 1225(b)(1),
11 INA § 235(b)(1), and then initiate expedited removal proceedings against her
12 under 8 U.S.C. § 1225(b)(1)(A), INA § 235(b)(1)(A), despite lacking such
13 authority because Ms. Mendez Los Santos was inspected and paroled into the U.S.
14 and does not satisfy any threshold inadmissibility ground for expedited removal
15 proceedings. In addition, Respondents' detention of Ms. Mendez Los Santos and
16 their intent to initiate expedited removal proceedings against her is also without
17 legal authority given Ms. Mendez Los Santos was—and still is—in pending
18 removal proceedings under 8 U.S.C. § 1229a, INA § 240.
- 19
- 20 3. Moreover, because the government purports to hold her under § 1225(b)(1), it has
21 not provided her an individualized bond hearing to challenge her detention under
22
- 23
- 24

1 8 U.S.C. § 1226(a), INA § 236(a), contravening her rights under the Immigration
2 and Nationality Act and the Fifth Amendment's Due Process Clause.

- 3 4. Ms. Mendez Los Santos seeks declaratory and injunctive relief to compel her
4 immediate release from the immigration jail where she has been held by the U.S.
5 Department of Homeland Security (DHS) since being unlawfully detained on
6 August 26, 2025, without first being provided a due process hearing to determine
7 whether her incarceration is justified.
8
- 9 5. Absent review in this Court, no other neutral adjudicator will examine Ms. Mendez
10 Los Santos's plight: Respondents will continue—unchecked—to detain her until
11 they remove her to Venezuela under authority they do not have. She thus urges this
12 Court to review the lawfulness of her detention and subjection to expedited
13 removal; declare that her detention under 8 U.S.C. § 1225(b)(1), INA § 235(b)(1),
14 is unlawful; that attempting to place her in expedited removal is unlawful; and
15 order her immediate release, or at a minimum that Respondents provide her a bond
16 hearing complying with the procedural requirements in Singh v. Holder, 638 F.3d
17 1196 (9th Cir. 2011).
18

19 **CUSTODY**

- 20 6. Ms. Mendez Los Santos is currently in Respondents' legal and physical custody.
21 They are detaining her at the Otay Mesa ICE Detention Center. She is under
22 Respondents' and their agents' direct control.
23

PARTIES

- 1
2 7. Petitioner Karlenis Mendez Los Santos is a citizen of Venezuela. She fled the
3 country because she was in fear of police officers who had raped her and her sister
4 on more than one occasion on account of their race (black) and her status as a
5 black woman in Venezuela. She arrived in the United States on October 29, 2023
6 to seek asylum and was paroled into the U.S. pursuant to an appointment with the
7 CBP One application. Petitioner was taken into custody on August 26, 2025 after
8 her court hearing at the San Diego Immigration Court. DHS counsel moved to
9 dismiss Petitioner's proceedings to purportedly subject the Petitioner to expedited
10 removal, yet even though proceedings were not dismissed by the immigration
11 judge, Petitioner was taken into custody with no warrant, notice or hearing.
12
13 8. Ms. Mendez Los Santos is currently in Respondents' legal and physical custody at
14 the Otay Mesa ICE Detention Center in San Diego, California. CoreCivic Inc., a
15 Maryland corporation, operates that facility.
16
17 9. Respondent Patrick DIVVER is the Field Office Director of ICE in San Diego,
18 California and is named in his official capacity. ICE is the component of the DHS
19 that is responsible for detaining and removing noncitizens according to
20 immigration law and oversees custody determinations. In his official capacity, he is
21 the legal custodian of Petitioner.
22
23 10. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
24 official capacity. Among other things, ICE is responsible for the administration and

1 enforcement of the immigration laws, including the removal of noncitizens. In his
2 official capacity as head of ICE, he is the legal custodian of Petitioner.

3 11. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official
4 capacity. DHS is the federal agency encompassing ICE, which is responsible for
5 the administration and enforcement of the INA and all other laws relating to the
6 immigration of noncitizens. In her capacity as Secretary, Respondent Noem has
7 responsibility for the administration and enforcement of the immigration and
8 naturalization laws pursuant to section 402 of the Homeland Security Act of 2002,
9 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a).
10 Respondent Noem is the ultimate legal custodian of Petitioner.
11

12 12. Respondent Pam BONDI is the Attorney General of the United States and the most
13 senior official in the U.S. Department of Justice (DOJ) and is named in her official
14 capacity. She has the authority to interpret the immigration laws and adjudicate
15 removal cases. The Attorney General delegates this responsibility to the Executive
16 Office for Immigration Review (EOIR), which administers the immigration courts
17 and the BIA.
18

19 13. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention
20 Center where Petitioner is being held. Respondent Christopher LaRose oversees
21 the day-to-day operations of the Otay Mesa Detention Center and acts at the
22 Direction of Respondents Divver, Lyons and Noem. Respondent Christopher
23 LaRose is a custodian of Petitioner and is named in their official capacity.
24

JURISDICTION AND VENUE

14. This action arises under the United States Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to challenge Ms. Mendez Los Santos's detention under the INA and any inherent or plenary powers the government may claim to continue holding her.

15. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution; and 28 U.S.C. § 1331, as Ms. Mendez Los Santos is presently in Respondents' custody under the United States' color of authority, and such custody violates the United States' Constitution, laws, or treaties. Its jurisdiction is not limited by a petitioner's nationality, status as an immigrant, or any other classification. *See Boumediene v. Bush*, 553 U.S. 723, 747 (2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2; U.S. CONST. amends. V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act), 2241 (habeas corpus).

16. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Ms. Mendez Los Santos's detention and her challenge to her placement in expedited removal proceedings. Federal district courts possess broad authority to issue writs of habeas corpus when a person is held "in custody in violation of the Constitution or laws or treaties of the United States" (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges that survived the REAL ID Act's jurisdictional restrictions.

1 17. Unlike challenges to the outcome of completed expedited removal proceedings,
2 Ms. Mendez Los Santos's claim that she is being improperly subjected to
3 expedited removal in the first instance falls within the narrow statutory exception
4 permitting review of whether the noncitizen is eligible for such review.

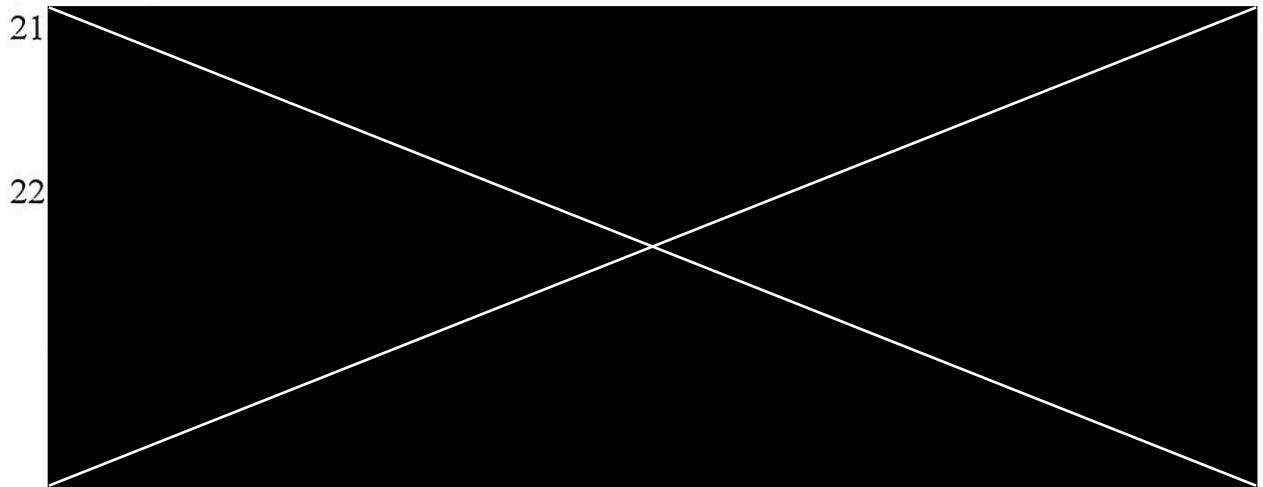
5 *See* 8 U.S.C. § 1252(e)(2), INA § 242(e)(2).

6
7 18. Because Ms. Mendez Los Santos seeks the traditional habeas remedy of release
8 from allegedly unlawful detention rather than additional administrative review of
9 her underlying claims, her petition presents precisely the type of threshold legality-
10 of-detention question that § 2241 was designed to address. *See INS v. St. Cyr*, 533
11 U.S. 289, 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th
12 Cir. 2020) (citing *Singh*, 638 F.3d at 1211-12)). And no court has ruled on the
13 legality of Ms. Mendez Los Santos's detention.
14

15 19. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a
16 substantial part of the events or omissions giving rise to this claim have happened
17 here, Ms. Mendez Los Santos is detained here, and her custodian resides here.
18 Venue is also proper under 28 U.S.C. § 2243 because Ms. Mendez Los Santos's
19 immediate custodian resides in this District. *See Rumsfeld v. Padilla*, 542 U.S. 426,
20 451-52 (2004) (Kennedy, J., concurring).
21

22 **STATEMENT OF FACTS**

23 20. Ms. Mendez Los Santos is a twenty-three-year-old citizen of Venezuela.
24



23. Due to these despicable and unspeakable acts by law enforcement officials in Venezuela, Ms. Mendez Los Santos has suffered, and continues to suffer, intense psychological conditions including but not limited to [REDACTED] [REDACTED] Ms. Mendez Los Santos has been receiving weekly psychological therapy. Being detained is a huge stressor that will negatively affect Ms. Mendez Los Santos' mental health.

24. Ms. Mendez Los Santos arrived in the United States on October 29, 2023 and was inspected and admitted after having made an appointment at the Port of Entry with the CBP One application. Upon arrival, she was issued a Form I-94 valid for two years (until October 29, 2025). She was paroled into the United States pending the outcome of her immigration court proceedings.

25. On April 30, 2025, Ms. Mendez Los Santos was sent a form letter by the Department of Homeland Security stating that her parole would be terminated within 7 days. No reason was provided for the purported termination of her parole.

1 26. On August 26, 2025, Ms. Mendez Los Santos went to her first court hearing.

2 Counsel for DHS moved to dismiss Ms. Mendez Los Santos' removal proceedings
3 with the intent to place her in expedited removal. The immigration judge in the San
4 Diego Immigration Court allowed time for Petitioner's counsel to brief the issue
5 and scheduled Petitioner's next hearing on September 17, 2025 at the San Diego
6 Immigration Court.
7

8 27. Thereafter, ICE unlawfully took Ms. Mendez Los Santos into custody without a
9 warrant, notice or opportunity to be heard. Because Ms. Mendez Los Santos was—
10 and is—in pending removal proceedings, ICE lacks authority to detain her under 8
11 U.S.C. § 1225(b)(1), INA § 235(b)(1), and proceed with expedited removal.
12

13 28. Moreover, even if Petitioner's current removal proceedings were dismissed, she is
14 still not subject to expedited removal by virtue of having been inspected and
15 paroled into the U.S.

16 29. Ms. Mendez Los Santos has no criminal history and was attending her court hearing
17 when she was apprehended. As such, there is zero indication of Ms. Mendez Los
18 Santos being a danger to the community or a flight risk.

19 **REQUIREMENTS OF 28 U.S.C. § 2243**

20 30. The Court must grant the petition for writ of habeas corpus or issue an order to
21 show cause (OSC) to Respondents "forthwith," unless the petitioner is not entitled
22 to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require
23
24

1 Respondents to file a return “within *three days* unless for good cause additional
2 time, *not exceeding twenty days*, is allowed.” *Id.* (emphasis added).

3 31. Courts have long recognized the significance of the habeas statute in protecting
4 individuals from unlawful detention. The Great Writ has been referred to as
5 “perhaps the most important writ known to the constitutional law of England,
6 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
7 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).
8

9 32. Habeas corpus must remain a swift remedy. Importantly, “The statute itself directs
10 courts to give petitions for habeas corpus ‘special, preferential consideration to
11 insure expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120
12 (9th Cir. 2000) (internal citations omitted). The Ninth Circuit warned against any
13 action creating the perception “that courts are more concerned with efficient trial
14 management than with the vindication of constitutional rights.” *Id.*
15

16 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

17 33. For habeas claims, exhaustion of administrative remedies is prudential, not
18 jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential
19 exhaustion requirement if “administrative remedies are inadequate or not
20 efficacious, pursuit of administrative remedies would be a futile gesture,
21 irreparable injury will result, or the administrative proceedings would be void.” *Id.*
22 (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and
23
24

1 quotation marks omitted)). Petitioner asserts that exhaustion should be waived
2 because administrative remedies are (1) futile and (2) her continued detention
3 results in irreparable harm.

4
5 34.Exhausting administrative remedies here is futile because ICE just detained Ms.
6 Mendez Los Santos to unlawfully subject her to expedited removal. As such, no
7 request to release her from custody would be considered by ICE. Moreover, an
8 immigration judges in this district claim to have no jurisdiction to conduct a
9 custody redetermination hearing as to individuals who are considered to be arriving
10 aliens, even those who have been paroled into the U.S. through a Port of Entry.
11 Immigration judges also claim to have no jurisdiction to redetermine the custody of
12 a noncitizen subjected to expedited removal. As such, any attempts to exhaust
13 administrative remedies would be entirely futile.
14

15 35.Moreover, no statutory exhaustion requirements apply to Petitioner's claim of
16 unlawful custody in violation of her due process rights, and there are no
17 administrative remedies that she needs to exhaust. *See Am.-Arab Anti-*
18 *Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding
19 exhaustion to be a "futile exercise because the agency does not have jurisdiction to
20 review" constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098,
21 1099 (C.D. Cal. 2000) (same).
22
23
24

1 36. More importantly, every day that Petitioner remains detained causes her harm that
2 cannot be repaired. Her continued detention puts her mental health at greater risk,
3 further warranting a finding of irreparable harm and the waiver of the prudential
4 exhaustion requirement. The Court must consider this in its irreparable harm
5 analysis of the effects on Petitioner as her detention continues. *See De Paz Sales v.*
6 *Barr*, No. 19-CV-07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020)
7 (noting that the petitioner “continues to suffer significant psychological effects
8 from his detention, including anxiety caused by the threats of other inmates and
9 two suicide attempts,” in finding that petitioner would suffer irreparable harm
10 warranting waiver of exhaustion requirement).

11 LEGAL FRAMEWORK

12
13 37. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a
14 right to apply for asylum to individuals seeking safe haven in the United States.
15 The purpose of the Refugee Act is to enforce the “historic policy of the United
16 States to respond to the urgent needs of persons subject to persecution in their
17 homelands.” Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102
18 (1980).

19
20 38. The “motivation for the enactment of the Refugee Act” was the United Nations
21 Protocol Relating to the Status of Refugees, “to which the United States had been
22 bound since 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987).
23
24

1 The Refugee Act reflects a legislative purpose “to give ‘statutory meaning to our
2 national commitment to human rights and humanitarian concerns.’” Duran v. INS,
3 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

4 39. The Refugee Act established the right to apply for asylum in the United States and
5 defines the standards for granting asylum. It is codified in various sections of the
6 INA.
7

8 40. The INA gives the Attorney General or the Secretary of Homeland Security
9 discretion to grant asylum to noncitizens who satisfy the definition of “refugee.”
10 Under that definition, individuals generally are eligible for asylum if they have
11 experienced past persecution or have a well-founded fear of future persecution on
12 account of race, religion, nationality, membership in a particular social group, or
13 political opinion and if they are unable or unwilling to return to and avail
14 themselves of the protection of their homeland because of that persecution or fear.
15 8 U.S.C. § 1101(a)(42)(A).
16

17 41. Although a grant of asylum may be discretionary, the right to apply for asylum is
18 not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen
19 “who is physically present in the United States or who arrives in the United
20 States[.]” 8 U.S.C. § 1158(a)(1).
21

22 42. Because of the life-or-death stakes, the statutory right to apply for asylum is robust.
23 The right necessarily includes the right to counsel, at no expense to the
24

1 government, see 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the right
2 to counsel, see 8 U.S.C. § 1158(d)(4), and the right to access information in
3 support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant
4 to present evidence to establish eligibility.).

5
6 43. Noncitizens seeking asylum are guaranteed Due Process under the Fifth
7 Amendment to the U.S. Constitution. Reno v. Flores, 507 U.S. 292, 306 (1993).

8 44. Noncitizens who are applicants for asylum are entitled to a full hearing in
9 immigration court before they can be removed from the United States. 8 U.S.C. §
10 1229a. Consistent with due process, noncitizens may seek administrative appellate
11 review before the Board of Immigration Appeals of removal orders entered against
12 them and judicial review in federal court upon a petition for review. 8 U.S.C. §
13 1252(a) et seq.

14
15 45. In 1996, Congress created “expedited removal” as a truncated method for rapidly
16 removing certain noncitizens from the United States with very few procedural
17 protections. 8 U.S.C. § 1225(b)(1). Because there are few procedural protections,
18 expedited removal applies narrowly to only those noncitizens who are inadmissible
19 to the United States because they engaged in fraud or misrepresentation to procure
20 admission or other immigration benefits, 8 U.S.C. § 1182(a)(6)(C), or who are
21 applicants for admission without required documentation, 8 U.S.C. § 1182(a)(7).
22
23
24

1 No other person may be subjected to expedited removal. 8 C.F.R. § 235.3(b)(1),
2 (b)(3).

3 46. Moreover, 8 U.S.C. § 1225(b)(1)(A)(iii)(II) further clarifies that a person who has
4 been paroled cannot be designated for expedited removal. This section allows an
5 immigration officer to place an inadmissible person in expedited removal only if
6 the person “has not been admitted or paroled into the United States, and who has
7 not affirmatively shown, to the satisfaction of an immigration officer, that the alien
8 has been physically present in the United States continuously for the 2-year period
9 immediately prior to the date of the determination of inadmissibility under this
10 subparagraph.”
11

12 47. Noncitizens subjected to expedited removal are ordered removed by an
13 immigration officer “without further hearing or review.” 8 U.S.C. §
14 1225(b)(1)(A)(i). If the officer concludes that the individual is subject to expedited
15 removal, the officer “shall,” with simply the concurrence of a supervisor, 8 C.F.R.
16 § 235.3(b)(7), order the individual removed “without further hearing or review
17 unless the alien indicates either an intention to apply for asylum . . . or a fear of
18 persecution.” 8 U.S.C. § 1225(b)(1)(A)(i).
19

20 48. Thus, a low-level DHS officer can order the removal of an individual who has been
21 living in the United States with virtually no administrative process—just
22 completion of cursory paperwork—based only on the officer’s own conclusions
23
24

1 that the individual has not been admitted or paroled, that the individual has not
2 adequately shown the requisite continuous physical presence, and that the
3 individual is inadmissible on one of the two specified grounds.

4
5 49. Once a determination on inadmissibility is made, removal can occur rapidly, within
6 twenty-four hours.

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

11 51. An expedited removal order comes with significant consequences beyond removal
12 itself. Noncitizens who are issued expedited removal orders are subject to a five-
13 year bar on admission to the United States unless they qualify for a discretionary
14 waiver. 8 U.S.C. § 1182(a)(9)(A)(i); 8 C.F.R. § 212.2. Similarly, noncitizens issued
15 expedited removal orders after having been found inadmissible based on
16 misrepresentation are subject to a lifetime bar on admission to the United States
17 unless they are granted a discretionary exception or waiver. 8 U.S.C. §
18 1182(a)(6)(C).
19

20 52. As discussed above, expedited removal only applies to certain noncitizens on
21 certain enumerated grounds. If DHS seeks to remove noncitizens based on other
22
23
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1 grounds, they must afford the noncitizen a full hearing before an immigration
2 judge. See 8 C.F.R. § 235.3(b)(1), (3).

3 53. Immigration detention should not be used as a punishment and should only be used
4 when, under an individualized determination, a noncitizen is a flight risk because
5 they are unlikely to appear for immigration court or a danger to the community.
6 Zadvydas v. Davis, 533 U.S. 678, 690 (2001).
7

8 **FIRST CAUSE OF ACTION**
9 **Violation of Due Process**
10 **U.S. Constitution Amendment V**

11 54. Ms. Mendez Los Santos re-alleges and incorporates by reference, as if fully set
12 forth herein, the allegations in the paragraphs above.

13 55. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits
14 the federal government from depriving any person of “life, liberty, or property,
15 without due process of law.” U.S. Const. Amend. V. Due process protects “all
16 ‘persons’ within the United States, including [non-citizens], whether their presence
17 here is lawful, unlawful, temporary, or permanent.” Zadvydas, 533 U.S. at 693.

18 56. Due process requires that government action be rational and non-arbitrary. See
19 U.S. v. Trimble, 487 F.3d 752, 757 (9th Cir. 2007).
20

21 57. While asylum is a discretionary benefit, the right to apply is not. 8 U.S.C.
22 § 1158(a)(1). Any noncitizen who is “physically present in the United States or
23
24

1 who arrives in the United States (whether or not at a designated port of arrival . . .),
2 irrespective of such [noncitizen's] status, may apply for asylum.” Id.

3 58. Because the denial of the right to apply for asylum can result in serious harm or
4 death, the statutory right to apply is robust and meaningful. It includes the right to
5 legal representation, and notice of that right, see id. §§ 1229a(b)(4)(A), 1362,
6 1158(d)(4); the right to present evidence in support of asylum eligibility, see id. §
7 1158(b)(1)(B); the right to appeal an adverse decision to the Board of Immigration
8 Appeals and to the federal circuit courts, see id. §§ 1229a(c)(5), 1252(b); and the
9 right to request reopening or reconsideration of a decision determining
10 removability, see id. § 1229a(c)(6)-(7).
11

12 59. Expedited removal, in contrast, severely limits the availability of such rights.
13

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

17 61. While there is a right to “consult” with an attorney or another person about the
18 credible fear interview process, see 8 U.S.C. § 1225(b)(1)(B)(iv) and 8 C.F.R. §§
19 208.30(d)(4), 235.3(b)(4)(i)(B), (ii), the consultation “shall not unreasonably delay
20 the process.” The consultant may be “present” during the interview but may only
21 make a “statement” at the end of the interview if permitted by the asylum officer. 8
22 C.F.R. § 208.30(d)(4). The immigrant subject to expedited removal may present
23
24

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).

62. 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.

63. 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.”).

1 64. Here, neither Ms. Mendez Los Santos nor undersigned counsel were advised by
2 DHS that they sought to terminate her proceedings to place her in expedited
3 removal, seeking to deprive her of the bundle of rights associated with her pending
4 asylum application. Because of her legal interest in her pending asylum
5 application, this violated due process. See generally Mathews v. Eldridge, 424 U.S.
6 319, 333 (1976) (requiring notice and an opportunity to be heard before
7 deprivation of a legally protected interest).
8

9 **SECOND CAUSE OF ACTION**

10 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in**
11 **Accordance with Law and in Excess of Statutory Authority Unlawful Detention**

12 65. Ms. Mendez Los Santos re-alleges and incorporates by reference, as if fully set
13 forth herein, the allegations in the paragraphs above.

14 66. Under the APA, a court shall “hold unlawful and set aside agency action” that is an
15 abuse of discretion. 5 U.S.C. § 706(2)(A).

16 67. An action is an abuse of discretion if the agency “entirely failed to consider an
17 important aspect of the problem, offered an explanation for its decision that runs
18 counter to the evidence before the agency, or is so implausible that it could not be
19 ascribed to a difference in view or the product of agency expertise.” Nat’l Ass’n of
20 Home Builders v. Defs. of Wildlife, 551 U.S. 644, 658 (2007) (quoting Motor
21 Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29,
22 43 (1983)).
23
24

1 68. To survive an APA challenge, the agency must articulate “a satisfactory
2 explanation” for its action, “including a rational connection between the facts
3 found and the choice made.” Dep’t of Com. v. New York, 139 S. Ct. 2551, 2569
4 (2019) (citation omitted).

5
6 69. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025) the court
7 explained the parole process in immigration cases and noted that before parole may
8 be revoked, the parolee must be given written notice of the impending revocation,
9 which must include a cogent description of the reasons therefore. Under the
10 Administrative Procedure Act, immigration parolees are entitled to determinations
11 related to their parole revocations that are not arbitrary, capricious or an abuse of
12 discretion. *Id.* at *10.

13
14 70. By categorically revoking Petitioner’s parole without any description of the
15 reasons therefore and detaining the Petitioner without consideration of her
16 individualized facts and circumstances, Respondents have violated the APA.

17 71. Respondents have made no finding that Petitioner is a danger to the community.

18 72. Respondents have made no finding that Petitioner is a flight risk because, in fact,
19 she was arrested while appearing at her immigration proceedings.

20 73. By detaining the Petitioner categorically, Respondents have further abused their
21 discretion because there have been no changes to her facts or circumstances since
22
23
24

1 the agency made its initial determination to parole her into the United States that
2 support detention.

3 74. Respondents have already considered Petitioner's facts and circumstances and
4 determined that she was not a flight risk or danger to the community. There have been
5 no changes to the facts or any materially changed circumstances that justify this
6 revocation of her parole and/or being detained.
7

8 **THIRD CAUSE OF ACTION**
9 **Violation of Fifth Amendment Right to Due Process**
10 **Illegal Retroactive Application of Expedited Removal Designation**

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

12 76. Administrative rules "will not be construed to have retroactive effect unless their
13 language requires this result." Landgraf v. USI Film Products, 511 U.S. 244, 272
14 (1994). When a "new provision attaches new legal consequences to events
15 completed before its enactment" the new provision is not retroactive unless it is
16 unmistakably clear.

17 77. Applying the January 2025 expedited removal designation to Petitioner's October
18 2023 entry to the United States to seek asylum would attach new legal
19 consequences including the loss of significant rights related to her right to seek
20 asylum.
21

22 78. The January 2025 designation does not apply to individuals who entered the
23 United States prior to its effective date.
24

1 79. Accordingly, Respondents are unlawfully subjecting her to expedited removal.

2 **FOURTH CAUSE OF ACTION**

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

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

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

11 82. Once a removal proceeding has been initiated, regulations allow for the
12 proceedings to be dismissed for a reason set forth at 8 C.F.R. § 239.2(a).

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

15 84. It is a well-established administrative principle that “agency action taken without
16 lawful authority is at least voidable, if not void ab initio.” L.M.-M. v. Cuccinelli,
17 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing SW General, Inc. v. NLRB, 796 F.3d
18 67, 79 (D.C. Cir. 2015); see also Hooks v. Kitsap Tenant Support Servs., Inc., 816
19 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by
20 unauthorized official).
21

22 85. Based upon the statements of counsel for DHS in court, Respondents moved to
23 have Petitioner’s removal proceedings dismissed because of their intent to
24

1 eliminate the due process rights available to Petitioner in removal proceedings
2 under section 240 of the Immigration and Nationality Act and place her in
3 expedited removal.
4

5 86. Because Petitioner's dismissal of section 240 proceedings would not be made in
6 furtherance of an enumerated reason set forth in the regulations, Respondents' use
7 of the January 2025 expedited removal designation is unlawful.

8 **FIFTH CAUSE OF ACTION**

9 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in**
10 **Accordance with Law and in Excess of Statutory Authority Violation of 8**
11 **U.S.C. § 1225(b)**

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

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

17 89. Congress has made it clear that the expedited removal statute does not apply and
18 may not be applied to individuals who were "paroled" into the United States. 8
19 U.S.C. § 1225(b).

20 90. Ms. Mendez Los Santos is not amenable to, nor may she be subjected to expedited
21 removal because she is not "arriving in the United States" as she has been physical
22 present for nearly two years.
23
24

1 91. Moreover, Ms. Mendez Los Santos is not amenable to, nor may she be subjected to
2 expedited removal under the January 2025 designation because she was paroled. 8
3 U.S.C. § 1225(b)(1)(A)(iii)(II) (limiting expedited removal designations only to
4 individuals who have not been admitted or paroled into the United States).
5

6 92. Because Petitioner is not subject to the designation, Respondents' use of the
7 January 2025 designation to detain her is unlawful.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, the Petitioner prays that this Court grant the following relief:

- 10 (1) Assume jurisdiction over this matter;
- 11 (2) Issue the writ of habeas corpus and order Respondents to show cause,
12 within three days of Ms. Mendez Los Santos's filing this petition, why
13 the relief she seeks should not be granted; and set a hearing on this matter
14 within five days of Respondents' return on the order to show cause (*see*
15 28 U.S.C. § 2243);
- 16 (3) Declare that Petitioner's detention without an individualized
17 determination violates the Due Process Clause of the Fifth Amendment;
- 18 (4) Declare that Respondents' application of the January 2025 Designation to
19 Petitioner is illegal;
- 20 (5) Issue a Writ of Habeas Corpus ordering Respondents to release
21 Petitioner from custody;
- 22 (6) In the alternative, order a constitutionally adequate bond hearing
23
24

1 complying with the procedural requirements in Singh where DHS bears
2 the burden of justifying Petitioner's continued detention by clear and
3 convincing evidence and the neutral adjudicator takes into consideration
4 alternatives to detention and Petitioner's ability to pay a bond;

5 (7) In the alternative, conduct an immediate bond hearing before this Court
6 where DHS bears the burden of justifying Petitioner's continued
7 detention by clear and convincing evidence and the Court takes into
8 consideration alternatives to detention and Petitioner's ability to pay a
9 bond;
10

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

13 (9) Issue an Order prohibiting the Respondents from attempting to place
14 Petitioner in expedited removal;

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

18 (11) Grant any further relief this Court deems just and
19 proper.
20

21 Dated: August 27, 2025

Respectfully submitted,

22 By: /s/ Bashir Ghazialam
23 Bashir Ghazialam
24 Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this August 27, 2025, in San Diego, California.

/s/ Kirsten Zittlau
Kirsten Zittlau
Attorney for Petitioner