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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

GABRIELA CAJAVILCA SALAS,)
)
 Petitioner,)
)
 v.)
)
 LUIS SOTO Director, Delaney Hall,)
 TODD M. LYONS, Acting Director, U.S.)
 Immigration and Customs Enforcement)
 U.S. Immigration and Customs Enforcement,)
 KRISTI NOEM, Secretary of the U.S.)
 Department of Homeland Security; and)
 PAM BONDI, Attorney General of the United)
 States)
 Respondents.)
 _____)

Case No. 2:25-cv-15713

ORDER TO SHOW CAUSE

Upon the accompanying Verified Petition, accompanying brief and attached exhibits, it is hereby,

ORDERED that the Respondents show cause before this Court on the _____ day of _____ 2025 in Courtroom _____, of the United States Courthouse, Newark, New Jersey at _____ .m., or as soon thereafter as counsel may be heard why a writ of habeas corpus should not issue and the Petitioner's detention declared unlawful.

ORDERED that service of this order and supporting papers herein shall be made, if not already effected, by personal service upon the Office of the United States Attorney for the District of New Jersey no later than _____ of the _____ day of _____ 2025, and that any responding papers be filed and served upon Petitioner's counsel no later than _____ of the _____ day of _____ 2025. Any reply by Petitioner shall be served on the Respondents by the _____ day of _____ 2025.

ORDERED that pending further order of this Court any transfer of Petitioner outside the District of New Jersey, is hereby stayed.

Dated: _____

U.S.D.C.

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8 C. .R. 208.3(a)(1)

8 C. .R. 208.30(e)(8)

8 C. .R. 1240.15, 1003.1

8 U.S.C. 1182(d)(5)(A)

8 U.S.C. 1229a(a)(1), (b)(1)

8 U.S.C. 1229a(b)(4).

28 U.S.C. 2241(c)(3)

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AT&T v. Winback & Conserve Program, 42 F.3d 1421, 1427 (3d Cir. 1994)

Coal. for Humane Immigrant Rts. v. Noem, No. 25-cv-872, 2025 WL 2192986, at 21-27

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Demore v. Kim, 538 U.S. 510, 517-18 (2003)

Ferring Pharms., Inc. v. Watson Pharms., Inc., 765 F.3d 205, 210 (3d Cir. 2014)

IIRAIRA, Pub. L. 104-208, 110 Stat. 3009, 3009-546 (1996)

Make the Rd. New York v. Wolf, 962 F.3d 612, 619 (D.C. Cir. 2020)

M.A.N.H. v. United States, No. EDCV 23-0372 JGB (KKx), at 3 (C.D. Cal. Sep. 22, 2023)

Novartis Consumer Health, Inc. v. Johnson-Merck Consumer Pharms. Co., 290 F.3d 578, 586

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P.C. Yonkers, Inc. v. Celebrations the Party & Seasonal Superstore, LLC, 428 F.3d 504, 508 (3d

Cir. 2005)

<https://www.uscis.gov/policy-manual/volume-7-part-m-chapter-2/S-C-2>

USCIS' Credible Fear Procedures Manual

INTRODUCTION

Petitioner entered the United States as an 18-year old in 2022 with her father in order to escape political persecution in Peru. Soon after arriving, Petitioner's father timely filed a Form I-589 application for asylum with U.S. Citizenship and Immigration Services (USCIS), naming Petitioner as an accompanying derivative applicant. The Petitioner's mother soon after also joined the asylum application as a derivative spouse. Petitioner's entire claim of fear is based on her father's political motivated persecution, arrests, and torture in Peru. On June 13, 2025, USCIS unlawfully terminated the father's asylum application and then in complete contravention to the governing regulations and agency rules only scheduled the Petitioner for a Credible Fear Interview (CFI). The father and mother were inexplicably never scheduled for a CFI.

On August 27, 2025, USCIS conducted the CFI of Petitioner and found her not credible. No consideration was given for the fact that Petitioner was a member of a family unit asylum application. Petitioner was then detained and transferred to Delaney Hall. An Immigration Judge (IJ) shortly thereafter affirmed the asylum officer's decision. Petitioner is now unjustly detained and subject to removal at any time. Meanwhile, her father and mother remain stuck in administrative limbo with a dismissed asylum application and no CFI scheduled or immigration court proceedings initiated. The Court should immediately grant injunctive relief preventing her transfer outside of New Jersey and removal from the United States for the following reasons.

First, Petitioner has established a likelihood of success on the merits. USCIS' June 13, 2025 dismissal of the father's asylum application was unlawful. Petitioner's father (lead asylum applicant) was released on parole pursuant to section 212(d)(5) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(5)(A). DHS had no authority to dismiss the I-589

asylum application under this circumstance. Instead, the asylum application should have been adjudicated by the asylum office or referred to the immigration court. But even if DHS had authority to dismiss the asylum application and place the family unit in expedited removal proceedings, DHS violated its own regulations and procedures by only scheduling Petitioner for a C I. In doing so, DHS also violated Petitioner's right to seek asylum as a derivative on her father's application.

Second, Petitioner will undeniably suffer irreparable harm unless this Court issues an injunction preventing her transfer from New Jersey and removal from the United States. Respondents have violated Petitioner's fifth Amendment Due Process rights and violated APA and *Accardi* doctrine. As a result, Petitioner is one step away from being removed to the country to which she fears persecution. If the Respondents' unlawful actions are not immediately halted, Petitioner will have no way to pursue her remedies.

Third, the balance of harms and public interest favor Petitioner. Respondents have no good faith argument to argue that a temporary restraining order and injunction would cause the Government any harm, particularly when it is the Respondents who have created the unlawful detention.

To be clear, Petitioner is not asking the Court to review her order of removal and is not challenging the discretionary decision making by USCIS during the C I. Instead, Petitioner is asking the Court to review the *process* due to her and prevent her removal while the Court can consider the merits of Petitioner's petition for habeas relief.

STATEMENT OF FACTS

Petitioner respectfully refers the Court to the Statement of facts as set forth in the Petition for Writ of Habeas Corpus.

STATUTORY AND CONSTITUTIONAL FRAMEWORK

I HABEAS CORPUS

To obtain habeas corpus relief, a petitioner must demonstrate that he is "in custody in violation of the Constitution or laws or treaties of the United States." *See* 28 U.S.C. 2241(c)(3). This Court has habeas corpus jurisdiction to consider the statutory and constitutional grounds for immigration detention that are unrelated to a final order of removal. *See Demore v. Kim*, 538 U.S. 510, 517-18 (2003).

II RIGHT TO SEEK ASYLUM

Seeking asylum protection from a fear of persecution on account of a protected ground is a right enshrined in United States statutes that implement international agreements and reflect widely accepted principles of international law. *M.A.N.H. v. United States*, No. EDCV 23-0372 JGB (KKx), at 3 (C.D. Cal. Sep. 22, 2023). Spouses and unmarried children under the age of 21 can accompany a lead principal asylum applicant as derivatives on the asylum application. *See* 8 C.F.R. 208.3(a)(1) (. . . an asylum applicant must file Form I-589, Application for Asylum and for Withholding of Removal, together with any additional supporting evidence in accordance with the instructions on the form. The applicant's spouse and children shall be listed on the application and may be included in the request for asylum if they are in the United States.). A child who was included on a parent's I-589 asylum application is protected from aging out after turning 21 by the Child Status Protection Act (CSPA). *See* <https://www.uscis.gov/policy-manual/volume-7-part-m-chapter-2/S-C-2> (last accessed September 14, 2025).

III REMOVAL OF NONCITIZENS

Congress established two main processes for removing noncitizens deemed ineligible to enter or remain in the United States. *See* IIRAIRA, Pub. L. 104-208, 110 Stat. 3009, 3009-546 (1996). The first are removal proceedings, also known as Section 240 removal proceedings due to the section of the INA under which they appear. These proceedings take place before an Immigration Judge (IJ). 8 U.S.C. 1229a(a)(1), (b)(1). They are adversarial proceedings in which the noncitizen has the right to hire counsel, examine and present evidence, and cross-examine witnesses. 8 U.S.C. 1229a(b)(4). The hearings are recorded, and a transcript is made available if a party appeals the decision. *Id.* 1229a(b)(4)(C). Upon a decision by the IJ, either party may appeal to the Board of Immigration Appeals (BIA). 8 C.F.R. 1240.15, 1003.1. If the BIA upholds a removal order, the noncitizen may then appeal that decision to a U.S. court of appeals. *See* 8 U.S.C. 1252.

Congress also included a second proceeding known as expedited removal. Relative to section 240 removal, expedited removal lives up to its name. *Make the Rd. New York v. Wolf*, 962 F.3d 612, 619 (D.C. Cir. 2020). An immigration officer, not an IJ, conducts the initial fact-finding. *See* 8 C.F.R. 235.3(b)(2)(i). If a noncitizen is eligible for expedited removal, an immigration officer asks them a short series of questions to determine (a) their identity, alienage, and inadmissibility, and (b) whether they intend to apply for asylum, fear persecution or torture, or fear returning to their country of origin. *Id.* 235.3(b)(2)(i), (b)(4).

If the noncitizen indicates a fear, the inspecting officer must refer them to a CFI to be conducted by an asylum officer. *See* 8 C.F.R. 235.3(b)(4). If that asylum officer finds the noncitizen to have a credible fear of persecution, the noncitizen will be moved either to full section 240 removal proceedings or to USCIS administrative asylum proceedings. *Id.*

208.30(f). If, however, the officer makes a negative credible fear determination, a supervisory officer will review the determination. *Id.* 208.30(e)(8). And if the supervisor agrees, the noncitizen can request review by an IJ. *Id.* 208.30(g). The IJ's review is meant to conclude within 24 hours and is final. *Make the Rd.*, 962 F.3d at 619.

I CREDIBLE FEAR INTERVIEWS AND FAMILY UNITY

1. The governing regulations require that family members be treated together as a family unit for purposes of a C.I. 8 C.F.R. 208.30(c) states:

(c) Treatment of family units.

- (1) A spouse or child of a principal alien who arrived in the United States concurrently with the principal alien shall be included in that alien's positive credible fear evaluation and determination, unless the principal alien or the spouse or child declines such inclusion. Any alien may have his or her evaluation and determination made separately, if that alien expresses such a desire. The option for members of a family unit to have their evaluations and determinations made separately shall be communicated to all family members at the beginning of the interview process.
- (2) The asylum officer in the officer's discretion may also include other accompanying family members who arrived in the United States concurrently with a principal alien in that alien's positive fear evaluation and determination for purposes of family unity.
- (3) For purposes of family units in credible fear determinations, the category of child includes only unmarried persons under 21 years of age.

USCIS' Credible Fear Procedures Manual implementing the regulation states that the procedures that follow have been designed to preserve the right to individual choice and protect all potential asylees. *See* Ex. D p. 18. For credible fear cases involving family units, the APSO Asylum Pre-Screening Officer must inform the aliens at the beginning of the credible fear interview that he or she may be processed individually if he or she prefers, and document it in the interview notes. The APSO must not attempt to influence the decision. *Id.* When family unit members do not decline to be included in the principal's positive credible fear determination,

then the APSO begins by interviewing the principal applicant. *Id.* If the principal is found to have a credible fear of persecution or torture, then no separate credible fear determination is made for the other family unit members. Each family member is included in the principal's positive credible fear determination. *Id.*

If the principal is not found to have a credible fear of persecution or torture, then the APSO must interview the other family unit members to determine if any other family unit member can establish a credible fear. If the APSO finds any family unit member positive for credible fear, then the APSO does not interview the remaining family unit members except to screen for mandatory bars. The other family members do not need separate credible fear determinations and may be included in the positive family member's determination in the officer's discretion for purposes of family unity on a case-by-case basis, unless the family member indicates that he or she wishes to receive a separate determination. Special attention should be paid to the privacy of each family member and the possibility that victims of domestic abuse, rape, and other forms of persecution might not be comfortable speaking in front of other family members. *Id.*

If no member of the family unit is found to have a credible fear, then the APSO processes each credible fear case separately and issues a negative credible fear determination to each person in the family unit. The APSO follows procedures for preparing, serving, and processing each family member's decision for a negative credible fear determination as set forth in this Manual.

STANDARD OF REVIEW

"Preliminary injunctive relief is an extraordinary remedy, which should be granted only in limited circumstances." *Ferring Pharms., Inc. v. Watson Pharms., Inc.*, 765 F.3d 205, 210 (3d

Cir. 2014) (quoting *Novartis Consumer Health, Inc. v. Johnson-Merck Consumer Pharms. Co.*, 290 F.3d 578, 586 (3d Cir. 2002)). The primary purpose of preliminary injunctive relief is "maintenance of the status quo until a decision on the merits of a case is rendered." *Acierno v. New Castle Cty.*, 40 F.3d 645, 647 (3d Cir. 1994). In order to obtain a TRO, the moving party must show:

(1) a reasonable probability of eventual success in the litigation, and (2) that it will be irreparably injured . . . if relief is not granted In addition, the district court, in considering whether to grant a preliminary injunction, should take into account, when they are relevant, (3) the possibility of harm to other interested persons from the grant or denial of the injunction, and (4) the public interest.

Reilly v. City of Harrisburg, 858 F.3d 173, 176 (3d Cir. 2017) (quoting *Del. River Auth. v. Transamerican Trailer Transp., Inc.*, 501 F.2d 917, 919-20 (3d Cir. 1974)).

The movant bears the burden of establishing "the threshold for the first two most critical factors If these gateway factors are met, a court then considers the remaining two factors and determines in its sound discretion if all four factors, taken together, balance in favor of granting the requested preliminary relief." *Id.* at 179. A court may issue an injunction to a plaintiff "only if the plaintiff produces evidence sufficient to convince the district court that all four factors favor preliminary relief." *AT&T v. Winback & Conserve Program*, 42 F.3d 1421, 1427 (3d Cir. 1994); *see also P.C. Yonkers, Inc. v. Celebrations the Party & Seasonal Superstore, LLC*, 428 F.3d 504, 508 (3d Cir. 2005) ("The burden lies with the plaintiff to establish every element in its favor, or the grant of a preliminary injunction is inappropriate.").

ARGUMENTS

I PETITIONER HAS ESTABLISHED A LIKELIHOOD OF SUCCESS

Respondents' actions violate Petitioner's Due Process rights, the APA, and the *Accardi* doctrine for two reasons: 1) DHS unlawfully terminated the I-589 asylum application filed by

Petitioner's father; 2) DHS unlawfully violated binding regulations and USCIS' own rules when it forced Petitioner to undergo the C I alone and without considering the fear of return by the entire family unit. But for these unlawful actions, Petitioner would not be unlawfully detained.

On June 13, 2025, USCIS issued a notice dismissing the I-589 asylum application, indicating that the applicants had been previously apprehended by DHS, placed in expedited removal, and issued a form I-860 notice and order of expedited removal. In doing so, DHS essentially terminated Petitioner father's parole under 8 U.S.C. 1182(d)(5)(A) and determined that the father was subject to expedited removal from the United States. But that determination was unlawful, as a court in the Northern District of California recently held. *See Ex. G, Aviles-Mena v. Kaiser* September 5, 2025 Order p. 8 Granting Preliminary Injunction (holding that because Aviles-Mena was paroled into the United States, he cannot be subject to expedited removal under section 1225(b)(1) and has a protectable liberty interest.). Other courts have similarly found that section 1225(b)(1) does not authorize designation for expedited removal of any noncitizen who has, at any point in time, been paroled into the United States. *See Coal. for Humane Immigrant Rts. v. Noem*, No. 25-cv-872, 2025 WL 2192986, at 21-27 (D.D.C. Aug. 1, 2025) (*Coalition*); *see also Castellon*, 2025 WL 2373425, at 9. The routine termination of parole permit noncitizens to be subject to expedited removal again. *Coalition*, 2025 WL 2192986, at 23. All parole will eventually be terminated or expire. *Id.* All parole will eventually be terminated or expire However, termination of parole does not generally require treating noncitizens as if they had never been paroled in the first place. *Ex. G, Aviles Mena v. Kaiser* p. 7 (citing *Coalition*, 2025 WL 2192986, at 21-27).

But even if the termination of the I-589 and the institution of expedited removal proceedings was proper, DHS unlawfully detained Petitioner after only interviewing her for a

C. I. Pursuant to governing regulations, once DHS determines that someone is subject to expedited removal, it must schedule a C. I. to determine if the applicant has a credible fear of return to their home country. Crucially, USCIS must schedule family units together for an interview. *See* 8 C. F.R. 208.30(c). The regulations at 208.30(c) provide that a spouse or child of a principal alien who arrived in the United States concurrently with the principal alien shall be included in that alien's positive credible fear evaluation and determination, unless the principal applicant or the spouse or child declines such inclusion. Ex. D, USCIS Credible Fear Manual p. 18.¹ The procedures that follow have been designed to preserve the right to individual choice and protect all potential asylees. *Id.* If the accompanying family members decline to have a separate asylum claim, the officer is obligated to begin by interviewing the principal applicant. *Id.* at 19. If the principal is found to have a credible fear of persecution or torture, then no separate credible fear determination is made for the other family unit members. Each family member is included in the principal's positive credible fear determination. *Id.* If the principal is not found to have a credible fear of persecution or torture, then the APSO must interview the other family unit members to determine if any other family unit member can establish a credible fear. If the APSO finds any family unit member positive for credible fear, then the APSO does not interview the remaining family unit members except to screen for mandatory bars. *Id.* The other family members do not need separate credible fear determinations and may be included in the positive family member's determination in the officer's discretion for purposes of family unity on a case-by-case basis, unless the family member indicates that he or she wishes to receive a separate determination. In other words, for purposes of family unity, the positive

¹ Also available at:

<https://www.uscis.gov/sites/default/files/document/guides/CredibleFearProceduresManual.pdf> (last accessed September 14, 2025).

finding may be used as the basis for finding positive credible fear for every other member of the accompanying family unit that arrived concurrently. *Id.* If no member of the family unit is found to have a credible fear, then the APSO processes each credible fear case separately and issues a negative credible fear determination to each person in the family unit. The APSO follows procedures for preparing, serving, and processing each family member's decision for a negative credible fear determination as set forth in this Manual.

Here, rather than schedule the father, mother, and Petitioner for a C I as required, DHS *only* scheduled the Petitioner for a C I. On August 27, 2025, Petitioner appeared before USCIS and an asylum officer conducted the interview and found that Petitioner had a negative credible fear of return to Peru. The asylum officer did not consider the fact that Petitioner was only a derivative on her father's application and that her entire fear of return was based on her father's fear of return. This directly led to Petitioner being detained at Delany Hall and subject to potential removal from the United States at any time.

Respondents' actions is a clear violation of Petitioner's fundamental right to pursue asylum. As an 18-year old unmarried daughter of the lead applicant, Petitioner was properly categorized as a derivative on her father's application. Derivatives are entitled to the same rights as lead applicants. *See M.A.N.H. v. United States*, No. EDCV 23-0372 JGB (KKx), at 3 (C.D. Cal. Sep. 22, 2023) ("seeking asylum protection from a fear of persecution on account of a protected ground is a right enshrined in United States statutes that implement international agreements and reflect widely accepted principles of international law."); *cf. E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 772 (9th Cir. 2018) ("To say that one may apply for something that one has no right to receive is to render the right to apply a dead letter."). That is precisely why the governing regulations require that USCIS to review all of the family claims

together. In the name of family unity, USCIS mandates that its officers individually examine all family applicants until at least one of them is found to have a credible fear. Only if none of them have a credible fear can the officer refer the matter for removal.

Under the Due Process Clause of the fifth Amendment to the United States Constitution, no person shall be deprived of life, liberty, or property, 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 Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

When analyzing whether there has been a due process injury of a protectable liberty interest, courts generally apply the factors set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976): the private interest that will be affected by the official action, the risk of an erroneous deprivation . . . and probable value, if any, of additional or substitute procedural safeguards, and the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.* at 335. Here, Petitioner has raised serious question about her procedural due process under the *Mathews* factors. Petitioner has a substantial private interest in remaining out of custody. The right to apply for affirmative asylum . . . involve s weighty private interests, for the potential injury , ' . . . includes deportation, which visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom.' *Immigrant Defs. L. Ctr. v. United States Dep't of Homeland Sec.*, No. CV 21-0395 MO (RAOx), 2025 L 57364, at 49 (C.D. Cal. Mar. 14, 2025) (quoting *Bridges v. Wixon*, 326 U.S. 135, 154 (1945)).

There is also undisputedly a significant risk of erroneous deprivation if the procedural safeguards concerning the processing of her father's asylum application are not satisfied. Indeed,

unless the Court intervenes and enjoins the Government's actions, Petitioner would be unlawfully deprived of her opportunity to seek asylum as a derivative on her father's application.

inally, the government has no interest in Petitioner's continued detention. Based on governing regulations and DHS own credible fear manual, Petitioner should never have been interviewed alone in the first place and the entire asylum claim should have been considered as part of a family unit.

This is also a violation of the Administrative Procedure Act (APA) and *Accardi* doctrine as the decision to dismiss the asylum application and only interview the Petitioner for a C I is arbitrary and capricious and in contravention of existing rules and regulations. It is well-established that w hen agencies fail to abide by their own regulations, "the APA (as developed by case law) gives aggrieved parties a cause of action to enforce compliance." *Fed. Defs. of N.Y., Inc. v. Fed. Bureau of Prisons*, 954 .3d 118, 130 (2d Cir. 2020); see also *Webster v. Doe*, 486 U.S. 592, 602, n. 7 (1988) (" T he Agency s failure to follow its *own regulations* can be challenged under the APA" (emphasis in original)); *Thomas Brooks Chartered v. Burnett*, 920 .2d 634, 642 (10th Cir. 1990) ("The failure of an agency to follow its own regulations is challengeable under the APA.") Under the *Accardi* doctrine, agencies are bound to follow their own rules that affect the fundamental rights of individuals, even self-imposed policies and processes that limit otherwise discretionary decisions. See *Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (holding that BIA must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.).

The requirement that an agency follow its own policies is not limited to rules attaining the status of formal regulations. *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Even an unpublished policy binds the agency if an examination of the provision's language, its context, and any available extrinsic evidence supports the conclusion that it is mandatory rather than merely precatory. *Doe v. Hampton*, 566 F.2d 265, 281 (D.C. Cir. 1977); *see also Morton*, 415 U.S. at 235–36 (applying *Accardi* to violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 813 (4th Cir. 1969) (Nor does it matter that these IRS instructions to Special Agents were not promulgated in something formally labeled a 'Regulation' . . .).

When agencies fail to adhere to their own policies as required by *Accardi*, courts typically frame the violation as arbitrary, capricious, and contrary to law under the APA, *see Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) (It is clear, moreover, that *Accardi* claims may arise under the APA), or as a due process violation, *see Sameena, Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) (An agency's failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual's constitutional right to due process.) (internal quotations omitted).

Prejudice is generally presumed when an agency violates its own policy. *See Montilla*, 926 F.2d at 167 (We hold that an alien claiming the INS has failed to adhere to its own regulations . . . is not required to make a showing of prejudice before he is entitled to relief. All that need be shown is that the subject regulations were for the alien's benefit and that the INS failed to adhere to them.); *Heffner*, 420 F.2d at 813 (The *Accardi* doctrine furthermore requires reversal irrespective of whether a new trial will produce the same verdict.).

To remedy an *Accardi* violation, a court may direct the agency to properly apply its policy, *see Damus*, 313 F. Supp. 3d at 343 ("This Court is simply ordering that Defendants do what they already admit is required. "), or a court may apply the policy itself and order relief consistent with the policy. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners' custody under ICE's standards because "it would be particularly unfair to require that petitioners remain detained . . . while ICE attempts to remedy its failure").

Here, there is no dispute that DHS failed to follow the governing regulations and internal rules for conducting a C I. As set forth above, DHS unlawfully separated Petitioner from the rest of the family unit when it conducted the C I and failed to consider the claims of the other family members.

II PETITIONER WILL SUFFER IRREPARABLE HARM UNLESS THE COURT ISSUES A TEMPORARY RESTRAINING ORDER

A court presented with a request for a temporary restraining order pursuant to Federal Rule of Civil Procedure 65 is authorized to issue a TRO to avoid "immediate and irreparable injury." Fed. R. Civ. P. 65(b)(1)(A). The purpose of a TRO is to "preserve the status quo and prevent irreparable harm just so long as is necessary to hold a preliminary injunction hearing, and no longer." *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

Here, the irreparable harm to Petitioner is clearly demonstrated. Absent a Court order preventing her transfer and removal, Petitioner will be deprived of her due process rights and likely removed despite the fact that she has a due process right to a lawful adjudication of her asylum application and the C I process.

The Government is constitutionally obligated to provide due process. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam) ("It is well established that the fifth Amendment entitles aliens to due process of law in the context of removal proceedings.") (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Therefore, it is necessary to grant TRO and injunctive relief now to prevent these unconstitutional harm from occurring. *See A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1368 (2025) (granting TRO to prevent expedited deportation potentially violative of due process). In addition, the All Writs Act, 28 U.S.C. 1651(a), empowers the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." The Supreme Court has recognized "a limited judicial power to preserve the court's jurisdiction or maintain the *status quo* by injunction pending review of an agency's action through the prescribed statutory channel." *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966) (citation omitted).

III THE BALANCE OF HARMS WEIGHES IN FAVOR OF PETITIONER

The merged "balancing-the-equities" and "public interest" factors favor Petitioner. The potential harm to Petitioner if the TRO is not granted is serious. If Petitioner is removed from the New Jersey without due process, she will be without means to challenge her detention in this Court. If she is removed from the United States, she will be unable to remedy the harms that resulted in her detention. In such a case, in comparison, the harm to Respondents is minimal. *Lira v. Noem*, No. 1:25-cv-00855-WJ-KK, 2025 L 383996, at 11-12 (D.N.M. Sep. 5, 2025). Indeed, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). Practically speaking, a TRO would inflict little more on Respondents than ensure they adhere to the requirement of the Constitution.

CONCLUSION

or the foregoing reasons, the Court should grant Petitioner's Motion for TRO and Preliminary Injunction.

Respectfully submitted on 16 day of September 2025

s. Jill S. Westerberg

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Dated: September 16, 2025