UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

ABBY Y. TORUMO CARRASQUEL, Petitioner, v. ROBERT LYNCH, Detroit Field Office Director for U.S. Immigration and Customs Enforcement, in his official capacity; TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; and KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity, Respondents.	Case No. 1:25-cv-1288 **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** **ORAL ARGUMENT REQUESTED**

INTRODUCTION

1. Petitioner Abby Yammel Torumo Carrasquel is a national of Venezuela who is being targeted by Tren de Aragua, repeatedly threatened his life. As the White House has recognized, "*Tren de Aragua (TdA) is a designated Foreign Terrorist Organization with thousands of members... TdA operates in conjunction with Cártel de los Soles, the Nicolas Maduro regime-sponsored, narco-terrorism enterprise based in Venezuela, and commits brutal crimes, including murders, kidnappings, extortions, and human, drug, and weapons trafficking.*"[1]

2. Fearing for his life, Petitioner fled to the United States with his wife and their three children (Petitioner's stepchildren) to seek protection under the laws of the United States based on

[1] *See* https://www.whitehouse.gov/presidential-actions/2025/03/invocation-of-the-alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-aragua/ (Visited October 24, 2025).

his political opinion opposing the Maduro regime (i.e., his refusal to give money to Tren de Aragua used to bolster that regime).

3. Petitioner Torumo Carrasquel entered the United States without inspection on or about May 15, 2024. He and his family surrendered to U.S. Customs and Border Protection ("CBP"), an agency within the U.S. Department of Homeland Security ("DHS"), which then released them into the United States with a Notice to Appear in immigration court dated May 16, 2024. **[Exhibit 1, Notice to Appear]** Petitioner applied for asylum before the U.S. immigration authorities on May 17, 2024.

4. Respondents commenced removal proceedings against Petitioner in immigration court, entitling Petitioner to present an asylum claim with the due process rights under 8 U.S.C. § 1229a. Petitioner was scheduled for an initial hearing at the Immigration Court in Chicago, Illinoi on August 20, 2026. **[Exhibit 2, Notice of In-Person Hearing]**

5. Petitioner has no criminal history in the United States or anywhere else in the world, and has participated fully and actively in pursing relief under the laws of this country. Yet, in a deceptive bait-and-switch, on October 3, 2025, on information and belief, Respondents detained the Petitioner without a warrant as he was leaving his place of employment in Chicago, Illinois in violation of the consent decree in *Castañon Nava et al. v. Dep't of Homeland Security et al.*, No. 18-cv-3757-RRP in the Northern District of Illinois. Counsel for the Petitioner confirmed with class counsel on Friday, October 24, 2025 that the Petitioner's detention has been reported as a violation of the consent decree in that ongoing litigation. **[Exhibit 3, E-mail from *Castañon Nava* class counsel]**

6. Subsequent to his unlawful detention, Petitioner was transferred by the Respondents to the North Lake Processing Center in Baldwin, Michigan, which U.S. Immigration

and Customs Enforcement ("ICE"), an agency within DHS, operates through a contract with The GEO Group, Inc., a company which operates private, for-profit prisons.

7. At the time of his unlawful arrest and detention, Petitioner had a serious medical condition for which he had undergone two surgeries for a urinary tract blockage and was awaiting a third surgery which had been postponed due to an infection. Counsel for Petitioner has sought has received medical records from the detention facility and has contacted his physician prior to his detention for those medical records which have not yet been received. The Respondents' medical records confirm the understanding of counsel that Petitioner has had, prior to and throughout his detention, a stent inserted that is draining urine directly from his kidneys, which carries a serious and significant danger of infection.

8. On October 14, 2025, the Petitioner's medical notes indicate that he needs urological follow up, but no such follow up appears to have been done despite his ongoing pain.

9. Pursuant to his medical records, during his detention at the North Lake Processing Center, Petitioner has blood in his urine and has not had proper access to antibiotics or other needed pain medication and medical care. **The Petitioner urgently requires access to specialized medical care by a urologist and/or hospitalization for evaluation of his condition**. Infection may lead to imminent kidney failure, requiring dialysis and possibly even the need for a transplant.

10. Further, despite communicating the urgent nature of the need for Counsel for the Petitioner (retained on the evening of October 23, 2025) to speak with the Petitioner, the North Lake facility has advised that it cannot accommodate an attorney-client call prior to Monday, October 27, 2025.

11. As Respondent is now unlawfully detained, his initial court hearing has now been rescheduled for November 14, 2025 at 8:30 a.m. **[Exhibit 4, EOIR Automated Case Status]** It is

unclear at this moment why Respondents have subjected the Petitioner to detention; however, in any case, Respondents' detention of Petitioner is unlawful.

12. Respondents do so based not on Petitioner's personal circumstances or individualized facts but because of Respondents' incorrect categorical determination that, the Fifth Amendment notwithstanding, noncitizens are not entitled to due process of law.[2]

13. But Respondents cannot evade the law so easily. The U.S. Constitution requires the Respondents provide Petitioner at minimum with the rights available to Petitioner when Petitioner filed an application for asylum after releasing him into the United States and instituting full proceedings in immigration court.

14. Moreover, to the extent that the Respondents intend to subject the Respondent to indefinite detention throughout the remainder of all his proceedings in the United States based on the *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) (holding that "all noncitizens who fall within the scope of 8 U.S.C. § 1225(b)(1) (arriving aliens) must be detained under that section and are "ineligible for any subsequent release on bond" under § 1226(a)" and to oppose bond before the Immigration Judge (IJ) pursuant to *Matter of Yajure Hurtado*, 29 I &N Dec. 216, 229 (BIA 2025) (holding that IJs have no jurisdiction to consider bond for persons charged as "arriving aliens" in removal proceedings), Petitioner's detention is nevertheless unlawful.

15. Any characterization of Petitioner's status as an "arriving alien" pursuant to 8 U.S.C. § 1225(b) and his detention without bond by ICE, an agency within DHS, is in violation of 8 U.S.C. § 1226(a).

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[2] *See, e.g.,* NBC News, Meet the Press interview of President Donald Trump (May 4, 2025), https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donald-trump-interviewed-meet-press-mod-rcna203514 (in response to a question whether noncitizens deserve due process under the Fifth Amendment, President Trump replied "I don't know. It seems—it might say that, but if you're talking about that, then we'd have to have a million or 2 million or 2 million trials.").

16. Accordingly, to vindicate Petitioner's rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner asks this Court to find that Respondents' attempts to detain, transfer, and deport Petitioner are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing Petitioner's transfer out of this district, further requiring Respondents to provide him with immediate, emergency medical care by a urologist, and to order the Respondent's immediate release from detention, or, in the alternative, to show cause in writing within three (3) days why the writ of habeas corpus and other relief requested in the petition should not be granted.

JURISDICTION AND VENUE

17. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.

18. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101–1537, regulations implementing the INA, the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706, and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

19. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

20. The federal government has waived its sovereign immunity and permitted judicial review of agency action under 5 U.S.C. § 702. In addition, sovereign immunity does not bar claims against federal officials that seek to prevent violations of federal law (rather than provide monetary relief).

21. Venue is proper because Petitioner is detained in Respondents' custody at the North Lake Processing Center in Baldwin, Michigan. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their immigration detention. See, e.g., *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

22. Venue is further proper because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Michigan.

23. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Western District of Michigan, the judicial district in which the Petitioner is currently detained.

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

24. There is no statutory exhaustion requirement in 28 U.S.C § 2241. Prudential exhaustion may be judicially required, however, courts may waive the prudential exhaustion requirement where, as here, "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (*quoting S.E.C. v. G.C. George Sec., Inc.*, 637 F.2d 685, 688 (9th Cir. 1981).

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

26. 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).

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

PARTIES

28. Petitioner Abby Yammel Torumo Carrasquel is a pending applicant for asylum pursuant to 8 U.S.C. § 1229a, and is a citizen and national of Venezuela. Petitioner entered the United States through the southern border and was released on or about May 16, 2024. On May 17, 2024, Petitioner filed his application for asylum. Petitioner is present within the Western District of Michigan as of the time of filing this petition, as he is currently detained at the North Lake Processing Facility in Baldwin, Michigan.

29. Respondent Robert Lynch is the Director of the Detroit Field Office of ICE's Enforcement and Removal Operations division, a component of the Department of Homeland Security. As such, he is Petitioner's immediate custodian for purposes of habeas and is responsible for Petitioner's detention and removal. *See Roman v. Ashcroft*, 340 F.3d 314 (6th Cir. 2003). He is sued in his official capacity.

30. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement, the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens, and a component agency of the Department of Homeland Security.

31. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

LEGAL FRAMEWORK

Asylum and Refugee Law

32. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking 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).

33. 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).

34. 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.

35. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens 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 and avail themselves of the protection of their homeland because of that persecution of fear. 8 U.S.C. § 1101(a)(42)(A).

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

37. Because of the life-or-death stakes, the statutory 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* § 1158(b)(1)(B) (placing the burden on the applicant to present evidence to establish eligibility.).

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

39. Noncitizens 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, noncitizens 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*.

Castañon Nava Consent Decree

40. The Petitioner in this case is a *Castañon Nava* class member.

41. In May 2018, persons arrested by ICE and impacted organizations, including the Illinois Coalition for Immigrant and Refugee Rights ("ICIRR") and Organized Communities Against Deportation ("OCAD"), challenged ICE's widespread, indiscriminate immigration

sweeps in the Chicago area, which resulted in the collateral arrest of hundreds of individuals through warrantless arrests and pre-textual vehicle stops, in *Castañon Nava et al. v. Dep't of Homeland Security et al.*, No. 18-cv-3757 (N.D. Ill.), arguing that ICE failed to comply with immigration law and the constitution in carrying out these arrests.

42. After the U.S. District Court for the Northern District of Illinois denied the government's motion to dismiss, the parties negotiated a settlement, which was approved on February 8, 2022. The settlement took effect on May 13, 2022 and remains in effect until February 2, 2026, and may be extended given recent violations of the settlement agreement.

43. "Class members" covered by the settlement agreement are persons who have been arrested, or are arrested in the future, without a warrant within the jurisdiction of the ICE Chicago Field Office, consisting of Illinois, Indiana, Wisconsin, Missouri, Kentucky, and Kansas, with additional terms of the agreement applying nationwide, such as training and documentation requirements.

44. If a class member is arrested in a manner that violates the settlement in the Chicago Area of Responsibility—which includes in Illinois, Indiana, Wisconsin, Kansas, Kentucky, and Missouri— they may be able to seek individual remedies—including immediate release from detention.

45. Under the settlement agreement, ICE was required to issue a **nationwide policy** regarding warrantless arrests and vehicle stops, share that policy with all ICE officers, and train them on its requirements. Under the policy, ICE **must** document the facts and circumstances surrounding a warrantless arrest or vehicle stop in the individual's arresting documentation, called an I-213, including whether the individual was arrested without an administrative warrant; the location of the arrest (e.g., place of business, residence, vehicle, or a public area); if arrested at a

business, whether the individual is an employee of the business; if arrested at a residence, whether the person resides at that place of residence; ties to the community, if known at the time of arrest, including family, home, or employment; the specific, particularized facts supporting the conclusion that the individual was likely to escape before a warrant could be obtained; and a statement of how the ICE officers identified themselves as ICE and "state[d] that the person is under arrest and the reason for the arrest." With respect to vehicle stops, ICE must also document specific facts that formed the basis for its reasonable suspicion that a person in the vehicle did not have legal status.

46. The Petitioner is a member of the *Castañon Nava* class. On information and belief, the Respondents arrest of the Petitioner violated the settlement agreement in Castañon Nava, and the Petitioner's arrest has been reported to class counsel. Under the terms of the settlement, in the event of a violation and arrest contrary to the terms of the agreement, a class member must be released from ICE custody as soon as practicable, without paying a bond or being subject to conditions of release.

Expedited Removal

47. In 1996, Congress created "expedited removal" as a truncated method for rapidly removing certain noncitizens 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 noncitizens who are inadmissible 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. § 235.3(b)(1), (b)(3).

48. Noncitizens 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 noncitizen; 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)).

49. Otherwise, if the officer concludes that the individual is inadmissible under an applicable ground, the officer "shall," with simply the concurrence of a supervisor, 8 C.F.R. § 235.3(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).

50. 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.

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

52. 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).

53. 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 it occurs, does

not remotely approach the type of process and the rights available to asylum seekers receive in regular Section 240 immigration proceedings.

54. An expedited removal order comes with significant consequences beyond removal itself. Noncitizens 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, noncitizens 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).

55. Expedited removal only applies to noncitizens 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 noncitizens 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 noncitizens based on other grounds, they must afford the noncitizen a full hearing before an immigration judge. *See* 8 C.F.R. § 235.3(b)(1), (3).

56. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen 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).

57. Beginning May 20, 2025, Respondents have dramatically increased oral and written motions to dismiss immigration court cases in order to reclassify the respondents in those cases as

being subject to expedited removal and deprive them of full proceedings in immigration court. This is a widespread practice.[3]

Release and Indefinite, Mandatory Detention

58. On July 8, 2025, ICE issued interim guidance instructing all ICE employees to consider anyone charged with inadmissibility under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. The July 8, 2025 DHS policy memorandum states it was issued "in coordination with the Department of Justice (DOJ)." **[Exhibit 5, 2025, ICE Guidance Regarding Detention Authority for Applications for Admission]**

59. As this Honorable Court has jurisdiction over this Petition for a Writ of Habeas Corpus, it must next determine whether the Petitioner's detention is governed by the mandatory detention provisions in 8 U.S.C. § 1225(b)(2) or the discretionary detention provisions in 8 U.S.C. § 1226(a).

60. Noncitizens detained under Section 1225(b)(2) must remain in custody for the duration of their removal proceedings, while those detained under Section 1226(a) are entitled to a bond hearing before an IJ at any time before entry of a final removal order." See *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1247 (W.D. Wash. 2025).

61. Respondents have begun widespread arrests and detentions of persons such as the Petitioner, who entered the U.S. without inspection, and now take the position that persons in his situation are subject to indefinite, mandatory detention as "applicants for admission" and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

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[3] *See* https://www.americanimmigrationcouncil.org/blog/ice-attorneys-case-dismissals-immigration-court-hearings-judges-grant/

62. To the contrary, the Petitioner is detained pursuant to 8 U.S.C. § 1226(a).

63. Since July 8, 2025, the vast majority of federal courts throughout the United States have found that § 1226(a) applies to noncitizens without lawful status who are arrested within the country. *See, e.g., Leal-Hernandez*, 2025 WL 2430025, at *8-10; *Maldonado*, 2025 WL 2374411, at *11-13; *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, 2025 WL 2607924, at *7-8, 11 (D. Mass. Sept. 9, 2025) (collecting cases); *Herrera v. Knight*, No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792, at *7 n.5 (D. Nev. Sept. 5, 2025) (collecting cases).

64. 8 U.S.C. § 1225(a)(1) provides that a noncitizen "present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed for purposes of this chapter an applicant for admission." The statute defines "applicants for admission" as "[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . ." 8 U.S.C. § 1225(a)(1).

65. The Respondents have argued to various courts around the United States that persons such as the Petitioner are subject to § 1225(b)(2), which provides that, "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A).

66. In other words, § 1225(b)(2)(A) generally requires mandatory detention of certain "applicant[s] for admission" during their removal proceedings. Individuals subject to mandatory detention under § 1225(b)(2)(A) may, however, be "temporarily released on parole 'for urgent humanitarian reasons or significant public benefit.'" *Jennings*, 583 U.S. at 288 (quoting § 1182(d)(5)(A)). This parole "shall not be regarded as an admission" of the noncitizen. 8 U.S.C. § 1182(d)(5)(A).

67. Once the purposes of parole have been served, the noncitizen "shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." *Id.*

68. By contrast, § 1226(a) sets forth "the default rule" for detaining noncitizens "already present in the United States." *Jennings*, 583 U.S. at 303. Section 1226(a) provides that, "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a).

69. Unlike § 1225(b)(2)(A), noncitizens who fall under § 1226(a) are not subject to mandatory detention. Pending a removal decision, the Attorney General may continue to detain an arrested noncitizen, release them on bond, or release them on conditional parole, unless they fall within certain exceptions involving criminal offenses and terrorist activities. *See* 8 U.S.C. § 1226(a) (1)-(2), (c).

70. The Respondents have taken the position in courts across the country that § 1226(a), and the possibility of release on bond, only applies to individuals who are present in the country with lawful status but are in removal proceedings. However, section 1226(a) does not contain a requirement of lawful status, and "courts are not free to read into the language [of a statute] what is not there." *See O'Hara v. Nika Techs., Inc.*, 878 F.3d 470, 475 (4th Cir. 2017).

71. Presumably, the Respondents will take the position that the Petitioner in this case is detained pursuant to § 1225(b)(2) because he entered this country without inspection, making him inadmissible under 8 U.S.C. § 1182(a). This argument fails for several reasons.

72. First, the Respondents' treatment of the Petitioner since he arrived in the United States supports the conclusion that he is detained pursuant to § 1226(a). The Petitioner entered the

country without inspection on May 15, 2025 with his family. Federal authorities simply released them into the United States. The Respondents have consistently treated the Petitioner as subject to § 1226(a) up to this point.

73. Individuals detained under § 1225(b) may not be released on recognizance; they may only be paroled into the country under § 1182(d)(5)(A) (release on recognizance is a form of "conditional parole" from detention under § 1226 that is distinct from parole under § 1182(d)(5)(A)). *See Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *3 (D. Mass. July 24, 2025))). That distinction is significant.

74. The INA allows an individual paroled into the United States to physically enter the country "subject to a reservation of rights by the Government that it may continue to treat the non-citizen 'as if stopped at the border.'" *Martinez*, 2025 WL 2084238, at *3 (quoting *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020)). On the other hand, conditional parole—including release on recognizance—releases a noncitizen already in the country from domestic detention. *See Thuraissigiam*, 591 U.S. at 139.

75. Individuals paroled into the country are thus in a fundamentally different and less protected position than 'those who are within the United States after an entry, irrespective of its legality." *See Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)). DHS's decision to release the Petitioner on recognizance does not support an argument that federal respondents actually intended for him to be paroled into the United States pursuant to § 1182(d)(5)(A).

76. Further, applying § 1225 to all persons who have not been admitted into the United States would conflict with the statute's broader structure, the Supreme Court's traditional understanding of the relationship between §§ 1225(b) and 1226(a), and decades of immigration practice. "[O]ne of the most basic . . . . canons" of statutory interpretation is that "a statute should

be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)) (internal brackets omitted).

77. By contrast, the Respondents' position that § 1225(b) applies to all persons who have not been admitted into the United States would render multiple provisions of § 1226 superfluous. For instance, § 1226(c)(1)(A), (D), and (E) already require mandatory detention of certain categories of inadmissible noncitizens. Indeed, Congress added § 1226(c)(1)(E)—which requires detention for certain inadmissible noncitizens charged with crimes including burglary, theft, and larceny—just this year through the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

78. If § 1225(b) already required mandatory detention of all noncitizens who have not been admitted, these provisions would be meaningless. *See, e.g.*, *Martinez*, 2025 WL 2084238, at *7 (concluding same); *Maldonado*, 2025 WL 2374411, at *12 (same); *Hasan*, 2025 WL 2682255, at *8 (same).

79. The Respondents' theory also conflicts with the Supreme Court's previous interpretation of the relationship between §§ 1225(b) and 1225(a). In *Jennings*, the Supreme Court explained that § 1225(b) governs noncitizens "seeking admission into the country," whereas § 1226(a) governs noncitizens "already in the country" who are subject to removal proceedings. 583 U.S. at 289. That interpretation is consistent with the core logic of our immigration system. "[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.

80. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" *Leng May Ma*, 357 U.S. at 187 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)); *accord Zadvydas*, 533 U.S. 678, 693 (2001) ("The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law.").

81. Given this precedent, it is doubtful that Congress intended § 1225(b)(2) to apply to individuals like the Petitioner who were detained after being present in the U.S. for an extended period of time, who had not committed any crimes, and who were fully complaint with all requirements to attend ICE checkins and immigration court hearings.

82. Respondents' position is at odds with DHS's own historic understanding of the statute's meaning. DHS's longstanding interpretation of § 1226 "like any other interpretive aid—can inform a court's determination of what the law is." *Hasan*, 2025 WL 2682255, at *9 (quoting *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024)). "DHS's long-standing interpretation has been that § 1226(a) applie[d] to those who have crossed the border between ports of entry and are shortly thereafter apprehended." *Id.* (quoting Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954)); *see also Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025) (observing that DHS's "novel position would expand § 1225(b) far beyond how it has been enforced historically").

83. DHS's historic practice reinforces § 1226(a)'s application to noncitizens in the Petitioner's position who are arrested well after arriving to this country.

FACTUAL BACKGROUND

84. Petitioner is a citizen and national of Venezuela.

85. Petitioner was repeatedly threatened by Tren de Aragua, a Venezuelan gang that the White House recognizes is in league Venezuelan government, for his political beliefs and his refusal to financially support the Maduro regime. Fearing for his life, he sought protection in the United States.

86. On or about May 15, 2024, Petitioner entered the United the Ysleta, Texas without inspection, to seek asylum, and surrendered to CBP. CBP released him into the United States. On or about May 16, 2024, Respondents prepared a Notice to Appear against Petitioner pursuant to 8 U.S.C. § 1229a requiring him to appear in Immigration Court in in Denver, Colorado on April 7, 2025. Respondents alleged that Petitioner was inadmissible to the United States under 8 U.S.C. 1182(a)(6)(A)(i).

87. After his release on or about May 16, 2025, Petitioner moved to reside in Illinois, and the venue of his immigration court case was moved to Chicago, Illinois where he has lived with his family and worked since that time until his unlawful detention on October 3, 2025.

Unlawful Terminations of Immigration Court Proceedings to Subject Asylum Seekers to Expedited Removal

88. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The "Protecting the American People Against Invasion" EO instructs the DHS Secretary "to take all appropriate action to enable" ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures including through the use of mass detention.

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

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

91. The January 2025 Designation does not state that it applies to noncitizens who were in the United States before its effective date.

92. Since that time, on information and belief, Respondents have moved for dismissal of proceedings in immigration court against asylum applicants throughout the United States with the purpose of divesting them of their due process rights in their properly filed asylum applications.

93. On information and belief, Respondents are using the immigration detention system, including extra-territorial transfer and detention, as a means to punish individuals for asserting rights under the Refugee Act.

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

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

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

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

97. 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.*

98. 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).

99. The Respondents' detention of Petitioner in violation of the *Castañon Nava* consent decree violates his due process rights.

100. In the event that Respondents move to terminate Petitioner's proceedings in order to place him in expedited removal, that violates his due process rights.

101. Expedited removal 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.

102. While there is a right to "consult" with an attorney or another person about the credible fear interview process, *see* 8 U.S.C. § 1225(b)(1)(B)(iv) *and* 8 C.F.R. §§ 208.30(d)(4), 235.3(b)(4)(i)(B), (ii), the consultation "shall not unreasonably delay the process." The consultant may be "present" during the interview but may only make a "statement" at the end of the interview *if* permitted by the asylum officer. 8 C.F.R. § 208.30(d)(4). The immigrant subject to expedited removal may present evidence "if available", *id.*—often an impossibility given the fast timeline and the default of detention during the process. *See generally* Heidi Altman, et. al., *Seeking Safety from Darkness: Recommendations to the Biden Administration to Safeguard Asylum Rights in CBP Custody*, Nov. 21, 2024, https://www.nilc.org/wp-content/uploads/2024/11/NILC_CBP-Black-Hole-Report_112124.pdf (describing the obstruction of access to counsel for people undergoing credible fear screenings in CBP custody).

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

104. In sum, applying for asylum in § 1229a removal proceedings comes with a panoply of greater protections when compared with seeking asylum in expedited removal. *See Immigrant Defenders Law Center v. Mayorkas*, 2023 WL 3149243, at *29 (C.D. Cal. Mar. 15, 2023)

("Individuals in regular removal proceedings enjoy far more robust due process protections [than those in expedited removal] because Congress has conferred additional statutory rights on them.").

105. Here, to the extent that Respondents seek to terminate Petitioner's proceedings in order to place Petitioner in expedited removal, depriving Petitioner of the bundle of rights associated with Petitioner's pending asylum application, Respondents are violating Petitioner's due process rights by depriving Petitioner of the strong private interest in the rights that attached to Petitioner's properly filed asylum application available in § 1229a proceedings. *See Board of Regents v. Roth*, 408 U.S. 564, 577 (1972) (requiring an opportunity to be heard where an individual has "a legitimate claim of entitlement" to a benefit); *Mathews v. Eldridge,* 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

106. Finally, subjecting the Petitioner to indefinite, mandatory detention on the flimsy legal pretext of the July 8, 2025 ICE guidance violates his due process rights.

COUNT TWO
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A), the Immigration and Nationality Act – 8 U.S.C. § 1226, and Federal Regulations
Not in Accordance with Law and in Excess of Statutory Authority
Unlawful Detention

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

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

109. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551

U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

110. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

111. By categorically detaining the Petitioner and transferring Petitioner away from the district without consideration of Petitioner's individualized facts and circumstances, Respondents have violated the INA, implementing regulations, and the APA.

112. On information and belief, Respondents have made no finding that Petitioner is a danger to the community or a flight risk.

113. By detaining and transferring the Petitioner categorically, Respondents have further abused their discretion because, since the agency made its initial determination to release the Petitioner into the United States, on information and belief, there have been no changes to Petitioner's facts or circumstances that support detention.

114. Respondents have already considered Petitioner's facts and circumstances and determined that Petitioner was not a flight risk or danger to the community when they initially released him into the United States. On information and belief, there have been no changes to the facts that justify his detention.

COUNT THREE
Violation of Fifth Amendment Right to Due Process
Illegal Retroactive Application of Expedited Removal Designation

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

116. Administrative rules "will not be construed to have retroactive effect unless their language requires this result." *Landgraf v. USI Film Products*, 511 U.S. 244, 272 (1994). When a

"new provision attaches new legal consequences to events completed before its enactment" the new provision is not retroactive unless it is unmistakably clear. *Id.* at 270. Applying the January 2025 expedited removal designation to Petitioner's entry to the United States to seek asylum in May 2024 would attach new legal consequences, including the loss of significant rights related to Petitioner's right to seek asylum.

117. The January 2025 designation does not unmistakably apply to individuals who entered the United States prior to its effective date of January 21, 2025. Office of the Secretary, Dep't of Homeland Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139. The designation's language thus does not "require that it be applied retroactively." *See INS v. St Cyr*, 533 U.S. 289, 291 (2001).

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

119. At the time of Petitioner's entry on or about May 15, 2024, the only individuals who could be placed in expedited removal proceedings were individuals "encountered within 100 air miles of the border and within 14 days of their date of entry." *See* Office of the Secretary, Dep't of Homeland Security, Rescission of the Notice of July 23, 2019, Designating Aliens for Expedited Removal, 87 Fed. Reg. 16022 (Mar. 21, 2022). To the extent that Respondents ever had the legal authority to reclassify Petitioner from § 1229a proceedings to expedited removal proceedings,3 that authority expired 14 days after Petitioner's entry date.

120. Accordingly, if it is the Respondents intent to terminate proceedings against the Petitioner in order to subject him to expedited removal, that is unlawful.

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

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

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

123. Petitioner does not concede that DHS has authority to reverse its initial processing choice to issue Petitioner an NTA for § 1229a proceedings.

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

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

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

127. To the extent that Respondents have decided to terminate Petitioner's removal proceedings in order to eliminate the due process rights available to Petitioner in § 1229a removal proceedings, that is not among the reasons to seek dismissal permitted by 8 C.F.R. § 239.2(a).

128. To the extent that Respondents intend to move to terminate Petitioner's removal proceedings in order to subject Petitioner to expedited removal, Respondents are further violating

the APA by "entirely fail[ing] to consider an important aspect of the problem" – namely, the important procedural rights that Petitioner relied on in § 1229a immigration court proceedings. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding that rescission of immigration policy without considering "particular reliance interests" is arbitrary and capricious in violation of the APA).

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

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

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

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

132. Petitioner does not waive his rights as a *Castañon Nava* class member.

133. Respondents' detention of the Petitioner in violation of the *Castañon Nava* consent decree is not in accordance with law.

134. Petitioner is not amenable to nor may Petitioner be subjected to expedited removal because Petitioner is not "arriving in the United States" as Petitioner has been physically present in the United States for approximately a year and five months.

135. Because Petitioner is not subject to the designation, Respondents' use of the January 2025 designation to detain and transfer Petitioner is unlawful.

136. Petitioner is not subject to indefinite, mandatory detention pursuant to the July 8, 2025 ICE Guidance.

137. Because Petitioner is not subject to indefinite, mandatory detention, Respondents' use of the July 8, 2025 ICE guidance to detain and transfer Petitioner is unlawful.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

a) Assume jurisdiction over this matter;
b) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
c) Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
d) Declare that the application of the January 2025 Designation to Petitioner violates the Due Process Clause of the Fifth Amendment;
e) Declare that the application of the July 8, 2025 ICE Guidance to Petitioner violates the Due Process Clause of the Fifth Amendment;
f) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody immediately;
g) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;
h) Issue an Order requiring the Respondents to immediately transport the Petitioner for evaluation by a urologist with regard to his ongoing kidney disease and infection;
i) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
j) Grant any further relief this Court deems just and proper.

Dated this 24th day of October, 2025,

Respectfully submitted,

s/ Amy Maldonado
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VERIFICATION

On this 24th day of October, 2025, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. I make this verification in lieu of and acting on behalf of Petitioner, Abby Yammel Torumo Carrasquel because the Petitioner is currently detained and because of the urgent nature of the relief requested. I am authorized to make this verification as a member of the legal team representing the Petitioner, Abby Yammel Torumo Carrasquel.

Dated: 10/24/2025

East Lansing, MI

s/ Amy Maldonado

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