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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

N.A.¹

CASE NO.: '25CV2936 BTM MMP

Petitioner-Plaintiff,

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

vs.

CHALLENGE TO UNLAWFUL
INCARCERATION: REQUEST FOR
DECLARATORY AND INJUNCTIVE
RELIEF

CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center;
PATRICK DIVVER, Field Office
Director, San Diego Office of Detention
and Removal, U.S. Immigration and
Customs Enforcement; TODD M.
LYONS, Acting Director, U.S.
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
and KRISTI NOEM, Secretary, U.S.
Department of Homeland Security,

Respondents-Defendants.

¹ Petitioner will move this Court for leave to proceed under a pseudonym (using the initials N.A.).

1 Petitioner N.A. petitions this Court for a writ of habeas corpus under 28 U.S.C. section 2241
2 to remedy Respondents' detaining him unlawfully, and states as follows:

3 INTRODUCTION

4 1. Petitioner N.A. ("Petitioner" or "Mr. N.A.") is a Salvadoran asylum seeker detained
5 at Otay Mesa Detention Center in San Diego, California. He was persecuted in El Salvador on
6 account of his membership in particular social groups by the Mara 18 and MS-13 gangs, criminal
7 groups the Salvadoran government is unable and unwilling to control. The persecution he suffered
8 in El Salvador included beatings by these groups and imminent death threats because of his
9 particular social group membership.

10 2. On or about January 2, 2023, Mr. N.A. entered the United States.

11 3. Respondents commenced removal proceedings against him in immigration court,
12 entitling him to present his asylum claim with the due process rights under 8 U.S.C. § 1229a.

13 4. Since then, Petitioner has attended his immigration court hearings. On or about
14 August 7, 2025, he filed a Form I-589 Application for Asylum, Withholding of Removal, and
15 protection under the Convention Against Torture with the immigration court.

16 5. Since approximately mid-May 2025, DHS has implemented a coordinated practice of
17 leveraging immigration detention to strip people like Mr. N.A. of their substantive and procedural
18 rights and pressure them into deportation.² Immigration detention is civil and thus is permissible for
19 only two reasons: to ensure a noncitizen's appearance at immigration hearings and to prevent
20 danger to the community. But DHS did not arrest and detain Mr. N.A.—who demonstrably poses no
21 risk of absconding from immigration proceedings or danger to the community—for either
22 of these reasons.

23 6. In immigration court, noncitizens have the right to pursue claims for relief from
24 removal (including asylum), be represented by counsel, gather and present evidence, and pursue
25 appeals. 8 U.S.C. § 1229(a). By dismissing an ongoing case, DHS—in its view—can transfer a
26 noncitizen's case from removal proceedings in immigration court, governed by 8 U.S.C. § 1229a, to
27 cursory proceedings under 8 U.S.C. § 1225(b)(1) called "expedited removal," where the procedural

28 ² Steve Price, Video shows ICE agents arresting immigrants at San Diego federal courthouse, raising due process concerns, CBS8 LOCAL NEWS (June 11, 2025, 5:40 p.m. PDT), <https://www.cbs8.com/article/news/local/video-ice-agents-arrestimmigrants-at-san-diego-federal-courthouse-raises-due-process-concerns/509-49745585-774b-4144-81ff-3486c5fadbe9> (last visited September 12, 2025) ("The exact number of arrests is unclear, but footage shows agents detaining people immediately after court appearances.").

1 protections and opportunities to pursue relief from removal built into regular immigration-court
2 proceedings do not apply.

3 7. Respondents now seek to keep Mr. N.A. detained without a meaningful opportunity
4 to seek a bond or custody redetermination hearing. *See* 8 U.S.C. § 1225. Respondents do so based
5 not on Mr. N.A.'s personal circumstances or individualized facts. Due to his detention, Mr. N.A. at
6 risk of being transferred away from the Southern District of California while he remains in
7 Respondents' physical and legal custody.

8 8. But Respondents cannot evade due process requirements so easily. The U.S.
9 Constitution requires the Respondents provide at least the rights available to him when he filed his
10 application for asylum.

11 9. The Constitution protects Mr. N.A.—and every other person present in this
12 country—from arbitrary deprivations of his liberty and guarantees him due process of law. The
13 government's power over immigration is broad, but as the Supreme Court has declared, it "is
14 subject to important constitutional limitations." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).
15 "Freedom from bodily restraint has always been at the core of the liberty protected by the Due
16 Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

17 10. Mr. N.A. seeks declaratory and injunctive relief to compel his immediate release
18 from the immigration jail where he has been held by DHS since being unlawfully detained since
19 March 2025, without first being provided a due process hearing to determine whether his
20 incarceration is justified.

21 11. Absent review in this Court, no other neutral adjudicator will examine Mr. N.A.'s
22 plight: Respondents will continue—unchecked—to detain him unlawfully under 8 U.S.C. §
23 1225(b)(1), INA § 235(b)(1), without due process. On August 26, 2025, an Immigration Judge at
24 Otay Mesa Detention Center granted Mr. N.A.'s request for bond, finding that he demonstrated that
25 he does not pose a danger to the community nor such a significant flight risk that he should not be
26 release. Counsel for DHS appealed, and the BIA found that the Immigration Judge was without
27 jurisdiction, denying Mr. N.A.'s request for bond.

28 12. For the reasons outlined below, Mr. N.A.'s arrest and inability to contest his arbitrary
detention violate his statutory and constitutional rights, including Due Process protections under the
U.S. Constitution. Mr. N.A. respectfully requests that this Court should grant the instant petition for
a writ of habeas corpus, without any bond requirement, and for declaratory and injunctive relief, to

1 prevent such harms from recurring. Mr. N.A. also asks this Court to find that Respondents' attempts
 2 to detain, transfer, and deport him are arbitrary and capricious and in violation of the law, and to
 3 immediately issue an order preventing his transfer out of this district.

4 JURISDICTION

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

7 14. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28
 8 U.S.C. § 1331 (federal question jurisdiction), art. I, § 9, cl. 2 of the United States Constitution
 9 (Suspension Clause), and 28 U.S.C. § 1346 (U.S. as defendant), and 28 U.S.C. § 1651 (All Writs
 10 Act).

11 15. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens
 12 challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003)
 13 (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533
 14 U.S. 678, 787 (2001) (same); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *3
 15 (D. Or. July 9, 2025) (same); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL
 16 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (same).

17 16. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et*
 18 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, the All Writs Act, 28 U.S.C. § 1651,
 19 and the Court's inherent equitable powers.

20 VENUE

21 17. Venue is proper because Petitioner is in Respondents' legal and
 22 physical custody at Otay Mesa Detention Center in San Diego, California. Venue is further proper
 23 because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in
 24 this District, where Petitioner is now in Respondents' legal and physical custody, including his
 25 current and ongoing detention under the legal and physical custody of Respondent LaRose, warden
 26 of Otay Mesa Detention Center. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004)
 27 (habeas petition must be addressed to the federal district court of confinement); *Wairimu v. Dir.,*
 28 *Dep't of Homeland Sec.*, No. 19-CV-174-BTM-MDD, 2019 WL 460561, at *2 (S.D. Cal. Feb. 5,
 2019) (district of confinement is the preferable forum even if the Court otherwise has personal
 jurisdiction). For these same reasons, venue should be found proper under Local Civil Rule HC.1.

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

18. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to the Respondents “forthwith,” unless 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.*

19. 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).

20. Mr. N.A. is “in custody” for the purpose of 28 U.S.C. section 2241 because he was arrested by Respondents and remains in their legal and physical custody at Otay Mesa Detention Center in San Diego, California. He is under Respondents’ and their agents’ direct control.

PARTIES

21. Mr. N.A. (“Petitioner”) is a 35-year-old citizen and national of El Salvador. He came to the USA in 2023 to seek asylum, withholding of removal, or protection under the Convention Against Torture after fleeing violence and death in El Salvador on account of his membership in particular social groups by the Mara 18 and MS-13 gangs, criminal groups the Salvadoran government is unable and unwilling to control. The persecution he suffered in El Salvador included witnessing gang violence with the shooting of his father and murder of his family members, his beating by these criminal groups, and imminent death threats because of his refusal to join these gangs. He has had no departures since his arrival. He is not married. He has four children. He works in construction. Mr. N.A. was arrested by Florida Fish and Wildlife officers for harvesting oysters, and he received a non-criminal infraction for fishing without a license. Mr. N.A. has no criminal convictions, and after ICE took him into custody, the pending non-criminal case was administratively closed. Since the arrest on or about March 9, 2025, Mr. N.A. has remained in Respondents’ custody.

22. Mr. N.A. is currently residing in Respondents’ custody at Otay Mesa Detention Center in San Diego, California, as of the time of the filing of this petition.

23. Respondent Christopher LaRose ("LaRose") is the Senior Warden at Otay Mesa Detention Center in San Diego, California, where Mr. N.A. is detained. LaRose is responsible for the day-to-day operations and confinement of non-citizens detained at that facility. He acts at the direction of Respondents Divver, Lyons, and Noem. LaRose is a custodian of Mr. N.A. and is named in his official capacity.

24. Respondent Patrick Divver ("Divver") is the Field Office Director of ICE in San Diego, California. He acts at the direction of Respondents Lyons and Noem. ICE is responsible for local custody decisions relating to non-citizens charged with being removable from the U.S., including the arrest, detention, custody status, and removal of non-citizens. The San Diego Field Office's area of responsibility includes San Diego and Imperial Counties in California. Respondent Divver is a custodian of Mr. N.A. and is named in his official capacity.

25. Respondent Todd Lyons ("Lyons") is the Acting Director of ICE, and he has authority over the actions of Respondents LaRose and Divver. ICE is responsible for local custody decisions relating to non-citizens charged with being removable from the U.S., including the arrest, detention, custody status, and removal of non-citizens. Respondent Lyons is a custodian of Mr. N.A. and is named in his official capacity.

26. Respondent Kristi Noem ("Noem") is the Secretary of DHS and has authority over the actions of all other DHS Respondents in this case, as well as all operations and federal agencies of DHS, including ICE. In her capacity as Secretary of DHS, Respondent Noem is charged with faithfully administering the immigration and naturalization laws of the United States. 8 U.S.C. § 1103(a). Respondent Noem is a custodian of Mr. N.A. and is named in her official capacity.

27. Respondent ICE is responsible for local custody decisions relating to non-citizens charged with being removable from the U.S., including the arrest, detention, custody status, and removal of non-citizens.

28. Respondent DHS is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

29. This action is commenced against Respondents LaRose, Divver, Lyons, and Noem (collectively, "Respondents") all in their official capacities.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

30. Petitioner has no administrative remedies to exhaust.

32. On October 21, 2025, the BIA confirmed that it was unlikely Mr. N.A. would be released on bond because of the holding in *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025). As such, Mr. N.A.'s continued unlawful detention in Respondents' custody cannot be challenged by way of bond proceedings before an Immigration Judge. Mr. N.A. is also challenging the unlawfulness of Respondents' decision to detain him, independent of any decision made by any Immigration Judge in removal proceedings.

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34. 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).

20 36. 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.

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38. 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).

39. 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.).

40. 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).

41. 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.*

42. In 1996, Congress created “expedited removal” as a truncated method for rapidly removing certain noncitizens from the United States with very few procedural protections. Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585; see 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).

43. 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)).

44. 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).

45. 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 the 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. *See* 8 U.S.C. §§ 1225(b)(1)-(b)(2).

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

47. 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).

48. 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 INA section 240 immigration proceedings.

49. 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).

50. 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

1 requirements. 8 U.S.C. § 1225(b)(1)(A)(1). If DHS seeks to remove noncitizens based on other
2 grounds, they must afford the noncitizen a full hearing before an immigration judge. *See* 8 C.F.R. §
3 235.3(b)(1), (3).

4 51. Moreover, following enactment of the IIRIRA, EOIR drafted regulations explaining
5 that, in general, non-citizens who entered the country without inspection were not considered
6 detained under 8 U.S.C. § 1225 or automatically subject to expedited removal. *See* Inspection and
7 Expedited Removal of Aliens, Detention and Removal of Aliens, Conduct of Removal Proceedings,
8 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Rather, such non-citizens were
9 instead detained under § 1226(a). *See id.*

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

16 53. Immigration detention should not be used as a punishment and should only be used
17 when, under an individualized determination, a noncitizen is a flight risk because they are unlikely
18 to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678,
19 690 (2001).

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

28 55. 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

1 expanded the application of expedited removal. Office of the Secretary, Dep't of Homeland
2 Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139 ("January 2025
3 Designation"). The designation was "effective on" January 21, 2025.

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

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

10 58. On information and belief, Mr. N.A. alleges that Respondents detained him for the
11 purpose of divesting him of his due process rights in his properly filed asylum application.

12 59. On information and belief, Respondents did not afford Petitioner due process before
13 revoking his release from custody, depriving him of his liberty interest, and placing him in detention
14 within Respondents' legal and physical custody.

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

18 FACTUAL BACKGROUND

19 61. Petitioner is 35-year-old citizen and national of El Salvador.

20 62. Mr. N.A. was persecuted in El Salvador on account of his membership in particular
21 social groups by the Mara 18 and MS-13 gangs, criminal groups the Salvadoran government is
22 unable and unwilling to control. The persecution he suffered in El Salvador included physical
23 beatings by these criminal groups and imminent death threats because of his particular social group
24 membership and his refusal to join these groups.

25 63. While living in El Salvador, Mr. N.A. experienced the loss of family members at the
26 hands of Mara 18 and MS-13, and he was threatened and beat by these gangs, fearing a similar fate,
27 Petitioner decided to flee to the USA, leaving behind his life partner and three kids.

28 64. Mr. N.A. passed through Guatemala and Mexico to reach the USA. While in
Mexico, Mr. N.A. was kidnapped and extorted. Mr. N.A. sold his home in order to pay the
requested Six-Thousand Dollars (\$6,000) for his release.

65. Mr. N.A. attended one or more master calendar hearings. In August 2025, he filed an asylum application with the immigration court.

66. The DHS started this removal proceeding on or about March 6, 2025.

67. Respondents alleged he was inadmissible to the United States under INA 212(a)(6)(A)(i) and commanded him to appear for a hearing on April 4, 2025, in the immigration court in Tallahassee, Florida.

68. Petitioner was detained by ICE at Broward Transitional Center on or about March 9, 2025.

69. Petitioner's case was transferred to the Otay Mesa Immigration Court on or about March 14, 2025, and has been detained at Otay Mesa Detention Center since that date.

70. On or about August 7, 2025, Petitioner filed his Form I-589 asylum application before the Otay Mesa Immigration Court.

71. At the custody redetermination hearing, on August 26, 2025, the Immigration Judge and counsel for Respondents indicated that Mr. N.A. is eligible for release on bond. Counsel for DHS appealed the Immigration Judge's decision, and the BIA found, on October 21, 2025, that the Immigration Judge was without jurisdiction pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

CAUSES OF ACTION

COUNT ONE

Violation of Fifth Amendment Right to Due Process – Substantive and Procedural Due Process, U.S. Const. Amend. V.

72. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

73. 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.

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

1 75. While asylum is a discretionary benefit, the right to apply is not. 8 U.S.C. §
2 1158(a)(1). Any noncitizen who is “physically present in the United States or who arrives in the
3 United States (whether or not at a designated port of arrival . . .), irrespective of such [noncitizen’s]
4 status, may apply for asylum.” *Id.*

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

12 77. Expedited removal, in contrast, severely limits the availability of such rights.
13 Interviews occur on an exceedingly fast timeline; review of a negative interview decision by an
14 immigration judge must occur within seven days of the decision. *See* 8 C.F.R. § 1003.42.

15 78. While there is a right to “consult” with an attorney or another person about the
16 credible fear interview process, *see* 8 U.S.C. § 1225(b)(1)(B)(iv) and 8 C.F.R. §§ 208.30(d)(4),
17 235.3(b)(4)(i)(B), (ii), the consultation “shall not unreasonably delay the process.” The consultant
18 may be “present” during the interview but may only make a “statement” at the end of the interview
19 if permitted by the asylum officer. 8 C.F.R. § 208.30(d)(4). The immigrant subject to expedited
20 removal may present evidence “if available”, *id.* —often an impossibility given the fast timeline and
21 the default of detention during the process. *See generally* Heidi Altman, et. al., *Seeking Safety from*
22 *Darkness: Recommendations to the Biden Administration to Safeguard Asylum Rights in CBP*
23 *Custody*, National Immigration Law Center, (Nov. 21, 2024),
24 [https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-](https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-administration-to-safeguard-asylum-rights-in-cbp-custody/)
25 [administration-to-safeguard-asylum-rights-in-cbp-custody/](https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-administration-to-safeguard-asylum-rights-in-cbp-custody/) (last visited Sept. 13, 2025) (describing
26 the obstruction of access to counsel for people undergoing credible fear screenings in Customs and
27 Border Protection custody).

28 79. 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

1 credible fear interview and affirmance by a judge, removal is a near certainty; the immigrant is
2 ineligible for other forms of relief from removal.

3 80. In sum, applying for asylum in removal proceedings comes with a panoply of greater
4 protections when compared with seeking asylum in expedited removal. *See Immigrant Defenders*
5 *Law Center v. Mayorkas*, 2023 WL 3149243, at *29 (C.D. Cal. Mar. 15, 2023) (“Individuals in
6 regular removal proceedings enjoy far more robust due process protections [than those in expedited
7 removal] because Congress has conferred additional statutory rights on them.”).

8 81. Moreover, Mr. N.A. has a vital liberty interest in remaining free from DHS custody.
9 *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal. July 24, 2025)
10 (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025)
11 (explaining that a non-citizen that ICE released from custody after initial apprehension “has a
12 substantial private interest in remaining out of custody” which includes an interest in “...obtaining
13 necessary medical care, [and] maintaining her relationships in the community...”).

14 82. Even if the initial decision to release a non-citizen on from DHS custody is
15 discretionary, “...after that individual is released from custody she has a protected liberty interest in
16 remaining out of custody.” *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068,
17 at *7 (E.D. Cal. Aug. 21, 2025) (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL
18 2084921, at *3 (N.D. Cal. July 24, 2025)).

19 **COUNT TWO**

20 **Violation of Fifth Amendment Right to Due Process -**

21 **Illegal Retroactive Application of Expedited Removal Designation, U.S. Const. Amend. V.**

22 84. Petitioner restates, realleges, and incorporates by reference each and every allegation
23 in the paragraphs above as if fully set forth herein.

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

28 86. Applying the January 2025 expedited removal designation to Petitioner’s January
2023 entry to the United States to seek asylum would attach new legal consequences including the
loss of significant rights related to his right to seek asylum, particularly because DHS immediately

1 placed Mr. N.A. into INA section 240 proceedings in lieu of expedited removal proceedings. *See*
2 Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (expanding the
3 expedited removal designation).

4 87. The January 2025 designation does not unmistakably apply to individuals who
5 entered the United States prior to its effective date and were already in INA section 240
6 proceedings. The designation's language thus does not "require that it be applied retroactively." *See*
7 *INS v. St Cyr*, 533 U.S. 289, 291 (2001).

8 88. Nor does the statutory language that the designation purports to derive from, 8
9 U.S.C. § 1225(b)(1)(A)(iii), include any language indicating Congressional intent to allow
10 retroactive effect. *See INS v. St. Cyr*, 533 U.S. 289, 316-17 (2001) (quoting *Lindh v. Murphy*, 521
11 U.S. 320, 328, n.4 (1997) (requiring statutory language to be "so clear that it could sustain only one
12 interpretation").

13 89. Accordingly, Respondents unlawfully subjected Mr. N.A. to expedited removal.

14 COUNT THREE

15 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with** 16 **Law and in Excess of Statutory Authority Violation of 8** 17 **C.F.R. § 239.2(c)**

18 90. Petitioner restates, realleges, and incorporates by reference each and every allegation
19 in the paragraphs above as if fully set forth herein.

20 91. Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "not in
21 accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction
22 authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. §
23 706(2)(A)-(D).

24 92. Once a removal proceeding has been initiated, regulations enumerate the reasons for
25 which proceedings may be dismissed at 8 C.F.R. § 239.2(a). In considering a motion to dismiss, the
26 Immigration Judge must make "an informed adjudication . . . based on an evaluation of the factors
27 underlying the [DHS] motion." *Matter of G-N-C-*, 22 I&N Dec. 281, 284 (BIA 1998).

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

94. It is a well-established administrative principle that "agency action taken without
lawful authority is at least voidable, if not void ab initio." *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1,

35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); see also *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by unauthorized official).

95. 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). On information and belief, Respondents’ intent was to eliminate the due process rights available to Petitioner in removal proceedings under section 240 of the INA, deprive him of his liberty interest despite no evidence of material changed circumstances, or for some other purposes not supported by law. See *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025) (“Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest.”).

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

97. The arbitrary and capricious detention of Mr. N.A. was not made in furtherance of an enumerated reason set forth in the regulations and causes Mr. N. A. irreparable harm. For these reasons, the Court should find that the decision to detain Mr. N.A. is arbitrary, capricious, and unsupported by substantial evidence. See 5 U.S.C. § 706(2)(A), (E).

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, Unlawful Detention

98. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

99. Under the APA, a court shall “hold unlawful and set aside agency action...” that is “...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity...” 5 U.S.C. § 706(2)(A)-(B).

100. 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)).

101. 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*, 588 U.S. 752, 773 (2019) (citation omitted).

103. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025), the Court explained the process of discretionary release from custody in immigration cases and noted that before revoking the release, the non-citizen must be given written notice of the impending revocation, which must include a cogent description of the reasons. Under the APA, non-citizens are entitled to determinations related to their release revocations that are not arbitrary, capricious or an abuse of discretion. *See id.* at *10.

104. By detaining Mr. N.A. without consideration of his individualized facts and circumstances, Respondents have violated the INA, implementing regulations, and the APA.

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

106. Respondents have made no finding that Petitioner is a flight risk.

107. On information and belief, by detaining Mr. N.A. categorically and without notice, Respondents have further abused their discretion because, since the agency made its initial custody determination, on information and belief, there have been no changes to Mr. N.A.’s specific facts or circumstances that support his detention.

108. On information and belief, the reason Petitioner was transferred into ICE custody was an incident that resulted in a non-criminal infraction. Petitioner was initially detained by Florida Fish and Wildlife Conservation Commission and subsequently transferred to the county sheriff, who in turn transferred to U.S. Immigration and Customs Enforcement. The underlying sustained non-criminal citation was for fishing without a license.

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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)

109. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

110. Under the APA, a court shall “hold unlawful and set aside agency action...” that is “...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity...” 5 U.S.C. § 706(2)(A)-(B).

111. Congress has made it clear that the expedited removal statute does not apply and may not be applied to individuals who were “paroled” into the United States. 8 U.S.C. § 1225(b). It further applies to the non-citizens seeking admission. *Id.* § 1225(b)(2).

112. Mr. N.A. is not amenable to, nor may he be subjected to, expedited removal because he was immediately placed into INA section 240 proceedings upon encountering DHS officers in 2023, and not into expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II), 1225(b)(2); *see also* 8 C.F.R. 253.3(b)(6) (requiring “reasonable opportunity” to explain a non-citizen’s status).

113. Because Mr. N.A. is not subject to the January 2025 Designation, Respondents’ use of the January 2025 designation to detain him while his INA section 240 proceedings were ongoing is unlawful arbitrary, capricious, and unlawful.

COUNT SIX

Violation of the Fourth Amendment of the Constitution

114. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

115. The Fourth Amendment protects “[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures.” U.S. Const. amend. IV. The Supreme Court has recognized that immigration arrests and detentions are “seizures” within the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the “seizure” of the person).

116. The Fourth Amendment requires that arrests entail a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial

determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in the form of a prompt judicial probable cause determination. *See id.* Arrest and detention of a person, including of a noncitizen, absent a neutral judicial determination of probable cause violates the Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48 hours of detention, which includes weekends, unless there is a bona fide emergency or other extraordinary circumstances. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

117. Congress enacted a strong preference that immigration arrests be based on warrants. *See Arizona v. United States*, 567 U.S. 387, 407–08 (2012). The Immigration and Nationality Act thus provides immigration officers with only limited authority to conduct warrantless arrests. 8 U.S.C. § 1357(a)(2). Federal regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

118. Mr. N.A., at the moment of his arrest and detention by Respondents, did not receive any judicial determination of probable cause for his arrest or continued detention by Respondents.

119. The Government cannot salvage this seizure by invoking generalized immigration enforcement interests. The Fourth Amendment’s reasonableness inquiry is fact-specific and demands individualized justification for both the arrest and the extended detention. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114.

120. Respondents’ warrantless arrest of Mr. N.A. constitutes an unreasonable and unlawful seizure in violation of the Fourth Amendment.

COUNT SEVEN

Violation of Fifth Amendment Right to Due Process – Procedural Due Process, U.S. Const. Amend. V.

121. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

122. The government may not deprive a person 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 the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

123. Mr. N.A. has a fundamental interest in liberty and being free from official restraint.

124. The government's detention of Petitioner without a notice or an opportunity to be heard before detention violates his right to due process.

125. The government's detention of Petitioner without a meaningful bond and custody redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (3) Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
- (4) Declare that Respondents' application of the January 2025 Designation to Petitioner is illegal;
- (5) Declare that refusal to allow Petitioner a meaningful bond and custody redetermination hearing violates the INA, APA, and Due Process;
- (6) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;
- (7) Issue an Order prohibiting the Respondents from transferring Petitioner from this district without the Court's approval;
- (8) Issue an Order requiring Respondents to provide a bond and custody redetermination hearing within 14 days to meaningfully consider his eligibility for release from DHS custody;
- (9) Award Petitioner's counsel reasonable attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law;
- (10) Grant such further relief as the Court deems just, equitable, and appropriate; and
- (11) Grant any and all other further relief this Court deems just or proper.

1 Dated: October 28, 2025

Respectfully submitted,

2 //s// John Wells

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