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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 RODRIGUEZ RODRIGUEZ, RODOLFO
11 (N.A.¹)

12 Petitioner-Plaintiff,

13 vs.

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

21 Respondents-Defendants.
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CASE NO.: '25CV3306 AGS AHG



PETITION FOR WRIT OF
HABEAS CORPUS AND ORDER
TO SHOW CAUSE WITHIN
THREE DAYS

CHALLENGE TO UNLAWFUL
INCARCERATION; REQUEST FOR
DECLARATORY AND INJUNCTIVE
RELIEF

27 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 her unlawfully, and states as follows:

3 **INTRODUCTION**

4 1. Petitioner N.A. ("Petitioner" or "Mr. N.A.") entered the United States on or about
5 2004. Mr. N.A. is a Venezuelan Asylum and Withholding of Removal seeker detained at Otay Mesa
6 Detention Center in San Diego, California. On or about February 11, 2025, Form I-589, Application
7 for Asylum, was filed with USCIS.

8 2. Petitioner was detained by Immigration and Customs Enforcement ("ICE") at the
9 Otay Mesa Detention Center pending removal proceedings since August 9, 2025. Mr. N.A. entered
10 the United States using CBP One, an app developed by Customs and Border Protection (CBP) that
11 serves as a portal used as the primary method for asylum seekers to schedule appointments at ports
12 of entry.

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

20 5. In immigration court, noncitizens have the right to pursue claims for relief from
21 removal (including Asylum and withholding of removal), be represented by counsel, gather and
22 present evidence, and pursue appeals. 8 U.S.C. § 1229(a).

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

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

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

10 9. Mr. N.A. seeks declaratory and injunctive relief to compel his immediate release
11 from the immigration jail where he has been held by DHS since being unlawfully detained on
12 August 9, 2025 without first being provided a due process hearing to determine whether his
13 incarceration is justified.

14 10. Absent review in this Court, no other neutral adjudicator will examine Mr. N.A.’s
15 plight: Respondents will continue—unchecked—to detain him unlawfully under 8 U.S.C. §
16 1225(b)(1), INA § 235(b)(1), without due process.

17 11. For the reasons outlined below, Mr. N.A.’s arrest and inability to contest his arbitrary
18 detention violate his statutory and constitutional rights, including Due Process protections under the
19 U.S. Constitution. Mr. N.A. respectfully requests that this Court should grant the instant petition for
20 a writ of habeas corpus, without any bond requirement, and for declaratory and injunctive relief, to
21 prevent such harms from recurring. Mr. N.A. also asks this Court to find that Respondents’ attempts
22 to detain, transfer, and deport him are arbitrary and capricious and in violation of the law, and to
23 immediately issue an order preventing her transfer out of this district.

JURISDICTION

24 12. This action arises under the Constitution of the United States and the Immigration
25 and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*

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

1 14. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens
2 challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003)
3 (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533
4 U.S. 678, 787 (2001) (same); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *3
5 (D. Or. July 9, 2025) (same); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL
6 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (same).

7 15. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et*
8 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, the All Writs Act, 28 U.S.C. § 1651,
9 and the Court’s inherent equitable powers.

10 **VENUE**

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

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

22 17. The Court must grant the petition for writ of habeas corpus or issue an order to show
23 cause (“OSC”) to the Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. §
24 2243. If an OSC is issued, the Court must require Respondents to file a return “within three days
25 unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

26 18. Courts have long recognized the significance of the habeas statute in protecting
27 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most
28 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).

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

4 **PARTIES**

5 20. Mr. N.A. (“Petitioner”) is a 26-year-old citizen and national of Venezuela. He came
6 to the USA in 2024, and on or about February 11, 2025, Form I-589, Application for Asylum, was
7 filed with USCIS. He has had no departures since his arrival. He is not married. He has no U.S.
8 minor children. He attends English classes at a local church. He has no criminal convictions. Since
9 the arrest on or about August 9, 2025, Mr. N.A. has remained in the Respondents’ custody.

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

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

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

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

28 25. 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

1 faithfully administering the immigration and naturalization laws of the United States. 8 U.S.C. §
2 1103(a). Respondent Noem is a custodian of Mr. N.A. and is named in her official capacity.

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

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

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

10 EXHAUSTION OF ADMINISTRATIVE REMEDIES

11 29. Petitioner has no administrative remedies to exhaust.

12 30. Mr. N.A. then received an NTA on March 11, 2024, which was filed before the Salt
13 Lake City Immigration Court to initiate his INA section 240 immigration proceedings.

14 31. Therefore, a writ of habeas corpus is the sole avenue to vindicate Mr. N.A.'s
15 constitutional, statutory, and regulatory rights and restore his liberty.

16 LEGAL FRAMEWORK

17 32. 8 C.F.R. § 1003.18(d)(1)(ii)(C) states discretionary termination is available when:
18 (a) The noncitizen is a beneficiary of Temporary Protected Status, deferred action, or Deferred
19 Enforced Departure.

20 33. Here, the Respondent warrants dismissal of his removal proceedings because of the
21 approved deferred action. As previously stated, the Respondent meets the requirements under the
22 Act to be eligible for dismissal.

23 34. Deferred action is an act of prosecutorial discretion to defer the removal of an
24 individual. Individuals who receive deferred action will not be removed from the United States for a
25 specified period of time, unless the Department of Homeland Security (DHS) chooses to terminate
26 the grant of deferred action.

27 35. Once jurisdiction vests with the Immigration Court, the government no longer has
28 the sole authority to dismiss proceedings. However, this analysis shows that the IJ does have the
29 authority to dismiss proceedings once jurisdiction vests with the Immigration Court. Motions to
30 dismiss are, in fact, frequently used by Respondents in removal proceedings on many grounds. One

1 example would be if the Respondent has a colorable claim to U.S. Citizenship. Another might be
2 that the NTA does not state valid grounds for removal. See 8 CRF 1239.2(c).

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

9 37. Immigration detention should not be used as a punishment and should only be used
10 when, under an individualized determination, a noncitizen is a flight risk because they are unlikely
11 to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678,
12 690 (2001).

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

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

28 40. 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.

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

3 42. On information and belief, Mr. N.A. alleges that Respondents detained him for the
4 purpose of divesting him of his due process rights in his properly filed asylum application, and the
5 underlying approved deferred action.

6 43. On information and belief, Respondents did not afford Petitioner due process before
7 revoking his release from custody, depriving him of his liberty interest, and placing him in detention
8 within Respondents' legal and physical custody.

9 44. On information and belief, Respondents are using the immigration detention system,
10 including extra-territorial transfer and detention, as a means to punish individuals for asserting
11 rights under the I.N.A.

12 FACTUAL BACKGROUND

13 45. Petitioner is a 26-year-old citizen and national of Venezuela who fled his home
14 country due to political persecution.

15 46. Petitioner was an active member of opposition political party groups in Venezuela.
16 As a result of his political activities, he was targeted and beaten by classmates, causing him to fear
17 for his safety.

18 47. Mr. N.A. began therapy to address the depression and trauma caused by the
19 persecution he endured.

20 48. Fearing for his life, Mr. N.A. fled Venezuela and sought refuge in Peru. However,
21 while in Peru, he was assaulted and faced xenophobia, further exacerbating his trauma.

22 49. Petitioner ultimately left Peru and pursued the CBP One process to seek safety in the
23 United States.

24 50. Mr. N.A. entered the US on or about March 11, 2024, through the CBP One
25 application process.

26 51. On or about February 11, 2025, Petitioner filed Form I-589, Application for Asylum
27 and Withholding of Removal, based on his well-founded fear of persecution in Venezuela.

28 52. Mr. N.A. remains in the Respondents' legal and physical custody at Otay Mesa
Detention Center, in San Diego, California. While in the U.S., Petitioner has taken significant steps
to integrate into society, including attending English classes and pursuing his goal of becoming a
commercial pilot.

CAUSES OF ACTION

COUNT ONE

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

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

54. 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.

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

56. Moreover, Mr. N.A. has a vital liberty interest in remaining free from DHS custody. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal. July 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025) (explaining that a non-citizen that ICE released from custody after initial apprehension “has a substantial private interest in remaining out of custody” which includes an interest in “...obtaining necessary medical care, [and] maintaining her relationships in the community...”). While on release from DHS custody, Mr. N.A. was building his emotional support system which helped him cope with the emotional trauma he suffered in Venezuela on account of persecution for his political beliefs.

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

58. Here, Mr. N.A. was not advised by DHS that the dismissal of his proceedings would place him in expedited removal, depriving him of his liberty interest and the bundle of rights associated with his original pending asylum application and approved underlying deferred action in violation of due process. *See generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring

1 notice and an opportunity to be heard before deprivation of a legally protected interest). Nor has the
2 government identified any materially changed circumstances that would warrant detaining Mr. N.A.
3 after he submitted his Asylum Application (Form I-589), declaration, and corroborating evidence to
4 the immigration Court.

5 **COUNT TWO**

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

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

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

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

14 61. The January 2025 designation does not unmistakably apply to individuals who
15 entered the United States prior to its effective date and were already in removal proceedings. The
16 designation’s language thus does not “require that it be applied retroactively.” *See INS v. St Cyr*,
17 533 U.S. 289, 291 (2001).

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

23 63. Accordingly, Respondents unlawfully subjected Mr. N.A. to expedited removal.

24 **COUNT THREE**

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

27 **C.F.R. § 239.2(c)**

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

65. 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

1 authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. §
2 706(2)(A)-(D).

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

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

9 68. It is a well-established administrative principle that “agency action taken without
10 lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1,
11 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); *see also*
12 *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency
13 action because it was taken by unauthorized official).

14 69. Under the APA, an agency must provide “reasoned explanation for its action” and
15 “may not depart from a prior policy sub silentio or simply disregard rules that are still on the
16 books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). On information and belief,
17 Respondents’ intent was to eliminate the due process rights available to Petitioner in removal
18 proceedings under section 240 of the INA, deprive him of his liberty interest despite no evidence of
19 material changed circumstances, or for some other purposes not supported by law. *See Pinchi v.*
20 *Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025) (“Detention
21 for its own sake, to meet an administrative quota, or because the government has not yet established
22 constitutionally required pre-detention procedures is not a legitimate government interest.”).

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

71. 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

1 reasons, the Court should find that the decision to detain Mr. N.A. is arbitrary, capricious, and
2 unsupported by substantial evidence. *See* 5 U.S.C. § 706(2)(A), (E).

3 **COUNT FOUR**

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

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

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

11 74. An action is an abuse of discretion if the agency “entirely failed to consider an
12 important aspect of the problem, offered an explanation for its decision that runs counter to the
13 evidence before the agency, or is so implausible that it could not be ascribed to a difference in view
14 or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644,
15 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463
16 U.S. 29, 43 (1983)).

17 75. To survive an APA challenge, the agency must articulate “a satisfactory explanation”
18 for its action, “including a rational connection between the facts found and the choice made.” *Dep’t*
19 *of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).

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

26 77. By detaining Mr. N.A. without notice or consideration of his individualized facts and
27 circumstances, Respondents have violated the INA, implementing regulations, and the APA.

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

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

80. 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.

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)

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

82. 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).

83. 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).

84. 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, and capricious.

COUNT SIX

Violation of the Fourth Amendment of the Constitution

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

86. 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).

87. 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

1 Fourth Amendment of the Constitution. *Id.*; *see also* *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44,
2 57 (1991). This determination must occur within 48 hours of detention, which includes weekends,
3 unless there is a bona fide emergency or other extraordinary circumstances. *See Cnty. of Riverside*
4 *v. McLaughlin*, 500 U.S. 44, 57 (1991).

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

10 89. Mr. N.A., at the moment of his arrest and detention by Respondents, was lawfully
11 present. He did not receive any judicial determination of probable cause for his arrest or continued
12 detention by the Respondents.

13 90. The Government cannot salvage this seizure by invoking generalized immigration
14 enforcement interests. The Fourth Amendment’s reasonableness inquiry is fact-specific and
15 demands individualized justification for both the arrest and the extended detention. *See United*
16 *States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114. Mr. N.A. was
17 granted release from DHS custody in 2023 and did not pose any danger to any person in the
18 community at large.

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

21 COUNT SEVEN

22 **Violation of Fifth Amendment Right to Due Process – Procedural Due Process, U.S. Const. 23 Amend. V.**

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

26 93. The government may not deprive a person of life, liberty, or property without due
27 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody,
28 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).

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

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

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

6 **PRAYER FOR RELIEF**

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

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

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1 Dated: November 25, 2025

Respectfully submitted,

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//s// Mario Portugal

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