UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

ASEL MUSAEVA, Petitioner, v. JOHN CANTU, Director, Phoenix Field Office, TODD LYONS Acting Director U.S. Immigration and Customs Enforcement, Pamela Bondi, US Attorney General and KRISTI NOEM U.S. Secretary of Homeland Security, Respondents.	Case No. _____ **PETITION FOR WRIT OF HABEAS CORPUS**

EMERGENCY VERIFIED MOTION FOR *EX PARTE* TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Petitioner Asel Musaeva respectfully moves this Court for an emergency temporary restraining order preventing Respondents from removing her from the United States pending its adjudication of her Petition for Writ of Habeas Corpus. Specifically, Petitioner requests the Court to order Respondents to cease any ongoing actions and refrain from taking any additional actions toward effectuating Petitioner's removal from the United States pursuant to Fed. R. Civ. P. 65(b) and LRCiv 65.1, until the Court has adjudicated the petition and complaint. Petitioner is a Kyrgyzstan national that has been determined to have a credible fear of persecution who is facing imminent unlawful removal from the United States. On information and belief, she was unlawfully detained by federal immigration agents ("ICE") on June 4, 2025.

Because Petitioner is likely to succeed in her petition and complaint, as well as to avoid the significant irreparable harm Petitioner would suffer if Respondents proceed with current removal plans—which, upon information and belief, is scheduled to occur on December 7, 2025,

Petitioner requests that the Court issue an emergency order restraining the Respondent from further action at the present time.

This motion is supported by the enclosed Memorandum of Points and Authorities and all filings in this action.

NOTICE TO RESPONDENTS

On the evening of December 5, 2025, undersigned counsel received information from the Respondent's family who received information from the Respondent that she will be deported from the United States on December 7, 2025.

On information and belief that she has been moved to a temporary Arizona holding facility, undersigned counsel affirms he intends to send, a copy of the petition, the motion for a temporary restraining order ("TRO") and a proposed order for granting the TRO upon the filing of this motion to Respondents.

MEMORANDUM OF POINTS AND AUTHORITIES

FACTUAL BACKGROUND

Petitioner Asel Musaeva is a Kyrgyzstan national that has been determined by Respondents to have a credible fear of persecution and torture and was lawfully paroled into the United States. On information and belief, she was unlawfully detained by federal immigration agents ("ICE") on June 4, 2025.

Following her entry into the United States in February of 2025, Petitioner was detained by immigration officials and placed in expedited removal proceedings after expressing a fear of return to her home country. Following an asylum officer's finding that she had a credible fear of harm if returned to her home country, the expedited order was cancelled, and she was released from

custody with a parole document valid for one year. Petitioner was also issued a Notice to Appear and advised of her obligation to report to ICE after her release.

Upon reporting to ICE on May 13, 2025, Petitioner was served with an Order of Supervision based on the presumably cancelled expedited removal order. ICE advised her to return and report again on June 4, 2025. On May 22, 2025, Petitioner submitted an affirmative application for asylum because her Notice to Appear had not been filed with the Executive Office for Immigration Review.

On June 4, 2025, Petitioner appeared for her second appointment with ICE. At that appointment, ICE purported to revoke her order of supervision without notice or cause and arrested her pursuant to the vacated expedited removal order. Should Petitioner's expedited removal order from February 13, 2025 still be outstanding, the 90-day removal period provided by 8 U.S.C. § 1231(a) has long passed.

Petitioner has further complied in all respects with her order of supervision and the revocation of that order as well as Petitioner's detention were in violation of the law. Petitioner is now detained on the basis of an order of removal that was vacated when she was found to have a credible fear of removal to her home country. Petitioner has now been detained well in excess of 180 days, in violation of the 90-day removal period provided by 8 U.S.C. § 1231(a).

On December 5, 2025, undersigned counsel received information from the Respondent's family who received information from the Respondent that she will be removed on December 7, 2025. Accordingly, to vindicate Petitioner's constitutional rights, this Court should grant the instant motion for a temporary restraining order.

ARGUMENT

The standards for granting a TRO and a preliminary injunction pursuant to Rule 65 of the

Federal Rules of Civil Procedure are identical. Where a party requests a TRO that enjoins governmental action, the party must demonstrate that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of the preliminary relief, that the balance of equities tip in his favor, and that an injunction is in the public interest." *Winter v. Natural Resources Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Here, because the Respondent meets both the irreparable harm and likelihood of success prongs and because the requested relief is not overly burdensome on Respondents, she merits such relief.

To the extent that the Respondents may argue there is a question regarding the Court's jurisdiction, it does not preclude this Court from exercising its inherent authority to issue emergent relief pending further briefing. "[A] federal court always has jurisdiction to determine its own jurisdiction." *United States v. Ruiz*, 536 U.S. 622, 628 (2002).

PETITIONER WILL SUFFER IRREPARABLE HARM IF SHE IS REMOVED

Under the four factor test the response the Supreme Court has established that the moving party must establish all four of the following requirements: Likelihood of success on the merits: The plaintiff must show they are likely to win the case eventually. Likelihood of irreparable harm: The plaintiff must demonstrate they are likely to suffer irreparable injury in the absence of preliminary relief. A mere possibility of harm is not enough; the risk must be "real and immediate". Balance of equities tips in their favor: The court must weigh the potential harm to the plaintiff if the injunction is not granted against the potential harm to the opposing party if the injunction is granted. Injunction is in public interest: The moving party must show that granting the injunction serves the public interest. 555 U.S. 7, 20 (2008). In the present case the Petitioner is likely to succeed in her application for relief.

First, her allegations of constitutional violations permit a *per se* finding of irreparable harm.

Hernandez v. Sessions, 872 F.3d 976, 994 (9th Cir. 2017); *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). In her petition and complaint, Petitioner raises specific allegations of violations of her constitutional rights and center on Respondents failure to provide her with meaningful continued review of her claim for asylum.

Second, Petitioner satisfies irreparable harm by demonstrating that but for this Court's granting of equitable relief, she cannot be returned to the position she previously occupied. Specifically, she will be removed from the United States and no longer eligible to pursue her claim for relief once outside the United States. Since Petitioner faces imminent removal, she is likely to face significant irreparable injury absent a TRO.

Third, Petitioner raises allegations of constitutional violations, violations of the Administrative Procedure Act (APA) and the *Accardi* doctrine all of which are related to Petitioner's right to pursue her claim for asylum that is currently pending with USCIS. Petitioner satisfies irreparable harm by demonstrating that but for this Court's granting of equitable relief, she cannot be returned to the position that she currently occupies with respect to her asylum application. As is discussed *infra,* Petitioner must be physically in the United States to pursue her application for relief. Since deportation will result in the loss of her right to pursue her asylum claim, she does face significant irreparable injury absent a TRO.

Fourth, Petitioner is likely to win on the merits of his claim that the government's detention of him and their revocation of her parole and order of supervision are unlawful. Removal in the present case would create irrevocable harm.

II. PETITIONER IS LIKELY TO SUCCEED ON HER PETITION

A.) Petitioner is Likely to Succeed on Her Claim that Her Ongoing Detention and Imminent Removal violate her Right to Due Process, the Administrative Procedures Act, the Immigration and Nationality Act, and Runs Afoul of the *Accardi* Doctrine

Petitioner, as an applicant for asylum, has a constitutional, statutory, and regulatory right to an opportunity to review her application. 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).

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. 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).

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). 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.). 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).

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).

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)). 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).

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. 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).

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).

Respondents' failure to abide by the law, after determining that Petitioner herself met the credible fear standard, create a substantial risk of an erroneous deprivation of Petitioner-Plaintiff's core interest in life and liberty. The Fifth Amendment of the Constitution guarantees that noncitizens receive adequate procedural protections in the course of any executions of the government's detention and removal authorities. *See, e.g.*, *Zadvydas*, 533 U.S. at 690. Such protections are flexible and guided by considerations for the "private interest that will be affected[,]" "the risk of an erroneous deprivation of such interest through the procedures used[,]" and "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Because principal U.S. asylum status is not available to an

individual who is not physically present in the U.S., the government's actions to deport Petitioner would deprive her of relief to which she is legally entitled and frustrate Congress's scheme to protect individuals from persecution abroad.

B.) Petitioner is Likely to Succeed on Her Claim that Her Ongoing Detention and Imminent Removal violate her Right to Due Process, the Administrative Procedures Act, the Immigration and Nationality Act, and Runs Afoul of the *Accardi* Doctrine

Petitioner is also likely to succeed on her claim that the revocation of her OSUP and Parole were unlawful because ICE had no lawful authority to do so. Procedural due process constrains governmental decisions that deprive individuals of property or liberty interests within the meaning of the Due Process Clause of the Fifth Amendment. *See Mathews,* 424 U.S. at 332. The Due Process Clause has been interpreted by the Supreme Court as a "protection of the individual against arbitrary action by the government." *Cnty. of Sacramento,* 523 U.S. at 845; *see also Addington v. Texas,* 441 U.S. 418, 427 (1979) ("The individual should not be asked to share equally with society the risk of error when the possible injury to the individual is significantly greater than any possible harm to the state."); *Martinez v, McAleenan*, 385 F.Supp.3d 349, 357 (S.D.N.Y June 14, 2019) ("[T]he due process right to be heard 'has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.'") (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

In *Rombot*, the Court found that "[t]he Supreme Court has recognized that an 'alien may no doubt be returned to custody upon a violation of [supervision] conditions,' *Zadvydas*, 533 U.S. at 700, but it has never given ICE a carte blanche to re-incarcerate someone without basic due process protection." *Rombot,* 296 F. Supp. 3d at 389; *see also, Torres-Jurado v. Biden*, 2023 WL 7130898 at *4 ("Defendants' cursory, abrupt, and predetermined notice that Plaintiff must self-

deport within one month after permitting him to live in the United States pursuant to the ICE Stay for eighteen years fails to satisfy this fundamental constitutional right.").

Under the APA, "final agency action for which there is no other adequate remedy in a court [is] subject to judicial review." 5 U.S.C. § 704. The reviewing court "shall...hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence." 5 U.S.C. §§ 706(2)(A), (E). A court reviewing agency action "must assess . . . whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment;" it must "examin[e] the reasons for agency decisions—or, as the case may be, the absence of such reasons." *Judulang* v. *Holder*, 565 U.S. 42, 53 (2011) (quotations omitted).

In *Bowen v. Massachusetts*, the Supreme Court explained that judicial review of administrative actions "should not be construed to defeat the central purpose of providing a broad spectrum of judicial review of agency action" and that any alternative remedy by the agency will not be adequate under §704 where the remedy offers only "doubtful and limited relief." 487 U.S. 879, 901, 903 (1988); *see also Arevalo v. Lopez,* 2018 WL 2932726 at *7 (S.D.N.Y June 12, 2018 USDJ Sweet); *L.V.M v. Lloyd,* 318 F. Supp. 3d 601, 609 (S.D.N.Y. June 27, 2018) (finding that "the APA guards against agency actions instituted based on personal preference of decision makers.").

In determining whether an agency action may be set aside by a reviewing Court, it must be determined whether the decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. §706(2)(A). The Court must also consider whether the agency "examine[d] the relevant data and articulated a satisfactory explanation for its action

including a rational connection between facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S., v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Respondents' sudden decision to revoke Petitioner's OSUP—which she was granted by the Government, was in full and complete compliance with, and served as the basis for her release from detention to pursue her asylum claim—and process him for deportation is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. §706(2)(A).

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).

III. A TRO WOULD NOT SEVERELY HARM THE GOVERNMENT OR PUBLIC INTEREST.

The Petitioner merits a TRO because a TRO would not significantly impede the government or public interest. In inquiries concerning the government's efforts to remove a noncitizen, the government and public interest factors merge as the government is both the opposing litigant and public interest representative. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

Here, temporarily restraining the Respondents from effectuating the Petitioner's removal would not be detrimental to the government's interests. Particularly, since "the public interest favors permitting immigrants to pursue their legal claims." *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) because the requested relief is temporary, narrowly tailored, and will only last pending the instant motion.

IV. THE COURT SHOULD NOT REQUIRE PETITIONER TO PROVIDE SECURITY PRIOR TO ISSUING A TEMPORARY RESTRAINING ORDER.

Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." However, "Rule 65(c) invests the district court with discretion as to the amount of security required, if any." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003) (internal quotation marks and citation omitted). District courts routinely exercise this discretion to require no security in cases brought by indigent and/or incarcerated people. *See, e.g., Toussaint v. Rushen*, 553 F. Supp. 1365, 1383 (N.D. Cal. 1983) (state prisoners); *Orantes–Hernandez v. Smith*, 541 F. Supp. 351, 385 n. 42 (C.D. Cal. 1982) (detained immigrants). This Court should do the same here.

CONCLUSION

Petitioner respectfully requests that the Court grant his motion for a temporary restraining order and maintain the status quo until this Court has an opportunity to assess the Petitioner's underlying petition and complaint.

Respectfully submitted,

Date: December 6, 2025

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VERIFICATION

I, Michael Dominguez, am co-counsel for Petitioner in the above-captioned matter. I am over the age of eighteen and competent to make this verification. I make this verification pursuant to 28 U.S.C. § 1746.

I have reviewed the foregoing MOTION FOR *EX PARTE* TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION, including all factual assertions contained therein. The facts stated in the motion are true and correct to the best of my knowledge, information, and belief, based upon:

1. Information provided to me by my client;
2. Information obtained through review of government records, correspondence, and documents; and
3. My own investigation and understanding of the facts and procedural posture of this matter.

Because of the urgent nature of the relief sought and my client's current circumstances, it is impracticable to obtain my client's verification at this time. Accordingly, I submit this verification on my client's behalf.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 6 day of December, 2025, in Houston, Texas.

/s/ Michael Dominguez
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