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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. 2:25-cv-04529-MTL--ASB **FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner Asel Musaeva is a Russian national who was previously determined to have a credible fear of persecution and torture and was paroled into the United States. On information and belief, she was unlawfully detained by federal immigration agents ("ICE") on June 4, 2025, and unlawfully removed on December 7, 2025—just two days after the filing of the original petition in this matter.

2. Upon her entry into the United States in February 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 determination that she had a credible fear of harm

if returned, the expedited removal order was cancelled, and she was released from custody with a parole document valid for one year.

3. Petitioner was also issued a Notice to Appear and advised of her obligation to report to ICE after her release.
4. When Petitioner reported to ICE on May 13, 2025, she was served with an Order of Supervision. ICE instructed her to return for another reporting appointment on June 4, 2025.
5. On May 22, 2025, Petitioner submitted an affirmative asylum application because her Notice to Appear had not been filed by ICE with the Executive Office for Immigration Review.
6. On June 4, 2025, Petitioner again appeared for her scheduled appointment with ICE. At that time, ICE purported to revoke her Order of Supervision without notice or cause and arrested her pursuant to the vacated expedited removal order.
7. Should Petitioner's expedited removal order from February 13, 2025 somehow still be considered outstanding, the 90-day removal period under 8 U.S.C. § 1231(a) had long expired. Petitioner has complied fully with all conditions of her Order of Supervision, and ICE's revocation of that order—and her subsequent detention—were unlawful.
8. Petitioner was detained on the basis of an expedited removal order that had already been vacated when she was found to have a credible fear of removal to her home country.
9. Petitioner was detained well in excess of 180 days, in violation of the 90-day statutory removal period provided by 8 U.S.C. § 1231(a).
10. Accordingly, to vindicate Petitioner's constitutional and statutory rights, this Court should grant the instant petition for a writ of habeas corpus.
11. Petitioner asks this Court to find that she was unlawfully detained and unlawfully removed, and to order Respondents to return her to the United States.

12. In addition, Petitioner's own documentation confirms that she was determined to have a credible fear of persecution and torture. As such, Petitioner had the right to have her protection claim adjudicated within the United States, and Respondents were estopped from removing her. *See* 8 U.S.C. § 1225(b)(1)(B)(ii).

JURISDICTION

13. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).

14. This Court has jurisdiction to hear this case under 28 U.S.C. § 2201, the Declaratory Judgment Act, and 28 U.S.C. § 1331, Federal Question Jurisdiction; and because the individual Respondents are United States officials. 28 U.S.C. § 1346(a)(2).

15. The Court has authority to enter a declaratory judgment and to provide temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, 28 U.S.C. §§ 2201-2202, the All Writs Act 28 U.S.C. § 1651, the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2), the Administrative Procedure Act 5 U.S.C. § 706(2)(A), and the Court's inherent equitable powers.

16. Venue is proper in this district because Petitioner was detained in Mesa, Arizona, and on information and belief was detained in the District of Arizona prior to her removal. Furthermore, Respondent Cantu's principal place of business is in Phoenix Ariona, and the legal violations described herein took place at Respondent's direction and under Respondent's supervision.

THE PARTIES

17. The Petitioner, Asel Musaeva, was detained at a temporary U.S. Immigration and Customs Enforcement ("ICE") holding facility in Mesa, Arizona, prior to her removal. Defendants have

deported her Russia in direct violation of the law.

18. Respondent John Cantu is the Phoenix Arizona Field Office Director for U.S. Immigration and Customs Enforcement.

19. Respondent Todd Lyons is the Acting Director for U.S. Immigration and Customs Enforcement.

20. Respondent Pamela Bondi is the Attorney General for the United States.

21. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS").

22. All Respondents are named in their official capacities.

RELEVANT LEGAL DOCTRINES

23. 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).

24. The "motivation for the enactment of the Refugee Act" was the United Nations Protocol Relating to the Status of Refugees, "to which the United States had been bound since 1968." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a legislative purpose "to give 'statutory meaning to our national commitment to human rights and humanitarian concerns.'" *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

25. 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.

26. 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).

27. 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).

28. 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.).

29. 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).

30. 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.

31. 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).

32. 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)).

33. 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).

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

35. 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).

36. 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.

37. 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).

38. 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).

39. When a noncitizen expresses a fear of return or an intention to apply for asylum, the expedited removal process must pause, and the individual must be referred to a trained asylum officer for a "credible fear interview." 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). This screening is mandatory once fear is indicated. The expedited removal order cannot be finalized unless and until DHS completes this statutory screening process.

40. A "credible fear" means a "significant possibility" that the noncitizen could establish eligibility for asylum, withholding of removal, or protection under the Convention Against Torture. 8

U.S.C. § 1225(b)(1)(B)(v). This is intentionally a low threshold designed to ensure that individuals with bona fide protection claims are not summarily removed without the opportunity for full consideration of their case.

41. Once a fear claim is made, DHS must provide the noncitizen access to consult with a person of their choosing, at no expense to the government, prior to the credible fear interview—so long as consultation occurs within a "reasonable period of time" not to delay the process. 8 U.S.C. § 1225(b)(1)(B)(iv). The individual must also be given a list of pro bono legal service providers. 8 C.F.R. § 235.3(b)(4)(i)(D).

42. The credible fear interview is conducted by an asylum officer, not by ICE Enforcement and Removal Operations. The officer must elicit all relevant information, allow the noncitizen to explain inconsistencies, and consider the totality of the circumstances. See 8 C.F.R. § 208.30(d). Interpreters must be provided. Id. The government bears responsibility for ensuring that the interview is fair and comprehensible.

43. If the asylum officer determines that the noncitizen does not have a credible fear of persecution or torture, the individual may request de novo review by an immigration judge. 8 U.S.C. § 1225(b)(1)(B)(iii)(III). This review must occur promptly, usually within 24–48 hours and no later than seven days. 8 C.F.R. § 1003.42(c). The immigration judge may question the asylum officer's findings, consider additional facts, and ultimately issue an independent determination.

44. If the immigration judge also finds no credible fear, the expedited removal order is reinstated and becomes immediately executable. 8 U.S.C. § 1225(b)(1)(B)(iii)(I). There is no administrative appeal, and federal court jurisdiction to review a negative credible fear finding is sharply limited by statute. See 8 U.S.C. § 1252(e)(2), (5).

45. If the asylum officer or immigration judge finds that the noncitizen does have a credible fear, the expedited removal process stops entirely, and DHS must issue a Notice to Appear ("NTA") and place the noncitizen into full Section 240 removal proceedings before an immigration judge. 8 U.S.C. § 1225(b)(1)(B)(ii). At this point, the individual is no longer subject to expedited removal.

46. In Section 240 proceedings, the noncitizen has all rights normally afforded in removal proceedings, including: the right to present evidence; the right to counsel at no expense to the government; the right to apply for asylum, withholding of removal, and CAT protection; the right to cross-examine witnesses; and the right to a reasoned decision by an immigration judge subject to appeal to the Board of Immigration Appeals. 8 U.S.C. §§ 1229a(b)(4), 1158; 8 C.F.R. §§ 1240.10–1240.11.

47. Importantly, a finding of credible fear does not grant admission or legal status, nor does it constitute a finding that the individual is admissible or non-removable. It merely entitles the noncitizen to seek protection through the normal asylum process, where the burden of proof is higher and the evidentiary record is developed in full.

48. Those who establish credible fear may nonetheless remain detained while awaiting their Section 240 hearing, because detention during pending asylum proceedings is mandatory under 8 U.S.C. § 1225(b)(1)(B)(ii), absent DHS's decision to parole them under § 1182(d)(5)(A) for "urgent humanitarian reasons" or "significant public benefit." Parole remains discretionary, even after a positive credible fear finding.

49. Thus, the expedited removal system functions as a front-end triage mechanism: it quickly removes individuals who are inadmissible and do not fear return, while diverting those who express fear into the full asylum process. But for those who do articulate fear, the screening is

limited, truncated, and lacks many of the procedural safeguards of regular removal proceedings, meaning asylum seekers still face substantial risk of erroneous removal despite Congress's intent to provide at least minimal protection.

50. In sum, expedited removal proceeds swiftly and without judicial oversight unless a noncitizen expresses fear of persecution. Once fear is expressed, the law requires a credible fear screening. If credible fear is found, expedited removal terminates, and the person is placed in typical Section 240 proceedings to fully adjudicate their protection claims.

Parole under the Immigration and Nationality Act

51. Under 8 U.S.C. § 1182(d)(5)(A), the Secretary of Homeland Security may parole a noncitizen into the United States "for urgent humanitarian reasons or significant public benefit." Parole is not an admission; it is a legal fiction permitting physical presence while the individual remains an "applicant for admission." The Ninth Circuit has consistently recognized parole as a temporary measure whose parameters are "strictly defined by statute. *See Nadarajah v. Gonzales*, 443 F.3d 1069, 1077 (9th Cir. 2006).

52. Although the grant or revocation of parole involves discretion, that discretion does not immunize DHS from judicial review when detention becomes unlawful. Federal courts retain jurisdiction under 28 U.S.C. § 2241 to review whether immigration detention violates statutory or constitutional limits. *See Singh v. Holder*, 638 F.3d 1196, 1200 (9th Cir. 2011); *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Habeas review is available whenever the Executive's detention authority is exceeded, misapplied, or exercised in a manner inconsistent with due process

53. Parole may be terminated under the standard codified at 8 C.F.R. § 212.5(e)(2)—that "neither emergency nor public interest justifies the continued presence of the alien in the United States."

DHS must satisfy this regulatory requirement for a lawful termination. The Ninth Circuit recognizes that discretionary immigration decisions must still be reasoned and may not rest on "arbitrary, irrational, or unsupported grounds." *See Judulang v. Holder*, 565 U.S. 42, 55–56 (2011); *Kazarian v. USCIS*, 596 F.3d 1115, 1121–22 (9th Cir. 2010).

Revocation of Supervised Release and Arrest

54. Federal regulations governing enforcement actions by immigration officers require that "[a] warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii).

55. Federal regulations governing enforcement actions by immigration officers require that "[a] warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii).

56. Where an individual with a final removal order has been released on supervision, 8 C.F.R. § 241.4(l)(2) provides that only the Executive Associate Commissioner or a district director may revoke supervised release, and the district director may do so only "when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." That regulation also requires that an individual whose supervised release is revoked be informed as to the reasons why and be given a prompt post-deprivation opportunity to be heard as to why his supervised release should be restored.

Detention Beyond Removal Period

57. Under 8 U.S.C. § 1231(a), the government may detain a noncitizen for removal only during

the 90-day "removal period," which begins when the removal order becomes administratively final. 8 U.S.C. § 1231(a)(1)(A)-(B)(i). This period may be extended only if the noncitizen "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal." 8 U.S.C. § 1231(a)(1)(C).

58. The Supreme Court has also recognized a constitutional limitation on post-removal- period detention: such detention is permissible only when there is a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

FACTS

59. Petitioner is a Russian national who was paroled into the United States. Exhibit 1—Parole Advisal & Scheduling Notification.

60. Petitioner complied with instructions from immigration officers and reported for supervision. Exhibit 2—Order of Supervision.

61. Despite Petitioner's Notice to Appear never being filed with the immigration court, she attempted to effectuate and pursue her asylum claim by filing it affirmatively with USCIS. – Exhibit 3—Form I-589 Application for Asylum and for Withholding of Removal Receipt Notice.

62. On information and belief, both her parole authorization and order of supervision were revoked, and she was detained without cause by U.S. Immigration and Customs Enforcement agents on June 4, 2025 seemingly based off the prior vacated expedited removal order. Exhibit 4—Notice to Alien Ordered Removed.

63. At no time was Petitioner informed as to the reasons for revoking her parole.

64. Similarly, at no time was Petitioner informed as to the reasons for revoking her or order of

supervision nor was she given the required interview to demonstrate reasons why it should be revoked.

65. Petitioner was in custody in the Southern District of Texas. Exhibit 5—Detention Information. On information and belief, Petitioner was moved to Mesa, Arizona prior to her deportation.

66. To date the Petitioner has not been afforded the opportunity to have her asylum case properly adjudicated, despite the Respondent's own finding that she has a credible fear of torture or persecution.

67. On information and belief, Petitioner was deported to Russia on December 7, 2025. Petitioner is at imminent risk of irreparable harm with every additional day she spends in Russia, including not limited to torture and possible death.

68. On information and belief, Petitioner has exhausted all available administrative remedies. No administrative remedies are available to Petitioner, precisely because Respondents made the choice to unlawfully forego proceedings. On information and belief, Petitioner's removal violated the Petitioner's right to have her asylum application properly adjudicated within the United States.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process

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

70. On information and belief, Petitioner was unlawfully detained and subsequently removed by federal agents without cause and in violation of her constitutional rights to due process of law.

71. 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.

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

73. While asylum is a discretionary benefit, the right to apply is not. 8 U.S.C. § 1158(a)(1). Any noncitizen who is "physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . .), irrespective of such [noncitizen's] status, may apply for asylum." Id. Because the denial of the right to apply for asylum can result in serious harm or death, the statutory right to apply is robust and meaningful.

74. Because of her legal interest in her pending asylum application and documented credible fear claim Respondents actions in detention and her removal violated due process. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

75. Petitioner asks the Court to immediately order Respondents to take all steps reasonably available to them, proportionate to the gravity of the ongoing harm, to return the Petitioner to the United States so that she can exercise her statutory right to apply for asylum.

COUNT TWO
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)

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

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

78. 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)).

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

80. By categorically revoking Petitioner's parole without consideration of her individualized facts and circumstances, Respondents have violated the APA.

81. On information and belief, Respondents failed to provide notice to Petitioner of any basis for the termination of her parole.

82. Respondents further abused their discretion because there have been no changes to her facts or circumstances since the agency made its initial determination to parole her into the United States that support detention.

83. In order to hold the Respondents accountable for their actions Petitioner asks the Court to immediately order Respondents to take all steps reasonably available to them, proportionate to the gravity of the ongoing harm, to return the Petitioner to the United States so that she can exercise her statutory right to apply for asylum.

COUNT THREE
Unlawful Arrest in Violation of Federal Regulations

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

85. When ICE arrested Petitioner on June 5, 2025, they flagrantly violated federal regulations.

86. Petitioner was released under a valid Order of Supervision following a finding that she has a credible fear of persecution or torture. She fully complied with all requirements.

87. Respondents violated 8 C.F.R. § 241.4(I)(1), which requires that upon revocation of supervised

release, "the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification."

88. Respondents provided Petitioner with no written notification of revocation, no explanation of the reasons for revocation, and no opportunity to contest the revocation.

89. Respondents further violated 8 C.F.R. § 241.4(l)(2), which provides that only the Executive Associate Commissioner or a district director may revoke supervised release, and the district director may do so only "when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." Upon information and belief, no such determination was made by the Executive Associate Commissioner or district director, and no exigent circumstances existed that would have prevented referral to the proper authority.

90. These regulations were promulgated to safeguard due process rights of noncitizens, and Respondents' violations severely prejudiced Petitioner. Had these regulations been followed, Petitioner would have had a meaningful opportunity to contest the revocation of her supervised release, demonstrate her compliance with the Order of Supervision, and prevent her unlawful detention.

91. Under the well-established Accardi doctrine, when an agency fails to follow its own procedures or regulations, that agency's actions are generally invalid. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)).

92. This Court must not permit Respondents to benefit from their flagrant regulatory violations.

93. As relief, the Petitioner asks the Court to immediately order Respondents to take all steps

reasonably available to them, proportionate to the gravity of the ongoing harm, to return the Petitioner to the United States so that she can exercise her statutory right to apply for asylum.

COUNT FOUR
Removal Without Opportunity to Seek Protection

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

95. A person with a finding of credible fear cannot be removed without being afforded the opportunity to have their application for relief considered. *See* 8 USC 1225(b)(1)(B)(ii).

96. The Convention Against Torture, as implemented in U.S. law, prohibits Respondents from removing an individual to any country where such individual is more likely than not to face torture by or at the acquiescence of the government. *See* Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified at 8 U.S.C. § 1231 note); 8 C.F.R. §§ 1208.16(c), 1208.18. This prohibition extends to chain refoulement— the practice of deporting someone to a country which will in turn deport that person to be tortured elsewhere. *See* 8 C.F.R. § 1208.18(a)(1).

97. Petitioner has no claim to citizenship or permanent residence in any country other than Russia. Petitioner has been deported to Russia, where it has already been determined that she has a credible fear of persecution.

98. Respondents have removed Petitioner without affording her the ability to apply for relief.

99. Additionally, as access to counsel is critical to preparing any potential application for relief, Petitioner asks the Court to immediately order Respondents to take all steps reasonably available to them, proportionate to the gravity of the ongoing harm, to return the Petitioner to the United States so that she can exercise her statutory right to apply for asylum.

COUNT FIVE
HABEAS CORPUS
28 U.S.C. § 2241

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

101. The writ of habeas corpus under 28 U.S.C. § 2241 is available to any individual "in custody under or by color of the authority of the United States" whose custody or restraint violates the Constitution, laws, or treaties of the United States. Habeas jurisdiction extends to challenges to the legality of immigration detention and to the unlawful execution of removal orders, including circumstances in which the Government's actions deprive a noncitizen of a meaningful opportunity to pursue statutory protection.

102. Petitioner was "in custody" for purposes of § 2241 at the time this Petition was filed, as she was then detained by Respondents and facing imminent removal. In the immigration habeas context, the Ninth Circuit has made clear that where a petitioner is deported after filing, "the fact of his deportation does not render the habeas petition moot where there are collateral consequences arising from the deportation that create concrete legal disadvantages." *Zegarra-Gomez v. INS*, 314 F.3d 1124, 1127 (9th Cir. 2003).

103. Under *Spencer v. Kemna*, once physical custody has ended, a case remains justiciable where the petitioner continues to suffer a "concrete and continuing injury other than the now-ended incarceration" — a "collateral consequence" that may be redressed by a favorable decision. 523 U.S. 1, 7 (1998). Applying Spencer, the Ninth Circuit in *Zegarra-Gomez* held that an alien's inability to seek lawful return to the United States for a period of years is an "obvious collateral consequence" of removal that keeps a habeas petition live so long as the petitioner was in custody at the time of filing. 314 F.3d at 1127.

104. Petitioner was removed to Russia only after the filing of this habeas action, and she continues to suffer concrete legal disabilities and harms arising from that removal, including (1) an inability to lawfully return to the United States, (2) loss of the opportunity to

meaningfully seek asylum and related protection, and (3) ongoing separation from retained counsel and from the forum in which her statutory claims must be pursued. These are "collateral consequences arising from the deportation that create concrete legal disadvantages," and thus prevent this case from becoming moot. *Zegarra-Gomez*, 314 F.3d at 1127; *see also Abdala v. INS*, 488 F.3d 1061, 1063–64 (9th Cir. 2007) (explaining that a habeas petition remains justiciable after release or removal where "collateral consequences" redressable by the writ continue to exist).

105. Because Petitioner filed this action while detained and continues to face concrete legal and practical barriers traceable to Respondents' actions, her claims are not moot, and this Court retains full authority to grant relief under § 2241.

106. Additionally, as access to counsel is critical to preparing any potential application for relief, Petitioner asks the Court to immediately order Respondents to take all steps reasonably available to them, proportionate to the gravity of the ongoing harm, to return the Petitioner to the United States so that she can exercise her statutory right to apply for asylum.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner shall be returned to the United States;

(3) Declare that Petitioner's removal violates the Due Process Clause of the Fifth Amendment.

(4) Issue a Writ of Habeas Corpus ordering Respondents to return the Petitioner to the United States and release the Petitioner immediately.

(5) Issue an order that Petitioner's Order of Supervision be restored and that she continue supervision under the same terms as in place prior to June 4, 2025.

(6) Issue an order that Respondents take all steps reasonable available to them, proportionate to the gravity of the ongoing harm, to return the Petitioner and allow her to litigate her asylum claim, consistent with the Respondent's own finding of credible fear of persecution and torture.

(7) Grant any further relief at law and in equity justice may require.

Respectfully submitted,

Date: December 12, 2025

/s/ Michael Dominguez

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