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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 **PETITIONER'S OPPOSITION TO RESPONDENTS MOTION TO DISMISS**

PETITIONER'S OPPOSITION TO RESPONDENTS MOTION TO DISMISS

Respondents in the present case ask this court to accept the proposition that federal officers may remove a person contrary to regulation, due process and law, in violation of well settled principles regarding asylum, while no court in the United States has jurisdiction to do anything about it. Courts have consistently rejected this jurisdictional gambit.

I. BACKGROUND

The Petitioner was removed from the United States on December 7, 2025, one day after the present petition was filed. As confirmed by the Government, the Petitioner, a Russian national was

removed to Russia on December 7, 2025. The Government claims, inconsistent with historical and recent precedent, that this Court lacks jurisdiction to grant the relief sought by the Petitioner.

Respondents' argument focuses on the fact that the *Zadvydas v. Davis* basis of Petitioner's initial filing no longer pertains to the case at bar. 533 U.S. 678 (2001). However, in arguing that a habeas petition cannot provide the relief sought in the present matter, Respondents ignore several claims in Petitioner's initial and amended filing which provide actionable relief. The Government's assertion that the Petitioner is arguing that this Court should "somehow order the United States to return Petitioner from Russia," belies the fact that Petitioner has identified specific remedies, regulations, and precedent which establish the Respondent is well equipped to correct this error, and this Court has the jurisdiction to order Respondents to do so.

II. BASIS FOR ASYLUM

The Petitioner in the present case was unlawfully removed after a finding by the Government that she did in fact have a credible fear of being returned to Russia. The Government seems well versed in the process by which an asylum application is adjudicated, noting, "Congress has mandated the procedure for such an issue to be heard, which is to present it to an Immigration Judge (IJ), then appeal the IJ's ruling to the Board of Immigration Appeals (BIA), and then appeal the BIA's decision strictly to the Ninth Circuit Court of Appeals." Doc. 14 ¶6 What the Government has omitted is that Petitioner was removed, subsequent to a finding of credible fear, without benefiting from any of the enumerated processes that the Government itself has cited. Specifically, Respondents have omitted that in the present case the Petitioner was not given any of the due process afforded to asylum applicants after a credible fear finding. 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 "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).

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).

Despite the Respondents' assertions, 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.).

Contrary to the Respondents' assertion 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). 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. In the present case, the Petitioner was denied the very due process referenced in Respondents' motion to dismiss. While Respondents implied that the Petitioner has benefited from the due process required for asylum cases, this never occurred.

III. ARGUMENT

Jurisdiction

Respondents claim that this Court no longer has jurisdiction, and that our present application was merely a habeas petition. However, this Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question). In addition, 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). Doc 9¶¶ 13-16

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.

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, Arizona, and the legal violations described herein took place at Respondents' direction and under Respondents' supervision.

This Court's jurisdiction over Petitioner's core claims is secure under 28 U.S.C. §1331, the federal question statute. Doc 9 ¶1. Petitioners have pleaded claims for violations of the Immigration and Nationality Act (**INA**), the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act (**APA**). Doc 9 ¶¶13-16. Each of these claims arises under a federal statute or the U.S. Constitution, so this Court has federal question jurisdiction under §1331. *See Biden v. Texas*, 597 U.S. 785, 798 (2022) ("Absent [a provision that potentially stripped jurisdiction], the District Court clearly had federal question jurisdiction over respondents' suit, which asserted claims arising under two federal statutes, the INA and the APA."); *Rosenfield v. Wilkins*, 280 F. App'x 275, 281 (4th Cir. 2008) (Fifth Amendment due process claims supply federal question jurisdiction).

While it is true that the Petitioner has pleaded a habeas claim, for which jurisdiction arises under 28 U.S.C. §2241, additional claims were made in the alternative. In this context, habeas claims need not be brought to the exclusion of all other claims." *See R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 185–86 (D.D.C. 2015). So, the alternative habeas claim does not displace this Court's federal-question jurisdiction over the INA, due process, and APA claims.

The Respondent's argument is irreconcilable with the Supreme Court's recent order affirming that a District Court's injunction "properly requires the Government to 'facilitate' [a noncitizen's] release from custody" and "ensure that [their] case is handled as it would have been had [they] not been improperly sent to" their home country. *See Noem v. Abrego Garcia, 145 S.*

Ct. at 1018 (2025). If the Government were right that Petitioner could pursue only "habeas" and that "federal courts had no jurisdiction to hear" non-habeas claims for injunctive relief, then "the Supreme Court's *Abrego Garcia* opinion had no reason to opine on whether the district court's injunction breached Article II." *J.O.P.*, 2025 WL 1431263, at *17 n.4 (Richardson, J., dissenting).

"[C]ommon-law habeas corpus was, above all, an adaptable remedy." Its precise application and scope changed depending upon the circumstances. *See* 3 Blackstone (describing habeas as "the great and efficacious writ, in all manner of illegal confinement"); see also *Schlup v. Delo*, 513 U.S. 298, 319, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995) (Habeas "is, at its core, an equitable remedy"); *Jones v. Cunningham*, 371 U.S. 236, 243, 83 S.Ct. 373, 9 L.Ed.2d 285 (1963) (Habeas is not "a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose")." *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008).

Just as the Supreme Court has noted "the flexibility of the habeas mechanism," so should this Court find that Petitioner still has redress and Respondents cannot moot her petition by simply removing her unlawfully. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 526 (2004). A constitutionally adequate habeas court "must have the power to order the conditional release of an individual unlawfully detained—though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted." *Boumediene*, 553 U.S. at 779.

Petitioners' Injuries Are Redressable

Respondents argue that this Court lacks the ability to issue any redressable relief to Petitioner. Alleging that this "action is moot and does not meet the constitutional requirement of a live case or controversy under Article III." Doc 14 ¶ 5-7 However, this assertion is incorrect, as noted above, the Government has in the past been required to return aliens improperly removed to the United States. The Supreme Court in *Noem* required the Government to facilitate a non-

citizen's return to the United Sates. 145 S. Ct. at 1018. The redressability requirement "is not onerous." *Deal v. Mercer Cnty. Bd. of Ed.*, 911 F.3d 183, 189 (4th Cir. 2018). Petitioner "need not show that a favorable decision will relieve [their] every injury" but "only that they personally would benefit in a tangible way from the court's intervention." *Id.* (quoting *Sierra Club v. U.S. Dep't of the Interior*, 899 F.3d 260, 284 (4th Cir. 2018)). "The removal of *even one* obstacle to the exercise of one's rights, even if other barriers remain, is sufficient to show redressability." *Sierra Club*, 899 F.3d at 285 (emphasis added).

It should be noted that the potential or necessary cooperation of a foreign government in facilitating the return of a removed individual does not eliminate standing. Any time someone is wrongfully removed, a foreign country is involved. That is inherent in removals. Yet the Supreme Court has recognized that wrongfully removed individuals can be "afforded effective relief by facilitation of their return, along with restoration of the immigration status they had upon removal," just like Petitioner requests here. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

In the immigration context, the Ninth Circuit has held that a petition for review is mooted by the petitioner's removal from the United States unless there is "some remaining 'collateral consequence' that may be redressed by success on the petition." *Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007). In *Kaur v. Holder*, 561 F.3d 957 (9th Cir. 2009), the court rejected an argument that a ten-year ban on reentry into the United States constituted a collateral consequence because the petition for review did not challenge the basis for the ban. *See id.* at 959. By contrast, in *Blandino-Medina v. Holder*, 712 F.3d 1338 (9th Cir. 2013), the court held that the petitioner's removal did not moot his petition because a favorable ruling would have made it possible—at least hypothetically—for him to obtain a waiver of the ban on reentry. *See Id.* at 1342. Petitioner was "in custody" for purposes of § 2241 at the time the 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).

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.

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).

Respondents' failure to provide due process and follow the asylum laws and regulations has created a collateral consequence in that Petitioner is unable to pursue her asylum claim from outside the United States.

Respondents' assertion that they should "somehow" facilitate the Petitioner's return implies a novelty that does not exist in the present situation. In many other cases the Government has facilitated the return of wrongfully removed individuals "as a matter of course," even when such efforts require extraterritorial conduct. *see, e.g.*, *D.V.D. v. U.S. Dep't of Homeland Sec.*, --- F. Supp. 3d ----, 2025 WL 1142968, at *15 n.34 (D. Mass. Apr. 18, 2025) ("Defendants acknowledge that there are procedures to compel the return of illegally remov[ed] individuals."); *Grace v. Whitaker*, No. 1:18-cv-01853-EGS (D.D.C. 2018); *J.L. v. Cuccinelli*, No. 18-cv-04914-NC (N.D. Cal. Feb. 20, 2020), (describing "extraordinary measures" the Government undertook to "facilitate R.M.N.'s return to the United States" despite "the complicated interplay between U.S. and Guatemalan policy" regarding travel policies during the onset of the COVID-19 pandemic); *Hamama v. Adducci*, No. 2:17-cv-11910 (E.D. Mich. Jan. 15, 2019), (order noting the Government's agreement to "rectify" an unlawful deportation by, among other things, coordinating with foreign government officials).

IV. CONCLUSION

Contrary to the Respondents' position in their motion to dismiss, Petitioner, who was found to have a credible fear of harm upon being returned to Russia, was not afforded due process or the opportunity to pursue her asylum claims prior to being removed. While she is no longer in the physical custody of Respondents, their wrongful removal of Petitioner continues to cause collateral consequences that may be redressed by this Court in a habeas proceeding. Consistent with precedent and historical practice, Petitioner seeks to have Respondents take all available steps, in

good faith, to facilitate the Petitioner's return to the United States. Therefore, the Court should deny Respondents' motion to dismiss.

Respectfully submitted,

Date: December 22, 2025

/s/ Michael Dominguez

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Petitioner's Opposition to Respondents' Motion to Dismiss with the Court and on Respondents via the Court's electronic filing system on December 22, 2025.

/s/ Michael Dominguez
Attorney for Petitioner