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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Portland Division

N-E-M-B-, an adult,

Petitioner,

v.

DREW BOSTOCK, Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO");TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE"); U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY; and PAMELA BONDI, Attorney General of the United States,

Respondents.

Case No. 25-989

Agency No. AXXX-XXX-099

PETITION FOR WRIT OF HABEAS CORPUS

ORAL ARGUMENT REQUESTED

Expedited Hearing Requested

INTRODUCTION

1. Petitioner N-E-M-B- is an Ecuadoran national who seeks protection in the United States after being kidnapped and threatened with death by the Los Choneros organized crime syndicate.

2. Petitioner N-E-M-B- was released into the United States on or about August 23, 2023, by Respondents; Respondents commenced removal proceedings against Petitioner in immigration court, entitling Petitioner to present an asylum claim with the due process rights under 8 U.S.C. § 1229a. Yet, in a deceptive sleight of hand, Respondents now seek to eject Petitioner from Petitioner's own asylum case; to detain Petitioner; and to transfer Petitioner away from the District of Oregon so that they can rapidly deport Petitioner under an entirely separate and inapposite law, 8 U.S.C. § 1225. Respondents do so based not on Petitioner's personal circumstances or individualized facts but because of Respondents' interpretation of President Trump's whim and categorical determination that, the Fifth Amendment notwithstanding, noncitizens are not entitled to due process.[1]

3. But Respondents cannot evade the law so easily. The law which they purport to use to rapidly remove Petitioner does not authorize their actions, and the U.S. Constitution requires the Respondents provide Petitioner at minimum with the rights available to Petitioner in Petitioner's § 1229a proceedings.

4. Accordingly, to vindicate Petitioner's rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner asks this Court to find that Respondents' attempts

[1] *See, e.g.,* NBC News, Meet the Press interview of President Donald Trump (May 4, 2025), https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donald-trump-interviewed-meet-press-mod-rcna203514 (in response to a question whether noncitizens deserve due process under the Fifth Amendment, President Trump replied "I don't know. It seems—it might say that, but if you're talking about that, then we'd have to have a million or 2 million or 2 million trials.").

to detain, transfer, and deport Petitioner are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing Petitioner's transfer out of this district.

JURISDICTION

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

6. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

7. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

VENUE

8. Venue is proper because Petitioner is in Respondents' custody in Portland, Oregon. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).

9. For these same reasons, divisional venue is proper under Local Rule 3-2.

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

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

11. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

12. Petitioner is "in custody" for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

PARTIES

13. Petitioner is a 45-year-old citizen of Ecuador. Petitioner is present within the state of Oregon as of the time of the filing of this petition.[2]

14. Respondent Drew Bostock is the Field Office Director for the Seattle Field Office, Immigration and Customs Enforcement and Removal Operations ("ICE"). The Seattle Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens. The Seattle Field Office's area of responsibility includes Alaska, Oregon, and Washington. Respondent Bostock is a legal custodian of Petitioner.

[2] Petitioner seeks leave to proceed anonymously because public identification creates a risk of retaliatory physical harm risk due to Petitioner's status as an asylum seeker in the United States, and the nature of Petitioner's claim is sensitive and highly personal. *See Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000). The Ninth Circuit has identified several different situations in which parties have been permitted to proceed under a fictitious name, including "(1) when identification creates a risk of retaliatory physical or mental harm, . . . ; (2) when anonymity is necessary 'to preserve privacy in a matter of sensitive and highly personal nature,' . . . ; and (3) when the anonymous party is 'compelled to admit [his or her] intention to engage in illegal conduct, thereby risking criminal prosecution.'" *Id.* (collecting cases; internal citations omitted). The Petitioner would provide Petitioner's identity to the Respondents and the Court under seal.

15. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent Drew Bostock and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

16. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Noem is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States.

17. Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

18. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

19. Respondent U.S. Department of Homeland Security is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

20. This action is commenced against all Respondents in their official capacities.

LEGAL FRAMEWORK

21. 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).

22. 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).

23. 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.

24. 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).

25. 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).

26. 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.).

27. 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).

28. 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*.

29. 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).

30. 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)).

31. 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).

32. Thus, a low-level DHS officer can order the removal of an individual who has been living in the United States with virtually no administrative process—just completion of cursory paperwork—based only on the officer's own conclusions that the individual has not been admitted or paroled, that the individual has not adequately shown the requisite continuous physical presence, and that the individual is inadmissible on one of the two specified grounds.

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

34. 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).

35. 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.

36. 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).

37. 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).

38. 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).

FACTUAL BACKGROUND

39. Petitioner is a citizen of Ecuador.

40. Petitioner seeks protection in the United States after being kidnapped and threatened with death by the Los Choneros organized crime syndicate.

41. On or about August 22, 2023, Petitioner came to or near the port of entry at San Ysidro, California. Respondents arrested and detained Petitioner.

42. On or about August 23, 2023, based on the individualized facts of Petitioner's case, Respondent DHS released Petitioner from its custody on an Order of Release on Recognizance pursuant to 8 U.S.C. § 1226(a).

43. On or about August 23, 2023, Respondents initiated removal proceedings against Petitioner under 8 U.S.C. § 1229a in Portland, Oregon; they filed his Notice to Appear on September 7, 2023.

44. Respondents alleged that Petitioner was inadmissible to the United States under 8 U.S.C. § 1182(a)(6)(A)(i) and commanded that Petitioner appear for a hearing in the immigration court in Portland, Oregon.

45. Petitioner appeared for Petitioner's scheduled immigration court hearing on June 10, 2025. However, instead of allowing Petitioner to proceed with Petitioner's asylum case, Respondents moved to dismiss Petitioner's case entirely and the immigration court dismissed the proceedings. On information and belief, Respondents did not advise Petitioner that they sought to terminate the case in order to place Petitioner in expedited removal proceedings.

46. After exiting the courtroom and while in the courtroom lobby, ICE agents arrested Petitioner. The ICE agents did not offer Petitioner any process, including any opportunity to be heard, prior to arresting and detaining him.

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

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

49. 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.

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

51. On information and belief, Petitioner avers that Respondents concealed the basis for dismissal from the immigration court and from Petitioner because the purpose was to divest Petitioner of Petitioner's due process rights in Petitioner's ongoing § 1229a asylum proceedings.

52. On information and belief, Respondents did not afford Petitioner an opportunity to be heard before issuing Petitioner an expedited removal order, depriving Petitioner of due process.

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

54. On information and belief, Petitioner has no criminal history.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process
Procedural Due Process

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

56. 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.

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

58. 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.*

59. 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. It includes the right to legal representation and notice of that right, *see id.* §§ 1229a(b)(4)(A), 1362, 1158(d)(4); the right to present evidence in support of asylum eligibility, *see id.* § 1158(b)(1)(B); the right to appeal an adverse decision to the Board of Immigration Appeals and to the federal circuit courts, *see id.* §§

1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a decision determining removability, *see id.* § 1229a(c)(6)-(7).

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

61. While there is a right to "consult" with an attorney or another person about the credible fear interview process, *see* 8 U.S.C. § 1225(b)(1)(B)(iv) *and* 8 C.F.R. §§ 208.30(d)(4), 235.3(b)(4)(i)(B), (ii), the consultation "shall not unreasonably delay the process." The consultant may be "present" during the interview but may only make a "statement" at the end of the interview *if* permitted by the asylum officer. 8 C.F.R. § 208.30(d)(4). The immigrant subject to expedited removal may present evidence "if available", *id.*—often an impossibility given the fast timeline and the default of detention during the process. *See generally* Heidi Altman, et. al., *Seeking Safety from Darkness: Recommendations to the Biden Administration to Safeguard Asylum Rights in CBP Custody*, Nov. 21, 2024, https://www.nilc.org/wp-content/uploads/2024/11/NILC_CBP-Black-Hole-Report_112124.pdf (describing the obstruction of access to counsel for people undergoing credible fear screenings in Customs and Border Protection custody).

62. Review of a negative credible fear decision by an immigration judge is limited. "A credible fear review is not as exhaustive or in-depth as an asylum hearing in removal proceedings," and there is no right to submit evidence, as it may be admitted only at "the discretion of the immigration judge." Immigration Court Practice Manual, Chpt. 7.4(d)(4)(E). After denial of a credible fear interview and affirmance by a judge, removal is a near certainty; the immigrant is ineligible for other forms of relief from removal.

63. In sum, applying for asylum in § 1229a removal proceedings comes with a panoply of greater protections when compared with seeking asylum in expedited removal. *See Immigrant Defenders Law Center v. Mayorkas*, 2023 WL 3149243, at *29 (C.D. Cal. Mar. 15, 2023) ("Individuals in regular removal proceedings enjoy far more robust due process protections [than those in expedited removal] because Congress has conferred additional statutory rights on them.").

64. Here, on information and belief, Petitioner was not advised by DHS that they sought to terminate Petitioner's proceedings in order to place Petitioner in expedited removal, depriving Petitioner of the bundle of rights associated with Petitioner's pending § 1229a asylum proceedings. Respondents violated Petitioner's due process rights by depriving Petitioner of the strong private interest in the rights that attached to the consideration of Petitioner's claim for protection in § 1229a proceedings. *See Board of Regents v. Roth*, 408 U.S. 564, 577 (1972) (requiring an opportunity to be heard where an individual has "a legitimate claim of entitlement" to a benefit); *Mathews v. Eldridge,* 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

COUNT TWO
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A), the Immigration and Nationality Act – 8 U.S.C. § 1226, and Federal Regulations
Not in Accordance with Law and in Excess of Statutory Authority
Unlawful Detention

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

66. 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).

67. 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)).

68. The INA provides that Respondents may, as they did months ago in Petitioner's case, release an individual from custody based on an individualized determination of their danger and flight risk. *See* 8 U.S.C. § 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). After such a release decision is made, a revocation of the custody determination may be made only when warranted by an individual's specific facts and circumstances. 8 U.S.C. § 1226(b); 8 C.F.R. § 1236.1(c)(9).

69. 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).

70. By categorically revoking Petitioner's release and transferring Petitioner away from the district without consideration of Petitioner's individualized facts and circumstances, Respondents have violated the INA, implementing regulations, and the APA.

71. On information and belief, Respondents have made no finding that Petitioner is a danger to the community.

72. On information and belief, Respondents have made no finding that Petitioner is a flight risk because, in fact, Petitioner's was arrested while appearing at Petitioner's immigration proceedings.

73. On information and belief, by detaining and transferring the Petitioner categorically, 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 Petitioner's facts or circumstances that support the revocation of Petitioner's release from custody.

74. Respondents have already considered Petitioner's facts and circumstances and determined that Petitioner was not a flight risk or danger to the community. On information and belief, there have been no changes to the facts that justify this revocation of Petitioner's release on recognizance. The fact that Petitioner has already been granted release by Respondents under the same facts and circumstances shows that Respondents do not consider Petitioner, on an individualized basis, to be a danger to the community or a flight risk. Moreover, Petitioner appeared for Petitioner's immigration court hearing as required which cannot be a basis to find that Petitioner is a flight risk.

COUNT THREE
Violation of Fifth Amendment Right to Due Process
Illegal Retroactive Application of Expedited Removal Designation

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

76. Administrative rules "will not be construed to have retroactive effect unless their language requires this result." *Landgraf v. USI Film Products*, 511 U.S. 244, 272 (1994). When a "new provision attaches new legal consequences to events completed before its enactment" the new provision is not retroactive unless it is unmistakably clear. *Id.* at 270.

77. Applying the January 2025 expedited removal designation to Petitioner's entry to the United States to seek asylum would attach new legal consequences, including the loss of significant rights related to Petitioner's right to seek asylum.

78. The January 2025 designation does not unmistakably apply to individuals who entered the United States prior to its effective date of January 21, 2025. Office of the Secretary,

Dep't of Homeland Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139. The designation's language thus does not "require that it be applied retroactively." *See INS v. St Cyr*, 533 U.S. 289, 291 (2001).

79. Nor does the statutory language that the designation purports to derive from, 8 U.S.C. § 1225(b)(1)(A)(iii), include any language indicating Congressional intent to allow retroactive effect. *See St. Cyr*, 533 U.S. at 316 (requiring statutory language to be "so clear that it could sustain only one interpretation").

80. At the time of Petitioner's entry on or about August 22, 2023, the only individuals who could be placed in expedited removal proceedings were individuals "encountered within 100 air miles of the border and within 14 days of their date of entry." *See* Office of the Secretary, Dep't of Homeland Security, Rescission of the Notice of July 23, 2019, Designating Aliens for Expedited Removal, 87 Fed. Reg. 16022 (Mar. 21, 2022). To the extent that Respondents ever had the legal authority to reclassify Petitioner from § 1229a proceedings to expedited removal proceedings,[3] that authority expired 14 days after Petitioner's entry date.

81. Accordingly, Respondents are unlawfully subjecting Petitioner to expedited removal.

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

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

[3] Petitioner does not concede that DHS has authority to reverse its initial processing choice to issue Petitioner an NTA for § 1229a proceedings.

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

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

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

86. Under the APA, an agency must provide "reasoned explanation for its action" and "may not depart from a prior policy *sub silentio* or simply disregard rules that are still on the books." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

87. On information and belief, Respondents have decided to dismiss Petitioner's removal proceedings because of their intent to eliminate the due process rights available to Petitioner in § 1229a removal proceedings. This basis is not among the reasons to seek dismissal permitted by 8 C.F.R. § 239.2(a).

88. In deciding to dismiss Petitioner's removal proceedings in order to subject Petitioner to expedited removal, Respondents further violated the APA by "entirely fail[ing] to consider an important aspect of the problem" – namely, the important procedural rights that Petitioner relied on in § 1229a immigration court proceedings. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding that rescission of

immigration policy without considering "particular reliance interests" is arbitrary and capricious in violation of the APA).

89. Because the dismissal of Petitioner's § 1229a proceedings was not made in furtherance of an enumerated reason set forth in the regulations, and because Respondents failed to consider Petitioner's reliance on the procedural rights of § 1229a immigration proceedings, Respondents' use of the January 2025 expedited removal designation is unlawful.

COUNT FIVE
Violation of Fifth Amendment Right to Due Process
Procedural Due Process

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

91. 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.

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

93. While the government has discretion to detain individuals under 8 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not "unlimited" and must comport with constitutional due process. *See Zadvydas*, 533 U.S. at 698; *Hernandez*, 872 F.3d 976, 981 (9th Cir. 2017) ("[T]he government's discretion to incarcerate non-citizens is always constrained by the requirements of due process."); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (holding that due process applies to revocation of parole).

94. Here, after initially releasing Petitioner, Respondents have chosen to re-detain Petitioner in an arbitrary manner and not based on a rational and individualized determination of whether she is a safety or flight risk, in violation of due process. Had Respondents conducted such an assessment, they would have concluded that no facts or circumstances had changed to justify a revocation of Petitioner's release on recognizance. *See Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) (holding that "where a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change of circumstance"); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (noting that DHS has incorporated *Matter of Sugay* "into its practice, requiring a showing of changed circumstances . . . where the previous release decision was made by a DHS officer").

95. On information and belief, because no individualized custody revocation or re-detention decision has been made and no circumstances have changed to make Petitioner a flight risk or a danger to the community, Respondents' have violated Petitioner's right to procedural due process.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that Petitioner's re-detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;

(4) Declare that Respondents' application of the January 2025 Designation to Petitioner is illegal;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;

(6) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;

(7) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(8) Grant any further relief this Court deems just and proper.

Dated: June 10, 2025.

/s/ Stephen W. Manning

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