

STEPHEN W. MANNING, OSB # 013373
stephen@innovationlawlab.org
smanning@ilgrp.com
JORDAN CUNNINGS, OSB # 182928
jordan@innovationlawlab.org
NELLY GARCIA ORJUELA, OSB #223308
nelly@innovationlawlab.org
TESS HELLGREN, OSB # 191622
tess@innovationlawlab.org
INNOVATION LAW LAB
333 SW 5th Ave., Suite 200
Portland, OR 97204-1748
Telephone: +1 503-922-3042

Attorneys for Petitioner

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
Portland Division

Y-Z-L-H-, 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. 3:25-CV-00965-SI

Agency No. A XXX-XXX-204

**PETITIONER'S MOTION FOR AND
MEMORANDUM OF LAW IN
SUPPORT OF BAIL PENDING
ADJUDICATION OF HABEAS
PETITION**

ORAL ARGUMENT REQUESTED

Expedited Hearing Requested

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MOTION AND MEMORANDUM OF LAW

Petitioner moves the Court for an order requiring Respondents to return Petitioner to the District of Oregon and to release him on bail pending the Court's adjudication of his petition for habeas corpus. The Court has inherent equitable authority to release Petitioner on bail pending the adjudication of his 8 U.S.C. § 2241 habeas petition. *Nadarajah v. Gonzales*, 443 F.3d 1069, 1083 (9th Cir. 2006). Pursuant to LR 7-1, counsel for the parties conferred in good faith by telephone conference and were unable to resolve the matter; Respondents' counsel advises they oppose the motion.

I. INTRODUCTION

The rule of law requires the stakeholders in the legal system to act in good faith. This foundational principle is particularly important when one of the stakeholders is the Executive Branch of the United States Government, because the Executive Branch has the single solemn duty to faithfully execute the laws. *See* U.S. Const. art. II, § 1, clause 8. On the day Petitioner Y-Z-L-H- was detained, Respondents manipulated the immigration system to achieve what the law plainly did not allow, in violation of their duty: Y-Z-L-H-'s detention and rapid expulsion without due process of law. "It is procedure that spells much of the difference between rule by law and rule by whim or caprice." *Joint Anti-Fascist Refugee Comm. V. McGrath*, 341 U.S. 123, 179 (1951) (Douglas, J., concurring); *Malinski v. New York*, 324 U.S. 401, 414 (1945) (Frankfurter, J., concurring) ("The history of American freedom is, in no small measure, the history of procedure."). The legal regime under which DHS undertook this manipulation is complex and it may take time to fully litigate the issues before the Court regarding the legality of the Government's actions. But what happened on June 5, 2025, at the Portland Immigration Court building is plain: Respondents failed repeatedly to provide Y-Z-L-H- his due process rights in

order to rapidly expel him. In this context, Y-Z-L-H-, a bona fide asylum seeker, should not be incarcerated pending adjudication of this litigation because to keep him detained while the complex habeas litigation proceeds would effectively undermine the purpose of the writ of habeas corpus.

First, Respondents manipulated Y-Z-L-H-'s removal proceedings by concealing the purpose of their motion to dismiss—in violation of both federal regulation and Respondents' duty to faithfully execute the laws—and by allowing Y-Z-L-H- to understand that he was not at risk of "imminent removal."¹ But, as Respondents knew, that was untrue. DHS officers were stationed outside the courtroom waiting area, ready to immediately arrest and detain Y-Z-L-H- and subject him to an expedited deportation process.

Second, the Respondents manipulated Y-Z-L-H-'s access to counsel, preventing him from speaking with his attorneys for four days following his arrest. During this time, Y-Z-L-H-'s counsel was not only unable to speak with him, but they were unable to confirm his location.

In recent months, Respondents have used the immigration detention system as a way to transfer individuals far away from their home districts, including by engaging in extra-territorial renditions to places like Panama, El Salvador, and Cuba, and to hold them in indefinite detention. These transfers separate individuals from their families and communities, their counsel, and often the courts with initial jurisdiction over their habeas petitions. Recently, Defendants have begun playing with jurisdictional rules to prevent bona fide asylum-seekers from having their day in

¹ See *infra* at II; see also Julia Ainsley, "Trump admin tells immigration judges to dismiss cases in tactic to speed up arrests," NBC News (Jun. 11, 2025), available at <https://www.nbcnews.com/politics/national-security/trump-admin-tells-immigration-judges-dismiss-cases-tactic-speed-arrest-rcna212138> (describing how the U.S. Department of Justice has instructed immigration judges, who report to Respondent Bondi, to allow DHS lawyers to make oral motions to dismiss and to then promptly grant these motions without the typical 10-day response time for noncitizen respondents).

court, reflecting President Trump’s desire for immigrants “to be forced out without going through a long, protracted, and expensive Legal Process”.² As in Y-Z-L-H-’s case, Respondents have abused the rules allowing for the dismissal of 8 U.S.C. § 1229a removal proceedings—with all the due process those proceedings provide—in order to improperly thrust asylum seekers into fast-track proceedings with few procedural protections instead. This abuse is happening months and sometimes years after individuals have entered the U.S. and applied for asylum in immigration court, where their procedural protections include the right to counsel at no government expense, the right to an adversarial process, and the right to appeal and judicial review. In Y-Z-L-H-’s case, as part of this escalating trend, Respondents dismissed his removal proceedings in violation of the law, swiftly transferred him out of the District of Oregon, and obstructed his access to counsel.³

Petitioner respectfully moves this Court to order that Respondents return him to this District and release him on bail while he litigates the present petition.

² Donald J. Trump, @realDonaldTrump, Truth Social post (May 16, 2025, 5:59pm), available at <https://truthsocial.com/@realDonaldTrump/posts/114519753109701350>.

³ Substantial press coverage has documented Respondents’ recent abuse of immigration court dismissals, followed by rapid arrests to seek expedited removal. *See, e.g.*, Ted Hesson and Kristina Cooke, “ICE arrests migrants at courthouses, opens door to fast-track deports,” Reuters (May 23, 2025), available at <https://www.reuters.com/world/us/ice-arrests-migrants-courthouses-opens-door-fast-track-deportations-2025-05-23/>; Suzanne Gamboa, “Immigration arrests in courthouses have become the new deportation tool, stripping migrants of a legal process,” NBC News (May 30, 2025), available at <https://www.nbcnews.com/news/latino/immigrations-arrests-ice-deportations-courthouse-legal-process-ice-rcna209671>; Angélica Franganillo Díaz and Priscilla Alvarez, “ICE targets migrants for arrest at courthouses as Trump administration intensifies deportation push,” CNN (June 2, 2025), available at <https://www.cnn.com/2025/06/02/politics/ice-arrests-migrants-courthouse/>; Laura Romero, Armando Garcia, and Mireya Villarreal, “In a new tactic, ICE is arresting migrants at immigration courts, attorneys say,” ABC News (June 4, 2025), available at <https://abcnews.go.com/US/new-tactic-ice-arresting-migrants-immigration-courts-attorneys/story?id=122513021>.

II. BACKGROUND

Petitioner is a citizen of Mexico. Petitioner's Declaration in Support of Motion for Bail ("Petitioner's Decl.") ¶ 2. He was born in 2000 in Cuernavaca, Mexico. *Id.* In Mexico, Petitioner was threatened by the chief of police and a notorious cartel called "La Familia Michoacana." *Id.* ¶ 3. Fearing for his life, he fled Mexico and sought asylum in the United States in July 2023. *Id.* ¶¶ 3-4.

On or about July 21, 2023, Petitioner came to the port of entry at El Paso, Texas, to seek asylum. *Id.* ¶ 4; Declaration of Lynn Stopher ("Stopher Decl.") Ex. A, Petitioner's Notice to Appear. Petitioner had made an appointment to enter the United States through the CBP One app.⁴ Petitioner's Decl. ¶ 4. After waiting for and presenting at that scheduled appointment, he answered some questions and, based on the individualized facts in his case, Respondent DHS released Petitioner into the U.S. on parole, pursuant to 8 U.S.C. § 1182(d)(5). *Id.*; Stopher Decl. Ex. A. That same day, Respondents initiated his removal proceedings under 8 U.S.C. § 1229a, alleging him to be inadmissible to the United States under 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* Ex. A. Following his release, Petitioner did not engage in any criminal activity and has no criminal history in the United States. *Id.* ¶ 8; Petitioner's Decl. ¶¶ 8, 15.

On or about July 24, 2023, Respondents commenced removal proceedings against Petitioner in Portland, Oregon, in the Portland Immigration Court. Stopher Decl. Ex. B, Screenshot

⁴ U.S. Customs and Border Protection, *Fact Sheet: Using CBP One to Schedule an Appointment* (Jan. 2023), available at https://www.cbp.gov/sites/default/files/assets/documents/2023-Jan/CBP%20One%20Fact%20Sheet_English_3.pdf (encouraging noncitizens who "meet specifical vulnerability criteria" to "schedule an appointment to present themselves for inspection at a participating [Port of Entry]" in order to a permit "a safe and orderly process"); see also American Immigration Counsel, *CBP One: An Overview*, Fact Sheet (Mar. 24, 2025), available at <https://www.americanimmigrationcouncil.org/research/cbp-one-overview> (describing the application's use by DHS to pre-process and pre-screen asylum-seekers and to channel applicants by regulation to its functions).

of Petitioner's EOIR Automated Case Information. Petitioner applied for asylum before the Portland Immigration Court on July 17, 2024. *Id.* Ex. C, Petitioner's Form I-589: Application for Asylum and Withholding for Removal. On September 28, 2023, Respondent DHS issued work authorization to Petitioner pursuant to 8 C.F.R. § 274a.12(c)(11) valid through July 19, 2025. *Id.* Ex. D, Petitioner's (c)(11) Employment Authorization Document. On or about April 11, 2025, Petitioner received a generic mass message from Respondents that purported to revoke his parole without any individualized assessment. *Id.* Ex. E, Screenshots of E-mails Purporting to Revoke Petitioner's Parole. On June 4, 2025, Respondent DHS approved Petitioner's application for work authorization based on his pending asylum application. *Id.* Ex. F, Petitioner's Notice of Approval for (c)(8) Employment Authorization.

Petitioner appeared for his hearing at the Portland Immigration Court the morning of June 5, 2025. Petitioner's Decl. ¶ 6. Unbeknownst to him, Respondents' agents were already gathering outside the courtroom for his arrest. *See* Witness Declaration of Alexis Ball ("Ball Decl.") ¶¶ 7-10. Outside the courtroom, three agents from DHS with masks and camo-colored clothing "were ready to attack." Ball Decl. ¶ 7.

In the courtroom, before his hearing was called, Immigration Judge Dustin Johnson addressed several individuals with hearings scheduled at the same time:

Immigration Judge (IJ) to courtroom: The purpose of these proceedings is for the court to decide whether you should be removed from the United States or whether you should be allowed to stay....You have the right to be represented by an attorney of your own choosing at no expense to the United States government. But you are not required to have an attorney. You can speak on your own behalf and represent yourself. If you want time to find an attorney, the court will reschedule your case to another day and give you more time...

See Stopher Decl. Ex. G, Rough Transcript of Digital Audio Recording (DAR) of Petitioner's June 5, 2025, Immigration Court Hearing.⁵ The IJ then called Y-Z-L-H- to the stand and the following occurred:

IJ to Y-Z-L-H-: Sir, good morning. Did you hear and understand all the rights and responsibilities that the court just explained to you?

Y-Z-L-H-: Yes.

IJ: Do you have any questions on any of those rights or responsibilities?

Y-Z-L-H-: No.

IJ: Do you still live on [address]?

Y-Z-L-H-: Yes, correct.

IJ: Alright, sir. Would you like more time to try to find an attorney before the court continues with your hearing?

Y-Z-L-H-: Yes.

IJ: Alright, so the court will give you more time, and we'll reschedule your case to another day. The court will send you a notice in the mail with the date and time of your next appointment or hearing. Do you have any questions, sir, on anything we've discussed here today?

Y-Z-L-H-: No, everything is clear.

IJ: Anything to add from the government?

DHS to IJ: DHS is moving for dismissal based on changed circumstances since the issuance of the Notice to Appear.

IJ to Y-Z-L-H-: So sir, the government has just asked the court to dismiss your case here today. If the court grants that request, you have no future appearances before the immigration court. Based on the current Notice to Appear that was given to

⁵ The digital audio recording (called the "DAR") was made available to Petitioner on June 10, 2025. By separate forthcoming motion, Petitioner seeks an order to have Respondents produce the official transcript of the proceedings, along with other papers related to Y-Z-L-H-'s § 1229a proceedings as well as his arrest, detention, and transfer.

you in July of 2023. Would you like the court to grant the government's request to dismiss your case?

Y-Z-L-H-: No.

IJ: And why not?

Y-Z-L-H-: Because I need a lawyer.

IJ: Alright, off the record momentarily.

IJ: Alright, back on the record. The court has considered the department's motion for dismissal. And the court has considered the respondent's opposition requesting an attorney. The court finds the department has offered more persuasive reasons for seeking dismissal. The court will issue a detailed order explaining its reasoning. To the extent that the respondent seeks the assistance of an attorney, he would still have opportunity to seek representation notwithstanding the court granting the motion for dismissal. The court will issue a detailed order citing relevant case law and precedents to support this decision. Any dismissal will be without prejudice . . .

See Stopher Decl. Ex. G Rough DAR transcript. The IJ reasoned that because Y-Z-L-H- was not "in imminent danger of removal," the "court has issued an order denying your um, granting the department's motion to dismiss over your objection." *Id.*; Declaration of Witness Ramona Sapru Henderson ("Henderson Decl.") ¶ 7; Petitioner's Decl. ¶ 6.⁶ Petitioner stated that at that time he "felt helpless and stressed because [he] did not know why the judge dismissed by case or what would happen next." *Id.* ¶ 7. Minutes after the IJ advised Y-Z-L-H- that "[y]ou are free to leave, sir[.]" Y-Z-L-H- was arrested and detained by DHS officers. Petitioner's Decl. ¶¶ 7-9; Ball Decl.

⁶ On May 30, 2025, immigration judges around the country received an email from the Department of Justice—their employers as immigration judges are nontenured adjudicators reporting to the nation's chief prosecutor, the U.S. Attorney General—encouraging them to misapply the law and grant dismissals so that DHS could make the courtroom arrests for expedited removal purposes. *See* Julia Ainsley, *Trump admin tells immigration judges to dismiss cases in tactic to speed up arrests*, NBC News (June 11, 2025), <https://www.nbcnews.com/politics/national-security/trump-admin-tells-immigration-judges-dismiss-cases-tactic-speed-arrest-rcna212138>.

¶ 9-10; Henderson Decl. ¶ 8.⁷ One officer stated that they were processing him for expedited removal. *See* Declaration of Lindsay Jonasson (“Jonasson Decl.”) ¶ 3. Petitioner, who had never been arrested before, “felt very afraid” and “did not understand why they were handcuffing me;” he also felt “alone” and “very scared because their faces were covered.” Petitioner’s Decl. ¶¶ 7-9. Without explanation, the DHS officers transported Petitioner by car to an unknown location 10-20 minutes from the court. *Id.* ¶ 9.

After he was arrested at the court, Petitioner’s access to counsel was blocked repeatedly. When he arrived at the Macadam ICE Processing Center after being arrested at the court, Petitioner asked to speak with his lawyer; he was told “there was no need to call [his] lawyer because [his] lawyer would arrive there in 20 minutes.” Petitioner’s Decl. ¶ 10. Indeed, attorney Lindsay Jonasson had arrived, presented Respondent’s officers with a signed Form G-28 indicating her legal representation, and requested to meet with Y-Z-L-H-. Jonasson Decl. ¶¶ 5-11. But Petitioner was never given the opportunity to speak with her. Despite Ms. Jonasson’s repeated requests, Petitioner was tightly handcuffed and transferred again, without being allowed to call or speak with his counsel. Petitioner’s Decl. ¶ 10. Only after waiting for over an hour was Ms. Jonasson finally informed by an ICE officer that Y-Z-L-H- had been transferred “around 30 to 45 minutes earlier.” Jonasson Decl. ¶ 12.

The next day, on Friday, June 6, 2025, attorney Lynn Stopher attempted to meet with Petitioner. Stopher Decl. ¶ 3. Because the ICE Detainee Locator listed Petitioner as being “in ICE

⁷ While Y-Z-L-H- was sitting quietly in the courtroom lobby with a pro bono lawyer who was explaining to him what had transpired in the hearing and what was likely to happen next, the DHS agents actually arrested two other men erroneously causing fear and confusion in the space. Ball Decl. ¶ 8 (the DHS agents “grabbed a first person by the arm and asked if he was ‘Mr. Y-’” and then, “the officers approached a second person and also grabbed him and said that he was under arrest” but the person “was not the man they were looking for either[.]”).

custody’ under the purview of ICE Tacoma Enforcement and Removal Operations,” Ms. Stopher traveled to the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington, to meet with Petitioner. *Id.* After she had waited for approximately three hours, a GEO Group staff member attempted to call Petitioner for an attorney meeting. *Id.* He then informed Ms. Stopher that Petitioner was not at the facility, nor did he know Petitioner’s whereabouts. *Id.*

When Ms. Stopher then contacted Supervisor Detention and Deportation Officer Parker Bell; Officer Bell informed her that Petitioner was being held instead at the SEA ICE Field Office in Tukwila, Washington, approximately 25 miles away, “due to lack of space at the NWIPC.” *Id.* ¶ 4. When Ms. Stopher asked to speak with Petitioner, Officer Bell informed her that “he did not have any information on a line of communication to anyone detained at the SEA ICE Field Office.” *Id.* At this point, Petitioner had just spent the night in a cell in Tukwila with seven other people, where he slept on the floor under a mylar sheet. Petitioner’s Decl. ¶ 11. Petitioner was not told why he was there, and he could barely sleep due to being cold and afraid. *Id.*

Later on June 6, Respondents again handcuffed Petitioner, shackled his legs, and transferred him to the NWIPC. *Id.* ¶ 12. There, he was placed in a very small cell with another person and again forced to sleep on the floor, this time without even a blanket or a sheet. *Id.* Petitioner was very cold. *Id.* He was told by a guard that “there were about 110 too many people at the facility and that there was no space for them to sleep.” *Id.* On Monday, June 9, four days after his arrest at immigration court, Petitioner was finally able to speak with an attorney for the first time; even that day, Ms. Stopher waited over than two hours to meet with him at the NWIPC. *Id.* at ¶ 5.

III. LEGAL STANDARDS

The standard for evaluating Petitioner's motion for release on bail while his 8 U.S.C. § 2241 habeas petition is pending is "the traditional standard for interim injunctive relief, [according to which] the moving party 'must show either (1) a probability of success on the merits and the possibility of irreparable harm, or (2) that serious legal questions are raised and the balance of hardships tips sharply in the moving party's favor.'" *Nadarajah v. Gonzales*, 443 F.3d 1069, 1083 (9th Cir. 2006), *quoting Maharaj v. Ashcroft*, 295 F.3d 963 (9th Cir. 2002). The Ninth Circuit has explained that "these two alternatives represent extremes of a single continuum, rather than two separate tests," such that "the greater the relative hardship to the moving party, the less probability of success must be shown." *Id.*, *quoting Immigrant Assistance Project of Los Angeles Cnty. Fed'n of Lab. (AFL-CIO) v. I.N.S.*, 306 F.3d 842, 873 (9th Cir. 2002) (cleaned up); *see also Aronson v. May*, 85 S. Ct. 3, 5 (1964) (recognizing that release pending habeas adjudication may be granted where "substantial questions" are presented by the case and "there is some circumstance making [an] application exceptional and deserving of special treatment in the interests of justice").

The authority to order bail is separate and apart from the Immigration and Nationality Act (INA). *See Nadarajah v. Gonzales*, 443 F.3d 1069, 1083 (9th Cir. 2006) (*citing* Fed. R. App. Pr. 23(b)); *id.* at 1083 n. 5 (*citing Mapp v. Reno*, 241 F.3d 221, 225-26 (2d Cir. 2001) (holding that the federal courts have the inherent authority to admit to bail habeas petitioners being detained by the INS); *see also* 28 U.S.C. § 1651(a) (authorizing courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law"); *Ozturk v. Trump*, —F.Supp. 3d—, 2025 WL 1420540 (May 16, 2025) (using inherent equitable authority to grant release on bail to immigration habeas petitioner filed under § 2241). While the INA will ultimately govern Y-Z-L-H's custodial status at the conclusion of this

litigation, during the litigation, the Court may exercise its inherent equitable authority to allow for bail. *See Mapp*, 241 F.3d at 227 (“Absent a clear direction from Congress, federal judicial power is unaltered, and the authority of the federal courts to admit to bail parties properly within their jurisdiction remains unqualified.”); *see also Zepeda Rivas v. Jennings*, 445 F. Supp. 3d 36, 41 (N.D. Cal. 2020) (affirming that “federal judges have the authority to release detainees on bail while their habeas cases are pending”).

IV. ARGUMENT

The Court should grant Y-Z-L-H- release on bail pending adjudication of his habeas petition because he can establish that the balance of hardships tips sharply in his favor and he has raised serious legal questions on the merits of his petition.

A. The balance of hardships tips sharply in Petitioner’s favor.

Over the past two weeks, Respondents have (unlawfully) re-detained Petitioner; obstructed his access to counsel and even attempted to hide his physical location from his counsel team absent intervention from this Court; and transferred him away from his habeas counsel and his community, as they have done in other cases, possibly to undermine this Court’s jurisdiction.

Respondents’ use of transfer outside of this district and within the vast immigration detention system could irreparably jeopardize Petitioner’s life. Respondents have used transfers to rapidly remove noncitizens outside of the United States including to the CECOT facility in El Salvador; the federal detention facility in Guantanamo, Cuba; or, most recently, a military camp in South Sudan. CECOT is a facility notorious for “cases of torture, ill-treatment, incommunicado detention, severe violations of due process and inhumane conditions, such as lack of access to adequate healthcare and food.” Declaration of Juanita Goebertus, *J.G.G. v. Trump*, 1:25-cv-00766 (D.D.C. Mar. 19, 2025), ECF Doc. 44-3, at 4. Although the United States is paying for this

detention in CECOT, Respondents have argued that once an individual has been transferred there, “even when [the Government] makes a mistake, it cannot retrieve individuals from the Salvadoran prisons to which it has sent them” *See Trump v. J. G. G.*, 145 S. Ct. 1003, 1011 (2025) (Sotomayor, J., dissenting), citing Defendant’s Memorandum of Law in Opposition in *Abrego Garcia v. Noem*, No. 25-cv-951 (D. Md., Mar. 31, 2025), ECF Doc. 11, at 7-9.⁸ On June 10, 2025, Politico reported that the government intends to move up to 9,000 noncitizens to the notorious Guantanamo Bay detention facility, starting as early as this week.⁹ And noncitizens blocked by a federal court order from extradition to South Sudan in late May have been languishing in dangerous conditions in a shipping container in Djibouti ever since.¹⁰

Since his detention on June 5, Y-Z-L-H- has been confined in overcrowded and unhealthy conditions. He spent two nights sleeping on the floor of his cell, first in Tukwila and then in Tacoma, Washington, before finally being assigned a room with a bed. *Id.* ¶¶ 11-12. Petitioner was not told why he was being detained, and he could barely sleep due to the cold and his fear. *Id.* A GEO guard told Y-Z-L-H- that “there were about 110 too many people at the facility and that there was no space from them to sleep at the NWIPC.” *Id.* ¶ 12. At NWIPC, Petitioner drinks water that tastes like chlorine, has not been permitted to go outside, lacks privacy when he uses the toilet, and struggles to sleep because the lights are always on. *Id.* ¶ 14; Stopher Decl. ¶ 11. Days after his

⁸ Nonetheless, the Government has shown that it does have the ability to request the return of an individual, which it has so far done under the guise of a criminal prosecution. *See* Luc Cohen, “Abrego Garcia to remain detained for now on migrant smuggling charges”, Reuters (June 13, 2025), available at <https://www.reuters.com/world/us/abrego-garcia-due-us-court-migrant-smuggling-charges-after-wrongful-deportation-2025-06-13/>.

⁹ *See* Nahal Toosi & Myah Ward, “Trump team plans to send thousands of migrants to Guantanamo starting as soon as this week,” Politico (June 10, 2025), available at <https://www.politico.com/news/2025/06/10/trump-plans-migrants-guantanamo-bay-00396673>

¹⁰ *See* Adam Gabbatt, “Group stranded with Ice in Djibouti shipping container after removal from US,” The Guardian (June 6, 2025), available <https://www.theguardian.com/us-news/2025/jun/06/migrants-djibouti-ice> (describing “imminent danger of rocket attacks,” suspected bacterial upper respiratory infections, and cramped sleeping quarters with 6 beds shared by 13 people).

initial detention, marks remained on his wrists because he had been handcuffed so tightly during his transfers between locations. Petitioner's Decl. ¶ 10. To this day, no ICE officer has told Petitioner why he was arrested and detained. *Id.* ¶ 13. He "feels very bad" that he is detained, and does "not understand why I am being treated this way" when "I followed the rules to seek asylum in the correct way." *Id.* ¶ 15.

Respondents' actions will cause further irreparable harm to Petitioner by depriving him of access and proximity to his local counsel and impeding his ability to engage in these instant judicial proceedings. *See Arroyo v. United States Dep't of Homeland Sec.*, 2019 WL 2912848, at *17 (C.D. Cal. June 20, 2019) (observing that "a significant burden on the attorney-client relationship, without a showing of underlying prejudice to the removal proceedings, may be sufficient to establish a legal injury sufficient to justify injunctive relief"), citing *Comm. of Cent. Am. Refugees v. I.N.S.*, 795 F.2d 1434, 1439 (9th Cir. 1986), *amended on other grounds*, 807 F.2d 769 (9th Cir. 1986); *see also Escobar-Grijalva v. I.N.S.*, 206 F.3d 1331, 1335 (9th Cir.), *amended on other grounds*, 213 F.3d 1221 (9th Cir. 2000) ("Deprivation of the statutory right to counsel deprives [a noncitizen] asylum-seeker of the one hope she has to thread a labyrinth almost as impenetrable as the Internal Revenue Code."). These harms are not speculative. Already, on the day the immediate petition was filed, Respondents obstructed Petitioner's access to counsel from the moment he was arrested. *See Jonasson Decl.*; *Stopher Decl.* Had Respondents allowed Y-Z-L-H- to meet with his counsel at the Macadam facility in Portland, Oregon, Y-Z-L-H- would likely have been in the district of Oregon at the time of this Court's order restricting out-of-state transfer, which would have prevented his immediate transport and detention out of state. *See Dkt. No. 4*; Petitioner's Decl. ¶¶ 10-12. Moreover, following this transfer out of the District, Petitioner was held incommunicado from his counsel despite his requests and their diligent attempts to access him,

preventing access to him until four days after his detention and transfer. *See* Jonasson Decl.; Stopher Decl. ¶¶ 3-6. His immigration counsel has “significant concerns” that Y-Z-L-H-’s detention will impede their communication, given routine two- to five-hour waits for meetings due to overcrowding at the NWIPC facility. *Id.* ¶ 11. In light of these wait times, Y-Z-L-H- has had to speak with his immigration counsel by phone, but the only phone available is in a non-private area that restricts his ability to speak confidentially about his case. *Id.*

As alleged in Petitioner’s habeas petition and elaborated *infra* § IV.B.3., Respondents’ decision to detain Y-Z-L-H- without a rational and individualized assessment of his circumstances also violates Petitioner’s constitutional right to due process. “It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury.” *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (internal quotation omitted).

While Petitioner faces the serious hardships above so long as he is detained, Respondents experience no hardship if Y-Z-L-H- is released on bail pending this litigation. By its own individualized assessment, Respondent DHS has already made an individual determination that Petitioner warrants release on parole pursuant to 8 U.S.C. § 1182(d)(5). *See* Stopher Decl. Ex. A. Since the time of DHS’s parole determination, Petitioner has engaged in no criminal conduct and has only deepened his ties to the community, including by attending his scheduled immigration hearing. *See* Petitioner’s Decl. Thus, Respondents cannot plausibly assert that the “hardship” they might experience is that Petitioner will not attend any official proceedings should he be released – indeed, it was Y-Z-L-H-’s conscientious attendance at his court hearing that enabled Respondents to arrest and detain him. Moreover, Respondents “cannot reasonably assert that [they are] harmed in any legally cognizable sense by being enjoined from constitutional violations”. *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). Furthermore, Respondents’ detention of Y-Z-L-H- has

already exacerbated their lack of bedspace for detained noncitizens at the NWIPC – as evidenced by the poor conditions of Y-Z-L-H-’s confinement, and his initial detention at the Tukwila facility. *See* Petitioner’s Decl. ¶¶ 10-14.

In sum, the balance of hardships here clearly tips in Petitioner’s favor.

B. Petitioner has raised serious questions going to the merits of his petition.

Petitioner has also raised serious questions going to the merits of the legal claims enumerated in his § 2241 petition, including that Respondents violated his procedural rights when they dismissed his immigration court proceedings in order to place him in expedited removal; that Respondents’ application of expedited removal to Petitioner is unlawfully retroactive; and that Respondents’ decision to detain Petitioner was arbitrary, capricious, and an abuse of discretion in violation of the Administrative Procedure Act (“APA”) and the Immigration and Nationality Act (“INA”).

1. Petitioner’s argument that Respondents dismissed his § 1229a removal proceedings in violation of the regulations and his due process rights raises serious questions going to the merits of his petition.

By dismissing Petitioner’s § 1229a proceedings (often referred to as “240 proceedings” by reference to the INA) after Petitioner had submitted his asylum application, with the concealed intent to resubmit him to expedited removal, and without providing notice and an opportunity to respond, Respondents violated Petitioner’s rights under federal regulations and the Due Process Clause. At minimum, Respondents were required to base their motion to dismiss on an enumerated regulatory ground and to provide Petitioner notice and a meaningful opportunity to respond. *See* 8 C.F.R. § 239.2(a); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.”) (citation and quotation marks omitted).

a. Respondents extinguished Y-Z-L-H-'s asylum application and his rights related to its adjudication.

Petitioner's properly filed asylum application—and all his rights attached thereto—were extinguished by Respondents. By statute, Petitioner, who filed for asylum in July 2024, has a protected interest in his asylum application and in having that application adjudicated with the rights that were available to him via the § 1229a proceedings in which he was seeking relief. *See Oshodi v. Holder*, 729 F.3d 883, 889 (9th Cir. 2013) (en banc) (“[E]very individual in removal proceedings is entitled to a full and fair hearing.”) (citing *Colmenar v. I.N.S.*, 210 F.3d 967, 971 (9th Cir. 2000)); *see also Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982) (recognizing a property interest in a cause of action conferred by statute and related adjudicatory procedures). “Although a grant of asylum is discretionary, the right to apply is not.” *Immigrant Defs. L. Ctr. v. Mayorkas*, 2023 WL 3149243, at *5 (C.D. Cal. Mar. 15, 2023) (citing 8 U.S.C. § 1158(a)(1)); *see also Haitian Refugee Ctr. v. Smith*, 676 F.2d 1023, 1038 (5th Cir. 1982) (“Congress and the executive have created, at a minimum, a constitutionally protected right to petition our government for political asylum.”). 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). Due to the life-or-death stakes involved, the statutory right to apply for asylum is robust for individuals placed by the government in § 1229a proceedings: it includes the right to have an asylum application decided by an immigration judge after an evidentiary hearing and to have that decision explained and communicated, *see* 8 C.F.R. § 1240.11(c)(3), 8 C.F.R. § 1240.11(c)(4); the right to counsel, at no expense to the government, *see* 8 U.S.C. § 1229a(b)(4)(A), § 1362; the right to a reasonable opportunity to submit evidence, *see* 8 U.S.C. § 1229a(b)(2); the right to examine evidence submitted by the government, *see id.* § 1229a(b)(4)(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). The expedited removal process, by contrast, severely limits such procedural rights: interviews occur on an exceedingly fast timeline, access to counsel is restricted, and 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. Crucially, applying for asylum in § 1229a removal proceedings thus comes with a panoply of greater protections when compared with seeking asylum in expedited removal proceedings under § 1225. *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.”). Indeed, the full extent of these procedural rights were a specific reason that Y-Z-L-H- opposed dismissal of his proceedings. Stopher Decl. Ex. G (opposing dismissal “[b]ecause I need a lawyer”).

After Respondents initiated and commenced §1229a proceedings against Y-Z-L-H- in July 2023, Y-Z-L-H- timely filed his asylum application with the Portland Immigration Court in July 2024. *Id.* Exs. B, C. Y-Z-L-H- thus acquired a legitimate entitlement to a set of rights under § 1229a that, prior to the U.S. Government’s deprivation of those rights, requires a meaningful hearing. By dismissing Petitioner’s § 1229a removal proceedings, Respondents extinguished all these rights. Prior to dismissal, Petitioner had filed an application for asylum and was merely waiting for the evidentiary hearing on that application and the immigration judge decision to follow. Now, it is as if his asylum application never existed.

b. There are serious questions about whether the dismissal of Y-Z-L-H-’s § 1229a proceedings complied with federal regulations.

The Petitioner has raised serious questions about the adequacy of the dismissal of his § 1229a proceedings under federal regulations. Once Y-Z-L-H-'s application for asylum was filed and his § 1229a proceedings commenced, he was entitled by regulation to have a fulsome hearing on any Government motion to dismiss. *See Matter of G-N-C-*, 22 I&N Dec. 281 (BIA 1998) (en banc) (interpreting 8 C.F.R. § 239.2(a)). When DHS moved to dismiss Y-Z-L-H-'s § 1229a proceedings—in which his application for asylum would have been adjudicated—they were limited by regulation to certain enumerated bases on which to seek dismissal. 8 C.F.R. § 239.2(a). Y-Z-L-H- was entitled to know which of the reasons DHS was asserting and the factors underlying the motion and to have an opportunity to be heard in opposition. The law requires that 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.

Respondents plainly violated the regulation. Respondent DHS proffered an oral motion to dismiss based solely on “changed circumstances since the issuance of the Notice to Appear.” *See supra* § II. Respondents cited no regulatory provision supporting dismissal and did not provide any statement explaining what “changed circumstances” they referred to, nor any other “factors underlying” their motion. *Id.* While the regulations permit dismissal when “[c]ircumstances of the case have changed after the notice to appear,” DHS presented no evidence that any circumstances of Y-Z-L-H-'s individual case had changed since July 2023 “to such an extent that continuation is no longer in the best interest of the government.” *See* 8 C.F.R. § 239.2(a)(7). Crucially, the regulations do *not* permit dismissal based solely on a shift in position or priorities of the government; the change in circumstances must be regarding “the case” itself. *See* 8 C.F.R. § 239.2(a). Here, none of Y-Z-L-H-'s individual case circumstances had changed. The DHS motion to dismiss was made for the sole and only purpose to divest Y-Z-L-H- of his asylum application

and his active § 1229a proceedings so that they could immediately move to more rapidly deport him from the United States – a basis that lacks any regulatory authority.

It is a serious question that merits additional inquiry as to whether Respondents’ active concealment and obfuscation of the “factors underlying” their motion to dismiss deprived Y-Z-L-H- of his right to be heard and contest the motion to dismiss. 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). Here, 8 C.F.R. § 239.2(a) enumerates the reasons for which a § 1229a removal proceeding may be dismissed after it is initiated. None of these clearly enumerated grounds encompasses Respondents’ intent to submit Petitioner to expedited removal proceedings pursuant to 8 U.S.C. § 1225. *See Matter of G-N-C*, 22 I&N Dec. at 283–84 (requiring immigration court to dismiss only following “an informed adjudication” “based on an evaluation of the factors underlying the Service’s motion”). Indeed, the Immigration Judge’s grant of dismissal over Y-Z-L-H-’s objection relied on a BIA decision where dismissal was permitted because, in part, there was “no indication that [the noncitizens] are in imminent danger of removal.” *See Stopher Decl. Ex. G*; Dkt. No. 11-2 at 1-2 (citing *Matters of Jaso & Ayala*, 27 I&N Dec. 557, 559 (BIA 2019)). For Y-Z-H-L-, this danger of post-dismissal removal was not only imminent, it was the entire purpose of the Respondents’ motion.

Respondents’ decision to seek dismissal of Petitioner’s § 1229a proceedings also further violated the APA because it “entirely failed to consider an important aspect of the problem” – namely, the important procedural rights that Petitioner relied on in his 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).

c. There are serious questions about the adequacy of Y-Z-L-H’s proceedings under the Due Process Clause.

The Petitioner has raised serious questions under the Due Process Clause about the adequacy of the proceedings to dismiss the consideration of his asylum application under § 1229a. “No person shall be . . . deprived of life, liberty, or property without due process of law.” U.S. Const. amend V. It is well-established that the Due Process Clause of the Fifth Amendment to the U.S. Constitution applies to “all ‘persons’ within the United States,” irrespective of their immigration status. *J. G. G.*, 145 S. Ct. 1003, 1005 (2025) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

Where the government seeks to deprive an individual of a protected interest, the Supreme Court has directed that courts balance three factors to determine what process is due:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335. In applying this balancing test, it is clear that Respondents provided inadequate process when they sought and granted dismissal of his § 1229a removal proceedings.

The private interest at stake here is grave: Petitioner has a strong private interest in the rights that attached to his properly filed asylum application available 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). Loss of that interest could mean

improper removal to Mexico, where he risks death as he has been targeted by the notorious cartel “La Familia Michoacana.” Moreover, it could also mean removal to an unknown third country where he does not hold citizenship and where conditions could be just as dangerous.¹¹

By contrast, Respondents’ interest is weak if not negligible, as they were already required by the Due Process Clause to at minimum provide Petitioner with notice and an opportunity to respond to their intent to reclassify him in expedited removal proceedings. Respondents’ interest is further undercut by the fact that it was Respondents who made the decision to place Petitioner in § 1229a removal proceedings by electing this forum for the adjudication of his asylum claim in September 2023. Respondents’ interest in complying with the Refugee Act and upholding the law, *see* U.S. Const. art. II, § 3, is also best served by providing Petitioner with rights he acquired when he properly filed for asylum and appeared in his § 1229a proceedings—the proceedings in which he explained that he wished to continue with the support of an attorney.

For the above reasons, Petitioner has raised serious legal questions regarding the merits of the First and Fourth Claims in his § 2241 habeas petition.

2. Petitioner has raised serious questions as to whether Respondents’ decision to extinguish Y-Z-L-H-’s rights in order to subject him to expedited removal is unlawful under the statute.

There are serious questions about the legality of Respondents’ intended application of expedited removal to the Petitioner, as Y-Z-L-H- was “paroled” into the United States and is not “arriving in the United States”.

¹¹ *See D.V.D. v. U.S. Dep’t of Homeland Secur.*, 2025 WL 1142968 (D. Mass. Apr. 18, 2025) (detailing recent efforts to remove noncitizens subject to final orders of removal to countries other than their country of nationality) *and D.V.D. v. U.S. Dep’t of Homeland Security*, 2025 WL 1495517 (D. Mass. May 26, 2025) (reprimanding the government for “racing to get six class members onto a plane to unstable South Sudan”- one of the most dangerous countries in the world- in violation of the court’s order).

The plain statutory text of the INA precludes applying expedited removal to a noncitizen who was “paroled” into the United States. Even in its heading, 8 U.S.C. § 1225(b)(1) limits its application to “aliens arriving in the United States *and* certain other aliens who have not yet been admitted or paroled” (emphasis added). Petitioner Y-Z-L-H- is neither. Y-Z-L-H- is not “arriving” in the United States; he has been residing here since his entry nearly two years ago, during which time he has built community ties, obtained work authorization, and diligently pursued his asylum case. *See* Petitioner’s Decl. ¶¶ 4-5, 15-16. Y-Z-L-H- has also undeniably been paroled. After scheduling, waiting for, and attending his CBP One appointment, Y-Z-L-H- was admitted to the United States on parole pursuant to § 1182(d)(5). *See* Petitioner’s Decl. ¶ 4; Stopher Decl. Ex. A. As such, Y-Z-L-H- may not be subjected to expedited removal. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (congressional authorization to expand expedited removal to certain noncitizens who were not paroled into the country); *Doe v. Noem*, 2025 WL 1099602, at *17 (D. Mass. Apr. 14, 2025) (explaining that the text of 8 U.S.C. § 1225(b) “makes clear its purpose, which is to limit the Secretary’s authority to utilize expedited removal only with regard to those arriving at the border or a port of entry, or those who entered the country unlawfully and have not been present in the country long enough to warrant consideration of any interests their residence may have created”).

For the above reasons, Petitioner has raised serious legal questions regarding the merits of the Fifth Claim in his § 2241 habeas petition.

3. Petitioner has raised serious questions as to whether Respondents have unlawfully retroactively applied the January 2025 expedited removal designation to his 2023 entry.

There are serious questions about the legality of applying the Respondents' January 2025 designation to Petitioner's pre-publication circumstances. The Supreme Court has long recognized that "a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms." *Bowen v. Georgetown Univ. Hospital*, 488 U.S. 204, 208 (1988). Administrative rules thus "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). The general presumption against retroactivity is intended to protect against the risk of responding to "political pressures" by "us[ing] retroactive legislation as a means of retribution against unpopular groups or individuals." *I.N.S. v. St. Cyr*, 533 U.S. 289, 315 (2001) (quoting *Landgraf*, 511 U.S. at 266) (referencing immigrants as an "unpopular group"). When a "new provision attaches new legal consequences to events completed before its enactment," the new provision is thus not retroactive unless it is unmistakably clear. *Id.* at 271. A new provision is "impermissibly retroactive" where (i) there is no clear authority for the provision to apply retroactively and (ii) the provision has a retroactive effect. *Kankamalage v. I.N.S.*, 335 F.3d 858, 862 (9th Cir. 2003).

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. Office of the Secretary, Dep't of Homeland Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139 (Jan. 24, 2025) ("January 2025 Designation"). The January 2025 Designation significantly expands the pool of noncitizens who

can be subjected to expedited removal under § 1225(b) 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. Although formally published on January 24, this designation became “effective on” January 21, 2025.

Applying the two-step analysis from *Kankamalage*, there is no clear statement that the January 2025 Designation applies retroactively. *See* 335 F.3d at 862. Here, the January 2025 Designation’s statement that it is “effective on” January 21, 2025, does not state that it applies to noncitizens who were in the United States before the effective date. *Id.* The “language must require that it be applied retroactively.” *INS v. St Cyr*, 533 U.S. 289, 291 (2001). The clear statement rule is particularly robust and requires unmistakable clarity. The promulgation of an effective date is insufficient. *Id.* Nor does the statutory language that it purports to derive from, 8 U.S.C. § 1225(b)(1)(A)(iii), include any language indicating Congressional intent to allow retroactive effect. The standard for finding that a statute or regulation unambiguously directs retroactive application is an exceedingly demanding one: the language must be “so clear that it could sustain only one interpretation.” *St. Cyr*, 533 U.S. at 316; *see also I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 449 (1987) (recognizing the “longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the alien”). There is no such language, in the January 2025 Designation itself or the underlying statutory authority, that “requires” retroactive application. *See Landgraf*, 511 U.S. at 272. Therefore, it cannot apply retroactively.

Nonetheless, this is exactly what Respondents have done. Petitioner entered the United States on or about July 21, 2023. At the time of his entry, the only individuals who could be placed in expedited removal proceedings were those “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). In other words, even assuming Petitioner met all other requirements for expedited removal, he could only have been placed in expedited removal proceedings until August 4, 2023. To the extent that Respondents were ever allowed to reclassify Respondent from § 1229a proceedings to expedited removal proceedings, *see infra* § IV.B.3,¹² that authority thus expired nearly two years ago.

Respondents, however, did not elect to place Petitioner in expedited removal proceedings during the time period when doing so was authorized. Rather, they initiated § 1229a removal proceedings, as evidenced by his July 21, 2023, Notice to Appear. Stopher Decl. Ex. A (placing Petitioner “In removal proceedings under section 240 of the Immigration and Nationality Act”). Now, almost two years later, Respondents are impermissibly retroactively applying a new rule to justify placing Petitioner in expedited removal. Because Congress did not explicitly grant Respondents the power to retroactively expand expedited removal, Respondents cannot now subject the Petitioner, whose removal proceedings were initiated nearly two years before the January 2025 expansion, to expedited removal. To find otherwise due to the January 2025 expansion would be to retroactively increase Y-Z-L-H-’s consequences for his 2023 entry to seek protection in the U.S. *See Landgraf*, 511 U.S. at 280 (applying presumption against retroactive application where it would “impair rights a party possessed when he acted, increase a party’s liability for past conduct, or impose new duties with respect to transactions already completed”).

For the above reasons, Petitioner has raised serious legal questions regarding the merits of the Third Claim in his § 2241 habeas petition.

¹² As explained below, because Respondents at the time of Y-Z-L-H-’s initial processing chose to issue an NTA placing him in § 1229a proceedings, DHS has no authority to later reverse that choice.

4. Petitioner has raised serious questions that Respondents' decision to detain him was arbitrary, capricious, and an abuse of discretion.

The INA provides that Respondents may, as they did nearly two years ago in Petitioner's case, parole an individual into the United States "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." *See* 8 U.S.C. § 1182(d)(5). After such a parole decision is made, federal regulations specify that where parole has been granted under 8 U.S.C. § 1182(d)(5), it may terminate on its expiration date, when a noncitizen departs the U.S., or "upon the accomplishment of the purpose for which parole was authorized." 8 C.F.R. §§ 212.5(e)(1), (2)(i). If none of these conditions are met, parole may only be terminated following an individualized determination that "neither humanitarian reasons nor public benefit warrants the continued presence of the [noncitizen] in the United States." 8 C.F.R. § 212.5(e)(2)(i). As the District Court for the District of Massachusetts has recently explained, pursuant to the INA,

the Secretary does not have the discretion to categorically terminate grants of parole. In any event, the parole statute establishes standards for the Secretary's exercise of discretion in granting parole—in that such grants must be made on a case-by-case basis for urgent humanitarian reasons or public benefit—and the statute also establishes standards for the termination of parole by requiring a determination by the Secretary that "the purposes of such parole ... have been served[.]" 8 U.S.C. § 1182(d)(5)(A).

Doe, 2025 WL 1099602 at *13.

Here, Respondents made no individualized determination nor provided any written notice in their decision to revoke Petitioner's prior grant of parole. After Petitioner arrived to seek protection in the U.S., Respondents made an individualized parole determination that assessed the humanitarian reasons and public benefit present in his case, resulting in his release on parole pursuant to 8 U.S.C. § 1182(d)(5). *See* Stopher Decl. Ex. A. Since that decision, Respondents have engaged in no individualized reconsideration of whether "neither humanitarian reasons nor public benefit warrants the continued presence" of Petitioner in the United States. 8 C.F.R. §

212.5(c)(2)(i). Such consideration is required by the terms of the statute, which speaks of parole as prescribed “on a case-by-case basis” and in individualized terms. *See* 8 U.S.C. § 1182(d)(5)(A); *see also Doe*, 2025 WL 1099602 at *18 (concluding that the INA “seems to contemplate termination of parole on an individual, rather than categorical, basis . . . Certainly, the Secretary has significant discretion to terminate a grant of parole under the statute. But by the terms of the statute, such termination must attend to the reasons an individual alien received parole.”); *Doe v. Noem*, 2025 WL 1505688, at *1 (1st Cir. May 5, 2025) (observing that “[c]ommon sense suggests . . . that parole given only on a case-by-case basis is to be terminated only on such a basis” and pointing to individualized statutory language of § 1182(d)(5)).

While Petitioner received written notice of parole revocation on or about April 11, 2025, this purported revocation was anything but individualized. *See* Stopher Decl. Ex. E. Instead, Petitioner’s revocation was one of tens of thousands of e-mails received by noncitizens who had waited to enter the U.S. through an appointment made on the CBP One App, as directed by Respondent DHS under the prior administration. *Id.*; *see also* Miriam Jordan, Jazmine Ulloa, & Hamed Alcaziz, “They Followed the Rules. Now Thousands of Migrants Are Told, ‘Leave.’”, *New York Times* (Apr. 14, 2025), available at <https://www.nytimes.com/2025/04/14/us/migrants-trump.html> (describing pro forma termination notices sent to tens of thousands of e-mail addresses, including some U.S.-citizen attorneys, without any individualized consideration of facts or pending legal pathways). The generic termination message that Y-Z-L-H- received purported not

only to deny his parole, but also improperly directed him to leave the country “immediately,” despite his pending asylum proceedings. Stopher Decl. Ex. E.¹³

By contrast, significant public benefit is furthered by enabling Petitioner to remain non-detained. Since his parole, Petitioner has conscientiously followed the processes to seek asylum and has committed no crimes. Indeed, it was while diligently attending his immigration court hearing that Petitioner was taken into custody by Respondents. Petitioner’s Decl. ¶¶ 8, 15. The only meaningful change in Petitioner’s personal facts and circumstances – the nearly two years of U.S. residency and community ties that he has established – further supports his continued parole in the public interest given his engagement with his Oregon community.

Because Respondents conducted no individualized analysis of whether Petitioner’s parole should be revoked, and because Respondents have articulated no explanation for their decision to change course so dramatically and detain and transfer Petitioner based on his individualized circumstances, their decision violates the APA. *See* 5 U.S.C. § 706(2)(A) (directing courts to “hold unlawful and set aside agency action” that is arbitrary and capricious); *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (requiring an agency to articulate a “satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made”); *see also 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

¹³ To the extent Respondents represent that Y-Z-L-H-’s parole always “terminated automatically” on the “expiration date” of April 18, 2025, they are factually incorrect. *See* Dkt. No. 10 at 12; Dkt. No. 11 at ¶ 7. Respondents granted Petitioner work authorization based on his parole status; the fact that his (c)(11) Employment Authorization Document is valid through July 19, 2025, evidences that his parole was valid at least through that date. *See* Stopher Decl. Ex. D.

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”).

Additionally, Respondents’ arbitrary detention of Petitioner violates his due process rights. While Respondents have discretion to revoke Petitioner’s custody decision under 8 U.S.C. § 1182(d)(5), this discretion is not “unlimited” and must comport with constitutional due process. *See Zadvydas*, 533 U.S. at 698; *Hernandez*, 872 F.3d at 981 (“[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).

Applying the *Mathews* balancing test described *supra* at § IV.B.1., Petitioner has strong private interests in maintaining his freedom from detention, in protecting himself from the distant and dangerous transfers that have recently followed the detention of other noncitizens, and in avoiding separation from his community. *See Id.* at 482 (recognizing that termination of the liberty of a parolee “inflicts a grievous loss on the parolee and often on others”) (internal quotations omitted). The risk of an erroneous deprivation of liberty here is proven: Petitioner has already been detained by Respondents and transferred out of the District of Oregon. Y-Z-L-H- also has strong private interests in avoiding the abuses and mistreatment that may occur in immigration detention, particularly following recent reports of overcrowding in ICE detention facilities.

By contrast, the government’s interest here is weak and its burden would be very small, as the procedural safeguard that Petitioner seeks is merely what Respondents are already legally required to do: conduct an individualized assessment to determine whether his own facts and circumstances have changed such that parole pursuant to 8 U.S.C. § 1182(d)(5) is no longer warranted given his humanitarian interests and the public benefit. *See Zadvydas*, 533 U.S. at 690. 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 parole. *See generally* ECF 3-1. Indeed, it is not clear that Respondents have *any* interest in re-detaining Petitioner. *See Addington v. Texas*, 441 U.S. 418, 426 (1979). ("The [government] has no interest in confining individuals involuntarily if they . . . do not pose some danger."); *Morrissey*, 408 U.S. at 483 ("[T]he State has no interest in revoking parole without some informal procedural guarantees."). Because Respondents revoked Petitioner's parole without a rational and individualized determination of the relevant factors, and they have not identified any government interest to re-detain him, they violated his constitutional right to due process.¹⁴

For the above reasons, Petitioner has raised serious legal questions regarding the merits of the Second Claim of his § 2241 habeas petition.

V. CONCLUSION

Petitioner has established that the balance of hardships tips sharply in his favor and that he has raised serious questions on the merits of his § 2241 habeas petition. For the foregoing reasons, Petitioner thus respectfully requests that this Court grant his motion for release on bail while his habeas petition is pending adjudication.

¹⁴ Regarding Respondents' June 12, 2025 response to the petition, ECF No. 10: In his reply to their response, Petitioner will address more completely why Respondents' arguments are incorrect. Petitioner briefly explains here that, as noted *supra* n. 12, Petitioner's parole did not automatically expire on April 18, 2025; that date was instead the date that Respondents purported to categorically and improperly terminate his parole without individualized consideration. *See* Stopher Decl. Ex. E (stating in categorical termination notice that "parole will terminate 7 days" from April 11, 2025). Respondents' assertion that detention is "mandatory" under 8 U.S.C. § 1225(b) is incorrect: as demonstrated by Y-Z-L-H- himself, Respondents may *always* parole under 8 U.S.C. § 1182(d)(5) a noncitizen subject to § 1225(b) at any time for, among other reasons, "legitimate law enforcement reasons" which necessarily include complying with a noncitizen's constitutional rights. Respondents have also misconstrued 8 U.S.C. § 1252(g). It is a narrow provision that applies only to the three discrete tasks named therein, none of which Petitioner is challenging. And even if this statutory provision were to apply, this Court's habeas jurisdiction is firmly protected by the Suspension Clause of the U.S. Constitution. U.S. Const., art. I, § 9, cl. 2.

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/s/ Tess Hellgren

TESS HELLGREN, OSB # 191622
tess@innovationlawlab.org
STEPHEN W. MANNING, OSB # 013373
stephen@innovationlawlab.org
smanning@ilgrp.com
JORDAN CUNNINGS, OSB # 182928
jordan@innovationlawlab.org
NELLY GARCIA ORJUELA, OSB #223308
nelly@innovationlawlab.org
INNOVATION LAW LAB
333 SW 5th Ave., Suite 200
Portland, OR 97204-1748
Telephone: +1 503-922-3042

Attorneys for Petitioner