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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 SAYED NASER NOORI,
11
12 Plaintiff,

13 vs.

14 CHRISTOPHER LAROSE, warden of
15 Otay Mesa Detention Center
16 SIDNEY AKI, San Diego Field Office
17 Director, Immigration and Customs
18 Enforcement and Removal Operations
19 (“ICE/ERO”);
20 TODD LYONS, Acting Director of
21 Immigration Customs Enforcement
22 (“ICE”);
23 KRISTI NOEM, Secretary of the
24 Department of Homeland Security
25 (“DHS”);
26 PAMELA BONDI, Attorney General of
27 the United States,
28 U.S. DEPARTMENT OF HOMELAND
SECURITY;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT;

Respondents.

Case No.: '25CV1824 GPC MSB

Agency Number: A 

PETITION FOR WRIT OF HABEUS
CORPUS

INTRODUCTION

1. The Taliban are a radical insurgent group that the United States, alongside the legitimate government of Afghanistan, has been battling for nearly 20 years. In August of 2021, the Taliban successfully took over the entire country when they entered and took control of Kabul, the capital of Afghanistan. The United States government worked diligently for several days to evacuate their allies but, ultimately, left hundreds of thousands behind. Sayed Naser Noori was one of those left behind. He went into hiding with his family but, in September of 2021, the Taliban discovered their location. They came to a family wedding where they executed his brother and detained his father for questioning. They demanded to know where Sayed Naser Noori and his other brother were hiding. Mr. Noori's wife witnessed the execution and warned Mr. Noori that he needed to leave Afghanistan immediately. Mr. Noori fled to Iran and came to the United States to seek asylum.

2. Mr. Noori was paroled into the United States on July 06, 2024, by Respondents; he then applied for asylum before the U.S. immigration authorities in March of 2025. Respondents commenced removal proceedings against him in immigration court, entitling him to present his 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 Mr. Noori from his own asylum case, detain him, and transfer

1 him away from the Southern District of California so that they can rapidly deport
2 him under an entirely separate and inapposite law, 8 U.S.C. § 1225. Respondents
3 do so based not on Mr. Noori's personal circumstances or individualized facts, nor
4 due to any mistake made by putting him in 240 removal proceedings, but because
5 of Respondents' interpretation of President Trump's whim and categorical
6 determination that, the Fifth Amendment notwithstanding, noncitizens are not
7 entitled to due process.
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11 3. But Respondents cannot evade the law so easily. The law which
12 they purport to rapidly remove Mr. Noori does not authorize their actions and the
13 U.S. Constitution requires the Respondents provide at least the rights available to
14 him when he filed his application for asylum¹.
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17 4. Accordingly, to vindicate Petitioner's rights, this Court should grant
18 the instant petition for a writ of habeas corpus. Mr. Noori asks this Court to find
19 that Respondents' attempts to detain, transfer, and deport him are arbitrary and
20 capricious and in violation of the law, and to immediately issue an order
21 preventing his transfer out of this district.
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26 ¹ See, e.g., NBC News, Meet the Press interview of President Donald Trump (May 4, 2025),
27 [https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donaldtrump-](https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donaldtrump-interviewed-meet-press-mod-rcna203514)
28 [interviewed-meet-press-mod-rcna203514](https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donaldtrump-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.").

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 San Diego, California. 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 HC.1

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

1 petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court
2 must require Respondents to file a return “within three days unless for good cause
3 additional time, not exceeding twenty days, is allowed.” *Id.*

4
5 11. Courts have long recognized the significance of the habeas statute
6 in protecting individuals from unlawful detention. The Great Writ has been
7 referred to as “perhaps the most important writ known to the constitutional law of
8 England, affording as it does a swift and imperative remedy in all cases of illegal
9 restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).
10

11 12. Petitioner is “in custody” for the purpose of § 2241 because he is
12 arrested and detained by Respondents.
13
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15 **PARTIES**

16 13. Sayed Naser Noori (“Petitioner”) is a 33-year-old citizen of
17 Afghanistan. He is a resident of San Diego, California, and is present within the
18 state of California as of the time of the filing of this petition.
19

20 14. Respondent Christopher Larosse is the Warden of the Otay Mesa
21 Detention Center and is a legal custodian of Petitioner.
22

23 15. Respondent Sydney Aki is the Field Office Director for the San
24 Diego Field Office, Immigration and Customs Enforcement and Removal
25 Operations (“ICE”). The San Diego Field Office is responsible for local custody
26 decisions relating to non-citizens charged with being removable from the United
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1 States, including the arrest, detention, and custody status of non- citizens. The San
2 Diego Field Office's area of responsibility includes San Diego, California and the
3 Otay Mesa Detention Center. Respondent Sidney Aki is a legal custodian of
4 Petitioner.
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7 16. Respondent Todd Lyons is the acting director of U.S. Immigration
8 and Customs Enforcement, and he has authority over the actions of respondent
9 Sidney Aki and ICE in general. Respondent Lyons is a legal custodian of
10 Petitioner.
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12 17. Respondent Kristi Noem is the Secretary of the Department of
13 Homeland Security (DHS) and has authority over the actions of all other DHS
14 Respondents in this case, as well as all operations of DHS. Respondent Noem is a
15 legal custodian of Petitioner and is charged with faithfully administering the
16 immigration laws of the United States.
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19 18. Respondent Pamela Bondi is the Attorney General of the United
20 States, and as such has authority over the Department of Justice and is charged
21 with faithfully administering the immigration laws of the United States.
22

23 19. Respondent U.S. Immigration Customs Enforcement is the federal
24 agency responsible for custody decisions relating to non-citizens charged with
25 being removable from the United States, including the arrest, detention, and
26 custody status of non-citizens.
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1 24. The Refugee Act established the right to apply for asylum in the
2 United States and defines the standards for granting asylum. It is codified in
3 various sections of the INA.
4

5 25. The INA gives the Attorney General or the Secretary of Homeland
6 Security discretion to grant asylum to noncitizens who satisfy the definition of
7 “refugee.” Under that definition, individuals generally are eligible for asylum if
8 they have experienced past persecution or have a well-founded fear of future
9 persecution on account of race, religion, nationality, membership in a particular
10 social group, or political opinion and if they are unable or unwilling to return to
11 and avail themselves of the protection of their homeland because of that
12 persecution of fear. 8 U.S.C. § 1101(a)(42)(A).
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16 26. Although a grant of asylum may be discretionary, the right to
17 apply for asylum is not. The Refugee Act broadly affords a right to apply for
18 asylum to any noncitizen “who is physically present in the United States or who
19 arrives in the United States[.]” 8 U.S.C. § 1158(a)(1).
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22 27. Because of the life-or-death stakes, the statutory right to apply for
23 asylum is robust. The right necessarily includes the right to counsel, at no expense
24 to the government, see 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the
25 right to counsel, see 8 U.S.C. § 1158(d)(4), and the right to access information in
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1 support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant
2 to present evidence to establish eligibility.).
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4 28. Noncitizens seeking asylum are guaranteed Due Process under the
5 Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306
6 (1993).
7

8 29. Noncitizens who are applicants for asylum are entitled to a full
9 hearing in immigration court before they can be removed from the United States. 8
10 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative
11 appellate review before the Board of Immigration Appeals of removal orders
12 entered against them and judicial review in federal court upon a petition for
13 review. 8 U.S.C. § 1252(a) *et seq.*
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16 30. In 1996, Congress created “expedited removal” as a truncated
17 method for rapidly removing certain noncitizens from the United States with very
18 few procedural protections. 8 U.S.C. § 1225(b)(1). Because there are few
19 procedural protections, expedited removal applies narrowly to only those
20 noncitizens who are inadmissible to the United States because they engaged in
21 fraud or misrepresentation to procure admission or other immigration benefits, 8
22 U.S.C. § 1182(a)(6)(C), or who are applicants for admission without required
23 documentation, 8 U.S.C. § 1182(a)(7). No other person may be subjected to
24 expedited removal. 8 C.F.R. § 235.3(b)(1), (b)(3).
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1 31. Noncitizens subjected to expedited removal are ordered removed
2 by an immigration officer “without further hearing or review.” 8 U.S.C. §
3 1225(b)(1)(A)(i). That officer must determine whether the individual has been
4 continuously present in the United States for less than two years; is a noncitizen;
5 and is inadmissible because he or she has engaged in certain kinds of fraud or
6 lacks valid entry documents “at the time of . . . application for admission.” *See* 8
7 U.S.C. § 1225(b)(1)(A)(i), (iii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)).
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11 32. Otherwise, if the officer concludes that the individual is
12 inadmissible under an applicable ground, the officer “shall,” with simply the
13 concurrence of a supervisor, 8 C.F.R. § 235.3(b)(7), order the individual removed
14 “without further hearing or review unless the alien indicates either an intention to
15 apply for asylum . . . or a fear of persecution.” 8 U.S.C. § 1225(b)(1)(A)(i).
16
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18 33. Thus, a low-level DHS officer can order the removal of an
19 individual who has been living in the United States with virtually no administrative
20 process—just completion of cursory paperwork—based only on the officer’s own
21 conclusions that the individual has not been admitted or paroled, that the individual
22 has not adequately shown the requisite continuous physical presence, and that the
23 individual is inadmissible on one of the two specified rounds.
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25

26 34. Once a determination on inadmissibility is made, removal can
27 occur rapidly, within twenty-four hours.
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1 35. Asylum is not an admission to the United States and an applicant
2 for asylum, while they must be physically present in the United States to apply,
3 need not apply for or seek admission to the United States. *Matter of V-X-*, 26 I&N
4 Dec. 147 (BIA 2013).
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6 36. For those who fear return to their countries of origin, the expedited
7 removal statute provides a limited additional screening. But the additional
8 screening, to the extent it occurs, does not remotely approach the type of process
9 and the rights available to asylum seekers receive in regular Section 240
10 immigration proceedings.
11

12 37. An expedited removal order comes with significant consequences
13 beyond removal itself. Noncitizens who are issued expedited removal orders are
14 subject to a five-year bar on admission to the United States unless they qualify for
15 a discretionary waiver. 8 U.S.C. § 1182(a)(9)(A)(i); 8 C.F.R. § 212.2. Similarly,
16 noncitizens issued expedited removal orders after having been found inadmissible
17 based on misrepresentation are subject to a lifetime bar on admission to the United
18 States unless they are granted a discretionary exception or waiver. 8 U.S.C. §
19 1182(a)(6)(C).
20

21 38. Expedited removal only applies to noncitizens who are
22 inadmissible on one of two specified grounds: 8 U.S.C. § 1182(a)(6)(C), which
23 applies to those who seek to procure immigration status or citizenship via fraud or
24

1 false representations, or § 1182(a)(7), which applies to noncitizens who, “at the
2 time of application for admission,” fail to satisfy certain documentation
3 requirements. 8 U.S.C. § 1225(b)(1)(A)(1). If DHS seeks to remove noncitizens
4 based on other grounds, they must afford the noncitizen a full hearing before an
5 immigration judge. *See* 8 C.F.R. § 235.3(b)(1), (3).
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8 39. Immigration detention should not be used as a punishment and
9 should only be used when, under an individualized determination, a noncitizen is a
10 flight risk because they are unlikely to appear for immigration court or a danger to
11 the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
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14 **FACTUAL BACKGROUND**

15 40. Petitioner is a citizen of Afghanistan. He was born April 28, 1992
16 in the Province of Wardak, Afghanistan.
17

18 41. Petitioner was threatened with death in Afghanistan by the Taliban
19 and other terrorists in Afghanistan.
20

21 42. On or about July 5, 2024, Petitioner came to the port of entry San
22 Ysidro, California to seek asylum. On July 6, 2024, Respondents paroled him into
23 the United States, based on the individualized facts in his case, under 8 U.S.C. §
24 1182(d)(5) and released him from custody pursuant to the same statute.
25

26 43. On or about July 6, 2024, Respondents commenced removal
27 proceedings against Petitioner under 8 U.S.C. § 1229a in Chicago, Illinois.
28

1 44. Respondents alleged he was inadmissible to the United States
2 under 8 U.S.C. § 1182(a)(7)(A)(i)(I) and commanded that he appear for a hearing
3 on September 7, 2027 in the immigration court in Chicago, Illinois. Subsequently,
4 Petitioner moved for change of venue to San Diego, California.
5

6 45. On information and belief, Petitioner regularly complied with and
7 appeared for ICE check-ins.
8

9 46. Petitioner applied for asylum before the San Diego Immigration
10 Court on March 13, 2025.
11

12 47. On August 7, 2024, Respondents issued work authorization to
13 Petitioner pursuant to 8 C.F.R. § 274a.12(c)(11) valid through July 04, 2026.
14

15 48. On or about April 11, 2025, Respondents purported to revoke his
16 parole through a mass, generic notification system.
17

18 49. Petitioner appeared for his immigration court hearing on June 12,
19 2025. However, instead of allowing him to proceed with his asylum application,
20 Respondents moved to dismiss his case entirely asserting the NTA had been
21 improvidently issued. Petitioner's counsel objected and demanded to know what
22 was improvident about the issuance of the NTA. Government counsel insisted she
23 did not need to explain it. Rather, she need only make the motion and announced
24 the government had nothing else to add. Counsel pointed out that this was a ruse to
25 detain the Petitioner and place him in expedited removal. The court asked
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1 government counsel what their intention was and she admitted he was to be
2 detained and placed in expedited removal. The court allowed Petitioner 10 days to
3 respond to the motion. However, after the response was filed, on June 26, 2025 the
4 immigration judge dismissed the proceedings. Respondents did not advise
5 Petitioner that they sought to terminate his case to place him in expedited removal
6 proceedings prior to the hearing on June 12, 2025.
7

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9 50. After exiting the courtroom and while in the courtroom hallway,
10 several ICE agents surrounded Petitioner. They asked him his name and he chose
11 to exercise his right to remain silent. They asked counsel what his name was and if
12 counsel had any documentation for them from the court. Petitioner's Counsel told
13 them he had nothing for them. Without any more information other than their own
14 hunch they arrested the Petitioner. When asked for a warrant by Petitioner's
15 counsel, the ICE agents refused to produce one. They did not provide him any
16 process. The ICE agents did not offer him any opportunity to be heard prior to
17 arresting and detaining him.
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22 51. On January 20, 2025, President Donald Trump issued several
23 executive actions relating to immigration, including "Protecting the American
24 People Against Invasion," an executive order (EO) setting out a series of interior
25 immigration enforcement actions. The Trump administration, through this and
26 other actions, has outlined sweeping, executive branch-led changes to immigration
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1 enforcement policy, establishing a formal framework for mass deportation. The
2 “Protecting the American People Against Invasion” EO instructs the DHS
3 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to
4 prioritize civil immigration enforcement procedures including through the use of
5 mass detention.
6
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8 52. On January 21, 2025, Acting Deputy Secretary of DHS Benjamin
9 Huffman issued for public inspection and effective immediately a designation
10 expanding the scope of expedited removal to apply nationwide and to certain
11 noncitizens who are unable to prove they have been in the country continuously for
12 two years. On January 24, 2025, DHS published a Notice that expanded the
13 application of expedited removal. Office of the Secretary, Dept of Homeland
14 Security, *Designating Aliens for Expedited Removal*, 15 Fed. Reg. 8139 (“January
15 2025 Designation”). The designation was “effective on” January 21, 2025.
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19 53. The January 2025 Designation expands the pool of noncitizens
20 who can be subjected to the summary removal process substantially to include
21 noncitizens who are apprehended anywhere in the United States and who have not
22 been in the United States continuously for more than two years. *Id.* at 8140.
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25 54. The January 2025 Designation does not state that it applies to
26 noncitizens who were in the United States before its effective date.
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1 55. On information and belief, Petitioner avers that Respondents
2 concealed the basis for dismissal from the immigration court and Petitioner
3 because the purpose was to divest him of his due process rights in his properly
4 filed asylum application.
5

6 56. On information and belief, Respondents are using the immigration
7 detention system, including extra-territorial transfer and detention, as a means to
8 punish individuals for asserting rights under the Refugee Act.
9
10

11 57. On information and belief, Petitioner has no criminal history.

12 **CLAIMS FOR RELIEF**

13 **COUNT ONE**

14 **Violation of Fifth Amendment Right to Due Process**

15 **Procedural Due Process**

16 58. Petitioner restates and realleges all paragraphs as if fully set forth
17 here.
18

19 59. The Due Process Clause of the Fifth Amendment to the U.S.
20 Constitution prohibits the federal government from depriving any person of “life,
21 liberty, or property, without due process of law.” U.S. Const. Amend. V. Due
22 process protects “all ‘persons’ within the United States, including [non-citizens],
23 whether their presence here is lawful, unlawful, temporary, or permanent.”
24 *Zadvydas*, 533 U.S. at 693.
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1 60. Due process requires that government action be rational and non-
2 arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).
3

4 61. While asylum is a discretionary benefit, the right to apply is not. 8
5 U.S.C. § 1158(a)(1). Any noncitizen who is “physically present in the United
6 States or who arrives in the United States (whether or not at a designated port of
7 arrival . . .), irrespective of such [noncitizen’s] status, may apply for asylum.” *Id.*
8

9 62. Because the denial of the right to apply for asylum can result in
10 serious harm or death, the statutory right to apply is robust and meaningful. It
11 includes the right to legal representation, and notice of that right, *see id.* §§
12 1229a(b)(4)(A), 1362, 1158(d)(4); the right to present evidence in support of
13 asylum eligibility, *see id.* § 1158(b)(1)(B); the right to appeal an adverse decision
14 to the Board of Immigration Appeals and to the federal circuit courts, *see id.* §§
15 1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a
16 decision determining removability, *see id.* § 1229a(c)(6)-(7).
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21 63. Expedited removal, in contrast, severely limits the availability of
22 such rights. Interviews occur on an exceedingly fast timeline; review of a negative
23 interview decision by an immigration judge must occur within seven days of the
24 decision. *See* 8 C.F.R. § 1003.42.
25

26 64. While there is a right to “consult” with an attorney or another
27 person about the credible fear interview process, *see* 8 U.S.C. § 1225(b)(1)(B)(iv)
28

1 and 8 C.F.R. §§ 208.30(d)(4), 235.3(b)(4)(i)(B), (ii), the consultation “shall not
2 unreasonably delay the process.” The consultant may be “present” during the
3 interview but may only make a “statement” at the end of the interview *if* permitted
4 by the asylum officer. 8 C.F.R. § 208.30(d)(4). The immigrant subject to expedited
5 removal may present evidence “if available”, *id.*—often an impossibility given the
6 fast timeline and the default of detention during the process. *See generally* Heidi
7 Altman, et. al., *Seeking Safety from Darkness: Recommendations to the Biden*
8 *Administration to Safeguard Asylum Rights in CBP Custody*, Nov. 21, 2024,
9 [https://www.nilc.org/wpcontent/uploads/2024/11/NILC_CBP-Black-Hole-](https://www.nilc.org/wpcontent/uploads/2024/11/NILC_CBP-Black-Hole-Report_112124.pdf)
10 [Report_112124.pdf](https://www.nilc.org/wpcontent/uploads/2024/11/NILC_CBP-Black-Hole-Report_112124.pdf) (describing the obstruction of access to counsel for people
11 undergoing credible fear screenings in Customs and Border Protection custody).

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65. 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.

66. In sum, applying for asylum in removal proceedings comes with a panoply of greater protections when compared with seeking asylum in expedited

1 removal. *See Immigrant Defenders Law Center v. Mayorkas*, 2023 WL 3149243, at
2 *29 (C.D. Cal. Mar. 15, 2023) (“Individuals in regular removal proceedings enjoy
3 far more robust due process protections [than those in expedited removal] because
4 Congress has conferred additional statutory rights on them.”).

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6
7 67. Here, Petitioner was not advised by DHS that they sought to
8 terminate his proceedings in order to place him in expedited removal, depriving
9 him of the bundle of rights associated with his pending asylum application.
10 Because of his legal interest in his pending asylum application, this violated due
11 process. *See generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring
12 notice and an opportunity to be heard before deprivation of a legally protected
13 interest).
14
15

16 COUNT TWO

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

18 Not in Accordance with Law and in Excess of Statutory Authority

19 Unlawful Detention

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21
22 68. Petitioner restates and realleges all paragraphs as if fully set forth
23 here.
24

25 69. Under the APA, a court shall “hold unlawful and set aside agency
26 action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).
27
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1 70. An action is an abuse of discretion if the agency “entirely failed to
2 consider an important aspect of the problem, offered an explanation for its decision
3 that runs counter to the evidence before the agency, or is so implausible that it
4 could not be ascribed to a difference in view or the product of agency expertise.”
5
6 *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007)
7 (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
8 463 U.S. 29, 43 (1983)).
9
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11 71. To survive an APA challenge, the agency must articulate “a
12 satisfactory explanation” for its action, “including a rational connection between
13 the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551,
14 2569 (2019) (citation omitted).
15

16 72. By categorically revoking Petitioner’s parole and transferring him
17 to Otay Mesa Detention Center without consideration of his individualized facts
18 and circumstances, Respondents have violated the APA.
19

20 73. Respondents have made no finding that Petitioner is a danger to
21 the community.
22

23 74. Respondents have made no finding that Petitioner is a flight risk
24 because, in fact, he was arrested while appearing at his immigration proceedings.
25

26 75. By detaining the Petitioner categorically, Respondents have
27 further abused their discretion because there have been no changes to his facts or
28

1 circumstances since the agency made its initial determination to parole him into the
2 United States that support detention.

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4 76. Respondents have already considered Petitioner's facts and
5 circumstances and determined that he was not a flight risk or danger to the
6 community. There have been no changes to the facts that justify this revocation of
7 his parole.
8

9 **COUNT THREE**

10 **Violation of Fifth Amendment Right to Due Process**

11 **Illegal Retroactive Application of Expedited Removal Designation**

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13 77. Petitioner restates and realleges all paragraphs as if fully set forth
14 here.
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16 78. Administrative rules "will not be construed to have retroactive
17 effect unless their language requires this result." *Landgraf v. USI Film Products*,
18 511 U.S. 244, 272 (1994). When a "new provision attaches new legal
19 consequences to events completed before its enactment" the new provision is not
20 retroactive unless it is unmistakably clear.
21

22 79. Applying the January 2025 expedited removal designation to
23 Petitioner's July 2024 entry to the United States to seek asylum would attach new
24 legal consequences including the loss of significant rights related to his right to
25 seek asylum.
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1 80. The January 2025 designation does not unmistakably apply to
2 individuals who entered the United States prior to its effective date.
3

4 81. Accordingly, Respondents are unlawfully subjecting him to
5 expedited removal.
6

7 **COUNT FOUR**

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

9 **Not in Accordance with Law and in Excess of Statutory Authority**
10

11 **Violation of 8 C.F.R. § 239.2(c)**

12 82. Petitioner restates and realleges all paragraphs as if fully set forth
13 here.
14

15 83. Under the APA, a court “shall . . . hold unlawful . . . agency
16 action” that is “not in accordance with law;” “contrary to constitutional right;” “in
17 excess of statutory jurisdiction, authority, or limitations;” or “without observance
18 of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).
19

20 84. Once a removal proceeding has been initiated, regulations allow
21 for the proceedings to be dismissed for a reason set forth at 8 C.F.R. § 239.2(a).
22

23 85. The initiation of expedited removal proceedings is not an
24 enumerated ground upon which a removal proceeding may be dismissed.
25

26 86. It is a well-established administrative principle that “agency action
27 taken without lawful authority is at least voidable, if not void *ab initio*.” *L.M.-M. v.*
28

1 *Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*,
2 796 F.3d 67, 79 (D.C. Cir. 2015); *see also Hooks v. Kitsap Tenant Support Servs.,*
3 *Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was
4 taken by unauthorized official).
5

6
7 87. On information and belief, Respondents have dismissed
8 Petitioner's removal proceedings because of their intent to eliminate the due
9 process rights available to Petitioner in removal proceedings under section 240 of
10 the Immigration and Nationality Act.
11

12 88. Because Petitioner's dismissal of section 240 proceedings was not
13 made in furtherance of an enumerated reason set forth in the regulations,
14 Respondents' use of the January 2025 expedited removal designation is unlawful.
15

16
17 **COUNT FIVE**

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

19 **Not in Accordance with Law and in Excess of Statutory Authority**

20
21 **Violation of 8 U.S.C. § 1225(b)**

22 89. Petitioner restates and realleges all paragraphs as if fully set forth
23 here.
24

25 90. Under the APA, a court “shall . . . hold unlawful . . . agency
26 action” that is “not in accordance with law;” “contrary to constitutional right;” “in
27

1 excess of statutory jurisdiction, authority, or limitations;” or “without observance
2 of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).
3

4 91. Congress has made it clear that the expedited removal statute does
5 not apply and may not be applied to individuals who were “paroled” into the
6 United States. 8 U.S.C. § 1225(b).
7

8 92. Petitioner is not amenable to nor may he be subjected to expedited
9 removal because he is not “arriving in the United States” as he has been physically
10 present for over a year.
11

12 93. Petitioner is not amenable to nor may he be subjected to expedited
13 removal under the January 2025 designation because he was paroled. 8 U.S.C. §
14 1225(b)(1)(A)(iii)(II) (limiting expedited removal designations only to individuals
15 who “has not been admitted or paroled into the United States”).
16
17

18 94. Because Petitioner is not subject to the designation, Respondents’
19 use of the January 2025 designation to detain him is unlawful.
20

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Petitioner respectfully requests this Court to grant the
23 following:
24

25 (1) Assume jurisdiction over this matter;

26 (2) Issue an Order to Show Cause ordering Respondents to show
27 cause why this Petition should not be granted within three days;
28

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

4 (4) Declare that Respondents' application of the January 2025
5 Designation to Petitioner is illegal;
6

7 (5) Issue a Writ of Habeas Corpus ordering Respondents to release
8 Petitioner from custody;
9

10 (6) Issue an Order prohibiting the Respondents from transferring
11 Petitioner from the district without the court's approval;
12

13 (7) Award Petitioner attorney's fees and costs under the Equal Access
14 to Justice Act, and on any other basis justified under law; and
15

16 (8) Grant any further relief this Court deems just and proper.
17

18 Dated: July 17, 2025.

/s/ Brian J. McGoldrick
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