Patrick Sean Barnacle Ohio Bar 0097430
Barnacle Law Firm LLC
lawyer@barnaclelaw.com
2658 West Broad Street
Columbus, OH 43204
Telephone: 614-233-1176
Fax: 614-924-8026

Attorney for Petitioner

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CIVIL DIVISION

Claudy Dornevil, Petitioner, v. **Kristi Noem,** Secretary of the U.S. Department of Homeland Security; and **Douglas Fender**, Warden, Northeast Ohio Correctional Center; **Robert Lynch,** Acting/Director of Detroit Field Office, U.S. Immigration and Customs Enforcement; **Todd Lyons** Director of the U.S. Department of Homeland Security **Pamela Bondi,** Attorney General of the United States, in their official capacities, Respondents.	)	Case No. 4:25-cv-1809 **PETITION FOR WRIT OF HABEAS CORPUS** **ORAL ARGUMENT** **REQUESTED**

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PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

1. Petitioner Claudy Dornveil is an applicant for asylum who fled from gang violence in Cabaret, Haiti. In 2021, the President of Haiti, Jovenel Moïse, was assassinated, setting off a crisis of gang violence that has spiraled through several parts of Haiti. Petitioner Claudy Dornveil's hometown of Cabaret, Haiti, has been struck by gang violence, causing Petitioner to flee for his personal safety and seek asylum in the United States.

2. Petitioner is a Recipient of Humanitarian Parole Granted by Respondents with an expiration date of July 23, 2026. Petitioner was released into the interior of the United States on his own recognizance by Respondents. Petitioner was also given a "Notice to Appear" with an Immigration Court Date of July 7, 2025 before the Executive Office of Immigration Review (EOIR) pursuant to 8 U.S.C. § 1229a where he was guaranteed due process rights to submit his application for asylum and have it be heard by an Immigration Judge[1].

3. Despite Petitioner's cooperation with all instructions by Respondents, on July 7, 2025, Respondents conspired to curtail his due process rights. Upon a "motion to dismiss" by agents of Respondent Kristi Noem, the Immigration Judge who serves at the pleasure of Respondent Pamela Bondi granted Respondent Noem's motion to dismiss Removal proceedings against Petitioner. The Immigration Judge then told Petitioner that he may leave, leading him to believe that Respondents no longer intended to remove him from the United States. Instead, Respondents arrested Petitioner in the hallways of the Cleveland Immigration Court, located

[1] *See 8 CFR § 1003.10*, "The immigration judges are attorneys whom the Attorney General appoints as administrative judges within the Office of the Chief Immigration Judge to conduct specified classes of proceedings, including hearings under section 240 of the Act. Immigration judges shall act as the Attorney General's delegates in the cases that come before them."

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within the Cleveland Federal Building, and issued him "Notice and Order of Expedited Removal" under color of 8 U.S.C. § 1225(b)(1) that same day without a hearing or an evaluation of his asylum application, which he was entitled to receive under 8 U.S.C. § 1229a. Respondent has since been detained at the Northeast Ohio Correctional Center.

4. The dismissal of Removal Proceedings under 8 U.S.C. § 1229a and subsequent initiation of Expedited Removal Proceedings that same day under 8 U.S.C. § 1225 was arbitrary, capricious, violated Petitioner's due process rights under the United States Constitution, and violated the statutory requirements of both 8 U.S.C. § 1229 and 8 U.S.C. § 1225.

5. Absent an order from this Court, Petitioner risks further unlawful detention, transport away from his counsel of record, and deportation without a hearing on the merits of his asylum application.

6. Accordingly, to vindicate Petitioner's rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner asks this Court to find that Respondents' attempts to detain, transfer, and deport him are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing his transfer out of this district.

JURISDICTION

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

8. 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). Under 8 U.S.C. § 1252(e)(2), this Court has habeas authority

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to determine whether Petitioner was ordered removed under 8 U.S.C. § 1225(b)(1) or whether Petitioner is an asylee under 8 U.S.C. § 1158.

9. 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.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

10. Venue is proper because Petitioner is detained at the Northeast Ohio Correctional Center in Youngstown, Ohio which is within the jurisdiction of this District.

11. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District.

REQUIREMENTS OF 28 U.S.C. § 2243

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

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

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PARTIES

14. Petitioner is a recipient of humanitarian parole, which was issued to him by Respondent's agents under the employ of the Department of Homeland Security on July 24, 2024, and expires July 23, 2026. Petitioner is currently detained at Northeast Ohio Correctional Center. He is in the custody, and under the direct control, of Respondents and their agents.

15. Respondent Douglas Fender is the Warden of Northeast Ohio Correctional Center, and he has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Fender is a legal custodian of Petitioner.

16. Respondent Robert Lynch is sued in his official capacity as the Acting Director of the Detroit Field Office of U.S. Immigration and Customs Enforcement (ICE). Respondent Lynch is a legal custodian of Petitioner and has authority to release him.

17. Respondent Todd Lyons is sued in his official capacity as the Director of the U.S. Department of Immigration and Customs Enforcement (ICE). Respondent is a legal custodian of Petitioner has authority to release him.

18. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

19. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that

capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

LEGAL FRAMEWORK

20. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the "historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands." Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

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

22. The Refugee Act established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.

23. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens who satisfy the definition of "refugee." Under that definition, individuals generally are eligible for asylum if they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion and if they are unable or unwilling

to return to and avail themselves of the protection of their homeland because of that persecution of fear. 8 U.S.C. § 1101(a)(42)(A).

24. Although a grant of asylum may be discretionary, the right to apply for asylum is not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen "who is physically present in the United States or who arrives in the United States[.]" 8 U.S.C. § 1158(a)(1)

25. Because of the life-or-death stakes, the statutory right to apply for asylum is robust. The right necessarily includes the right to counsel, at no expense to the government, see 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the right to counsel, see 8 U.S.C. § 1158(d)(4), and the right to access information in support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant to present evidence to establish eligibility.).

26. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. Reno v. Flores, 507 U.S. 292, 306 (1993).

27. Noncitizens who are applicants for asylum are entitled to a full hearing in immigration court before they can be removed from the United States. 8 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative appellate review before the Board of Immigration Appeals of removal orders entered against them and judicial review in federal court upon a petition for review. 8 U.S.C. § 1252(a) et seq.

28. In 1996, Congress created "expedited removal" as a truncated method for rapidly removing certain noncitizens from the United States with very few procedural protections. 8 U.S.C. § 1225(b)(1). Because there are few procedural protections, expedited removal applies narrowly to only those noncitizens who are inadmissible to the United States because they

engaged in fraud or misrepresentation to procure admission or other immigration benefits, 8 U.S.C. § 1182(a)(6)(C), or who are applicants for admission without required documentation, 8 U.S.C. § 1182(a)(7). No other person may be subjected to expedited removal. 8 C.F.R. § 235.3(b)(1), (b)(3)

29. Noncitizens subjected to expedited removal are ordered removed by an immigration officer "without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i). That officer must determine whether the individual has been continuously present in the United States for less than two years; is a noncitizen; and is inadmissible because he or she has engaged in certain kinds of fraud or lacks valid entry documents "at the time of . . . application for admission." See 8 U.S.C. § 1225(b)(1)(A)(i), (iii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)).

30. Otherwise, if the officer concludes that the individual is inadmissible under an applicable ground, the officer "shall," with simply the concurrence of a supervisor, 8 C.F.R. § 235.3(b)(7), order the individual removed "without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i).

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

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

33. Asylum is not an admission to the United States and an applicant for asylum, while they must be physically present in the United States to apply, need not apply for or seek admission to the United States. Matter of V-X-, 26 I&N Dec. 147 (BIA 2013).

34. For those who fear return to their countries of origin, the expedited removal statute provides a limited additional screening. But the additional screening, to the extent it occurs, does not remotely approach the type of process and the rights available to asylum seekers receive in regular Section 240 immigration proceedings.

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

36. Expedited removal only applies to noncitizens who are inadmissible on one of two specified grounds: 8 U S.C. § 1182(a)(6)(C), which applies to those who seek to procure immigration status or citizenship via fraud or false representations, or § 1182(a)(7), which applies to noncitizens who, "at the time of application for admission," fail to satisfy certain documentation requirements. 8 U.S.C. § 1225(b)(1)(A)(1). If DHS seeks to remove noncitizens based on other grounds, they must afford the noncitizen a full hearing before an immigration judge. See 8 C.F.R. § 235.3(b)(1), (3).

37. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. Zadvydas v. Davis, 533 U.S. 678, 690 (2001)

38. An existing order stayed Expedited Removal Proceedings against aliens who received Parole at Ports of Entry. *See* COALITION FOR HUMANE IMMIGRANT RIGHTS v. Noem, Case No. 25-cv-872 (JMC) (D.D.C.), but this order is partially administratively stayed as of August 18, 2025.

STATEMENT OF FACTS

39. Petitioner is a 21-year-old citizen of Haiti. He was granted Humanitarian Parole by Respondents and released into the interior of the United States, where he has been permitted to live with family in Ohio. He was given a work permit, and permitted to forge ties to the community at Respondent's invitation through the CBP One Application. Respondent is fleeing violence in Haiti and hopes to have his petition for asylum to be judged upon its merits.

40. Upon information or belief, Petitioner arrived in the United States on or around July 24, 2024 at Brownville, Texas, and was granted humanitarian parole by Respondents through an application known as "CBP One[2]," with an expiration date of July 23, 2026 and released into the interior of the United States on his own recognizance.

[2] CBP One was an application launched by the Department of Homeland Security's Customs and Border Protection Agency in January 2023 to allow asylum seekers without entry visas to schedule an appointment with a border patrol officer. Its use for this purpose was discontinued in January 2025. *See* https://www.cbp.gov/sites/default/files/assets/documents/2023-Jan/CBP%20One%20Fact%20Sheet_English_3.pdf and Circumvention of Lawful Pathways, 88 Fed. Reg. 31314, 31317–18. (May 16, 2023)

41. With his humanitarian Parole, Petitioner was permitted to reside and work in the United States while he applied for asylum. Petitioner moved to Ohio with the knowledge and consent of Respondents.

42. On the same date of his Arrival, July 24, 2024, Petitioner was also given a *Notice to Appear*[3] by Respondents with an Immigration Court Date of July 7, 2025 before the Executive Office of Immigration Review (EOIR) pursuant to 8 U.S.C. § 1229a where he was guaranteed due process rights to submit his application for asylum and have it be heard by an Immigration Judge[4].

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

44. 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

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[3] A "Notice to Appear" is defined by 8 USC § 1129(a), which initiates removal proceedings under 8 U.S.C. § 1229a.
[4] *See 8 CFR § 1003.10*, "The immigration judges are attorneys whom the Attorney General appoints as administrative judges within the Office of the Chief Immigration Judge to conduct specified classes of proceedings, including hearings under section 240 of the Act. Immigration judges shall act as the Attorney General's delegates in the cases that come before them."

have been in the country continuously for two years. On January 24, 2025, DHS published a Notice that expanded the application of expedited removal. Office of the Secretary, Dep't of Homeland Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139 ("January 2025 Designation"). The designation was "effective on" January 21, 2025

45. The January 2025 Designation expands the pool of noncitizens who can be subjected to the summary removal process substantially to include noncitizens who are apprehended anywhere in the United States and who have not been in the United States continuously for more than two years. Id. at 8140

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

47. Respondents terminated all grants of parole authorized through the CBP One Application in April 2025, and began sending notices in June 2025 of that termination.[5]

48. Upon information or belief, Respondents did not send Petitioner and individualized determination on his parole, and it is unknown if Petitioner received any notice of the mass termination of parole pursuant to agency action.

49. Petitioner cooperated with the Notice to Appear, and presented himself pro se to the EOIR on July 7, 2025 at the Cleveland Immigration Court located at the Federal Court House, 801 W. Superior Ave, Cleveland, Ohio, Suite 13.

50. Petitioner was not given a hearing on the merits of his application for asylum.

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[5] *See Dep't of Homeland Sec., Six Months of Keeping America Safe Under President Trump and Secretary Noem (July 20, 2025), https://perma.cc/7Z6X-328H ("President Trump ended the CBP One app that allowed more than one million aliens to illegally enter the U.S.").*

51. Instead, the Immigration Judge assigned to Petitioner's case dismissed proceedings upon a motion by Respondents, citing 8 CFR § 239.2 and *Matter of Jasco & Ayalah*, 27 I & N Dec. 558 (BIA 2019). The Immigration Judge did not conduct an individualized analysis of his decision.

52. Upon leaving the courtroom, Petitioner was arrested in the hallways of Suite 13 by Respondents.

53. Upon information or belief, Petitioner has no criminal record and has not been accused of any crime.

54. Upon information or belief, respondents immediately issued Petitioner a "Notice and Order of Expedited Removal" under color of 8 U.S.C. § 1225(b)(1) without an interview, access to an attorney, or an assessment of his application for Asylum.

55. Respondents have since detained Petitioner at Northeast Ohio Correctional Center, located at 2240 Hubbard Rd, Youngstown, OH 44505.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process

56. The allegations in the above paragraphs are realleged and incorporated herein.

57. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." Zadvydas, 533 U.S. at 693.

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

59. While asylum is a discretionary benefit, the right to apply is not. 8 U.S.C. § 1158(a)(1). Any noncitizen who is "physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . .), irrespective of such [noncitizen's] status, may apply for asylum." Id.

60. Because the denial of the right to apply for asylum can result in serious harm or death, the statutory right to apply is robust and meaningful. It includes the right to legal representation, and notice of that right, see id. §§ 1229a(b)(4)(A), 1362, 1158(d)(4); the right to present evidence in support of asylum eligibility, see id. § 1158(b)(1)(B); the right to appeal an adverse decision to the Board of Immigration Appeals and to the federal circuit courts, see id. §§ 1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a decision determining removability, see id. § 1229a(c)(6)-(7). 61. Expedited removal, in contrast, severely limits the availability of such rights. Interviews occur on an exceedingly fast timeline; review of a negative interview decision by an immigration judge must occur within seven days of the decision. See 8 C.F.R. § 1003.42

61. While there is a right to "consult" with an attorney or another person about the credible fear interview process, see 8 U.S.C. § 1225(b)(1)(B)(iv) and 8 C.F.R. §§ 208.30(d)(4) 235.3(b)(4)(i)(B), (ii), the consultation "shall not unreasonably delay the process." The consultant may be "present" during the interview but may only make a "statement" at the end of the interview if permitted by the asylum officer. 8 C.F.R. § 208.30(d)(4). The immigrant subject to expedited removal may present evidence "if available", id.—often an impossibility given the

fast timeline and the default of detention during the process. See generally Heidi Altman, et. al., Seeking Safety from Darkeness: Recommendations to the Biden Administration to Safeguard Asylum Rights in CBP Custody, Nov. 21, 2024, https://www.nilc.org/wp content/uploads/2024/11/NILC_CBP-Black-Hole-Report_112124.pdf (describing the obstruction of access to counsel for people undergoing credible fear screenings in Customs and Border Protection custody).

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

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

64. Here, Petitioner was not advised by DHS that they sought to terminate his proceedings in order to place him in expedited removal, depriving him of the bundle of rights associated with his pending asylum application. Because of his legal interest in his pending asylum application, this violated due process. See generally Mathews v. Eldridge, 424 U.S. 319,

333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest)

COUNT TWO
Violation of Administrative Procedure Act 5 U.S.C. § § 706(2)(A)
Not in Accordance with Law and in Excess of Statutory Authority
Unlawful Detention

65. The allegations in the above paragraphs are realleged and incorporated herein.

66. Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A). 68. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." Nat'l Ass'n of Home Builders v. Defs. of Wildlife, 551 U.S. 644, 658 (2007) (quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)). 69. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." Dep't of Com. v. New York, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

67. By categorically revoking Petitioner's release and detaining him without consideration of his individualized facts and circumstances, Respondents have violated the APA.

68. Respondents have made no finding that Petitioner is a danger to the community. Respondents have made no finding that Petitioner is a flight risk because, in fact, he was arrested while appearing at his immigration proceedings.

69. By detaining the Petitioner categorically, Respondents have further abused their discretion because there have been no changes to his facts or circumstances since the agency made its initial custody determinations that support the revocation of his release from custody.

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

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

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

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

73. Applying the January 2025 expedited removal designation to Petitioner's September 2023 entry to the United States to seek asylum would attach new legal consequences including the loss of significant rights related to his right to seek asylum.

74. The January 2025 designation does not unmistakably apply to individuals who entered the United States prior to its effective date.

75. Accordingly, Respondents are unlawfully subjecting him to expedited removal

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

76. Petitioner restates and realleges all paragraphs as if fully set forth here. Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "not in accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction, authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

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

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

79. It is a well-established administrative principle that "agency action taken without lawful authority is at least voidable, if not void ab initio." L.M.-M. v. Cuccinelli, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing SW General, Inc. v. NLRB, 796 F.3d 67, 79 (D.C. Cir. 2015); see also Hooks v. Kitsap Tenant Support Servs., Inc., 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by unauthorized official).

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

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

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

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

83. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." Zadvydas, 533 U.S. at 693.

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

85. While the government has discretion to detain individuals under 8 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not "unlimited" and must comport with constitutional due process. See Zadvydas, 533 U.S. at 698.

86. Here, Respondents have chosen to detain Petitioner after initially releasing him at the border in an arbitrary manner and not based on a rational and individualized determination of whether he is a safety or flight risk, in violation of due process. Because no individualized custody revocation or detention decision has been made and no circumstances have changed to make Petitioner a flight risk or a danger to the community, Respondents have violated his right to procedural due process.

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PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

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

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

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

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.

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

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

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

Respectfully submitted,

/s/Patrick Sean Barnacle

Patrick Sean Barnacle
Barnacle Law Firm LLC
Ohio Bar # 0097430
lawyer@barnaclelaw.com
Office: 614-233-1176
Fax: 614-924-8026

Counsel for Petitioner

U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO
Dated: August 27, 2025

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Claudy Dornevil, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 29 day of August, 2025.

/s/ Patrick Sean Barnacle

Patrick Sean Barnacle