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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 N.A.¹,

13 Petitioner-Plaintiff,

14 vs.

15 CHRISTOPHER J. LAROSE, Senior
16 Warden, Otay Mesa Detention Center;
17 PATRICK DIVVER, Field Office
18 Director, San Diego Office of Detention
19 and Removal, U.S. Immigration and
20 Customs Enforcement; TODD M.
21 LYONS, Acting Director, U.S.
22 Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
and KRISTI NOEM, Secretary, U.S.
Department of Homeland Security,

23 Respondents-Defendants.

Case No.: '25CV2384 RSH BLM

**PETITION FOR WRIT OF
HABEAS CORPUS AND ORDER
TO SHOW CAUSE WITHIN
THREE DAYS; COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

24
25 ¹ Petitioner will move this Court for leave to proceed under a pseudonym (using
26 the initials N.A.).

Petitioner N.A. petitions this Court for a writ of habeas corpus under 28 U.S.C. section 2241 to remedy Respondents' detaining her unlawfully, and states as follows:

INTRODUCTION

1. Petitioner N.A. ("Petitioner" or "Ms. N.A.") is an Iranian asylum seeker detained at Otay Mesa Detention Center in San Diego, California. She was persecuted in Iran on account of her political opinions and activism against the Iranian government. The persecution she suffered in Iran included kidnapping, physical violence, and rape because of her political opinions and particular social group membership. Iranian government forces attacked Ms. N.A. on more than one occasion before she fled the country, including by trying to kidnap her while she fled and she fears retaliation, persecution, and torture if returned to Iran.

2. On or about October 29, 2024, Ms. N.A. entered the United States. She was quickly taken to the emergency department of a medical center for an acute medical emergency. Federal agents briefly apprehended her, determined that she was not a flight risk or danger to the community, and released her on her own recognizance with a Notice to Appear ("NTA") for removal proceedings at San Diego Immigration Court.

3. Respondents commenced removal proceedings against her in immigration court, entitling her to present her asylum claim with the due process rights under 8 U.S.C. § 1229a.

4. Since then, Petitioner has diligently attended every immigration court hearing. She filed a Form I-589 Application for Asylum, Withholding of Removal, and protection under the Convention Against Torture on or about January 29, 2025, and a revised application again on or about March 7, 2025, both within the

1 one-year filing deadline.

2 5. On July 15, 2025, masked U.S. Department of Homeland Security
3 (“DHS”) agents detained Ms. N.A. at San Diego Immigration Court, shortly after
4 counsel for DHS requested that her case be dismissed.

5 6. Ms. N.A.’s courthouse arrest is part of a new, nationwide DHS
6 strategy of sweeping up people who attend their immigration court hearings,
7 detaining them, and seeking to re-route them to fast-track deportations. Since
8 approximately mid-May 2025, DHS has implemented a coordinated practice of
9 leveraging immigration detention to strip people like Ms. N.A. of their substantive
10 and procedural rights and pressure them into deportation.² Immigration detention is
11 civil, and thus is permissible for only two reasons: to ensure a noncitizen’s
12 appearance at immigration hearings and to prevent danger to the community. But
13 DHS did not arrest and detain Ms. N.A.—who demonstrably poses no risk of
14 absconding from immigration proceedings or danger to the community—for either
15 of these reasons.

16 7. In immigration court, noncitizens have the right to pursue claims for
17 relief from removal (including asylum), be represented by counsel, gather and
18 present evidence, and pursue appeals. 8 U.S.C. § 1229(a). By dismissing an
19 ongoing case, DHS—in its view—can transfer a noncitizen’s case from removal
20 proceedings in immigration court, governed by 8 U.S.C. § 1229a, to cursory
21

22 ² Steve Price, *Video shows ICE agents arresting immigrants at San Diego federal*
23 *courthouse, raising due process concerns*, CBS8 LOCAL NEWS (June 11, 2025,
24 5:40 p.m. PDT), [https://www.cbs8.com/article/news/local/video-ice-agents-arrest-](https://www.cbs8.com/article/news/local/video-ice-agents-arrest-immigrants-at-san-diego-federal-courthouse-raises-due-process-concerns/509-49745585-774b-4144-81ff-3486c5fadbe9)
25 [immigrants-at-san-diego-federal-courthouse-raises-due-process-concerns/509-](https://www.cbs8.com/article/news/local/video-ice-agents-arrest-immigrants-at-san-diego-federal-courthouse-raises-due-process-concerns/509-49745585-774b-4144-81ff-3486c5fadbe9)
26 [49745585-774b-4144-81ff-3486c5fadbe9](https://www.cbs8.com/article/news/local/video-ice-agents-arrest-immigrants-at-san-diego-federal-courthouse-raises-due-process-concerns/509-49745585-774b-4144-81ff-3486c5fadbe9) (last visited September 12, 2025) (“The
exact number of arrests is unclear, but footage shows agents detaining people
immediately after court appearances.”).

1 proceedings under 8 U.S.C. § 1225(b)(1) called “expedited removal,” where the
2 procedural protections and opportunities to pursue relief from removal built into
3 regular immigration-court proceedings do not apply.

4 8. Despite apprehending her at San Diego Immigration Court without
5 notice or due process, placing her at risk of being transferred away from the
6 Southern District of California while she remains in Respondents’ physical and
7 legal custody, Respondents now seek to keep Ms. N.A. detained without a
8 meaningful opportunity to seek a bond or custody redetermination hearing. *See* 8
9 U.S.C. § 1225. Respondents do so based not on Ms. N.A.’s personal circumstances
10 or individualized facts.

11 9. But Respondents cannot evade due process requirements so easily.
12 The U.S. Constitution requires the Respondents provide at least the rights available
13 to her when she filed her application for asylum.

14 10. The Constitution protects Ms. N.A.—and every other person present
15 in this country—from arbitrary deprivations of her liberty, and guarantees her due
16 process of law. The government’s power over immigration is broad, but as the
17 Supreme Court has declared, it “is subject to important constitutional limitations.”
18 *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). “Freedom from bodily restraint has
19 always been at the core of the liberty protected by the Due Process Clause from
20 arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

21 11. Ms. N.A. seeks declaratory and injunctive relief to compel her
22 immediate release from the immigration jail where she has been held by DHS since
23 being unlawfully detained on July 15, 2025, without first being provided a due
24 process hearing to determine whether her incarceration is justified.

25 12. Absent review in this Court, no other neutral adjudicator will examine
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Ms. N.A.'s plight: Respondents will continue—unchecked—to detain her unlawfully under 8 U.S.C. § 1225(b)(1), INA § 235(b)(1), without due process. Indeed, after passing a credible fear interview, Ms. N.A. appeared before the Otay Mesa Immigration Court within Otay Mesa Detention Center in San Diego, California. On September 9, 2025, an Immigration Judge at Otay Mesa Detention Center informed Respondent that she was likely not eligible for bond. Counsel for DHS confirmed that DHS, too, believed Respondent was likely not eligible for bond or release.

13. For the reasons outlined below, Ms. N.A.'s arrest and inability to contest her arbitrary detention violate her statutory and constitutional rights, including Due Process protections under the U.S. Constitution. Ms. N.A. respectfully requests that this Court should grant the instant petition for a writ of habeas corpus, without any bond requirement, and for declaratory and injunctive relief, to prevent such harms from recurring. Ms. N.A. also asks this Court to find that Respondents' attempts to detain, transfer, and deport her are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing her transfer out of this district.

JURISDICTION

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

15. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and 28 U.S.C. § 1346 (U.S. as defendant), and 28 U.S.C. § 1651 (All Writs Act).

16. Federal district courts have jurisdiction to hear habeas claims brought

1 by noncitizens challenging the lawfulness of their detention. *See Demore v. Kim*,
 2 538 U.S. 510, 516-17 (2003) (recognizing habeas jurisdiction over immigration
 3 detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 787 (2001) (same); *Y-Z-L-*
 4 *H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *3 (D. Or. July 9, 2025)
 5 (same); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at
 6 *7 (E.D. Cal. Aug. 21, 2025) (same).

7 17. This Court may grant relief under the habeas corpus statutes, 28
 8 U.S.C. § 2241, *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*,
 9 the All Writs Act, 28 U.S.C. § 1651, and the Court's inherent equitable powers.

10 VENUE

11 18. Venue is proper because Petitioner is in Respondents' legal and
 12 physical custody at Otay Mesa Detention Center in San Diego, California. Venue
 13 is further proper because a substantial part of the events or omissions giving rise to
 14 Petitioner's claims occurred in this District, where Petitioner is now in
 15 Respondents' legal and physical custody, including her current and ongoing
 16 detention under the legal and physical custody of Respondent LaRose, warden of
 17 Otay Mesa Detention Center. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S.
 18 426, 443 (2004) (habeas petition must be addressed to the federal district court of
 19 confinement); *Wairimu v. Dir., Dep't of Homeland Sec.*, No. 19-CV-174-BTM-
 20 MDD, 2019 WL 460561, at *2 (S.D. Cal. Feb. 5, 2019) (district of confinement is
 21 the preferable forum even if the Court otherwise has personal jurisdiction). For
 22 these same reasons, venue should be found proper under Local Civil Rule HC.1.

23 CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

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

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

9 21. Ms. N.A. is “in custody” for the purpose of 28 U.S.C. section 2241
10 because she was arrested by Respondents and remains in their legal and physical
11 custody at Otay Mesa Detention Center in San Diego, California. She is under
12 Respondents’ and their agents’ direct control.

13 PARTIES

14 22. Ms. N.A. (“Petitioner”) is a 33-year-old citizen of Iran. She arrived in
15 the U.S. on or about October 29, 2024, to seek asylum, withholding of removal, or
16 protection under the Convention Against Torture after fleeing persecution in Iran
17 which included physical beatings, kidnapping, and rape, including by Iranian
18 government forces, on account of her political opinions against the Iranian
19 government, beliefs, and particular social group membership. On July 15, 2025, at
20 a San Diego Immigration Court hearing, counsel for DHS moved to dismiss Ms.
21 N.A.’s immigration proceedings due to purported “changed circumstances.”
22 Without waiting for the Immigration Judge’s final order, and without due process,
23 Respondents’ masked agents waiting with a courthouse hallway immediately took
24 Ms. N.A. into their custody. Since the courthouse arrest on July 15, 2025, Ms. N.A.
25 has remained in Respondents’ custody.

1 23. Ms. N.A. is currently residing in Respondents' custody at Otay Mesa
2 Detention Center in San Diego, California, as of the time of the filing of this
3 petition.

4 24. Respondent Christopher LaRose ("LaRose") is the Senior Warden at
5 Otay Mesa Detention Center in San Diego, California, where Ms. N.A. is detained.
6 LaRose is responsible for the day-to-day operations and confinement of non-
7 citizens detained at that facility. He acts at the direction of Respondents Divver,
8 Lyons, and Noem. LaRose is a custodian of Ms. N.A. and is named in his official
9 capacity.

10 25. Respondent Patrick Divver ("Divver") is the Field Office Director of
11 ICE in San Diego, California. He acts at the direction of Respondents Lyons and
12 Noem. ICE is responsible for local custody decisions relating to non-citizens
13 charged with being removable from the U.S., including the arrest, detention,
14 custody status, and removal of non-citizens. The San Diego Field Office's area of
15 responsibility includes San Diego and Imperial Counties in California. Respondent
16 Divver is a custodian of Ms. N.A. and is named in his official capacity.

17 26. Respondent Todd Lyons ("Lyons") is the Acting Director of ICE, and
18 he has authority over the actions of Respondents LaRose and Divver. ICE is
19 responsible for local custody decisions relating to non-citizens charged with being
20 removable from the U.S., including the arrest, detention, custody status, and
21 removal of non-citizens. Respondent Lyons is a custodian of Ms. N.A. and is
22 named in his official capacity.

23 27. Respondent Kristi Noem ("Noem") is the Secretary of DHS and has
24 authority over the actions of all other DHS Respondents in this case, as well as all
25 operations and federal agencies of DHS, including ICE. In her capacity as
26

1 Secretary of DHS, Respondent Noem is charged with faithfully administering the
2 immigration and naturalization laws of the United States. 8 U.S.C. § 1103(a).

3 Respondent Noem is a custodian of Ms. N.A. and is named in her official capacity.

4 28. Respondent ICE is responsible for local custody decisions relating to
5 non-citizens charged with being removable from the U.S., including the arrest,
6 detention, custody status, and removal of non-citizens.

7 29. Respondent DHS is the federal agency that has authority over the
8 actions of ICE and all other DHS Respondents.

9 30. This action is commenced against Respondents LaRose, Divver,
10 Lyons, and Noem (collectively, “Respondents”) all in their official capacities.

11 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

12 31. Petitioner has no administrative remedies to exhaust.

13 32. After Respondents’ courthouse arrest of Ms. N.A., the San Diego
14 Immigration Court dismissed Ms. N.A.’s removal proceedings. Respondents
15 thereafter conducted a credible fear interview (“CFI”) of Ms. N.A. and determined
16 that she had a credible fear of return to Iran based on past persecution by Iranian
17 government forces because of her political opinions against the Iranian
18 government. Ms. N.A. then received a new NTA which was filed before the Otay
19 Mesa Immigration Court to re-initiate her INA section 240 immigration
20 proceedings while she remains detained at Otay Mesa Detention Center.

21 33. On September 8, 2025, during her first master calendar hearing in
22 detention since her courthouse arrest, the Otay Mesa Immigration Court and
23 counsel for DHS confirmed that it was unlikely Ms. N.A. would be released on
24 bond because of the holding in Matter of M-S-, 27 I&N 509 (2019). As such, Ms.
25 N.A.’s continued unlawful detention in Respondents’ custody cannot be challenged
26

1 by way of bond proceedings before an Immigration Judge. Ms. N.A. is also
2 challenging the unlawfulness of Respondents' decision to detain her, independent
3 of any decision made by any Immigration Judge in removal proceedings.

4 34. Therefore, a writ of habeas corpus is the sole avenue to vindicate Ms.
5 N.A.'s constitutional, statutory, and regulatory rights and restore her liberty.

6 **LEGAL FRAMEWORK**

7 35. The Refugee Act of 1980, the cornerstone of the U.S. asylum system,
8 provides a right to apply for asylum to individuals seeking safe haven in the United
9 States. The purpose of the Refugee Act is to enforce the "historic policy of the
10 United States to respond to the urgent needs of persons subject to persecution in
11 their homelands." Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102
12 (1980).

13 36. The "motivation for the enactment of the Refugee Act" was the
14 United Nations Protocol Relating to the Status of Refugees, "to which the United
15 States had been bound since 1968." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424,
16 432-33 (1987). The Refugee Act reflects a legislative purpose "to give 'statutory
17 meaning to our national commitment to human rights and humanitarian concerns.'"
18 *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

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

22 38. The INA gives the Attorney General or the Secretary of Homeland
23 Security discretion to grant asylum to noncitizens who satisfy the definition of
24 "refugee." Under that definition, individuals generally are eligible for asylum if
25 they have experienced past persecution or have a well-founded fear of future
26

1 persecution on account of race, religion, nationality, membership in a particular
2 social group, or political opinions and if they are unable or unwilling to return to
3 and avail themselves of the protection of their homeland because of that
4 persecution of fear. 8 U.S.C. § 1101(a)(42)(A).

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

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

15 41. Noncitizens seeking asylum are guaranteed Due Process under the
16 Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306
17 (1993).

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

24 43. In 1996, Congress created “expedited removal” as a truncated method
25 for rapidly removing certain noncitizens from the United States with very few
26

1 procedural protections. Illegal Immigration Reform and Immigrant Responsibility
2 Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-
3 546, 3009–582 to 3009–583, 3009–585; *see* 8 U.S.C. § 1225(b)(1). Because there
4 are few procedural protections, expedited removal applies narrowly to only those
5 noncitizens who are inadmissible to the United States because they engaged in
6 fraud or misrepresentation to procure admission or other immigration benefits, 8
7 U.S.C. § 1182(a)(6)(C), or who are applicants for admission without required
8 documentation, 8 U.S.C. § 1182(a)(7). No other person may be subjected to
9 expedited removal. 8 C.F.R. § 235.3(b)(1), (b)(3).

10 44. Noncitizens subjected to expedited removal are ordered removed by
11 an immigration officer “without further hearing or review.” 8 U.S.C. §
12 1225(b)(1)(A)(i). That officer must determine whether the individual has been
13 continuously present in the United States for less than two years; is a noncitizen;
14 and is inadmissible because he or she has engaged in certain kinds of fraud or lacks
15 valid entry documents “at the time of . . . application for admission.” *See* 8 U.S.C.
16 § 1225(b)(1)(A)(i), (iii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)).

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

22 46. Thus, a low-level DHS officer can order the removal of an individual
23 who has been living in the United States with virtually no administrative process—
24 just completion of cursory paperwork—based only on the officer’s own
25 conclusions that the individual has not been admitted or paroled, that the individual
26

1 has not adequately shown the requisite continuous physical presence, and that the
2 individual is inadmissible on one of the two specified grounds. *See* 8 U.S.C. §§
3 1225(b)(1)-(b)(2).

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

6 48. Asylum is not an admission to the United States and an applicant for
7 asylum, while they must be physically present in the United States to apply, need
8 not apply for or seek admission to the United States. *Matter of V-X-*, 26 I&N Dec.
9 147 (BIA 2013).

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

15 50. An expedited removal order comes with significant consequences
16 beyond removal itself. Noncitizens who are issued expedited removal orders are
17 subject to a five-year bar on admission to the United States unless they qualify for
18 a discretionary waiver. 8 U.S.C. § 1182(a)(9)(A)(i); 8 C.F.R. § 212.2. Similarly,
19 noncitizens issued expedited removal orders after having been found inadmissible
20 based on misrepresentation are subject to a lifetime bar on admission to the United
21 States unless they are granted a discretionary exception or waiver. 8 U.S.C. §
22 1182(a)(6)(C).

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

6 52. Moreover, following enactment of the IIRIRA, EOIR drafted
7 regulations explaining that, in general, non-citizens who entered the country
8 without inspection were not considered detained under 8 U.S.C. § 1225 or
9 automatically subject to expedited removal. *See* Inspection and Expedited
10 Removal of Aliens, Detention and Removal of Aliens, Conduct of Removal
11 Proceedings, Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
12 Rather, such non-citizens were instead detained under § 1226(a). *See id.*

13 53. Thus, in the decades that followed, most people who entered without
14 inspection—unless they were subject to some other detention authority—received
15 bond hearings. That practice was consistent with many more decades of prior
16 practice, in which noncitizens who were not deemed “arriving” were entitled to a
17 custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
18 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a)
19 simply “restates” the detention authority previously found at § 1252(a)).

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

24 55. On January 20, 2025, President Donald Trump issued several
25 executive actions relating to immigration, including “Protecting the American
26

1 People Against Invasion,” an executive order (EO) setting out a series of interior
2 immigration enforcement actions. The Trump administration, through this and
3 other actions, has outlined sweeping, executive branch-led changes to immigration
4 enforcement policy, establishing a formal framework for mass deportation. The
5 “Protecting the American People Against Invasion” EO instructs the DHS
6 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to
7 prioritize civil immigration enforcement procedures including through the use of
8 mass detention.

9 56. On January 21, 2025, Acting Deputy Secretary of DHS Benjamin
10 Huffman issued for public inspection and effective immediately a designation
11 expanding the scope of expedited removal to apply nationwide and to certain
12 noncitizens who are unable to prove they have been in the country continuously for
13 two years. On January 24, 2025, DHS published a Notice that expanded the
14 application of expedited removal. Office of the Secretary, Dep’t of Homeland
15 Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139 (“January
16 2025 Designation”). The designation was “effective on” January 21, 2025.

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

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

23 59. On information and belief, Ms. N.A. avers that Respondents
24 concealed the basis for dismissal from the immigration court and Ms. N.A. because
25 the purpose was to divest her of her due process rights in her properly filed asylum
26

1 application.

2 60. On information and belief, Respondents did not afford Petitioner due
3 process before revoking her release from custody, depriving her of her liberty
4 interest, and placing her in detention within Respondents' legal and physical
5 custody.

6 61. 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 **FACTUAL BACKGROUND**

10 62. Ms. N.A. is a thirty-three year old citizen of Iran.

11 63. Ms. N.A. fled Iran after she suffered physical violence, kidnapping,
12 rape, and death threats, including persecution and attempted kidnapping by Iranian
13 government forces, on account of her political opinion, beliefs, and particular
14 social group membership.

15 64. Based on persecution by Iranian government forces, Ms. N.A.
16 suffered severe physical and emotional distress, including losing consciousness
17 from physical beatings, pain and injury resulting from sexual violence, and
18 psychological distress in the form of depression and post-traumatic stress disorder
19 ("PTSD"). She continues to suffer from depression and PTSD. Her sudden
20 apprehension by Respondents' masked agents, and ongoing detention at Otay Mesa
21 Detention Center in San Diego, California, will very likely exacerbate her
22 symptoms.

23 65. On or about October 29, 2024, while suffering an acute medical
24 emergency, Petitioner entered the United States to seek asylum, withholding of
25 removal, and protection under the Convention Against Torture due to the
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1 persecution she suffered in Iran, including persecution by Iranian government
2 forces, and her fear of removal to a third-country outside of the U.S.³ Upon entry,
3 DHS issued to Ms. N.A. an NTA and an Order of Release on Recognizance (Form
4 I-220A) in accordance with section 236 of the Immigration and Nationality Act.
5 Ms. NA was quickly taken to the emergency department of a medical center in
6 Southern California to receive medical treatment for an acute medical emergency.

7 66. Respondents' NTA dated October 29, 2024, charged Ms. N.A. with
8 removal under INA 212 (a)(6)(A)(i) based on the individualized facts in her case
9 and released her from custody pursuant to the same statute.

10 67. On or about October 29, 2024, Respondents commenced removal
11 proceedings against Petitioner under 8 U.S.C. § 1229a in San Diego.

12 68. Respondents alleged she was inadmissible to the United States under
13 8 U.S.C. § 1182(a)(7)(A)(i)(I) and commanded her to appear for a hearing on
14 December 2, 2024, in the immigration court in San Diego, California.

15 69. On January 29, 2025, Petitioner filed her Form I-589 asylum
16 application before the San Diego Immigration Court.

17
18 ³ See U.S. Department of State, *2024 Country Reports on Human Rights Practices:*
19 *Iran*, (Aug. 12, 2025), [https://www.state.gov/reports/2024-country-reports-on-](https://www.state.gov/reports/2024-country-reports-on-human-rights-practices/iran/)
20 [human-rights-practices/iran/](https://www.state.gov/reports/2024-country-reports-on-human-rights-practices/iran/) (last visited Sept. 8, 2025) (“The government was
21 alleged to have killed or kidnapped persons and used violence and threats of
22 violence against individuals in other countries to force their return to Iran and for
23 other purposes of politically motivated reprisal.”); *see also* United Nations Human
24 Rights Office of the High Commissioner, *Iran: Government continues systematic*
25 *repression and escalates surveillance to crush dissent in the aftermath of protests,*
26 *UN Fact-Finding Mission says*, (Mar. 14, 2025), [https://www.ohchr.org/en/press-](https://www.ohchr.org/en/press-releases/2025/03/iran-government-continues-systematic-repression-and-escalates-surveillance)
[releases/2025/03/iran-government-continues-systematic-repression-and-escalates-](https://www.ohchr.org/en/press-releases/2025/03/iran-government-continues-systematic-repression-and-escalates-surveillance)
[surveillance](https://www.ohchr.org/en/press-releases/2025/03/iran-government-continues-systematic-repression-and-escalates-surveillance) (last visited Sept. 8, 2025) (discussing the continued persecution of
women protesters and Iran’s digital surveillance “extending its repression beyond
Iran’s borders to silence human rights defenders...”).

1 70. On February 7, 2025, the San Diego Immigration Court Judge in
2 Petitioner's 240 proceedings ordered that Petitioner's asylum application was
3 incomplete.

4 71. On February 25, 2025, the San Diego Immigration Court rescheduled
5 Petitioner's next master calendar hearing to April 24, 2025. After the hearing, ICE
6 officers instructed Ms. N.A. to attend her next in-person ICE check-in on the same
7 day as her next hearing at San Diego Immigration Court.

8 72. On March 7, 2025, Petitioner re-filed her Asylum Application (Form
9 I-589), declaration, and multiple pieces of additional evidence before the San
10 Diego Immigration Court.

11 73. On or about March 25, 2025, the San Diego Immigration Court
12 rescheduled Petitioner's next master calendar hearing from April 24, 2025, to July
13 15, 2025.

14 74. On July 15, 2025, Petitioner appeared in person for her immigration
15 court hearing at San Diego Immigration Court. However, instead of allowing her to
16 proceed with her asylum application, Respondents' moved to dismiss her case
17 entirely and the immigration court subsequently dismissed Ms. N.A.'s INA section
18 240 immigration proceedings. On information and belief, Respondents did not
19 advise Petitioner prior to July 15, 2025, that they sought to terminate her case to
20 place her in expedited removal proceedings. Petitioner and her counsel verbally
21 opposed Respondents' oral motion to dismiss, and later submitted written
22 objections. The San Diego Immigration Court set Ms. N.A.'s next master calendar
23 hearing for August 18, 2025.

24 75. After exiting the courtroom and while in the courtroom lobby, several
25 masked ICE agents arrested Ms. N.A. on July 15, 2025.

Procedural Due Process, U.S. Const. Amend. V.

82. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

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 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.*

86. 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).

87. Expedited removal, in contrast, severely limits the availability of such rights. Interviews occur on an exceedingly fast timeline; review of a negative

1 interview decision by an immigration judge must occur within seven days of the
2 decision. *See* 8 C.F.R. § 1003.42.

3 88. While there is a right to “consult” with an attorney or another person
4 about the credible fear interview process, *see* 8 U.S.C. § 1225(b)(1)(B)(iv) and 8
5 C.F.R. §§ 208.30(d)(4), 235.3(b)(4)(i)(B), (ii), the consultation “shall not
6 unreasonably delay the process.” The consultant may be “present” during the
7 interview but may only make a “statement” at the end of the interview if permitted
8 by the asylum officer. 8 C.F.R. § 208.30(d)(4). The immigrant subject to expedited
9 removal may present evidence “if available”, *id.*—often an impossibility given the
10 fast timeline and the default of detention during the process. *See generally* Heidi
11 Altman, et. al., *Seeking Safety from Darkness: Recommendations to the Biden*
12 *Administration to Safeguard Asylum Rights in CBP Custody*, National Immigration
13 Law Center, (Nov. 21, 2024), [https://www.nilc.org/resources/seeking-safety-from-](https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-administration-to-safeguard-asylum-rights-in-cbp-custody/)
14 [darkness-recommendations-to-the-biden-administration-to-safeguard-asylum-](https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-administration-to-safeguard-asylum-rights-in-cbp-custody/)
15 [rights-in-cbp-custody/](https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-administration-to-safeguard-asylum-rights-in-cbp-custody/) (last visited Sept. 13, 2025) (describing the obstruction of
16 access to counsel for people undergoing credible fear screenings in Customs and
17 Border Protection custody).

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

25 90. In sum, applying for asylum in removal proceedings comes with a
26

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

6 91. Moreover, Ms. N.A. has a vital liberty interest in remaining free from
7 DHS custody. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921,
8 at *4 (N.D. Cal. July 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025
9 WL 1676854 (N.D. Cal. June 14, 2025) (explaining that a non-citizen that ICE
10 released from custody after initial apprehension “has a substantial private interest
11 in remaining out of custody” which includes an interest in “...obtaining necessary
12 medical care, [and] maintaining her relationships in the community...”)). While on
13 release from DHS custody, Ms. N.A. was building her emotional support system
14 and obtaining critical medical treatment for the physical and emotional trauma she
15 suffered in Iran on account of persecution by Iranian government forces.

16 92. Even if the initial decision to release a non-citizen on from DHS
17 custody is discretionary, “...after that individual is released from custody she has a
18 protected liberty interest in remaining out of custody.” *Garcia v. Andrews*, No.
19 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *7 (E.D. Cal. Aug. 21, 2025)
20 (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3
21 (N.D. Cal. July 24, 2025)).

22 93. Here, Ms. N.A. was not advised by DHS that they sought to terminate
23 her proceedings in order to place her in expedited removal, depriving her of her
24 liberty interest and the bundle of rights associated with her original pending
25 asylum application in violation of due process. *See generally Mathews v. Eldridge*,
26

1 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before
2 deprivation of a legally protected interest). Nor has the government identified any
3 materially changed circumstances that would warrant detaining Ms. N.A. after she
4 submitted her Asylum Application (Form I-589), declaration, and corroborating
5 evidence to the immigration Court.
6

7
8 **COUNT TWO**

9 **Violation of Fifth Amendment Right to Due Process -**
10 **Illegal Retroactive Application of Expedited Removal Designation, U.S. Const.**
11 **Amend. V.**

12 94. Petitioner restates, realleges, and incorporates by reference each and
13 every allegation in the paragraphs above as if fully set forth herein.

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

19 96. Applying the January 2025 expedited removal designation to
20 Petitioner’s October 2024 entry to the United States to seek asylum would attach
21 new legal consequences including the loss of significant rights related to her right
22 to seek asylum, particularly because DHS immediately placed Ms. N.A. into INA
23 section 240 proceedings in lieu of expedited removal proceedings. *See* Designating
24 Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025)
(expanding the expedited removal designation).

25 97. The January 2025 designation does not unmistakably apply to
26

1 individuals who entered the United States prior to its effective date and were
2 already in INA section 240 proceedings. The designation's language thus does not
3 "require that it be applied retroactively." *See INS v. St Cyr*, 533 U.S. 289, 291
4 (2001).

5 98. Nor does the statutory language that the designation purports to derive
6 from, 8 U.S.C. § 1225(b)(1)(A)(iii), include any language indicating Congressional
7 intent to allow retroactive effect. *See INS v. St. Cyr*, 533 U.S. 289, 316-17 (2001)
8 (quoting *Lindh v. Murphy*, 521 U.S. 320, 328, n.4 (1997) (requiring statutory
9 language to be "so clear that it could sustain only one interpretation").

10 99. Accordingly, Respondents unlawfully subjected Ms. N.A. to
11 expedited removal.

12 **COUNT THREE**

13 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in** 14 **Accordance with Law and in Excess of Statutory Authority Violation of 8** 15 **C.F.R. § 239.2(c)**

16 100. Petitioner restates, realleges, and incorporates by reference each and
17 every allegation in the paragraphs above as if fully set forth herein.

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

22 102. Once a removal proceeding has been initiated, regulations enumerate
23 the reasons for which proceedings may be dismissed at 8 C.F.R. § 239.2(a). In
24 considering a motion to dismiss, the Immigration Judge must make "an informed
25 adjudication . . . based on an evaluation of the factors underlying the [DHS]
26

1 motion.” Matter of G-N-C-, 22 I&N Dec. 281, 284 (BIA 1998).

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

4 104. It is a well-established administrative principle that “agency action
5 taken without lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v.*
6 *Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*,
7 796 F.3d 67, 79 (D.C. Cir. 2015); *see also Hooks v. Kitsap Tenant Support Servs.,*
8 *Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was
9 taken by unauthorized official).

10 105. Under the APA, an agency must provide “reasoned explanation for its
11 action” and “may not depart from a prior policy sub silentio or simply disregard
12 rules that are still on the books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S.
13 502, 515 (2009). At the time of her courthouse arrest, Ms. N.A. had been released
14 from DHS custody for over seven months. On information and belief, Respondents
15 requested dismissal of Ms. N.A.’s removal proceedings because of their intent to
16 eliminate the due process rights available to her in removal proceedings under
17 section 240 of the INA, deprive her of her liberty interest despite no evidence of
18 material changed circumstances, or for some other purposes not supported by law.
19 *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal.
20 July 24, 2025) (“Detention for its own sake, to meet an administrative quota, or
21 because the government has not yet established constitutionally required pre-
22 detention procedures is not a legitimate government interest.”).

23 106. In deciding to detain Ms. N.A., Respondents further violated the APA
24 by “entirely fail[ing] to consider an important aspect of the problem” – namely, the
25 important procedural rights that Petitioner relied on in § 1229a immigration court
26

1 proceedings. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto.*
2 *Ins. Co.*, 463 U.S. 29, 43 (1983); *see also Dep't of Homeland Sec. v. Regents of the*
3 *Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding that rescission of
4 immigration policy without considering “particular reliance interests” is arbitrary
5 and capricious in violation of the APA).

6 107. The arbitrary and capricious courthouse arrest of Ms. N.A., despite
7 her valid release from DHS custody, was not made in furtherance of an enumerated
8 reason set forth in the regulations and causes Ms. N. A. irreparable harm. For these
9 reasons, the Court should find that the decision to detain Ms. N.A. is arbitrary,
10 capricious, and unsupported by substantial evidence. *See* 5 U.S.C. § 706(2)(A),
11 (E).

12 **COUNT FOUR**

13 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in** 14 **Accordance with Law and in Excess of Statutory Authority, Unlawful** 15 **Detention**

16 108. Petitioner restates, realleges, and incorporates by reference each and
17 every allegation in the paragraphs above as if fully set forth herein.

18 109. Under the APA, a court shall “hold unlawful and set aside agency
19 action...” that is “...(A) arbitrary, capricious, an abuse of discretion, or otherwise
20 not in accordance with law; (B) contrary to constitutional right, power, privilege,
21 or immunity...” 5 U.S.C. § 706(2)(A)-(B).

22 110. An action is an abuse of discretion if the agency “entirely failed to
23 consider an important aspect of the problem, offered an explanation for its decision
24 that runs counter to the evidence before the agency, or is so implausible that it
25 could not be ascribed to a difference in view or the product of agency expertise.”
26

1 *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007)
2 (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
3 463 U.S. 29, 43 (1983)).

4 111. To survive an APA challenge, the agency must articulate “a
5 satisfactory explanation” for its action, “including a rational connection between
6 the facts found and the choice made.” *Dep't of Com. v. New York*, 588 U.S. 752,
7 773 (2019) (citation omitted).

8 112. The INA provides that Respondents may, as they did in 2024 in
9 Petitioner's case, release an individual from apprehension or custody based on an
10 individualized determination of their danger and flight risk. *See* 8 U.S.C. §
11 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA
12 2006). After such a release decision is made, a revocation of the custody
13 determination may be made only when warranted by an individual's specific facts
14 and circumstances. 8 U.S.C. § 1226(b); 8 C.F.R. § 1236.1(c)(9).

15 113. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9,
16 2025) issued less than a week before Ms. N.A.'s arrest on July 15, 2025, the Court
17 explained the process of discretionary release from custody in immigration cases
18 and noted that before revoking the release, the non-citizen must be given written
19 notice of the impending revocation, which must include a cogent description of the
20 reasons. Under the APA, non-citizens are entitled to determinations related to their
21 release revocations that are not arbitrary, capricious or an abuse of discretion. *See*
22 *id.* at *10.

23 114. By categorically revoking Ms. N.A.'s release from DHS custody, and
24 detaining her without notice or consideration of her individualized facts and
25 circumstances, Respondents have violated the INA, implementing regulations, and
26

1 the APA.

2 115. Respondents have made no finding that Petitioner is a danger to the
3 community.

4 116. Respondents have made no finding that Petitioner is a flight risk
5 because, in fact, she was arrested while appearing at her immigration proceedings.

6 117. On information and belief, by detaining Ms. N.A. categorically and
7 without notice, Respondents have further abused their discretion because, since the
8 agency made its initial custody determination, on information and belief, there
9 have been no changes to Ms. N.A.'s specific facts or circumstances that support
10 the revocation of her release from custody on her own recognizance.

11 118. Respondents have already considered Ms. N.A.'s facts and
12 circumstances and determined that she was not a flight risk or danger to the
13 community. On information and belief, there have been no changes to the facts of
14 Ms. N.A.'s proceedings that justify this revocation of her release from DHS
15 custody. The fact that Ms. N.A. has previously been granted release by
16 Respondents under the same facts and circumstances shows that Respondents do
17 not consider Ms. N.A., on an individualized basis, to be a danger to the community
18 or a flight risk.

19 **COUNT FIVE**

20 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in**
21 **Accordance with Law and in Excess of Statutory Authority, Violation of 8**
22 **U.S.C. § 1225(b)**

23 119. Petitioner restates, realleges, and incorporates by reference each and
24 every allegation in the paragraphs above as if fully set forth herein.

25 120. Under the APA, a court shall “hold unlawful and set aside agency
26

1 action...” that is “...(A) arbitrary, capricious, an abuse of discretion, or otherwise
2 not in accordance with law; (B) contrary to constitutional right, power, privilege,
3 or immunity...” 5 U.S.C. § 706(2)(A)-(B).

4 121. Congress has made it clear that the expedited removal statute does not
5 apply and may not be applied to individuals who were “paroled” into the United
6 States. 8 U.S.C. § 1225(b). It further applies to the non-citizens seeking admission.
7 *Id.* § 1225(b)(2).

8 122. Ms. N.A. is not amenable to, nor may she be subjected to, expedited
9 removal because she was immediately placed into INA section 240 proceedings
10 upon encountering DHS officers in 2024, and not into expedited removal
11 proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II), 1225(b)(2); *see also* 8 C.F.R.
12 253.3(b)(6) (requiring “reasonable opportunity” to explain a non-citizen’s status).

13 123. Because Ms. N.A. is not subject to the January 2025 Designation,
14 Respondents’ use of the January 2025 designation to detain her while her INA
15 section 240 proceedings were ongoing is unlawful arbitrary, capricious, and
16 unlawful.

17 **COUNT SIX**

18 **Violation of the Fourth Amendment of the Constitution**

19 124. Petitioner restates, realleges, and incorporates by reference each and
20 every allegation in the paragraphs above as if fully set forth herein.

21 125. The Fourth Amendment protects “[t]he right of the people to be
22 secure in their persons . . . against unreasonable searches and seizures.” U.S.
23 Const. amend. IV. The Supreme Court has recognized that immigration arrests and
24 detentions are “seizures” within the meaning of the Fourth Amendment. *INS v.*
25 *Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that deportation
26

1 proceedings are civil, but the Fourth Amendment still applies to the “seizure” of
2 the person).

3 126. The Fourth Amendment requires that arrests entail a neutral, judicial
4 determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975).
5 That neutral, judicial determination can occur either before the arrest, in the form
6 of a warrant, or promptly afterward, in the form of a prompt judicial probable
7 cause determination. *See id.* Arrest and detention of a person, including of a
8 noncitizen, absent a neutral judicial determination of probable cause violates the
9 Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v.*
10 *McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48
11 hours of detention, which includes weekends, unless there is a bona fide
12 emergency or other extraordinary circumstances. *See Cnty. of Riverside v.*
13 *McLaughlin*, 500 U.S. 44, 57 (1991).

14 127. Congress enacted a strong preference that immigration arrests be
15 based on warrants. *See Arizona v. United States*, 567 U.S. 387, 407–08 (2012). The
16 Immigration and Nationality Act thus provides immigration officers with only
17 limited authority to conduct warrantless arrests. 8 U.S.C. § 1357(a)(2). Federal
18 regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. §
19 287.8(c)(2)(ii).

20 128. Ms. N.A., at the moment of the courthouse arrest by Respondents, was
21 lawfully present based on Respondents’ prior grant of release from DHS custody.
22 She did not receive any judicial determination of probable cause for her arrest or
23 continued detention by Respondents.

24 129. The Government cannot salvage this seizure by invoking generalized
25 immigration enforcement interests. The Fourth Amendment’s reasonableness
26

1 inquiry is fact-specific and demands individualized justification for both the arrest
2 and the extended detention. *See United States v. Brignoni-Ponce*, 422 U.S. 873,
3 882–84 (1975); *Gerstein*, 420 U.S. at 114. Ms. N.A. was granted release from DHS
4 custody in 2024 and did not pose any danger to any person in the community at
5 large.

6 130. Respondents’ warrantless courthouse arrest of Ms. N.A. constitutes an
7 unreasonable and unlawful seizure in violation of the Fourth Amendment.

8 **COUNT SEVEN**

9 **Violation of Fifth Amendment Right to Due Process – Procedural Due**
10 **Process, U.S. Const. Amend. V.**

11 131. Petitioner restates, realleges, and incorporates by reference each and
12 every allegation in the paragraphs above as if fully set forth herein.

13 132. The government may not deprive a person of life, liberty, or property
14 without due process of law. U.S. Const. amend. V. “Freedom from
15 imprisonment—from government custody, detention, or other forms of physical
16 restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v.*
17 *Davis*, 533 U.S. 678, 690 (2001).

18 133. Ms. N.A. has a fundamental interest in liberty and being free from
19 official restraint.

20 134. The government’s detention of Petitioner without an notice or an
21 opportunity to be heard before detention violates her right to due process.

22 135. The government’s detention of Petitioner without a meaningful bond
23 and custody redetermination hearing to determine whether she is a flight risk or
24 danger to others violates his right to due process.

25 ///

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) Declare that refusal to allow Petitioner a meaningful bond and custody redetermination hearing violates the INA, APA, and Due Process;
- (6) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;
- (7) Issue an Order prohibiting the Respondents from transferring Petitioner from this district without the Court's approval;
- (8) Issue an Order requiring Respondents to provide a bond and custody redetermination hearing within 14 days to meaningfully consider her eligibility for release from DHS custody;
- (9) Award Petitioner's counsel reasonable attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law;
- (10) Grant such further relief as the Court deems just, equitable, and appropriate; and
- (11) Grant any and all other further relief this Court deems just or proper.

///

1 Dated: September 13, 2025 Respectfully Submitted,

2
3 /s/ Mihret Getabicha

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