UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A.S.F. Petitioner, v. Bryan Flanagan, Asst. Field Office Director of U.S. Immigration and Customs Enforcement; Kenneth Genalo, New York City Field Office Director, Immigration and Customs Enforcement, Todd Lyons, Acting Director U.S. Immigrations and Customs Enforcement, Kristi Noem, U.S. Secretary of Homeland Security, Pamela Bondi, Attorney General of the United States in their official capacities, Respondents.	Case No: 25-cv-5768 **PETITION FOR WRIT OF HABEAS CORPUS** **ORAL ARGUMENT REQUESTED** **Expedited Hearing Requested**

INTRODUCTION

1. Petitioner Mr. A. S. F.[1] (hereinafter "Mr. F"), an asylum seeker from Afghanistan who has resided in the United States for more than three years, was arrested by Immigration and Customs Enforcement ("ICE") hours after passing a credible fear interview, and is currently in the physical custody of Respondents at the ICE holding facility at Central Islip, New York.

[1] For security reasons and privacy reasons related to Mr. F.'s claim for asylum, he will be referred to only by initials. Motion for leave to proceed under pseudonym will be filed shortly; counsel is providing his name and information to counsel for the Respondents.

2. Mr. F. entered the United States without inspection in February, 2022, sought protection from U.S. immigration officers and was detained. ICE released Mr. F. on or about February 23, 2022, with parole valid for one year. Mr. F. was not issued a Notice to Appear in removal proceedings under 8 U.S.C. § 1229a at that time, nor was he referred for a credible fear interview under 8 U.S.C. § 1225. While still in valid parole status, Mr. F. applied for asylum before United States Citizenship and Immigration Services (USCIS) on December 22, 2022. After Mr. F. had been waiting for an interview on his affirmative asylum application for over two and a half years, the Asylum Office abruptly summoned him to a credible fear interview under under 8 U.S.C. § 1225, rather than an affirmative asylum interview. On Oct. 14, 2025, Mr. F. attended and passed that interview, at which point, Respondents arbitrarily re-detained him and told his counsel that detention was not discretionary. At the same time, however, Respondents produced an administrative warrant stating that they were arresting Mr. F. under their authority pursuant to 8 U.S.C. § 1226. The same day, Respondents commenced removal proceedings against Petitioner in immigration court under 8 U.S.C. § 1229a by issuing a NTA.

3. Mr. F. now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

4. Having now passed a Credible Fear Interview, Petitioner is charged with, inter alia, having entered the United States with being present in the United States without proper entry documents. *See* 8 U.S.C. § 1182(a)(7)(A)(i)(I).

5. Based on statements Respondents' agents made at the time of Mr. F.'s arrest, on information and belief, Respondents appear to be taking the position that Mr. F. is being held pursuant to 8 U.S.C. § 1225(b) and therefore ineligible to be released on bond. Petitioner's

detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.

6. Accordingly, to vindicate Petitioner's statutory and constitutional rights, this Court should grant the instant petition for a writ of habeas corpus.

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).

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 Central Islip in New York, New York, which is within the jurisdiction of this District.

REQUIREMENTS OF 28 U.S.C. § 2243

11. 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).

12. 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).

PARTIES

13. Petitioner is a citizen of Afghanistan seeking asylum in the United States. Petitioner is currently detained at the Central Islip ICE holding facility. He is in the custody, and under the direct control, of Respondents and their agents.

14. Respondent Bryan Flanagan is the Assistant Field Office Director of the ICE ERO Field Office in Central Islip where, on information and belief, Mr. F. is detained and he has immediate physical custody of Mr. F. Respondent Flanagan is also a legal custodian of Petitioner. He is sued in his official capacity.

15. Respondent Kenneth Genalo is the New York City Field Office Director for Enforcement and Removal Operations, Immigration and Customs Enforcement, and as such has legal custody over Petitioner. He is sued in his official capacity.

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

17. 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.

18. 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.

STATEMENT OF FACTS

19. Petitioner, Mr. A.S.F., is a 31-year-old citizen of Afghanistan. [redacted] fled threats of death by the Taliban following the fall of Kabul. He has extensive family ties to the community, with both parents and numerous siblings having been already granted asylum. He has no criminal history. He has lived continuously in the United States since his arrival three and a half years ago.

20. Mr. F. crossed the U.S.-Mexico border to seek asylum on or about February 6, 2022 along with his parents and several siblings, including an adult brother. The Notices to Appear issued to Mr. F.'s family members on February 9, 2022, allege that they entered the United States on February 6, 2022 at Calexico, California. The family requested protection from the Border Patrol and were detained.

21. Mr. F.'s parents and several of his siblings were released soon after with Notices to Appear placing them in removal proceedings under 8 U.S.C . § 1229a. Mr. F. and his brother, hereinafter referred to as Mr. M.F., remained in detention.

22. On February 23, 2022, Mr. F. and his brother, Mr. M.F., were paroled and released from detention pursuant to 8 U.S.C. § 1182(d)(5)(A). Neither Mr. F. nor his brother were issued Notices to Appear under 8 U.S.C. § 1229a at that time, nor was either of them referred for a credible fear interview under section 1225. Mr. F.'s parole was valid for one year.

23. On Dec. 22, 2022, while in parole status, Mr. F. filed a Form I-589, Application for Asylum, affirmatively with USCIS. His brother affirmatively filed for asylum on the same day.

24. In December of 2024, Mr. M.F. received a Notice to Appear in "regular" removal proceedings under 8 U.S.C. § 1229a. Jurisdiction of Mr. M.F.'s Form I-589 therefore shifted to the Immigration Court. Mr. M.F. presented his asylum claim to an immigration judge on August 5, 2025 and was granted asylum.

25. Mr. F. did not receive a Notice to Appear and his affirmative asylum application remained pending before USCIS.

26. On August 8, 2025, a notice was issued to Mr. F to appear for a Credible Fear Interview on August 18, 2025. Mr. F. did not receive the notice for several days, and, through counsel, requested rescheduling of his Credible Fear Interview, as his counsel was not available at the stated time. On Oct. 2, 2025, Mr. F. received notice of a rescheduled Credible Fear Interview to be held on Oct. 14, 2025. Mr. F. received no notices or communications from either USCIS or the Immigration Court in the intervening weeks.

27. On October 14, 2025, Mr. F. appeared for the scheduled Credible Fear Interview with counsel. At the conclusion of the interview, he was asked to wait for the decision. Several hours later, Mr. F. and his counsel were informed that he had passed the Credible Fear Interview and was being issued a Notice to Appear. The Notice to Appear issued to Mr. F. on October 14,

2025 charges him with inadmissibility under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as "an immigrant who, at the time of application for admission is not in possession of a valid unexpired immigrant visa" or other entry document or a valid passport or other travel document. The Notice to Appear also alleges that he "is an alien present in the United States who has not been admitted or paroled."

28. Mr. F. was detained by Immigration and Customs Enforcement at the Asylum office in Bethpage, New York. At that time, Mr. F was served, through his counsel with a document titled "Warrant for Arrest of Alien," which cites to sections 236 and 287 of the Immigration and Nationality Act for the authority for Mr. F.'s arrest. He and his immigration counsel were told by the detaining officers that he was not eligible for bond and that the officers had no discretion to release him.

29. At approximately 8:30 p.m. on October 14, 2025, Mr. F. informed his counsel that he had been told that he would spend the night in the Central Islip holding facility.

LEGAL FRAMEWORK

30. The Immigration and Nationality Act prescribes three basic forms of detention for noncitizens in removal proceedings.

31. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge (IJ). *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

32. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

33. Last, the Act also provides for detention of noncitizens who have been previously ordered removed including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

34. This case concerns the detention provisions at §§ 1226(a) and 1225(b).

35. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025), in ways not relevant to Mr. F.'s case.

36. Following the enactment of the IIRIRA, the Executive Office of Immigration Review (EOIR) drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

37. Thus, in the decades that followed, most people who entered without inspection – unless they were subject to some other detention authority – received bond hearings. That practice was consistent with many more decades of prior practice in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer.

See 8 U.S.C. *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

38. Respondents' new policy turns this well-established understanding on its head and violates the statutory scheme.

39. Indeed, this legal theory that noncitizens who entered the United States without admission or parole are ineligible for bond hearings was already rejected by a District Court in the Western District of Washington, finding that such individuals are entitled to bond redetermination hearings before immigration judges, and rejecting the application of § 1225(b)(2) to such cases. *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *12 (W.D. Wash. Apr. 24, 2025). In the months since that decision, the overwhelming majority of courts who have looked at those issues have agreed. *See, e.g., Guerrero Orellana v. Moniz*, No. 25-cv-12664-PBS, 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv- 02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093- JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051

(ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

40. Despite these findings from Federal Courts, in July 2025, ICE released a memorandum instructing its attorneys to coordinate with the Department of Justice, the agency housing EOIR, to reject bond redetermination hearings for applicants who arrived in the United States without documents.

41. In September, 2025 the BIA published a decision confirming that EOIR is taking this same position that noncitizens who entered the United States without admission or parole are ineligible for immigration judge bond hearings. *See Matter of Yajure Hurtado*, 29 I&N Dec. 2016, 220 (BIA 2025).

42. This is now a widespread position applying across the United States.

43. This interpretation defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

44. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, which "decid[e] the inadmissibility or deportability of [a] [noncitizen]."

45. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

46. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).

47. Accordingly, the mandatory detention provision of § 1225(b) does not apply to people like Petitioner who are alleged to have entered the United States without admission or parole.

CLAIMS FOR RELIEF

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

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

62. 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; *accord Flores*, 507 U.S. at 306.

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

64. 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.

65. Here, Respondents have chosen to revoke Petitioner's release 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 has been made and no circumstances have changed to make Petitioner a flight risk or a danger to the community, Respondents' revocation of Petitioner's release violates his right to procedural due process.

COUNT TWO
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Abuse of Discretion
Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)

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

49. 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).

50. 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)).

51. 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).

52. By categorically revoking Mr. F.'s 2022 release on parole without consideration of his individualized facts and circumstances, Respondents have violated the APA.

53. By detaining Mr. F 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. To the contrary, since his release, Mr. F. has demonstrated at every opportunity that he is not a flight risk, establishing deep ties to the community, working to help support his family of asylees, filing affirmatively for asylum following his release and appearing for a Credible Fear Interview when summoned. Mr. F. also has more reason now than when he was released in 2022 to comply and appear: he has passed his Credible Fear Interview and now has an opportunity to pursue asylum before an immigration judge, as the rest of his family has successfully done before him. He has no criminal history to speak of and no indication that he poses a danger of any kind to the community.

54. Respondents have already considered Mr. F.'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. The fact that

Petitioner has already been granted release, and parole, by Respondents under less favorable facts and circumstances shows that Respondents to not consider him, on an individualized basis to be a danger to the community or a flight risk.

COUNT THREE
Violation of 8 U.S.C. § 1226(a) and Implementing Regulations

66. Mr. F was arrested on a warrant and is currently detained pending removal proceedings. Under the plain language of § 1226(a), Mr. F is eligible for release on bond. *See, e.g., Guerrero Orellana v. Moniz*, No. 25-cv-12664-PBS, 2025 WL 2809996 (D. Mass. Oct. 3, 2025).

67. However, it is a near certainty that the Respondents will deny Mr. F an individualized bond hearing under the Board of Immigration Appeals' recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) which provides that Immigration Judges lack authority to hear bond requests or to grant bond to noncitizens who are present in the United States without admission because such noncitizens are, according to the Board of Immigration Appeals, "applicants for admission" under § 1225(b).

68. However, Mr. F is not properly detained under § 1225(b). Rather, to the extent that any immigration statute permits his detention, it would be § 1226(a).

69. Accordingly, Mr. F is not subject to mandatory detention and, if this Court does not order his immediate release, this Court should order for the Respondents to provide him with an individualized bond hearing.

COUNT FOUR
Wrongful Use of Expedited Removal in Violation of Law and Court Injunction

70. Mr. F was detained following a credible fear interview. Pursuant to 8 U.S.C. § 1225(b)(1), credible fear interviews are conducted as part of the expedited removal process. Generally, when an immigration officer determines that a noncitizen described under § 1225(b)(1)(A)(i) is inadmissible under § 1182(a)(6)(C) or 1182(a)(7), the officer may order the noncitizen removed without a hearing unless the noncitizen indicates an intention to apply for asylum or a fear of persecution. In such case, the noncitizen is referred for a credible fear interview. § 1225(b)(1)(A)(ii).

71. When Mr. F entered the United States, he was not referred for a credible fear interview or indeed placed in expedited removal proceedings as far as he is aware; rather, he was released on parole and affirmatively applied for asylum with USCIS. More than three years later, DHS sent Mr. F a notice instructing him to appear for a credible fear interview, which was conducted on October 14, 2025. Such a credible fear interview could not have been conducted unless DHS determined that Mr. F was subject to expedited removal procedures. *See* § 1225(b)(1)(A)(ii). However, Mr. F is not properly subjected to expedited removal procedures.

72. DHS is currently enjoined from applying expanded expedited removal procedures to noncitizens such as Mr. F. pursuant to an injunction entered on August 25, 2025 by the D.C. District Court in *Make the Road New York v. Noem*, No. 25-cv-190 (JMC), 2025 WL 2494908 (D.D.C. Aug. 25, 2025). Prior to January 21, 2025, expedited removal was limited only to (1) "arriving aliens" (2) noncitizens who arrived by sea and have been present for fewer than two years; and (3) those apprehended within 100 miles of the border and 14 days of entry. *See id.* at *4.

73. When Mr. F entered the United States, he was apprehended; however, he was not placed into credible fear proceedings. Instead, he was paroled into the United States under §

1182(d)(5)(A). Subsequently, he applied for asylum affirmatively. However, over three years later, DHS placed him into expedited removal proceedings by issuing a notice for him to appear at a credible fear interview and then, once he passed this interview, by detaining him and placing him in removal proceedings. Simply put, the expedited removal procedures as they existed prior to January 21, 2025 do not apply to Mr. F.

74. On January 21, 2025, DHS issued a designation (the "2025 Designation") that authorized the agency "to exercise the full scope of its statutory authority" in utilizing expedited removal," which significantly expanded the use of expedited removal. *See id.*; Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025). Shortly thereafter, Acting Secretary of DHS Benjamine Huffman issued guidance regarding the implementation of this designation. *See id.*; Dep't of Homeland Sec., Memorandum from Acting Secretary Benjamine C. Huffman on Guidance Regarding How to Exercise Enforcement Discretion (Jan. 23, 2025). Insofar as expedited removal procedures that existed prior to January 21, 2025 clearly did not permit the application of expedited removal proceeding to Mr. F over three years following his entry into the United States, any authority, if it exists at all, for application of such procedures must be found in the 2025 Designation and the implementing Huffman guidance. However, on August 29, 2025, the D.C. District Court found that the 2025 Designation and Huffman memorandum fail to afford the individuals subject to provisions therein with a meaningful opportunity to be heard and, therefore, these provisions and guidance likely violate the Due Process Clause. *Make the Road*, 2025 WL 2494908, at *10. Accordingly, the district court stayed implantation of both the 2025 Designation and Huffman memorandum. *Id.* at *23. Such stay remains in place today.

75. Thus, the Respondents are enjoined from applying such action to Mr. F. Since it is clear that Mr. F could not have been subjected as of October 14, 2025 to expedited removal procedures as they existed prior to January 21, 2025, DHS could not have subjected Mr. F to expedited removal procedures, including the credible fear interview they used as a pretext for detaining Mr. F, without violating the injunction. Insofar as the expanded use of expanded expedited removal is presently enjoined, and the Petitioner could not be subject to expedited removal based on the law as it existed prior to January 21, 2025, the Respondents acts of applying those procedures to Mr. F and subsequently detaining him likely violates the district court's injunction and, moreover, violates the statute and Mr. F's right to due process

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests that this Court:

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 Mr. F.'s detention violates the Administrative Procedure Act, the Due Process Clause of the Fifth Amendment, and 8 U.S.C. § 1226(a).
4. Issue a Writ of Habeas Corpus ordering Respondents to release Mr. F. immediately or, in the alternative, to schedule a bond hearing before an immigration judge;
5. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
6. Grant any further relief this Court deems just and proper.

Dated: October 15, 2025

Respectfully submitted,

/s/ Inyoung Hwang
Inyoung Hwang
Bar No. IH 1527
HUMAN RIGHTS FIRST
121 W. 36th St., PMB 520
New York, NY 10018
(212) 845-5236
HwangS@humanrightsfirst.org

Attorney for Petitioner

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

I represent Petitioner, A.S.F., 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 _15_ day of _Oct._, 2025.

/s/ Caddie K. Nath-Folsom
Caddie K. Nath-Folsom