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7 UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

8 S.A.E.A. (adult), individually and as parent and
9 next friend to her minor children, A.A.E.A.
(adult child of S.A.E.A), C.I.C.E. (minor child
10 of S.A.E.A), and M.M.E.A. (minor child of
S.A.E.A)

11 Petitioners,

12 v.

13 Laura HERMOSILLO, Acting Field Office
14 Director of Enforcement and Removal
Operations, Seattle Field Office, Immigration
15 and Customs Enforcement; Kristi NOEM,
Secretary, U.S. Department of Homeland
16 Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; Pamela BONDI,
17 U.S. Attorney General; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW.

18 Respondents.
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Case No. 3:26-cv-00072-SLG

**MOTION TO PRESERVE HABEAS
JURISDICTION, ENFORCE
STATUTORY AUTOMATIC STAY,
AND RESTORE STATUS QUO ANTE**

1 **MOTION TO PRESERVE HABEAS JURISDICTION, ENFORCE STATUTORY**
2 **AUTOMATIC STAY, AND RESTORE STATUS QUO ANTE**

3 Petitioners respectfully move this Court for an order preserving its habeas jurisdiction
4 and restoring the status quo ante following Respondents' removal of Petitioners S.A.E.A.,
5 C.I.C.E., and M.M.E.A. from the United States while this habeas proceeding was pending. This
6 motion does not seek reconsideration of the Court's denial of Petitioners' emergency motion for
7 temporary restraining order. Rather, it addresses subsequent events — specifically, removal
8 conducted while this Court's jurisdiction was pending and while a statutory and regulatory
9 automatic stay of removal was in effect.

10 **CHRONOLOGY AND FACTUAL BACKGROUND**

11 Immigration and Customs Enforcement ("ICE") arrested Petitioners in Alaska on
12 February 17, 2026 and held them in immigration detention. Petition for Writ of Habeas Corpus,
13 Dkt. 1 ¶¶ 13–14. At the time of arrest, Petitioners were subject to *in absentia* removal orders
14 entered by Respondent EOIR on January 13, 2026. *Id.* at ¶ 22. Petitioners thereafter filed a
15 motion to reopen pursuant to INA § 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C), which, by
16 regulation, automatically stays removal pending adjudication. 8 C.F.R. § 1003.23(b)(4)(iii).

17 On February 17, 2026, while physically detained in Alaska, Petitioners filed the present
18 Petition for Writ of Habeas Corpus in this Court. Dkt. 1. The Petition challenged Respondents'
19 planned transfer of Petitioners outside Alaska on constitutional grounds, including interference
20 with retained counsel and access to the courts. *Id.* ¶¶ 1–4, 26–32. Jurisdiction therefore attached
21 while Petitioners were in custody within this District.

22 That same day, Petitioners sought emergency relief prohibiting transfer outside Alaska
23 and requesting release. Dkt. 3. The Court denied the temporary restraining order on February 17,
24

1 2026. Order on Emergency Motion for Temporary Restraining Order, Dkt. 5 at 1. The underlying
2 habeas action remained pending.

3 In the early morning hours of February 18, 2026 — while this habeas petition was
4 pending — S.A.E.A., C.I.C.E., and M.M.E.A. were placed into ICE contractor custody at
5 approximately 0002 hours Alaska Standard Time for transport out of Alaska. Declaration of
6 Bradley Hayes, Dkt. 10 ¶ 3. They departed Anchorage at approximately 0545 hours and were
7 physically deported to Mexico at approximately 1600 hours Pacific Standard Time on February
8 18, 2026. *Id.* ¶¶ 4–6. DHS has represented that those three Petitioners are no longer in the
9 custody of the United States. Notice of Removal and Disclosure, Dkt. 9 at 2; Hayes Decl., Dkt.
10 10 ¶ 6. Petitioner A.A.E.A., the adult child, was not transported with the rest of his family on
11 February 18, 2026 and instead remained at the Anchorage jail at that time. Hayes Decl., Dkt. 10 ¶
12 7. On February 20, 2026, he was booked out of the Anchorage jail for transfer to the Northwest
13 ICE Processing Center in Tacoma, Washington. *Id.* ¶¶ 8–9.

14 On February 19, 2026, this Court issued an Order requiring Respondents to disclose each
15 Petitioner’s location and the exact date and time of any removal from the United States. Order on
16 Notice of Transfer and Motion for Disclosure, Dkt. 7 at 1–2. The Court stated that the disclosure
17 was necessary to permit the Court to exercise its habeas jurisdiction. *Id.* at 2. Respondents filed
18 their Notice and the Declaration of Bradley Hayes on February 20, 2026 in response to that
19 Order. Dkts. 9, 10.

20 On February 18, 2026, at approximately 3:32 p.m. Pacific Standard Time — prior to the
21 Petitioners’ physical removal — undersigned counsel filed a motion to reopen removal
22 proceedings on behalf of all Petitioners in person by courier with EOIR at the clerk’s office of
23 the Portland, Oregon Immigration Court. *See* MercuryPDX delivery receipt, attached. That court
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1 has jurisdiction over the motion, as it entered the removal order on January 13, 2026. On
2 February 19, 2026, Ms. Lauren Hedge, paralegal for undersigned counsel, spoke with Mr. Isaac
3 Ross at the Portland Immigration Court by telephone and confirmed that the motion had been
4 delivered. *See Declaration by Lauren Hedge*, attached. This morning, at approximately 10:30
5 a.m. Pacific Standard Time, Ms. Hedge again spoke by telephone with Mr. Ross, who stated that
6 the motion was still being processed. *See Declaration by Lauren Hedge*, attached. The removal of
7 Petitioners S.A.E.A., C.I.C.E., and M.M.E.A. therefore occurred after this Court's jurisdiction
8 had attached and while both the habeas petition and the motion to reopen were pending.

9 **APPLICABLE LAW**

10 A federal district court has jurisdiction under 28 U.S.C. § 2241 to consider a habeas
11 petition filed by a person who is "in custody" at the time of filing. The Supreme Court has held
12 that the custody requirement is assessed as of the date the petition is filed and that subsequent
13 release does not divest the court of jurisdiction once it has attached. *Carafas v. LaVallee*, 391
14 U.S. 234 (1968) (holding that jurisdiction attached because the petitioner was in custody at filing
15 and was not defeated by his later release). If a petitioner is released or removed after filing, the
16 issue becomes mootness rather than jurisdiction. A case is moot when it is impossible for the
17 court to grant any effectual relief. *Spencer v. Kemna*, 523 U.S. 1 (1998) (explaining that the case-
18 or-controversy requirement demands a continuing injury redressable by the court).

19 In the immigration detention context, the Ninth Circuit has held that removal or release
20 may render a habeas petition moot where the petition challenges only detention and no further
21 relief can be granted. In *Abdala v. INS*, 488 F.3d 1061 (2007), the court held that a habeas
22 petition challenging the legality of detention pending removal became moot after the petitioner
23 was removed because he sought only release from custody and no collateral consequence
24

1 remained redressable by the court. Similarly, in *Picrin-Peron v. Rison*, 930 F.2d 773 (1991), the
2 court concluded that the petitioner's release from custody mooted a habeas challenge to detention
3 where the only injury alleged was confinement.

4 By contrast, removal does not necessarily moot a case if effective relief remains
5 available. See *Zegarra-Gomez v. INS*, 314 F.3d 1124, 1125 (9th Cir. 2003) (holding that "where
6 an alien habeas petitioner is deported after he files his petition, the fact of his deportation does
7 not render the habeas petition moot where there are collateral consequences arising from the
8 deportation that create concrete legal disadvantages.") More recently, in *Del Cid Marroquin v.*
9 *Lynch*, 823 F.3d 933 (9th Cir. 2016), the Ninth Circuit held that removal did not render the
10 petition moot where the petitioner challenged the validity of his removal order and effective
11 relief remained available. *Id.* at 935-36. The court explained that removal does not automatically
12 eliminate a live controversy if the court can still grant meaningful relief. *Id.* at 936.

13 Judicial review of certain immigration enforcement decisions is limited by 8 U.S.C. §
14 1252(g), which provides that "no court shall have jurisdiction to hear any cause or claim by or on
15 behalf of any [noncitizen] arising from the decision or action by the Attorney General to
16 commence proceedings, adjudicate cases, or execute removal orders against any [noncitizen]." The
17 United States Supreme Court has interpreted this provision narrowly as applying only to the
18 three discrete actions enumerated in the statute. *Reno v. American-Arab Anti-Discrimination*
19 *Committee*, 525 U.S. 471 (1999) (holding that section 1252(g) applies only to the decision to
20 commence proceedings, adjudicate cases, or execute removal orders, and does not cover all
21 claims related to deportation proceedings). The Ninth Circuit has applied 8 U.S.C. § 1252(g) to
22 bar review of certain challenges to execution of removal orders following denial of *discretionary*
23 stays. *Matias Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2022) (holding that section 1252(g)

1 barred jurisdiction over a habeas petition challenging execution of removal after the agency
2 denied a discretionary stay).

3 Additional decisions have reinforced that section 1252(g) only applies to discretionary
4 enforcement judgments and does not insulate conduct that is non-discretionary or undertaken
5 contrary to binding law. In *Arce v. United States*, 899 F.3d 796 (9th Cir. 2018) the Ninth Circuit
6 addressed a removal executed in violation of a judicial stay. While the case arose in a different
7 statutory posture, the court treated removal carried out in contravention of a stay as distinct from
8 a protected discretionary execution decision. The *Arce* decision reflects the principle that section
9 1252(g) does not shield conduct taken in defiance of binding legal constraints.

10 Separately, it is a longstanding principle that agencies are bound by their own regulations.
11 *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (holding that the Board of
12 Immigration Appeals was required to exercise its discretion independently in accordance with
13 governing regulations). As noted above, the Ninth Circuit has addressed removal executed in
14 violation of a judicial stay in the context of related statutory claims. *Arce v. United States*, 899
15 F.3d 796 (9th Cir. 2018) (addressing removal carried out in violation of a court-issued stay and
16 analyzing the jurisdictional consequences under the Federal Tort Claims Act).

17 Finally, the Supreme Court has recognized that removal during pending litigation does
18 not necessarily foreclose relief where return is feasible. *Nken v. Holder*, 556 U.S. 418 (2009)
19 (observing, in the context of stays of removal, that removal does not necessarily prevent a court
20 from granting relief, and that the government has represented that it can facilitate return if
21 necessary).

DISCUSSION

I. Jurisdiction Attached When The Habeas Petition Was Filed

Petitioners filed their Petition for Writ of Habeas Corpus while in physical custody in Alaska. The Petition challenged their transfer out of Alaska on constitutional grounds, including interference with the right to counsel and access to the courts. As discussed above, under long-settled precedent, habeas jurisdiction is determined at the time of filing. Once jurisdiction attaches, it is not defeated by subsequent executive action. *See Carafas v. LaVallee*, 391 U.S. 234 (1968). At the time of filing, Petitioners were detained in Alaska. Jurisdiction therefore vested in this Court.

II. The Court's February 19 Order Confirmed Its Concern With Preserving Habeas Jurisdiction

On February 19, 2026, the Court ordered Respondents to disclose Petitioners' physical locations, custodians, and the precise timing of any removal. The Court expressly stated that the Order was "limited to disclosure necessary to permit the Court to exercise its habeas jurisdiction." The declaration by SDDO Bradley Hayes, filed in response to that order, establishes that S.A.E.A., C.I.C.E., and M.M.E.A. were removed to Mexico on February 18, 2026 at approximately 1600 PST. Thus, removal occurred while this habeas action was pending before the Court.

III. Removal Occurred While a Statutory and Regulatory Automatic Stay Was In Effect

Prior to removal, Petitioners filed with Respondent EOIR a motion to reopen their *in absentia* removal orders pursuant to INA § 240(b)(5)(C)(i)–(ii), 8 U.S.C. § 1229a(b)(5)(C)(i)–(ii). That statute authorizes rescission of *in absentia* removal orders upon a showing of exceptional circumstances or lack of notice. The implementing regulation, 8 C.F.R. §

1 1003.23(b)(4)(iii), provides that the filing of such a motion automatically stays removal pending
2 adjudication. The stay is self-executing. It does not depend on discretionary action by the
3 Immigration Judge. The removal of S.A.E.A., C.I.C.E., and M.M.E.A., executed while the
4 aforementioned automatic stay was in effect was, therefore, action taken contrary to governing
5 law. Agencies are required to follow their own regulations. *See United States ex rel. Accardi v.*
6 *Shaughnessy*, 347 U.S. 260 (1954). Petitioners do not ask this Court to review a discretionary
7 enforcement decision. They seek enforcement of a statutory protection that was in force at the
8 time of their removal.

9 **IV. This Case Is Not Moot Because Effective Relief Remains Available**

10 A case becomes moot only when it is impossible for a court to grant any effectual relief.
11 *See Spencer v. Kemna*, 523 U.S. 1 (1998). The Ninth Circuit has recognized that removal does
12 not automatically render a case moot where facilitation of return remains possible. *See Del Cid*
13 *Marroquin v. Lynch*, 823 F.3d 933 (9th Cir. 2016). The return of Petitioners S.A.E.A., C.I.C.E.,
14 and M.M.E.A. to the United States would restore this Court's ability to adjudicate the habeas
15 claims as originally pleaded, reestablish Petitioners' meaningful access to their retained Alaska
16 counsel, and preserve proper adjudication of the pending motion to reopen before the
17 Immigration Court (EOIR). Absent their physical return to the United States, the core relief
18 originally sought in this action — preventing transfer that severs counsel access and ensuring
19 meaningful judicial review — cannot be effectuated.

20 **V. Restoration of the Status Quo Ante Is Necessary to Preserve the Court's Habeas** 21 **Jurisdiction**

22 The Ninth Circuit defines the status quo ante as “the last uncontested status which
23 preceded the pending controversy.” *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th
24 Cir. 2000). In the instant case, that status consisted of Petitioners being detained in Alaska while

1 their habeas petition was pending before this Court, their motion to reopen was pending before
2 the Immigration Court, and the statutory and regulatory automatic stay of removal was in effect.
3 The subsequent removal of Petitioners altered that lawful status while this Court's jurisdiction
4 was active. Permitting removal to defeat jurisdiction would allow executive action to nullify both
5 Congress's rescission mechanism and this Court's habeas authority. Return of Petitioners to the
6 United States is therefore not a new or expanded remedy. It is the only means by which this
7 Court can preserve its existing jurisdiction and provide effectual relief on the claims already
8 before it.

9 **VI. *Abrego Garcia v. Noem* Confirms That Unlawful Removal Does Not Extinguish District
10 Court Jurisdiction And That Restoration Is An Available Remedy**

11 Recent federal litigation addressing removal conducted during pending judicial
12 proceedings confirms that removal does not divest a district court of jurisdiction where the
13 removal itself is alleged to have violated governing law. In *Abrego Garcia v. Noem*, No. 8:25-cv-
14 00951 (D. Md. Apr. 6, 2025), the plaintiff was removed from the United States while federal
15 litigation challenging the legality of the government's actions was pending. The district court
16 concluded that it retained jurisdiction notwithstanding the completed removal. The court
17 reasoned that jurisdiction attached while the plaintiff was in U.S. custody and that the subsequent
18 act of removal did not eliminate the court's Article III authority to adjudicate claims alleging
19 violations of statutory and constitutional protections. The case therefore proceeded on the merits
20 even though the plaintiff was physically outside the United States.

21 The *Abrego Garcia* court further recognized that removal conducted in violation of
22 governing legal constraints is not insulated from review merely because the Executive has
23 completed the act. The court treated the legality of the removal as the central issue, not the
24 Government's unilateral alteration of the factual posture. The Supreme Court proceedings that

1 followed did not disturb that foundational principle. *Noem v. Abrego Garcia*, No. 24A949, 604
2 U.S. ____ (Apr. 10, 2025) (mem.). The dispute presented to the Court concerned the scope and
3 phrasing of equitable relief, not whether the district court retained jurisdiction after removal. The
4 underlying premise remained intact: removal does not defeat jurisdiction where the challenged
5 action is alleged to be unlawful and where effective relief remains available.

6 That framework is directly instructive here. Petitioners were physically detained in
7 Alaska when this habeas petition was filed. Jurisdiction attached at that time under 28 U.S.C. §
8 2241. *Carafas v. LaVallee*, 391 U.S. 234 (1968). Their subsequent removal does not undo that
9 attachment. As in *Abrego Garcia*, the central issue is whether the removal was conducted in
10 contravention of binding law. *Abrego Garcia* demonstrates that a federal court does not lose
11 jurisdiction simply because the Executive has completed the challenged act. When removal is
12 alleged to have occurred in violation of law, the court retains authority to determine legality and
13 to grant effective relief. The Supreme Court has recognized that removal does not necessarily
14 foreclose relief and that the Government has represented it can facilitate return where necessary.
15 *Nken v. Holder*, 556 U.S. 418, 435 (2009). (“Aliens who are removed may continue to pursue
16 their petitions for review, and those who prevail can be afforded effective relief by facilitation of
17 their return.”)

18 The same reasoning applies here. Jurisdiction is attached while Petitioners were in
19 custody within this District. Removal conducted during the pendency of a mandatory regulatory
20 stay does not extinguish that jurisdiction. As in *Abrego Garcia*, the legality of the removal
21 remains justiciable, and restoration of the status quo ante is an available and appropriate remedy
22 to preserve meaningful review and enforce compliance with federal law.

1 **VII. This Motion Does Not Seek Reconsideration of the TRO**

2 The Court previously denied Petitioners' emergency motion for a temporary restraining
3 order. That ruling addressed the standards for emergency injunctive relief prior to removal. The
4 present motion addresses a distinct issue: removal carried out while this Court's jurisdiction was
5 pending and while a statutory automatic stay was operative. This motion seeks preservation of
6 habeas jurisdiction and enforcement of statutory protections, not reconsideration of the TRO.

7 **CONCLUSION**

8 Therefore, Petitioners respectfully request that this Court:

- 9 1. Declare that removal of Petitioners S.A.E.A., C.I.C.E., and M.M.E.A. occurred while this
10 Court's habeas jurisdiction was pending and while a statutory automatic stay under INA §
11 240(b)(5)(C) was in effect;
- 12 2. Order Respondents to facilitate the return of Petitioners S.A.E.A., C.I.C.E., and
13 M.M.E.A. to the United States;
- 14 3. Restore Petitioners – in Alaska – to the posture that existed immediately prior to their
15 removal, pending adjudication of the habeas petition and the motion to reopen; and
- 16 4. Grant such further relief as necessary to preserve the Court's habeas jurisdiction and
17 effectuate meaningful review.

18 Respectfully submitted on this 23rd day of February, 2026.

19 /s/ Lara Erin Nations

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