

Emily E. Howe, State Bar No. 293964  
LAW OFFICES OF EMILY E. HOWE  
405 Via del Norte, Ste B  
La Jolla CA 92037  
Telephone: (619) 800-6605  
Email: emh@howelaws.com

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

A.M. on behalf of himself and others ) Case No.: 25CV1412 JO AHG  
similarly situated )

Plaintiff-Petitioner(s), ) **FIRST AMENDED COMPLAINT**  
vs. ) **FOR DECLARATORY AND**  
) **INJUNCTIVE RELIEF; PETITION**  
) **FOR WRIT OF HABEAS**

U.S. CUSTOMS AND IMMIGRATION ) **[28 U.S.C. § 2241]**  
ENFORCEMENT; EXECUTIVE )  
OFFICE OF IMMIGRATION REVIEW )  
CORE CIVIC; CHRISTOPHER )  
LAROSE, warden of Otay Mesa )  
Detention Center; PAMELA BONDI, )  
Attorney General of the United States, in )  
her official capacity, KRISTI NOEM, )  
Secretary of the U.S. Department of )  
Homeland Security, in her official )  
capacity; U.S. DEPARTMENT OF )  
HOMELAND SECURITY, TODD )  
LYONS, Acting Director of U.S. )  
Immigration and Customs Enforcement, )  
in his official capacity; JASON )  
AGUILAR, Chief Counsel for )  
Immigration and Customs Enforcement )  
San Diego, SIDNEY AKI, Director of )  
Field Operations, San Diego Field Office )  
U.S. Customs and Border Protection, )  
GREGORY J. ARCHAMBEAULT, )  
Director of U.S. Immigration and Custom )  
Enforcement and Removal Operations )  
(ERO), San Diego, DOES 1 through 20,  
Defendant-Respondent(s).

1 Plaintiff-Petitioner and asylum seeker A.M. brings this complaint to assert  
2 his and others' constitutional, statutory, and human rights and petition for a writ of  
3 habeas against officials from the Department of Homeland Security to stop his  
4 arbitrary detention, in violation of various rights secured by the U.S. constitution  
5 and laws, grant stay of removal and allow them to adjudicate their claims.

## 6 INTRODUCTION

7 1. This case arises out of the sweeping immigration enforcement actions that  
8 the government began unannounced at the Edward J. Schwartz Federal Building  
9 and Courthouse in the Southern District of California. As a part of an official  
10 memo, Respondents, including leadership and agents of the U.S. Immigration and  
11 Customs Enforcement, planned to and did arrest noncitizens, detaining them at the  
12 courthouse without notice or an opportunity to be heard, set for immediate  
13 expulsion from the United States at an unprecedented speed.

14 2. Petitioner respectfully seeks this Court enjoin the abusive, overly broad,  
15 and harassing practice of using the courthouses to conduct civil courthouse arrests  
16 without a bench warrant, impose indefinite 'mandatory' detention, and forced  
17 removal without due process as asylum seekers and other noncitizens lawfully  
18 appear for their mandated courtroom appearances.

19 3. DHS's actions reflect the recent unparalleled levels of practices that violate  
20 the immigration laws, statutory law, foreign treatises, and the U.S. Constitution.

21 4. Defendant-Respondents' current practice of:

22 (i) the **overzealous courthouse arrests of *anyone*** whom the government  
23 has "information that believes the target...will be at a specific location" like the  
24 federal building and U.S. courthouse,

25 (ii) **deprivation of due process in detaining applicants** who are  
26 lawfully asserting their rights to seek asylum,

27 (iii) **unlawful policy, practice, or conduct** of revoking the notice to  
28 appear to place into immediate removal and deprive noncitizens and asylum

1 seekers of due process, has a profound chilling effect on the fundamental pillars of  
2 the rule of law, access to the courts, and access to justice.

3 This unlawful government behavior of courthouse arrests was enjoined in  
4 *Elizeo Velazquez-Hernandez, et al., v. U.S. Immigration and Customs Enf't, et al.*,  
5 No. 3:20-CV-2060 (DMS)(KSC), 2020 WL 6712223 (S.D. Cal. Nov. 16, 2020).  
6 Courts<sup>1</sup> have similarly prohibited this conduct.

7 5. Respondents' actions violate their own memos, the constitution and  
8 statutory protections. On or about May 27, 2025, Respondents revoked its own  
9 rules without notice that prohibited arrests at or within the courthouses but also  
10 have not followed its own published guidance. The **expansive quotas** under the  
11 ICE Directive Enforcement Actions have incentivized improper actions in or near  
12 Courthouses. Defendants-Respondents have the universe of their information.

13 A recent policy, practice, or conduct in San Diego believed based on the  
14 *Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses*  
15 (May 27, 2025), replacing the January 21, 2025 Directive and has unlawfully applied  
16 an **overly broad interpretation, arbitrary and capricious practice, and rules**  
17 **reversal emboldening ICE officers or agents to conduct unfettered civil**  
18 **immigration enforcement actions in or near courthouses** when they believe the  
19 targeted [noncitizen] is or will be present at a specific location" and patently  
20 ignores the previous directive "where such action is not precluded by laws imposed  
21 by the jurisdiction" or the agency's own published instructions that they will  
22 refrain entirely due to the irreparable damage. **Defendants have main access to**  
23 **their universe.** Plaintiff alleges the following and will seek leave to amend:

24 <sup>1</sup> See, e.g., *Ryan v. U.S. Immigration & Customs Enf't*, 467 F. Supp. 3d 228 (D. Mass. 2020);  
25 *State of New York v. U.S. Immigration & Customs Enf't*, No. 19-cv-8876, 2020 WL 2117584  
26 (S.D.N.Y. May 12, 2020); *Liu v. Chertoff*, No. C07-2566, 2007 WL 1211290 (N.D. Cal. Apr. 23,  
27 2007) (injunction issued to limit ICE arrests at courthouses to protect access to immigration  
28 hearings); *Nken v. Holder*, 556 U.S. 418 (2009) (recognizing the importance of fair process in  
immigration hearings).

**EXHAUSTION OF REMEDIES**

Plaintiff-Petitioner has no adequate administrative remedy available and exhaustion is required because the claim is collateral to removal proceedings and raises systemic due process violations. He has a right to appeal until July 3, 2025; he was not a flight risk; upon efforts to preserve his rights, all were thwarted:

(i) USCIS rejected his asylum claim between the brief stint of leaving the court and filing that day due to ‘detention’, (ii) the Bureau of Immigration & Appeals could not find his name or alien number, (iii) the final ICE alternative is a discretionary stay of removal, however, Respondents’ agents flatly noted those are not approved.

**FACTUAL BACKGROUND**

6. Plaintiff-Petitioner A.M. is and has been a **human right defender** and a leader at a well-acclaimed international non-governmental organization and has contributed to **critical reporting to the United Nations, European Commission on Human Rights, Cornell Law School Legal Clinic, Robert Kennedy Human Rights, and global organizations.**

7. He was a champion who fled for his life when he refused to promote Morocco on an international stage.

8. A.M. presented himself at the San Ysidro Port of Entry on or about January 29, 2025. He presented himself to seek asylum but he was released with a Notice to Appear under 212(a)(6)(A)(i) of the Immigration and Nationality Act that he’s an alien present in the United States without being admitted or paroled.

9. A.M. complied with the rules, notices, and appeared in court prepared to present his lawful claim with I-589 filings in July of 2025, appearance in August, supplemental I-589 in October of 2024, presented self in November, briefing in January of 2025, supplemental filings in the spring and May of 2025.

10. On or about June 3, 2025, he prepared to present his asylum claims at his scheduled individual merits hearing on June 3, 2025.

11. A.M. was finally eligible to apply for work authorization with the

1 Employment Authorization Document (EAD)(Form I-765); his asylum clock had  
2 been tolled for A.M. to seek representation and had fully prepared his case over the  
3 course of nearly five hundred (500) days.

4 12. Plaintiff-Petitioner's witnesses were prepared to testify from overseas  
5 that day even in spite of recent hospitalization and unknown availability due to his  
6 health at later date.

7 13. In an abundance of caution, due to the recent raids of witnesses and court  
8 attendees, in an abundance of caution, Petitioner re-submitted his witness list for a  
9 subsequent time to list as 'Motion' to clarify that the request was via WebEx or  
10 telephonically, instead of in person. Plaintiff-Petitioner was prepared and willing  
11 to testify at his merits hearing, independent of them.

12 14. Noticeably upon entry, the courthouse climate had changed. Petitioner is  
13 informed and believes he could **hear ICE agents by the door throughout the**  
14 **hearing and could see them upon entering and exiting.** As Petitioner stepped  
15 outside of the doorway, Petitioner was summarily arrested within the Edward J.  
16 Schwartz building once the immigration judge dismissed his case upon the U.S.  
17 government's request, and in spite of the court acknowledging A.M. has a lawful  
18 right to seek asylum, withholding of removal, and/or convention against torture  
19 protections under the Immigration and Nationality Act.

20 15. Petitioner is informed that Respondents knew or should have known that  
21 this deprivation of the notice and right to be heard was an overt intentional tactic  
22 and policy abuse to prevent the adjudication of a strong asylum claim and remove  
23 A.M. without due process forcing him into terrifying and ambiguous proceedings  
24 of immediate removal or indefinite detention when he had been fully compliant.

25 16. In fact, Plaintiff-Petitioner is informed and believes that an internal memo  
26 went to the judges who are within the Executive Branch, to increase dismissals.

27 17. A provisionary class member entered in November 2023, was released into  
28 the community after a Notice to Appear, was arrested on or about May 22, after

1 DHS moved to dismiss his proceedings and the Immigration Judge dismissed  
2 despite counsel's request for a continuance.

3 18. Other prospective class members were told to self deport but very well may  
4 already be a lawful permanent resident or citizen and have to assert their rights at  
5 the Edward J. Schwartz federal building and U.S. courthouse.

6 19. Plaintiff-Petitioner is informed and believes that there are other similarly  
7 situated applicants who don't speak English fluently, detained at their court  
8 hearings, have been unable to access counsel and seek protections and relief with  
9 an emergency stay of removal to be able to access their rights and counsel.

10 ***A. Federal Building Courthouse Arrests - Habeas Corpus and Due Process***

11 20. In recent statements, behavior, and practice, Respondents-Defendants have  
12 demonstrated little interest or regard for adhering to America's foundational and  
13 bedrock principles of due process, habeas corpus, and rule of law.  
14 Recently, on or about May 20, 2025, at her confirmation hearing, Respondent-  
15 Defendant KRISTI NOEM<sup>2</sup> erroneously responds: "Habeas corpus is a  
16 constitutional right that the president has to be able to remove people from this  
17 country".

18 21. Here, in San Diego, A.M. who presented himself lawfully for his asylum  
19 hearing was separated from his attorney and upon is informed and believes, not  
20 clearly advised on why he is being detained or explained the process protecting his  
21 procedural and substantive due process rights, after the United States government  
22 withdrew his notice to appear in court to terminate his asylum case. Respondents'  
23 agents could not advise on the process, next steps or ensure protections.

24 22. Defendants-Respondents stated ICE is not granting any requests for stays  
25 of removal.

26 \_\_\_\_\_  
27 <sup>2</sup> See Testimony of Kristi Noem, Dep't of Homeland Sec. (May 20, 2025), *available at*  
28 <https://www.bbc.com/news/videos/ce8113z7k17o>; <https://www.c-span.org/classroom/document/?23993>

23. Notably, Defendants- Respondents’ agents were confused, unclear, and unfamiliar on the process, next steps, or information on Petitioner, and could not provide any policies or protections that his rights are preserved as a matter of law.

24. Plaintiff-Petitioner is informed and believes that separate hours of independent research and conversations with legal observers to discover that Respondents shifted the protections from the Mayorkas memo and reverted to refusing to recognize courthouses as “Sensitive Locations” and maintains that Respondents in the **San Diego Field Office leadership** in particular “The Assistant Field Office Director and Assistant Special Agents in Charge” possesses full authority and discretion to civilly arrest individuals in and around any courthouse.

25. **The courthouse arrest policy purports to re-vest ICE with the unbridled and boundless discretion to make civil arrests in and around virtually any courthouse location when the U.S. Government deems a person is an “alien” at a specified location.**

26. Defendants-Respondents have not stated or provided this DHS policy.

27. Defendants-Respondent’s newly enacted policies, practices, and procedures fail to account for significant issues such as the historic sanctity of courthouses and the chilling impact these policies have on anyone attending a federal office.

28. Shortly after taking office, the President issued ICE Directive *Enforcement Actions in or Near Courthouses* (Jan. 21, 2025) DHS Directive *Enforcement Actions in or Near Protected Areas* (Jan. 20, 2025) and where such action is not precluded by laws imposed by the jurisdiction in which the civil immigration enforcement action will take place.<sup>3</sup> The new memorandum supersedes the Mayorkas memorandum entitled ‘Guidelines for Enforcement Actions in or Near Protected Areas’ (October

---

<sup>3</sup> See Memorandum on ICE Directive *Enforcement Actions in or Near Courthouses* (Jan. 21, 2025); DHS Directive *Enforcement Actions in or Near Protected Areas* (Jan. 20, 2025); *Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses* (May 27, 2025).



27, 2021), replacing with ICE Policy No. 11072.4 Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses. (May 27, 2025). *Id.*

29. Plaintiff-Petitioner is informed and believes Respondents-Defendants’ engaged in a concerted effort to dismiss their cases to deprive them of due process.<sup>4</sup> Plaintiff-Petitioner is informed and believes that there were complaints of detainees were removed or deported on the same day.

30. **Ultimately, the courthouse arrest policy simply formalizes aspects of Directive or unknown instructions, which vest ICE with unfettered discretion to use courthouses as a trap to arrest *anyone* they suspect of being a noncitizen at any location—including asylum seekers who are honoring their conditions and mandates imposed by Respondents.**

31. With these Directives and memos, the President abandoned past programs and protections and called for the deportation of **anyone potentially removable, i.e. lawful green card holders, parolees, and in practice, asylum seekers---** with published mandatory quotas of 3,000 daily removals in **disregard of the fundamental principles of due process.**

Today, a recent memo to immigration judges obtained by NBC News provides fresh insight into how the Trump administration is pulling off a new tactic — dismissing pending immigration cases, then immediately moving to arrest the immigrants — that is part of its bid to increase the number of detentions.

32. **Despite widespread opposition to this practice, Respondents have not only refused to stop it but has issued official policies authorizing civil courthouse arrests. DHS’s courthouse arrest policies, and its extensive**

---

<sup>4</sup> See e.g., Chris Gross, Molly Sheets, *ICE agents arrest migrants at courthouses in San Diego*, Across Country CBS 8 San Diego, May 22, 2025, <https://www.cbs8.com/article/news/local/ice-agents-arrest-migrants-at-courthouses-in-san-diego/509-1b3d0519-2132-49fa-ad76-fdb58af37a32> ; See e.g., Alex Cheney, *ICE tactics spark fear as migrant arrested post-hearing in San Diego*, Across US, CBS 8 San Diego, May 27, 2025, <https://www.cbs8.com/article/news/local/ice-tactics-migrants-arrested-post-hearing-san-diego/509-e66acde1-18bd-42d5-b40b-1bb479d963e4>;



1 **practice of conducting civil arrests at asylum hearings, are unprecedented in**  
2 **United States history.**

3 33. At the same time, Respondents have prohibited that the use of Web Ex or  
4 virtual appearances by Plaintiffs-Petitioners and required that asylum seekers  
5 appear physically in person in the federal immigration court.

6 34. Plaintiff is informed and believes **Respondents are authorizing their**  
7 **agents to be wearing Balaclava, full face covering masks**, while hovering at or  
8 about the courtroom doors.

9 35. **Curiously enough, the updated memo expressly provides, “ICE officers**  
10 **should generally avoid enforcement near non-criminal or specialized courts.**

11 36. Petitioners-Plaintiffs have complained of intimidating, aggressive arrests,  
12 no notice, and chaotic scenes in which the public were refused entry or deterred  
13 from asserting their lawful rights in the federal building and courthouse:

14 37. By way of example, on or about May 22, 2025, Plaintiff is informed and  
15 believes that Respondents’ resulted in the arrest of the wrong persons, including a  
16 man who hyperventilates and collapses to the ground. DOES Officers used force  
17 against asylum seekers, shoved attorneys and members of the public.

18 38. Plaintiffs contend that Respondents used unnecessary force, shoving  
19 attorneys, applicants, and members of the public.

20 39. ICE went to detain a man who collapsed to the ground and started to  
21 hyperventilate. Plaintiff is informed and believes a DOE Officer responded, “calm  
22 down, it’s not that big of a deal.” Plaintiff is informed and believes that DOE  
23 officers shoved attorneys and members of the public.

24 40. During the week of May 18, 2025, Respondents’ commenced immigration  
25 raids at or about the Edward J. Schwartz Building.

26 41. On or about May 22, 2025, Plaintiff is informed Respondents arrested  
27 detained at least 13 individuals at or about the courtroom door.

28 42. On or about May 23, Plaintiff is informed and believes Respondents

1 detained at least 7 and perhaps more.

2 43. During the week, Plaintiff is informed and believes Respondents continued  
3 to arrest and detain individuals their courtroom hearings.

4 44. On or about May 27, Plaintiff is informed and believes that ICE conducts  
5 warrantless arrests at or about the courtroom doors.

6 45. On or about May 28, Plaintiff is informed and believes witnesses heard  
7 Respondent's making jokes about being the 'Gestapo'.

8 46. On or about May 30, 2025, Plaintiff is informed and believes DOE Officers  
9 arrested an individual seeking legal representation.

10 47. During this week, Plaintiff is informed and believes multiple witnesses  
11 observe ICE supervising agents discussing a list with the government attorneys  
12 who were seeking to dismiss the cases. Plaintiff is informed and believes that list  
13 was being provided to the EOIR.

14 48. On or about June 2, 2025, Plaintiff is informed and believes ICE officers  
15 are continued to make warrantless arrests, detaining and separating parents from  
16 their children without notice or an opportunity to be heard.<sup>5</sup>

17 49. On or about June 2, Plaintiff is informed and believes ICE Officers were  
18 laughing and jovial about all those detained who did not have an attorney.

19 50. On or about June 3, 2025, at least 10 officers cornered two members of the  
20 public.

21 51. During this week Plaintiff is informed and believes another dozen of  
22 applicants were detained at their asylum hearings via warrantless arrests.

23 52. On or about June 9, 2025, Plaintiff is informed and believes a DOE  
24 Supervisor stated an attorney must determine who would be detained of his two  
25 clients, it was irrelevant to him who was detained.

26 <sup>5</sup> Many of those who saw loved ones handcuffed and taken away had accompanied their family  
27 members to ongoing immigration processes seeking asylum or hoping to make a case before a  
28 judge to stave off deportation, a legal process long afforded to immigrants and spelled out for  
immigration judges in court practice manuals.

1 53. Plaintiff is informed and believes that immigration attorneys are reporting  
2 that their clients are not showing up to court due to Respondents' Policies Practices  
3 and Procedures.

4 54. Plaintiff is informed and believes a Memorandum of Understanding,  
5 directive, policy was instructing these raids.

6 55. DHS has made clear that *anyone* who is subject to arrest by DHS may be  
7 arrested in the courthouse, and courthouse arrests are not limited to defendants in  
8 criminal matters – the arrests are of asylum seekers, witnesses, or anyone **DHS**  
9 **believes is a “targeted alien...” who is or will be present at a specific location.”**

10 56. To be clear, Defendants- Respondents have already had Plaintiffs in  
11 custody and processed their biometrics and backgrounds, including all information  
12 necessary for civil immigration enforcement purposes. They have no interest or  
13 need in re-arrest for those reasons. Respondents' only interest is to keep Plaintiffs  
14 incarcerated or removed expeditiously from the country

15 57. Plaintiffs-Petitioners have established that their incarceration is not  
16 required for their immigration cases, as they reliably appeared for court hearings.

17 *Common Law and Constitutional protections*

18 58. ICE practices are interfering with the public's access to the federal building  
19 and the courthouses. In addition to deviating from prior policy, **the U.S. Supreme**  
20 **Court long ago recognized a privilege against civil arrests for those attending**  
21 **court on official business—a privilege that traces its roots back to English**  
22 **common law and rests on the common-sense principle that the judicial system**  
23 **cannot function if parties and witnesses fear that their appearance in court**  
24 **will be a trap.**

25 59. DHS's decision to flout the long-standing common-law privilege against  
26 civil courthouse arrests and to commandeer the courtrooms of the Southern District  
27 of California for federal civil immigration purposes has led Plaintiff-Petitioner(s)  
28 to reasonably fear civil arrest should they appear in court at their upcoming court

1 dates. They know that when their case ends, an immigration agent lurking in the  
2 courtroom will be ready to civilly arrest them and place them in removal  
3 proceedings. DHS's policy to civilly arrest them in court following the conclusion  
4 of their misdemeanor prosecutions forces the Petitioners-Plaintiffs to choose  
5 between coming to court as ordered and exercising their common-law right to be  
6 free from civil arrest in court.

7 60. In addition to the Plaintiffs- Petitioners' own fear of civil arrest, the First,  
8 Fifth, Sixth, and Fourteenth Amendment rights to receive equal protection and  
9 present witnesses and to a public trial are violated because the policy instills fear in  
10 potential witnesses and court observers who have reason to fear civil arrest at or  
11 about the Edward J. Schwartz federal building and U.S. courthouse.

12 61. DHS's civil-courthouse-arrest policies not only undermine the  
13 Administration of Justice, they are also illegal for at least four reasons.

14 62. First, DHS's courthouse arrest policies are arbitrary and capricious in  
15 violation of the Administrative Procedures Act (APA) because the policies are  
16 insufficiently explained, fail to consider all relevant factors, and depart from prior  
17 policy without reasoned explanation. Further, DHS's implementation of the  
18 policies is inconsistent. ICE's policy states that arrests will take place "inside" the  
19 courthouses or at "non-public entrances and exits," but arrests do not always take  
20 place inside the courthouse. For example, officers chased a client and his lawyer  
21 down Broadway Street adjacent to the courthouse and arrested the client. The  
22 lawyer asked the officers to identify themselves and to produce a warrant, and the  
23 officers refused and further ordered the lawyer to back away under threat of arrest  
24 if he did not cooperate. ICE arrests outside of a courthouse are an arbitrary and  
25 capricious application of its policy. *See Washington v. U.S. Dep't of Homeland*  
26 *Sec.*, No. C19-2043 TSZ, 2020 WL 1819837, at \*26–27 (W.D. Wash. Apr. 10,  
27 2020) (ICE's practice of arresting immigrants outside courthouses, presents a  
28

1 plausible claim that the policy is arbitrary and capricious under the APA).

2 63. Second, Congress never authorized DHS to conduct civil courthouse arrests  
3 because it never abrogated the longstanding and well-settled common-law  
4 privilege against such arrests. The Supreme Court has recognized that the  
5 common-law privilege against civil courthouse arrests is “well settled.” *Stewart v.*  
6 *Ramsay*, 242 U.S. 128, 129 (1916). When Congress acts in an area governed by  
7 “long-established and familiar” common-law principles, Congress is presumed to  
8 retain those principles. *United States v. Texas*, 507 U.S. 529, 534 (1993). Here,  
9 where Congress granted the federal government a general civil-arrest power to  
10 enforce civil immigration laws, Congress retained traditional common-law  
11 limitations on that arrest power—including that such arrests cannot be made  
12 against parties and witnesses attending court on official business. Because the INA  
13 does not grant the federal government authority to conduct civil courthouse arrests  
14 in violation of the common-law privilege, DHS’s policies authorizing such arrests,  
15 and its policies to conduct such arrests, exceed DHS’s statutory authority and must  
16 be set aside under the Administrative Procedure Act (APA). *See* 5 U.S.C. § 706(2).

17 64. Third, DHS’s policies violate the Constitutional right of access to the  
18 courts, which prohibits “systemic official action [that] frustrates a plaintiff or  
19 plaintiff class in preparing and filing suits.” *Christopher v. Harbury*, 536 U.S. 403,  
20 413, 415 & n.12 (2002). Conditioning litigants’ ability to access the courts on  
21 risking civil arrest creates precisely such impermissible frustration. Indeed,  
22 common-law courts created the privilege against civil courthouse arrest to prevent  
23 the intolerable chilling effect of such arrests, explaining that the fear of arrest  
24 would “prevent [parties and witnesses’] approach,” obstructing “the administration  
25 of justice.” *Halsey v. Stewart*, 4 N.J.L. 366, 368 (N.J. 1817). Plaintiffs found,  
26 however, that if they come to court as ordered they face the specter of civil  
27 courthouse arrest whether they win or lose their case.

1 65. Fourth, DHS conducts the civil courthouse arrests without a judicial  
2 warrant authorizing the arrests as required by law. 8 U.S.C. § 1357(a)(2). Pursuant  
3 to section 1357(a)(2), DHS must have “reason to believe” that the arrestee is  
4 violating immigration law *and* that the arrestee is “likely to escape before a warrant  
5 can be obtained. . . .” But Petitioners-Plaintiffs’ consistent appearance at court  
6 demonstrates otherwise. DHS could have sought a warrant in the months while  
7 Plaintiffs’ cases were pending. DHS did not. Failure to obtain a warrant during the  
8 pendency of the cases is the product of indolence, not necessity, and it violates  
9 Petitioners-Plaintiffs’ statutory and constitutional rights.

10 **66. For these reasons, and as set forth below, Plaintiffs ask this Court to**  
11 **declare that DHS’s policies authorizing civil arrests in the U.S. courthouses of**  
12 **the Southern District of California are unlawful, to declare that DHS’s**  
13 **current practices and tactics including failing to obtain a warrant and**  
14 **courthouse arrests is illegal, and to enjoin DHS from such activity.**

15 *The common-law privilege against civil arrest*

16 67. The common-law privilege against civil arrest while attending court on  
17 official business is longstanding, tracing its origins back at least to the English  
18 courts in the eighteenth century.

19 68. In England, and in the early years of this country, civil arrest, or civil  
20 *mesne process*, was a common means for initiating civil proceedings. *See* Nathan Levy, Jr.,  
21 *Mesne Process in Personal Actions at Common Law and the Power Doctrine*, 78  
22 Yale L.J. 52, 61-70 (1968). The possibility that such civil arrests could take place  
23 in court, however, posed a significant problem for the judiciary: If a party or  
24 witness’s appearance in a case could be used as a trap for a civil arrest in *another*  
25 case, many parties and witnesses would not attend court. To avoid this problem,  
26 courts both in England and the United States—including the U.S. Supreme  
27 Court—recognized and strictly enforced an “inflexib[le]” privilege against the civil  
28 arrest of parties or witnesses attending court. *Page Co. v. MacDonald*, 261 U.S.



1 446, 448 (1923). As the Supreme Court explained, “the due administration of  
2 justice requires that a court shall not permit interference with the progress of a case  
3 pending before it, by the service of process in other suits, which would prevent, or  
4 the fear of which might tend to discourage, the voluntary attendance of those  
5 whose presence is necessary or convenient to the judicial administration in the  
6 pending litigation.” *Lamb v. Schmitt*, 285 U.S. 222, 225 (1932).

7 69. The common-law privilege against civil arrest while attending court on  
8 official business is longstanding, tracing its origins back at least to English courts  
9 in the eighteenth century. Blackstone’s *Commentaries on the Laws of England*  
10 explained the common-law rule that “[s]uitors, witnesses, and other persons,  
11 necessarily attending any courts of record upon business, are not to be arrested  
12 during their actual attendance, which includes their necessary coming and  
13 returning.” 3 William Blackstone, *Commentaries on the Laws of England* 289  
14 (1769); see also 6 Matthew Bacon, *A New Abridgment of the Law* 530 (London, A.  
15 Strahan, 7th ed. 1832) (“[A]ll [] persons whatsoever, are freed from arrests so long  
16 as they are in view of any of the courts at Westminster, or if near the courts, though  
17 out of view, lest any disturbance may be occasioned to the courts or any violence  
18 used.”). This principle was repeatedly endorsed by the English courts, which held  
19 that, “for the purpose of justice,” and “to encourage witnesses to come forward  
20 voluntarily,” they are privileged from arrest “in coming, in staying, and in  
21 returning”. *The King v. Holy Trinity in Wareham*, 99 Eng. Rep. 531 (1782); see  
22 also *Meekins v. Smith*, 126 Eng. Rep. 363 (1791) (“[A]ll persons who had relation  
23 to a suit which called for their attendance, whether they were compelled to attend  
24 by process or not, (in which bail were included,) were [e]ntitled to privilege from  
25 arrest *eundo et redundo*, provided they came bona fide.”); *Spence v. Stuart*, 102  
26 Eng. Rep. 530 (1802); *Ex Parte Byne*, 35 Eng. Rep. 123 (1813).

27 70. The U.S. Supreme Court adopted this privilege and held that it bars service  
28

1 of any other civil process while attending court. For instance, in *Stewart v.*  
2 *Ramsay*, 242 U.S. 128 (1916), the Court described the privilege as “well settled,”  
3 explaining that a litigant “should be permitted to approach [the courts], not only  
4 without subjecting himself to evil, but even free from the fear of molestation or  
5 hindrance. He should also be enabled to procure, without difficulty, the attendance  
6 of all such persons as are necessary to manifest his rights.” *Id.* at 129. The Court  
7 described it as particularly firmly established that there was an “exemption from  
8 arrest,” or “capias,” and held that this exemption applied to any civil process to  
9 protect the “necessities of the judicial administration, which would be often  
10 embarrassed, and sometimes interrupted, if the suitor might be vexed with process  
11 while attending upon the court for the protection of his rights, or the witness while  
12 attending to testify.” *Id.* at 130. The Court later emphasized the “necessity of [the  
13 rule’s] inflexibility” in order to serve its purpose of protecting litigants and  
14 witnesses in appearing in court. *Page Co.*, 261 U.S. at 448; *see also Long v. Ansell*,  
15 293 U.S. 76, 83 (1934) (Brandeis, J.) (describing “the common-law rule that  
16 witnesses, suitors, and their attorneys, while in attendance in connection with the  
17 conduct of one suit, are immune from service in another”); *Lamb*, 285 U.S. at 225.

18 71. Each applicant was not a flight risk as they lawfully appeared for their  
19 hearings in pursuing their statutory rights. In fact, Respondent-Defendants *rely on*  
20 Plaintiffs’ lack of flight risk, lying in wait to arrest and punish them when they do  
21 appear for their hearings. By insisting Plaintiffs be re-arrested for their removal or  
22 seeking the asylum process, these agencies threaten the integrity of the proceedings  
23 and ignore the reasonable alternative, namely that their interests in initiating the  
24 removal process for these Plaintiffs – individuals who have been found to be  
25 neither flight risks or dangers to the community and who indeed appear when the  
26 government asks them to – can be accomplished without having to arrest them.  
27 Petitioners-Plaintiffs seek to enjoin the profound disregard of common law,  
28

1 statutory protections, international treatises, and basic rule of law in San Diego

2 **72. DHS's reinstated the previously enjoined practice of civilly arresting**  
3 **people in the federal building and courthouses of the Southern District of**  
4 **California who are present for official court business unduly infringes upon**  
5 **Plaintiffs-Petitioners' shared common-law right to be free from civil**  
6 **courthouse arrest:**

7 ***DHS officers are routinely present in the U.S. courthouses in the Southern***  
8 ***District of California to effectuate civil immigration arrests of Plaintiffs***  
9 ***when they appear in court for their asylum hearings***

10 73. Immigration agents are believed to have arrested scores of people and  
11 plan to do so for even more in perhaps the hundreds or thousands inside  
12 the federal building and courthouses of the Southern District of California.

13 74. Defendants- Respondents agents attend these hearings so they can  
14 effectuate a civil courthouse arrest. That means ICE officers are present and poised  
15 to conduct administrative arrests at every immigration hearing in the Southern  
16 District of California where the government requests dismissals.

17 75. When immigration officers attend the Plaintiffs' hearings, they patrol the  
18 hallways and hover next to the exit of the courtroom at the time of the proceeding.

19 76. The officers are equipped with handcuffs and plan to effectuate a civil  
20 arrest to place the defendant in immigration custody at the conclusion.

21 ***DHS officers conduct courthouse arrests without official warrants in or about***  
22 ***the U.S. Courthouses in the Southern District of California***

23 77. On information and belief, Plaintiffs believe that DHS intends to effectuate  
24 warrantless immigration arrests of plaintiffs coming to court, while present at  
25 court, or leaving court in connection with their pending immigration cases.

26 **78. If at all, Defendants-Respondents have deployed administrative signed**  
27 **by staff, not court-ordered judicial warrants by a magistrate or federal judge.**

28 79. Plaintiffs-Petitioners have been out of custody for months, are in

1 compliance with the conditions including attending all court hearings, and they do  
2 not present a risk of flight before DHS could obtain a warrant.

3 ***DHS's civil courthouse arrest policies harm Plaintiffs by forcing them to***  
4 ***appear in court believing that they could be subjected to an unlawful civil***  
5 ***arrest in the courthouse at any time.***

6 80. Plaintiffs-Petitioners are appearing for their defensive asylum hearings. At  
7 this 'trial', their credibility would surely be challenged on cross examination. But  
8 the Plaintiffs-Petitioners are all alleged to be undocumented aliens in the United  
9 States and their character witnesses may be similarly undocumented.

10 81. Plaintiffs'-Petitioners' decision on whether to testify at trial and call  
11 character witnesses, or other witnesses, in support of their asylum case is chilled by  
12 the looming presence of immigration officers in court, targets certain groups, and  
13 used to harass or retaliate. Plaintiffs fear that full exercise of their rights to present  
14 a defense could lead to the arrest of undocumented witnesses or members of the  
15 public who come to court to observe the proceedings.

16 ***B. Asylum, Withholding of Removal, Convention Against Torture***

17 82. Plaintiffs-Petitioners sought fairness, due process protection, and the rule  
18 of law in the United States:

19 83. A.M. has long filed an asylum application and requested a credible fear  
20 interview. He fears for detention and harm from Morocco and now faces arbitrary  
21 detention in the United States. He seeks protections against being placed on a  
22 plane to a country where he has no ties, El Salvador, Sudan, or back to the country  
23 where he fled for his life from persecution, torture, and death threats.

24 84. A.M. and others are being subjected to expedited removal despite  
25 Respondents having knowledge of their claims for asylum and credible fear of  
26 persecution the Convention against Torture. The agency's refusal to provide a  
27 meaningful credible fear determination, arrest, resetting the clock, and detaining  
28 the asylum seeker violates procedural due process and statutory rights under 8

1 U.S.C. § 1158 and § 1231(b)(3). The restarting of proceedings is highly prejudicial  
2 and serves no legitimated government basis other than to harass, intimidate, delay,  
3 and increase taxpayers' money especially as A.M. was scheduled for his asylum  
4 individual merits hearing on the day he was arrested.

5 85. Plaintiffs-Petitioners assert their rights to be free from *civil* arrest in this  
6 Complaint. To be clear, Plaintiffs do not argue that the Defendants-Respondents  
7 could not effectuate criminal arrests in the courthouse. **Notably, DHS arrests that**  
8 **merely place a person in immigration proceedings are civil arrests.** *See I.N.S.*  
9 *v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1974) (holding that deportation  
10 proceedings are “purely” civil); *Arizona v. United States*, 567 U.S. 387, 407 (2012)  
11 (holding that “it is not a crime for a removable alien to remain present” in the  
12 United States and that deportation proceedings are civil).

13 86. DHS officers attend asylum and immigration hearings relating to whether  
14 they have experienced persecution, likely to be persecuted, eligible for asylum,  
15 withholding of removal or and ready to civilly arrest Petitioners-Plaintiffs once the  
16 hearings are pre-determined to be dismissed. The anticipated arrests occur  
17 regardless of the veracity or strength of the claim - whether it be through a  
18 Government or Court's granting the motion to dismiss— the officers are waiting to  
19 effectuate a warrantless civil arrest at or about the courtroom.

20 87. Petitioner is informed and believes this opaque and obfuscatory policy,  
21 procedure, and/or practice is denying credible claims to statutory protections, and  
22 subjecting eligible applicants with colorable claims to persecution, torture, or death  
23 against United States and international law.

### 24 **C. Expedited Removal**

25 88. This is time-sensitive because the current U.S. government has been  
26 alleged to have sent asylum seekers, lawful permanent residents, and even U.S.  
27 citizens overseas without due process, and have not been able to retrieve or  
28 account for their whereabouts.

1 89. Expedited removal has applied to those who were in the country less than  
2 fourteen (14) days and within 100 miles of the border. 8 C.F.R. 2385.3(b).

3 90. Defendants-Respondents are using dismissing a section 240 case to trigger  
4 removal in an overt evasion of procedural due process and statutory protections.

5 91. Defendants-Respondents' refer to Section 235(b)(1) of the Immigration and  
6 Nationality Act (INA), as mandating that noncitizens subject to expedited removal  
7 be detained *throughout* the process, changing the rules for all those impacted here.

8 92. Courts have provided protections against Expedited Removal.

9 93. Defendants-Respondents' actions are retaliatory for those engaging in  
10 protected activity like filing an asylum claim or appearing at their mandated court  
11 cases. The government should not be forcing expedited removal as Petitioners-  
12 Plaintiffs have a right and sought a motion to appeal at the Bureau of Immigration  
13 of Appeals. BIA could not find Petitioners to seek an emergency stay.

14 94. The government has not guaranteed the due process rights of noncitizens.  
15 A Proclamation signed on March 14 and published on March 15, the President  
16 invoked a war power, the Alien Enemies Act of 1798 ("AEA"), to summarily  
17 remove noncitizens from the U.S. and bypass the immigration laws Congress has  
18 enacted. *See* Invocation of the Alien Enemies Act (Mar. 15, 2025) 1  
19 ("Proclamation"). The Proclamation accused Venezuelan noncitizens of being part  
20 of Tren de Aragua ("TdA"), a criminal gang. On the evening of March 15, 2025,  
21 the D.C. District Court issued an order temporarily pausing removals pursuant  
22 Proclamation of a provisionally certified nationwide class. *J.G.G. v. Trump*, No.  
23 25-5067, 2025 WL 914682, at \*2 (D.C. Cir. Mar. 26, 2025). That order was  
24 appealed by the government, but the court of appeals denied a stay. *Id.*

25 95. In April 2025, the Supreme Court ruled that immigrants even under the  
26 Alien Enemies Act are entitled to advance notice of their removal and a  
27 meaningful opportunity to challenge their deportation through legal avenues. On  
28 April 7, in a 5-4 decision, the Supreme Court granted the government's application



1 to stay on the basis Petitioners would proceed through habeas, emphasizing those  
2 are “entitle[d] to due process” and notice “within a reasonable time and in  
3 such manner as will allow them to actually seek habeas relief” before removal.  
4 *Trump v. J.G.G.*, No. 24A931, 2025 WL 102409 (U.S. Apr. 7, 2025).

5 96. The government has not stated the type of notice they intend to  
6 provide or how much time they will give individuals before seeking to remove  
7 them. However, in a hearing in other jurisdictions in the Southern District of Texas  
8 on Friday, April 11, the government said they had not ruled out the possibility that  
9 individuals will receive no more than 24 hours’ notice; the government did not say  
10 whether it was considering providing even less than 24 hours. In light of the  
11 Supreme Court’s ruling that challenges to the Proclamation must be brought in  
12 habeas, Petitioners file this action in his district of confinement and arrest.

13 97. At or about end of May of 2025, Respondents started to show up at the  
14 immigration courts at valid asylum hearings and arrest the applicants at their court  
15 hearings in San Diego, at or about 880 Front Street, Edward J. Schwartz Federal  
16 Building and U.S. Courthouse, and stating that they will remove those applicants  
17 who are apprehended and withdrew the notice and opportunity to be heard.

18 98. On June 4, 2025, with uncertainty and lack of clarity, A.M. petitioned this  
19 court for a writ of habeas corpus, a complaint for declaratory and injunctive relief,  
20 and emergency temporary restraining order (which this court granted), for fear of  
21 those in immigration custody in danger of imminent removal from the United  
22 States (less than 24-hour notice) – and this court could potentially permanently  
23 lose jurisdiction. Petitioner fears of the imminent danger of being transferred  
24 outside of the Southern District of California *en route* to removal without a notice  
25 to appear, indefinite detention, and the lack of the opportunity to be heard and thus  
26 request an injunction on any transfer out of the Southern District of California, as  
27 well as a 30-day notice of any intent to remove and due process protections.

28 ///

## JURISDICTION AND VENUE

99. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 *et seq.* (habeas corpus), as protected under Art. I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause), 28 U.S.C. § 1346 (United States as defendant), 28 U.S.C. § 1361 (mandamus), and 28 U.S.C. § 1651 (All Writs Act).

100. This Court has original jurisdiction pursuant to 42 U.S.C. § 1983. Federal jurisdiction exists under 28 U.S.C. § 1331 (federal question). This court has supplemental jurisdiction over Plaintiffs' claims arising under state law pursuant to 28 U.S.C. § 1367 (a) because those claims are so related to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution. Plaintiffs bring this action under the laws of the United States and the U.S. Constitution.

101. This case arises under the First, Fourth, Fifth, Sixth, Fourteenth Amendments to the United States Constitution, federal asylum statutes, the Administrative Procedure Act, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.* and its regs.; the Convention Against Torture ("CAT"), *see* Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231); the All Writs Act, 28 U.S.C. § 1651.

102. The Court may grant relief pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 2243; the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; the All Writs Act, 28 U.S.C. § 1651; and the Court's inherent equitable powers.

103. Venue is proper in the Southern District of California pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events, acts, or omissions giving rise to the claims occurred in the County of San Diego including at the time of filing Petitioner is detained in the Respondents' custody, in the Southern District of California; Respondents JASON AGUILAR, Chief Counsel for Immigration and Customs Enforcement San Diego, SIDNEY AKI, Director of Field Operations, San

1 Diego Field Office U.S. Customs and Border Protection, GREGORY J.  
2 ARCHAMBEAULT, are believed to reside in this district; Respondents are  
3 agencies or officers of the United States in their official capacity.

4 **PARTIES**

5 **A. Petitioners-Plaintiffs (“Petitioners”)**

6 104. Plaintiff-Petitioner is a 35-year-old Western Sahrawi man who has been a  
7 human rights Defender at an internationally well-respected non-governmental  
8 organization that has presented to the United Nations and European Commission of  
9 Human Rights who is detained at the Otay Mesa Facility in San Diego and who,  
10 having reported to his hearing, is at imminent risk of removal and current practices  
11 that the Immigration and Customs Enforcement has been deploying in San Diego.

12 105. A.M. is seeking asylum on the basis of his political views, membership in a  
13 social group, race-ethnicity, fear of harm, persecution, and mistreatment from his  
14 government due to his immutable characteristics and human rights leadership.

15 106. A.M. is diabetic and has medical complications due to past persecution and  
16 requires access to daily medications and consistent medical care.

17 107. The U.S. government has publicly stated that those with asylum claims  
18 would proceed with their credible fear and asylum rights as a matter of law.

19 108. However, after lawfully presenting himself for his asylum hearing, he was  
20 Arrested immediately at the downtown Courthouse on June 3, 2025.

21 109. Petitioners’ attorney provided Respondents with his G-28 Notice of Entry  
22 of Appearance as an Attorney in an Abundance of Caution.

23 110. Plaintiff-Petitioner’s Counsel reached out to Respondents and still has not  
24 had access to him. His family feared that he was being interrogated without his  
25 attorney.

26 111. Plaintiff-Petitioner’s legal representation endeavored to connect with him.  
27 Initially he could not be found in the system; the following day he could not be  
28 found and was being processed”. Subsequently, Plaintiff’s Counsel reached out to

1 his ICE Officer, CORE CIVIC, and by and through Respondents' Counsel. To  
2 date, Counsel has not been able to speak with him similar to the admonitions about  
3 those Petitioners who are unrepresented cannot access counsel.

4 112. Plaintiff-Petitioner fears being deported, being unable to speak with his  
5 attorney, being denied adequate medical care, and being sent back to a country  
6 where he will be imprisoned, tortured, and likely killed by the Moroccan police  
7 since they have done previously to him. He fears that the Moroccan authorities  
8 will target him because of his political opinion, because he and his family are  
9 known human rights activists.

10 113. The government did not provide adequate notice or an opportunity to be  
11 heard on why he is being detained but rather planned to ship him overseas and out  
12 of this jurisdiction without due process rights.

13 114. A.M. and other Plaintiff-Petitioner are those **who were similarly arrested**  
14 **at the downtown courthouse, 880 Front Street, deprived of their credible fear**  
15 **interviews, and are at risk of being sent on an airplane out of the jurisdiction**  
16 **or country without an opportunity to access or speak with an attorney despite**  
17 **their credible fear claims.**

18 115. To the extent able, Petitioner brings this action under Federal Rules of  
19 Civil Procedure 23(a) and 23(b)(2)<sup>6</sup> on behalf himself and as an emergency and/or  
20 preliminary injunctive relief claim to preserve the rights of all other persons  
21 similarly situated who have been arrested or detained for appearing at their court  
22 hearings, deprived the right of speaking to an attorney and are being subjected to  
23 be sent overseas without notice or an opportunity to be heard on their credible fear

---

24 Julia Ainsley, *Trump Admin Tells Immigration Judges to Dismiss Cases in Tactic That Could Speed Arrests*,  
25 NBC News (May 31, 2024, 6:02 PM), <https://www.nbcnews.com/politics/national-security/trump-admin-tells-immigration-judges-dismiss-cases-tactic-speed-arrest-rcna212138>.

26 <sup>6</sup> In a separate motion for emergency- injunctive provisional class certification,  
27 Plaintiff-Petitioner briefs the issue insofar that the eligible class has been detained,  
28 may be unrepresented, have not been able to access attorneys that A.M. seek to  
protect his and their rights under time-sensitive, unprecedented circumstances.

1 claims in the Southern District Court of California.

2 There's commonality, typicality, adequacy, and numerosity:

3 a. The provisional class members for an emergency order are subject to a  
4 common practice: courthouse arrests, deprivation of asylum protections,  
5 summary removal, contrary to the INA, statutory protections, constitutional  
6 and common law.

7 b. Commonality: Rule 23(a)(1) The suit also raises questions of law and  
8 practice common to members of the proposed class, including whether the  
9 Directive and its implementation of summary removal violate the APA, the  
10 INA, Fifth Amendment, and the statutory protections for asylum seekers.  
11 The proposed class includes numerous future noncitizens who will be  
12 subject to Respondents' Directive and related policies or practices. This is  
13 filed to prevent the irreparable harm in which the detained will incur if they  
14 are sent overseas without a notice and opportunity to be heard or protections  
15 for their credible fear of being harmed, tortured, or killed.

16 c. Numerosity Rule 23(a)(2)

17 There is numerosity because there has been scores believed to be arrested,  
18 including dozen a day including at least throughout the weeks of May 20,  
19 May 27, May 28, June 3, June 5, and the on-going future members impacted.

20 d. **Typicality (Rule 23(a)(3))**

21 Typicality applies here because all have suffered or will suffer the same  
22 constitutional and statutory violations or claims as a result of the  
23 government's challenged practice, and because they seek singular injunctive  
24 and corresponding declaratory relief that remedy those injuries.

25 e. **Adequacy (Rule 23(a)(4))**

26 The proposed class satisfies the requirements as the representative  
27 Petitioners seek the same relief as the other members of the class –  
28 including, an order declaring the Directive unlawful and an injunction

1 preventing the unlawful policy, practice, or procedure. Plaintiffs and their  
2 counsel will fairly and adequately protect the interests of the class.

3 f. **The proposed class also satisfies Rule 23(b)(2).** Respondents have acted  
4 (or will act) on grounds generally applicable to the class by subjecting them  
5 to summary removal under the Proclamation rather than affording them the  
6 protection of immigration laws. Injunctive and declaratory relief is therefore  
7 appropriate with respect to the whole.

8 116. Petitioners-Plaintiffs share the similar commonality in having complied  
9 with and the U.S. government's rules until the rules were arbitrarily changed.

10 117. Under current DHS practice, numerous other asylum-seekers are being  
11 arrested and detained at their asylum, hearings.

12 118. Plaintiffs have seen immigration officers waiting in court presumably to  
13 arrest him/her at prior court appearances if the case had concluded and believes  
14 that he/she and/or their witnesses face likely civil immigration arrest in court  
15 following conclusion of the hearing.

16 119. There is overwhelming medical evidence that the incarceration of a person  
17 will have a negative impact on their well-being especially where there are other  
18 traumatic factors at work, and that damage can be permanent.

19 120. For these reasons set forth herein, Plaintiff ask this court to declare DHS's  
20 policies authorizing civil arrests in the federal building and courthouses of the  
21 Southern District Court of California are unlawful, to declare that DHS's practice  
22 of filing to obtain a warrant for courthouse arrests is illegal, and to enjoin DHS  
23 from sending noncitizens to countries without notice and a credible fear interview.

24 **B. Respondents-Defendants ("Respondents")**

25 121. Respondent CHRISTOPHER J. LAROSE is the Senior Warden at the Otay  
26 Mesa Detention Center. Respondent is a legal custodian of Petitioners.

27 122. Respondent PAMELA BONDI is the Attorney General of the United  
28 States, which is a cabinet-level department of the United States Government. In



1 this capacity, she directs each of the component agencies within DHS: ICE,  
2 USCIS, and CBP. As a result, Respondent BONDI has responsibility for the  
3 administration of the immigration laws pursuant to 8 U.S.C. C. § 1103, is  
4 empowered to grant asylum, or relief. She is sued in her official capacity,

5 123. Respondent KRISTI NOEM is the Secretary of the U.S. Department of  
6 Homeland Security, which is a cabinet-level department of the United States  
7 Government. In this capacity, she has responsibility for the administration of the  
8 immigration laws pursuant to 8 U.S.C. 1103, oversees the Executive Office of  
9 Immigration Review, is empowered to grant asylum or other relief, and is a legal  
10 custodian of Petitioner. She is sued in her official capacity;

11 124. Respondent U.S. DEPARTMENT OF HOMELAND SECURITY, is a  
12 cabinet-level department of the United States federal government and sub-agency  
13 of DHS that is responsible for the initial processing and detention of noncitizens.  
14 Its components include Immigration and Customs Enforcement (“ICE”).  
15 Respondent DHS is a legal custodian of Petitioner.

16 125. Respondent TODD LYONS is the Acting Director of U.S. Immigration and  
17 Customs Enforcement. Respondent Lyons is the senior official responsible for  
18 ICE’s policies, practices, and procedures, including those relating to the courthouse  
19 arrest and detention of immigrants during their removal procedures. Plaintiff is  
20 informed and believes Respondent Lyons signed the authorized memo of increased  
21 immigration enforcement near courthouses. Respondent Lyons has policymaking  
22 knowledge and custody of Plaintiff. Defendant is sued in his official capacity.

23 126. Respondent JASON AGUILAR, Chief Counsel for Immigration and  
24 Customs Enforcement San Diego. Respondent Aguilar is responsible for the Office  
25 of the Principal Legal Advisor (OPLA) and ICE’s policies, practices, and  
26 procedures, including those relating to the detention of immigrants during their  
27 removal procedures. Respondent Aguilar is believed to be the person responsible  
28 for executing relevant provisions of ICE Directive Enforcement Actions in or Near

1 Courthouses, issued on January 21, 2025, and a legal custodian of Petitioners.  
2 Respondent Aguilar is sued in his policymaking capacity, not a legal counsel role.  
3 Respondent Aguilar is sued in his official capacity.

4 127. Respondent SIDNEY AKI, Director of Field Operations, San Diego Field  
5 Office U.S. Customs and Border Protection. Respondent Aki is responsible for the  
6 Office of the Principal Legal Advisor (OPLA) and ICE's policies, practices, and  
7 procedures, including those relating to the detention of immigrants during their  
8 removal procedures. Plaintiff is informed and believes that Respondent Aki is sued  
9 in his policymaker role under a policymaking memo that divests authority to the  
10 Assistant Field Office Director and Assistant Special Agents in Charge.  
11 Respondent Aki is a legal custodian of Petitioners. Respondent Aki is sued in his  
12 official capacity.

13 128. Respondent GREGORY J. ARCHAMBEAULT, Director of U.S.  
14 Immigration and Custom Enforcement and Removal Operations (ERO) San Diego,  
15 which is responsible for ICE enforcement and the detention facilities, including the  
16 Otay Messa Detention Facility and San Diego Area. Respondent Archambeault's  
17 place of business is in the Southern District of California; he is believed to reside  
18 in the County of San Diego, and he is an immediate legal custodian responsible for  
19 the arrest and detention of Petitioners. He is sued in his official capacity

20 129. Respondent U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT is  
21 the subagency of DHS that is responsible for carrying out removal orders and  
22 overseeing detention. Respondent ICE is a legal custodian of Petitioners.

23 130. Respondent EXECUTIVE OFFICE OF IMMIGRATION REVIEW  
24 (EIOR) is the federal agency that administers the immigration court system, which  
25 decides whether an individual should be allowed to stay in the country or not.

26 131. Respondent CORE CIVIC is the private prison company, believed to earn  
27 multi-millions of dollars on the detention of the individual humans beings detained  
28 at the Otay Mesa Detention Center. Core Civic is a legal custodian of petitioners.

1 132. Plaintiff is informed and believes there are other Respondents DOES 1  
2 through 10 are agents who usurped their power as detailed herein.

3 133. Plaintiff is informed and believes there are DOES 11 through 20, who are  
4 responsible for U.S. government, the Office of the Principal Legal Advisor  
5 (OPLA) and ICE's policies, practices, and procedures, including those relating to  
6 the detention of immigrants against their due process rights.

7 **CAUSES OF ACTION**

8 **FIRST CLAIM FOR RELIEF**

9 **Ultra Vires, Violation of 50 U.S.C. § 21, et seq.**

10 **(All Respondents)**

11 134. All of the allegations are repeated and realleged as if fully set herein.

12 135. The government has not provided an explanation for its actions or the  
13 applicable law but has incarcerated countless individuals alleged to be noncitizens at  
14 their court hearings.. Notably, even the AEA does not authorize the removal of  
15 noncitizens from the United States absent a "declared war" or a "perpetrated,  
16 attempted, or threatened" "invasion or predatory incursion" into the United States  
17 by a "foreign nation or government." *See* 50 U.S.C. § 21..

18 136. But Petitioners-Plaintiffs are being subject to immediate removal  
19 without any guarantees the Respondents-Defendants will afford the privilege of  
20 voluntary departure, notice or an opportunity to respond, or asylum protections.

21 137. The application of the unstated process is therefore ultra vires.

22 **SECOND CLAIM FOR RELIEF**

23 **Violation of 8 U.S.C. § 1101, et seq.**

24 **(All Respondents)**

25 138. All of the foregoing allegations are repeated as if fully set forth herein.

26 139. The INA, 8 U.S.C. § 1101, et seq., sets out the sole mechanisms established  
27 By Congress for the removal of noncitizens.

28 140. The INA provides that a removal proceeding before an immigration judge

1 under 8 U.S.C. § 1229a is “the sole and exclusive procedure” by which the  
2 government may determine whether to remove an individual, “[u]nless otherwise  
3 specified” in the INA. 8 U.S.C. § 1229a(a)(3).

4 141. The current policy, conduct creates an alternative removal mechanism  
5 outside of the immigration laws set forth by Congress in Title 8.

6 142. The INA’s “exclusive procedure” and statutory protections apply to any  
7 removal of a noncitizen from the United States. Because the current process or  
8 conduct provides for the removal of Petitioners without the procedures specified in  
9 the INA, it violates 8 U.S.C. § 1229a and the INA.

10 143. As a result, the application of the Directive to Petitioners-Plaintiffs, which  
11 will result in their removal from the United States, is contrary to law.

12 **THIRD CLAIM FOR RELIEF**

13 **Violation of 8 U.S.C. § 1158, Asylum**

14 **(All Respondents)**

15 144. All of the allegations are repeated and realleged as if fully set herein.

16 145. The INA provides, “[a]ny alien who is physically present in the United  
17 States or who arrives in the United States (whether or not at a designated port of  
18 arrival and including an alien who is brought to the United States after having been  
19 interdicted in international or United States waters), irrespective of such alien’s  
20 status, shall apply for asylum in accordance with this section or, where applicable,  
21 section 1225(b) of this title.” 8 U.S.C §1158(a)(1).

22 146. Petitioners-Respondents arrest after a hearing violates federal asylum, law  
23 because it impedes their ability to pursue their asylum claims.

24 147. Respondents’ application of Expedited Removal to Petitioners prevents  
25 them from applying for asylum under 8 U.S.C. § 1158(a)(1) and is contrary to law.

26 **FOURTH CLAIM FOR RELIEF**

27 **Violation of 8 U.S.C. § 1231(b)(3), Withholding of Removal**

28 **(All Respondents)**

1 148. Plaintiffs reallege all prior paragraphs of this complaint and incorporate the  
2 same herein by this reference as if fully set below.

3 149. The “withholding of removal” statute, INA § 241(b)(3), *codified at* 8  
4 U.S.C. § 1231(b)(3), bars the removal of noncitizens to a country where it is more  
5 likely than not that they would face persecution.

6 150. Respondents’ Process violates the withholding of removal statute  
7 because it does not provide adequate safeguards to ensure that Petitioners are not  
8 returned to a country where it is more likely than not they would face persecution.  
9 Accordingly, Respondents’ actions against Petitioners are contrary to law.

10 **FIFTH CLAIM FOR RELIEF**

11 **Violation of the Foreign Affairs Reform and Restructuring Act of 1998**

12 **(“FARRA”) codified at 8 U.S.C. § 1231 note**

13 **Convention Against Torture**

14 **(All Respondents)**

15 151. Plaintiffs realleges all prior paragraphs as incorporated fully herein.

16 152. The United States is bound by the United Nations Convention Against  
17 Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment  
18 (“CAT”), which prohibits returning any individual to a country where it is more  
19 likely than not that they would be subjected to torture.

20 153. Article 3 of the CAT, as implemented by the Foreign Affairs Reform and  
21 Restructuring Act of 1998 (FARRA), and its regulations at 8 C.F.R. § 208.16–18,  
22 require that no person be removed to a country where they are likely to face torture  
23 at the hands of the government or with its acquiescence.

24 154. Petitioner has expressed a credible and well-supported fear of torture upon  
25 return to Morocco, supported by evidence including country conditions,  
26 medical/psychological documentation, affidavits, and testimony.

27 **SIXTH CLAIM FOR RELIEF**

28 ***Ultra Vires*, Violation of 50 U.S.C. § 22**

**(All Respondents)**

155. All of the allegations are repeated and realleged as if set forth herein.

156. The Directive requires that noncitizens whose removal is authorized unless “chargeable with actual hostility, or other crime against the public safety,” be allowed the full time stipulated by treaty to depart or a reasonable time in which to settle their affairs before departing. *See* 50 U.S.C. § 22. The Directive on its face denies Petitioners any time under Section 22 to settle their affairs, because it declares everyone subject to Expedite Removal, including asylum seekers who have already filed their I-589 and established they have fear of returning to their country due to torture, persecution, or death.

157. The current practice contravenes 50 U.S.C. § 22 and is *ultra vires*.

**SEVENTH CLAIM FOR RELIEF**

**Violation of Due Process Under the First Amendment**

**(Right to Provide Legal Advice, Right to Counsel, Petition the Government)**

**(All Respondents)**

158. Plaintiffs reallege all prior paragraphs of this complaint and incorporate the same herein by this reference as if fully set below.

159. The First Amendment to the United States guarantees fundamental freedoms, including freedom of assembly, freedom of speech, the right to petition the government, free exercise.

160. Upon information and belief, Defendants-Respondents’ policies, practices, and conduct are denying access to counsel and obstructs certain freedoms.

161. Plaintiffs-Petitioners have certain rights to access their counsel.

162. Plaintiffs-Petitioners are informed and believe Defendants-Respondents’ policies, practices, and conduct are denying noncitizens their rights to communicate with counsel, in violation of the First Amendment.

**EIGHTH CLAIM FOR RELIEF**

**Violation of Due Process Under the Fourth, Fifth, Fourteenth Amendment**



**(All Respondents)**

163. Plaintiffs reallege all prior paragraphs of this complaint and incorporate the same herein by this reference as if fully set below.

164. The Fourth Amendment guarantees against unlawful searches and seizures.

165. The Due Process Clause of the Fifth Amendment provides for fair and adequate hearing and an opportunity to be heard.

166. The Due Process Clause of the Fifth Amendment applies to all “persons” on United States soil and thus applies to A.M. and Petitioners-Plaintiffs.

167. The Fourteenth Amendment guarantees equal protection.

168. A.M. have a life and liberty interest under the Due Process Clause.

169. A.M. was denied a fair opportunity to present their case, Respondents’ actions prevented a lawful hearing, and intimidated from accessing the courts.

170. The arrest at an asylum hearing violates procedural due process because it furthers no legitimate purpose other than chill or prevent access to the court system with those attempting to comply, not to mention a compelling government interest.

171. The mechanics of how ICE courthouse arrests occur is unnecessary, confusing, and not related to advancing the governments interest.

172. The U.S. Constitution prohibits arbitrary detention without prompt notices of charges or meaningful opportunity to be heard.

**NINTH CLAIM FOR RELIEF**

**Violation of Habeas Corpus**

**(All Respondents)**

173. Plaintiffs realleges all prior paragraphs of this complaint and incorporate the same herein by this reference.

174. The protection of habeas corpus is enshrined in Article I, section 9 of the United States Constitution.

175. Detainees have the right to file for habeas corpus to challenge the legality of their detention or raise claims related to their detention or the basis of removal.

1 176. The detention of Petitioners under Expedited Removal has violated and  
2 continues to violate their right to habeas corpus. *See* 28 U.S.C. § 2241; U.S. Const.  
3 art. I, § 9, cl. 2 (Suspension Clause).

4 **TENTH CLAIM FOR RELIEF**

5 **(Administrative Procedure Act)(“APA”)**

6 **(All Respondents)**

7 177. All of the allegations are repeated and re-alleged as though set herein.

8 178. The APA prohibits agency action that is arbitrary and capricious.

9 179. The detention of asylum seekers at their immigration hearings without a  
10 legitimate justification is arbitrary and capricious and accordingly violates the  
11 APA. 5 U.S.C. §706.

12 180. There is no legitimate purpose in detaining Petitioners at the asylum  
13 hearing as they were about to adjudicate their claims and now costs the U.S.  
14 increased costs to detain or ship off to an unknown location overseas.

15 181. The APA instructs courts to “hold unlawful and set aside agency action”  
16 that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance  
17 with law[.]” 5 U.S.C. § 706(2)(A). Accordingly, defendants may only exercise  
18 authority conferred by statute. *City of Arlington v. FCC*, 569 U.S. 290, 297-98  
19 (2013).

20 **COUNT I**

21 **DHS’s Courthouse Arrest Policy is Arbitrary, Capricious, an Abuse of  
22 Discretion, or Otherwise Not in Accordance with Law in Violation of the  
23 Administrative Procedure Act, 5 U.S.C. § 706(2)(A)**

24 182. DHS’s enforcement policy any “alien” may be arrested at a known location  
25 is a final agency action subject to review under the Administrative Procedure Act.

26 183. DHS’s policies regarding courthouse arrest are arbitrary and capricious  
27 because Respondents-Defendants do not sufficiently explain to whom the policies  
28 apply, fail fully to consider the foreseeable harms and/or costs of the policies, do  
not adequately explain its prioritizing of civil arrests in or near courthouses over

1 the severe harms triggered by those arrests, and do not adequately justify the  
2 change from Respondents-Defendants' prior policies.

3 184. DHS's application of their policies are further arbitrary and capricious as  
4 applied to the Plaintiffs because all of the Plaintiffs have been ruled *not* to be a risk  
5 of flight when the magistrate set bond in their criminal prosecutions. Plaintiffs are  
6 all in compliance with the conditions of their pretrial release, which is further  
7 evidence that their arrest at court does not further a legitimate need by ICE to arrest  
8 them because their removal can be accomplished without detaining them anew.  
9 Moreover, Defendants are not complying with their own policies.

10 185. Plaintiffs-Petitioners have been lawfully playing by the rules. At the least  
11 they should be provided voluntary departure.

12 186. DHS's courthouse arrest policies are arbitrary and capricious for a  
13 multitude of reasons including their failure to explain this historic deviation in  
14 policy, the application of the policies is inconsistent, and the policies fail to  
15 advance legitimate immigration enforcement interests.

16 187. Defendants' violation causes ongoing and irreparable harm to Plaintiffs.

17 **COUNT II**  
18 **DHS's Courthouse Arrest Policies Exceed Statutory Authority in Violation of**  
19 **the Administrative Procedures Act, 5 U.S.C. § 706(2)(C)**

20 **(All Respondents)**

21 188. Plaintiffs incorporate by reference the allegations set forth in each of the  
22 preceding paragraphs of this Complaint.

23 189. The Administrative Procedure Act instructs courts to "hold unlawful and  
24 set aside agency action" that is "in excess of statutory jurisdiction, authority, or  
25 limitations...." 5 U.S.C. § 706(2)(C).

26 190. There exists a longstanding common-law privilege against civil arrest of  
27 witnesses, parties, and others attending court on official business recognized by  
28 both federal and state courts.

1 191. The validity of DHS authorizing civil arrest of parties and witnesses  
2 attending court depends on whether the grant of power to conduct civil arrests  
3 somehow abrogated the well-settled common law privilege that civil arrests cannot  
4 be used to arrest parties, witnesses and those attending court on official business.

5 192. Given the “longstanding [] principle that statutes which invade the common  
6 law are to be read with a presumption favoring the retention of long-established  
7 and familiar principles,” a statute must “speak directly to the question addressed by  
8 the common law” to “abrogate a common-law principle.” *Texas*, 507 U.S. at 534  
9 (1993) (internal quotation marks and alterations omitted). The statute authorizing  
10 DHS to conduct civil immigration arrests does not “speak directly to the question  
11 addressed by the common law”—*i.e.*, it does not speak to whether DHS can use a  
12 party or witness’s appearance in court as a trap for purposes of a civil arrest.  
13 Instead, the statute simply authorizes arrest and detention, while saying nothing  
14 about how, when, or where such arrests may take place. *See* 8 U.S.C. §§ 1226(a),  
15 1357(a). Thus, the power Congress granted to DHS to conduct civil arrests  
16 inherently contains within it the common-law limitation that parties, witnesses, and  
17 others attending court on official business are privileged from civil arrest.

18 193. To the extent there is any ambiguity concerning whether the INA  
19 incorporates or abrogates the common-law privilege, the constitutional concerns  
20 raised by DHS’s courthouse arrest policies, resolve that ambiguity in favor of  
21 interpreting the statute to limit DHS’s authority. *See Clark v. Martinez*, 543 U.S.  
22 371, 380-82 (2005) (when there are “competing plausible interpretations of a  
23 statutory text,” courts should apply “the reasonable presumption that Congress did  
24 not intend the alternative which raises serious constitutional doubts”).

25 194. Abrogating the common-law privilege violates the Constitutional right of  
26 access to the courts, which prohibits “systemic official action [that] frustrates a  
27 plaintiff or plaintiff class in preparing and filing suits.” *Christopher v. Harbury*,  
28

1 536 U.S. 403, 413, 415 & n.12 (2002). Such “frustrat[ion]” includes not only  
2 policies that ban access outright, but also obstruct access. *E.g., id.* at 413. Forcing  
3 noncitizens to risk civil arrest at the courts creates such impermissible frustration.

4 195. DHS’s most recent policies authorize civil courthouse arrests that  
5 Congress never authorized DHS to conduct and contravene their **own policies,**  
6 **regulations, and procedures that asylum seekers relied upon.** The policies are  
7 thus “in excess of statutory jurisdiction, authority, or limitations,” and “arbitrary,  
8 capricious, an abuse of discretion, or otherwise not in accordance with law.”  
9 conduct should be unlawful and set aside under the Administrative Procedure Act.

10 196. The courthouse arrests impact noncitizen communities broadly, instilling  
11 fear and distrust of the government, law enforcement, and the judiciary.

12 197. Congress’ general grant of power to DHS to conduct civil arrests did not  
13 abrogate the well-settled common law privilege that prohibits civil arrests of  
14 parties, witnesses and others attending court on official business.

15 198. If asylees show up to court, they might get arrested, detained indefinitely,  
16 or sent back to the country where they fled persecution, but if they do not appear, a  
17 judge may rule adversely against them and permanently lose their rights.

18 199. DHS’s courthouse arrest policies authorizing civil arrests of people in,  
19 or traveling to or from, courthouses, and DHS’s practice of carrying out civil  
20 arrests against individuals attending federal immigration courthouses within the  
21 Southern District of California, thus exceed DHS’s statutory authority.

22 200. The policies are “in excess of statutory jurisdiction, authority, or  
23 limitations” in violation of the Administrative Procedure Act, 5 U.S.C. §706(2)(C).

24 201. Defendants’ violation causes ongoing harm to Plaintiffs.

### 25 **COUNT III**

#### 26 **DHS’s Courthouse Arrest Policies Violate the Right of Access to the Courts**

27 202. Plaintiffs incorporate by reference the allegations set forth in each of the  
28 preceding paragraphs of this Complaint.

1 203. Defendants’ actions deprive Plaintiffs of meaningful access to the federal  
2 courthouses of the Southern District of California in violation of Plaintiffs’ rights  
3 under the United States Constitution.

4 204. Policies that ban access outright and policies that obstruct the right of  
5 access to courts in more subtle ways are prohibited.

6 205. Forcing noncitizens who have been fully compliant to choose between  
7 exercising their right to present asylum claims or risk being subjected to a civil  
8 arrest at a federal courthouse in the Southern District of California impermissibly  
9 frustrates the right of access to courts, as protected by the First, Fifth, Sixth,  
10 Fourteenth Amendments to the United States Constitution.

11 206. DHS’s courthouse arrest policies, practices, and conduct were adopted by  
12 Defendants without any consideration of the foreseeable harms of their policy,  
13 without adequate explanation of their prioritizing civil arrests in or around  
14 courthouses over those harms, and without adequate justification of the change  
15 from Defendants’ prior policies on courthouse arrests.

16 207. The courthouse arrest policies are therefore unconstitutional because they  
17 infringe on Plaintiffs’ right to access the courts free from fear of civil arrest.

18 208. These policies, practices, and procedures cause ongoing harm to Plaintiffs.

#### COUNT IV

#### **DHS’s Warrantless Courthouse Arrests Violate 8 U.S.C. § 1357(a)(2) because Plaintiffs Are Not a Flight Risk and the Arrests therefore Violate the Administrative Procedures Act, 5 U.S.C. § 706(2)(A), (C)**

21 209. Plaintiffs incorporate by reference the allegations set forth fully herein.

22 210. Plaintiffs allege that DHS has not obtained a warrant for their arrest in  
23 compliance with 8 U.S.C. § 1357(a)(2). Section 1357(a)(2) authorizes DHS to  
24 make warrantless arrests only if (1) there is “reason to believe” the alien is present  
25 in the United States in violation of immigration law; and (2) the alien “is likely to  
26 escape before a warrant can be obtained for his arrest. . . .”

27 211. Courts have continually recognized and required strict adherence to § 1357.  
28

1 *See Arizona v. United States*, 567 U.S. 387, 408, 410 (2012) (holding that an  
2 Arizona statute was preempted because it purported to give Arizona law  
3 enforcement greater warrantless arrest authority “than Congress has given to  
4 trained federal immigration officers,” emphasizing that warrantless arrest authority  
5 is limited to situations where there is a likelihood of escape before a warrant can be  
6 obtained); *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995)  
7 (holding that this statute requires an individualized determination of flight risk);  
8 *United States v. Meza-Campos*, 500 F.2d 33 (9th Cir. 1975) (applying an  
9 individualized likelihood-of-escape analysis).<sup>7</sup>

10 212. DHS cannot show that Plaintiffs pose a risk of escape before it can obtain a  
11 warrant. Plaintiffs are all out of custody on bond in their petty offense  
12 prosecutions, and their release on bond required a magistrate judge to rule that they  
13 do not pose an unreasonable risk of flight. Moreover, Plaintiffs’ criminal cases  
14 have all been pending for many months, and DHS could have used this time to  
15

---

16 <sup>7</sup> *See also, De La Paz v. Coy*, 786 F.3d 367, 376 (5th Cir. 2015) (“[E]ven if an  
17 agent has reasonable belief, before making an arrest, there must also be a  
18 likelihood of the person escaping before a warrant can be obtained for his arrest.”);  
19 *Morales v. Chadbourne*, 793 F.3d 208, 216 (1st Cir. 2015) (quoting § 1357(a)(2))  
20 (“Without a warrant, immigration officers are authorized to arrest an alien only if  
21 they have “*reason to believe that the alien so arrested is in the United States in*  
22 *violation of any [immigration] law or regulation and is likely to escape before a*  
23 *warrant can be obtained for his arrest.*”); *United States v. Harrison*, 168 F.3d 483,  
24 1999 WL 26921, at \*4 (4th Cir. 1999) (unpublished) (explaining that “the critical  
25 question remains did the INS believe Harrison was likely to flee before a warrant  
26 could be obtained. In making such a determination, a court examines the objective  
27 facts with the knowledge of the INS Agents”; rejecting the Government’s position  
28 “that in every case in which an alien is deportable an arrest can be made without a  
warrant”); *Westover v. Reno*, 202 F.3d 475, 479-80 (1st Cir. 2000) (commenting  
that an immigration arrest was “in direct violation” of § 1357(a)(2) because  
“[w]hile INS agents may have had probable cause to arrest Westover by the time  
they took her into custody, there is no evidence that Westover was likely to escape  
before a warrant could be obtained for her arrest”).



1 obtain a warrant. Even if DHS can establish a reason to believe that Plaintiffs are  
2 present in the United States in violation of immigration law, it cannot establish that  
3 Plaintiffs are “likely to escape” when it has failed to obtain a warrant during the  
4 months while Petitioners-Plaintiffs’ cases have been pending.

5 213. Petitioners-Plaintiffs seek to enjoin DHS from arresting them without a  
6 federal warrant while at court, and on their way to and from court appearances  
7 mandated by their petty offense prosecutions. Plaintiffs conclusively show that  
8 they are not “likely to escape before a warrant can be obtained,” § 1357(a)(2),  
9 because they are in compliance with the court-ordered conditions of bond.

10 214. Petitioners-Plaintiffs’ cases have been pending for months or nearly two  
11 years and the length of time has afforded DHS sufficient time to obtain a warrant.

12 215. Petitioners-Plaintiffs’ compliance with court orders for the pendency of  
13 their Immigration cases and appearance in court as ordered defeats any argument  
14 that they pose a risk of flight before a warrant can be obtained. The Court should  
15 therefore enjoin DHS from arresting Plaintiffs without a warrant while on their  
16 way to court, at court, or departing court in connection with their asylum rights.

## 17 **COUNT V**

### 18 **DHS’s Warrantless Federal Building Courthouse Arrests Violate Plaintiffs’ 19 Fourth Amendment Rights**

20 216. Petitioners-Plaintiffs incorporate by reference the allegations set forth in  
21 each of the preceding paragraphs of this Complaint.

22 217. The Fourth Amendment guarantees Plaintiffs the right to be free from  
23 “unreasonable searches and seizures. . .” Plaintiffs assert DHS intends to arrest  
24 them when they appear in court without a warrant.

25 218. “[U]nlike illegal entry, mere unauthorized presence in the United  
26 States is not a crime.” *Melendres v. Arpaio*, 695 F.3d 990, 1000 (9th Cir. 2012).  
27 DHS’s warrantless courthouse arrests are not in response to new criminal activity;  
28 rather, DHS’s administrative arrests are used to place people immediate removal.

1 219. DHS's warrantless courthouse arrests are not authorized by law, and the  
2 arrests violate Plaintiffs' Fourth Amendment rights to be free from unreasonable  
3 government seizure and arrest.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs-Petitioners pray for judgment as follows:

- 6 A. Assume Jurisdiction over this matter and Enjoin Respondents from  
7 transferring Petitioners out of this district's jurisdiction during this matter.  
8 B. Stay the removal of the Petitioners-Plaintiffs pending further proceedings.  
9 C. Grant injunctive relief (including but not limited to, habeas relief and enjoin  
10 resetting the asylum clock-process) and prohibit Defendants-Respondents  
11 from preventing noncitizens meaningful access to counsel or from relying on  
12 pressure to convince noncitizens to surrender their rights.  
13 D. Grant the restoration of the individual merits hearing or asylum adjudication.  
14 E. Declare unlawful the Directive policy and/or practice they're implementing  
15 to arrest and detain Petitioners without a hearing or due process;  
16 F. Declare DHS's courthouse arrest policies and practices are in excess of  
17 Defendants' statutory jurisdiction, authority, or limitations in violation of 5  
18 U.S.C. § 706(2)(C).  
19 G. Enjoin Defendants and all of their officers, employees, agents, and anyone in  
20 concert with them, from implementing, applying, or taking any action  
21 whatsoever under the DHS's courthouse arrest policies and from civilly  
22 arresting parties, witnesses, and others attending, being present at, or  
23 departing from U.S. courthouses in the Southern District of California.  
24 H. Award Petitioners' counsel Equal Access to Justice Act or reasonable  
25 attorneys' fees and costs.  
26

27 ///

1 I. Any and all other further relief as this Court deems just or proper.  
2

3 DATED: June 11, 2025

Respectfully submitted,  
LAW OFFICES OF EMILY E. HOWE

By /s/ Emily Howe

Emily Howe  
Attorneys for Plaintiffs  
emh@howelaws.com  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28