UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

EVENEZER CORTEZ MARTINEZ Plaintiff, v. U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, PETE R. FLORES as Acting Commissioner of US Customs and Border Patrol, in his official capacity; JAYSON AHERN as Port Director US Customs and Border Patrol Dallas Fort Worth Airport, in his official capacity Defendants,	)	Case Number: 3:25-cv-801

Plaintiff, Evenezer Cortez Martinez, through his undersigned counsel, alleges as follows:

I. INTRODUCTION

1. Non-citizens who came to the United States as children and met several guidelines may request consideration for Deferred Action for Childhood Arrivals ("DACA"), an exercise of prosecutorial discretion, providing temporary relief from deportation (deferred action) and work authorization. Once approved, DACA benefits also include the ability seek advance parole for travel. 8 CFR 236.21-236.25

2. A facially and legally valid advance parole document (Form I-131) allows for certain unequivocal benefits. Once approved by United States Citizenship and Immigration Services ("USCIS"), it allows, as is relevant here, a DACA recipient in the United States to temporarily travel outside the country and return without needing a visa.

3. A " . . .[d]eparture under a grant of advance parole is qualitatively different from other departures". *In re Arrabally and Yerrabelly*, 25 I. & N. Dec. 771, (BIA 2012).

4. Under current regulations, a holder of an Advance Parole document cannot be barred from the country (removed) without a formal removal hearing before an Immigration Judge. 8 C.F.R. §1001.1(q) (an alien granted advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, shall not be considered an arriving alien for purposes of section 235(b)(1)(A)(i) of the Act [the provision allowing for expedited removal without recourse to a hearing]).

5. Thus, a returning non-citizen previously granted Advance Parole is not placed into Expedited Removal proceedings; rather, they must be placed into regular Removal Proceedings under §1229a (INA §240), unless that individual is an aggravated felon, in which case the provisions of §1228(b) (INA §238(b)) are applicable.

6. The matter at hand involves such a document and yet, Plaintiff was denied entry and subjected to an expedited removal order. Moreover, when Defendants prevented Plaintiff's return to the U.S. they confiscated his properly issued advance parole document and marked his Mexican passport with a bold notation indicating he had been "deported". At no point was Plaintiff afforded a hearing of any kind and Defendants' actions provided no legal remedy which would allow Plaintiff the opportunity to be heard before having his property taken and his passport vandalized. These actions were all contrary to law.

7. The Administrative Procedure Act ("APA") entitles "a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . to

judicial review thereof." 5 U.S.C. § 702. In addition, The APA empowers this Court to set aside a final agency action where, as here, the agency action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

8. This action seeks declaratory, injunctive and mandamus relief to find that Defendants actions were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law when they confiscated Plaintiff's validly issued advance parole documents, improperly subjected him to expedited removal proceedings without hearing, and removed him from the United States on March 23, 2025, at the Dallas Fort Worth Airport. Insofar as Defendants wrote "deported" in his Mexican passport without authority, their actions were in violation of law.

9. Plaintiff is entitled to attorneys' fees and costs pursuant to the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 and 28 U.S.C. § 2412(d), *et seq*.

II. JURISDICTION

10. This case arises under 8 U.S.C. § 1101, *et. seq.*, and the APA, 5 U.S.C. § 701, *et. seq.* This Court has jurisdiction pursuant to 28 U.S.C. § 1331 as a civil action arising under the laws of the United States. This Court also has the authority to grant declaratory relief under 28 U.S.C. §§ 2201-02, and injunctive relief under 5 U.S.C. § 702 and 28 U.S.C. §§ 1361-62. The United States has waived sovereign immunity under 5 U.S.C. § 702

11. This Court is not deprived of jurisdiction by 8 U.S.C. § 1252, INA § 242. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (finding that INA § 242 does not bar a claim challenging agency authority that does not implicate discretion). Generally, a narrower construction of jurisdiction-stripping provision is favored over the broader one, as reflected by the "familiar principle of statutory construction: the presumption

favoring judicial review of administrative action." *Kucana v. Holder*, 558 U.S. 233, 251, 130 S. Ct. 827, 839 (2010). Absent "clear and convincing evidence" of congressional intent specifically to eliminate review of certain administrative actions, the above-cited principles of statutory construction support a narrow reading of the jurisdiction-stripping language of 8 U.S.C. § 1252(a)(2)(B)(ii). *Id.*, at 251-252. *See also*, *Geneme v. Holder*, 935 F.Supp.2d 184, 192 (D.D.C. 2013) (discussing *Kucana's* citation to a presumption favoring judicial review of administrative action when statute does not specify discretion.)

12. 8 U.S.C. § 1252(a)(5), INA § 242(a)(5), provides that "a petition for review filed with an appropriate court of appeals in accordance with this section, shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this Act[.]"As the present action is not an action to review a removal order but an action challenging the unlawful conduct of CBP in preventing Plaintiff's return on an advance parole document, this Court retains original jurisdiction under the APA and 28 U.S.C. § 1331, as well as for declaratory relief under 28 U.S.C. § 2201.

III. VENUE

13. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(e)(1)(C) because(1) this is a civil action in which Defendant Department of Homeland Security and Customs and Border Patrol is an agency or department of the United States; (2) Defendants Flores and Ahren are officers and employees of the United States, acting in their official capacities, or an agency thereof, and a substantial part of the events or omissions giving rise to this action are occurring in this District.

IV. PARTIES

14. Plaintiff, Evenezer Cortez Martinez, is an adult individual who is a valid DACA recipient having had his applications approved through October 22, 2026. He also applied for and was granted, under the DACA program, an application for Advance Parole. He is a long-time resident of Roeland Park, Kansas, where he lives with his wife and 3 children. He is also employed by the Shawnee Mission, Kansas School District as a painter.

15. Defendant U.S. Department of Homeland Security ("DHS") is the federal agency responsible for, among other things, enforcing immigration laws. DHS is an executive department of the United States Government, headquartered in Washington, DC.

16. Defendant U.S. Customs and Border Protection ("CBP") is a subcomponent of DHS, headquartered in Washington, DC, and is responsible for, among other things, enforcing immigration laws at and between ports of entry.

17. Defendant Pete R. Flores is the Acting Commissioner of CBP and is sued in his official capacity as the individual exercising the power as head of the subcomponent.

18. Defendant Jayson Ahern is the Port Director Customs and Border Patrol Dallas Fort Worth Airport and is sued in his official capacity as the individual exercising the power as head of the port of entry at the Dallas Fort Worth Airport pot of entry.

V. LEGAL BACKGROUND

19. Parole is part of DHS' general parole authority described at 8 USC §1182 (d)(5)(A). *See also* 8 CFR § 212.5(f) and USCIS Adjudicator's Field Manual, § 54.1 ("… the use of advance parole is an outgrowth of administrative practice stemming from the general parole authority at section 212(d)(5)"). The plain language of the statute does not create inadmissibility for a parolee who has a removal order under 8 USC 1229(a) where they are presenting a valid parole document at the time they seek to enter the

United States. This is because inherent in the parole authority is a significant humanitarian or public benefit purpose.

20. The regulations at 8 C.F.R. 212.5(f) authorize the grant of advance parole for individuals to travel outside of the United States and return without a visa; the regulations specify that the individual "shall be issued an appropriate document authorizing travel." (*emphasis added*).

21. Under current regulations, a holder of an Advance Parole document cannot be barred from the country (removed) without a formal removal hearing before an Immigration Judge. 8 C.F.R. §1001.1(q) (an alien granted advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, shall not be considered an arriving alien for purposes of section 235(b)(1)(A)(i) of the Act [the provision allowing for expedited removal without recourse to a hearing]).

22. Thus, a returning non-citizen previously granted Advance Parole may not placed into Expedited Removal proceedings; rather, they must be placed into regular Removal Proceedings under §1229a (INA §240), unless that individual is an aggravated felon, in which case the provisions of §1228(b) (INA §238(b)) are applicable. The regulations do not create any exception to issuance where there is a removal order in place.

23. The Fifth Circuit and the Board of Immigration Appeals have recognized that an individual with a removal order may still utilize an advance parole document to travel out of the US and return without consequence. *See Duarte v. Mayorkas*, 27 F.4th 1044 (5th Cir. 2022)(*cf.* recognizing that an applicant with TPS who has a removal order may nonetheless travel out of the country and return on a grant of advance parole); *See also*

Maria v. McAleenan, No. H-18-3996, 2019 U.S. Dist. LEXIS 82255, at *7 n.3 (S.D. Tex. May 15, 2019)("Even assuming that the court has jurisdiction, Santa Maria's argument that her departure from the United States on advance parole executed her removal order has no merit" *citing In re Arrabally/Yerrabelly*[1], 25 I. & N. Dec. 771, (BIA 2012) ("[I]t is well-settled that an alien who leaves the United States and returns under a grant of advance parole is subject to the grounds of inadmissibility once parole is terminated, even if he had been 'deportable' rather than 'inadmissible' before the trip's commencement.").

24. Advance parole by definition is "treated as a distinct benefit for which the alien must demonstrate his eligibility and worthiness." *Arrabally/Yerrabelly* at 778. This distinction comes with certain guarantees, the Seventh Circuit explained: "the Board of Immigration Appeals, in *In re G-A-C-, supra*, described advance parole as "a mechanism by which a district director can, as a humanitarian measure, advise an alien who is in this country, but who knows or fears that he will be inadmissible if he leaves and tries to return, that he can leave *with assurance that he will be paroled back into the United States upon return*, under prescribed conditions, if he cannot establish that he is admissible at that time" (emphasis added in the original)(internal cite omitted). The Board went on to say that "the term 'advance parole' is something of a misnomer"—that really it means "advance authorization of parole…the alien is advised in advance of a departure that, if he meets certain conditions, *he will be paroled into the United States when he returns*." *Id*. at 88 n. 3. (emphasis added) *Samirah v. Holder*, 627 F.3d 652, 659, 2010 U.S. App. LEXIS 24684, *18-19

[1] The court wrongly captions the case as *Manohar*, 25 I. & N. Dec. at 780, *Maria v. McAleenan*, No. H-18-3996, 2019 U.S. Dist. LEXIS 82255, at *7 n.3 (S.D. Tex. May 15, 2019)

25. Significantly, USCIS itself recognizes that DACA recipients may seek advance parole "[i]f we have granted DACA under 8 CFR 236.21-236.25 after you have been ordered deported or removed, you may still request advance parole if you meet the guidelines for advance parole…" *See* https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions#travel last visited March 26, 2025.

26. Although the advance parole document contains certain warning on it regarding an individual being subjected to grounds of inadmissibility at the time of their return from travel abroad, the Court in *Samirah* and the Board in *Matter of Arrabally/Yerrabelly* disregarded such types of warnings in reaching their holdings. (*See Arrabally/Yerrabelly* at *fn*.7, 779, determining, "As the DHS points out on appeal, documents authorizing advance parole bear explicit warnings that the parolee may be inadmissible under section212(a)(9)(B) and ineligible for adjustment of status upon return. *See also Cheruku v. Att'y Gen. of U.S.*, 662 F.3d at 208 &n.10 (noting the existence of such warnings). However, because we do not believe that Congress understood a trip under a grant of advance parole to be a 'departure' within the meaning of section 212(a)(9)(B)(i)(II), the nature or clarity of such warnings is ultimately beside the point.")

27. Similarly, the *Samirah* Court outlined that even those who may be inadmissible are entitled to have that determination made by an immigration judge subsequent to their return on advance parole. *See Samirah,* finding "except in the case of an 'arriving alien'—and for purposes of removal an alien granted advance parole is not deemed to be one upon his return to the United States,-inadmissibility must be determined by an immigration judge, rather than by an immigration officer at a checkpoint or port of

entry. 8 U.S.C. § 1229a(a)….Of course, the plaintiff has not returned to the United States, but the point is only that, *should he return, he could not be denied admission without a determination by an immigration judge that he was inadmissible*. This point is important for two reasons: an immigration judge is a judicial officer; and the fact that no immigration judge was involved in the decision to exclude plaintiff from the United States shows that the ground for excluding him was not that he was inadmissible." (*emphasis added*) *Id.* at 657.

28. There is no authority that allows a validly issued advance parole document to be revoked unilaterally and without notice by CBP.

29. Notwithstanding even if a revocation were possible, which it is not, even those actions alone would not have prevented return to the US under the current situation. (*See Samirah* at 655, finding "The government argues that the revocation of [the Plaintiff's] advance parole made him inadmissible because it left him without an entry document, as required by 8 U.S.C. § 1182(a)(7)(A)(i)(I) for admission to the United States. The government is wrong. Form I-512L is a travel document, a substitute for a visa (it *says* so), the purpose of which is to tell immigration officers that the bearer is entitled to enter the United States." (emphasis in the original).

30. Moreover, while CBP has broad arrest powers under governing statutes and regulations, there are constitutional constraints to the exercise of this authority. Notably, the Fourth Amendment commands that searches and seizures be reasonable.

31. In addition to the reasonableness of the search and seizure, CBP's own guidelines outline that "documents determined to be genuine, unaltered, and issued under the proper authority, must be returned to upon release, removal or repatriation." Section 7.0. US. Customs and Boarder Protection National Standards on Transport, Escort,

Detention, and Search. Nothing allows CBP to confiscate documents that are valid on their face and are otherwise genuine, simply because CBP believes that they "may have been issued in error." At a minimum where property is seized, CBP is required to produce a receipt. *See* 19 C.F.R. §162.21. Nothing in the law provides CBP with the authority to vandalize an individual's passport where there is no evidence that the individual has engaged in any unlawful or improper conduct. Such conduct is outside the scope and authority of CBP agents. 8 U.S.C. 1357.

VI. STATEMENT OF FACTS

32. On March 23, 2025, Mr. Cortez Martinez arrived at the Dallas Fort Worth Airport on American Airlines flight 1066 from Mexico City. He had left just three days earlier to visit family after his grandfather died. At the time he left the country, Mr. Cortez Martinez had in his possession his approved DACA application and a legally valid advance parole document (Form I-512, receipt number IOE0929249393). The advance parole document remains valid until April 14, 2025.

33. Upon returning to the United States, Mr. Cortez Martinez appeared for inspection at the port of entry at the airport in Dallas Fort Worth and tendered his documents to officers. He was then placed in secondary inspection and questioned. Mr. Cortez Martinez cooperated and truthfully answered all the officer's questions.

34. At the conclusion of the interview, a CBP officer denied Mr. Cortez Martinez entry indicating that he was "inadmissible to the United States pursuant to section 212(a)(7)(A)(i)(I) of the INA as an immigrant without an immigrant visa based on the

fact that [he had been] ordered removed in absentia on June 11, 2024[2]." They further determined that Mr. Cortez Martinez's advance parole document "was issued in error," and therefore he was subject to an expedited removal order for failing to be in possession of a valid entry document.

35. The sole basis for denying Mr. Cortez-Martinez entry into the US was based on CBP's incorrect determination that the existence of a removal order in and of itself abated the ability of USCIS to issue a valid advance parole document.

36. Plaintiff was afforded no hearing, and no opportunity to contest CBP's improper finding that his advance parole document was valid for entry.

37. Plaintiff's lawfully obtained advance parole document, which was valid on it's face, was then confiscated from Plaintiff by Defendants. No receipts were provided to Plaintiff to show that his property-one which he applied for, paid for and obtained from USCIS-was being confiscated and kept by CBP officers. Defendants then marked Plaintiff's Mexican passport with the words "deported." They did this even though the passport bore no US visa stamp that needed to be cancelled or voided. The marking served no purpose under the circumstances.

38. Plaintiff was then escorted to another flight and returned to Mexico City the same day.

39. There are no further administrative remedies available to Plaintiff to redress his grievances described herein. Despite efforts on March 27, 2025, to seek review by the Watch Commander DFW Airport, no response has been received and it is unknown what if any review CBP conducted internally. Even still, Plaintiff is left with no

[2] While a review of the Court file suggests that Mr. Cortez Martinez may have a legal basis to seek reopening of the removal order, that analysis is not relevant to the improper implications imposed by CBP based solely on the existence of the order. Should Mr. Cortez Martinez return to the US on his advance parole, he can effectively address the merits of the in absentia order with the Immigration Court in Kansas City.

meaningful due process to address the harm he incurred as a result of Defendant's unlawful conduct.

40. Plaintiff has now been separated from his wife and children for over 10 days beyond when they expected him home. He has lost his job with the Shawnee Mission School District and has been left without permanent housing in Mexico- a place he had not been back to since he was 4 years old.

41. Additionally, because of Defendants actions, his DACA benefits are at risk and his ability to work and take care of his family has been lost. Plaintiff's harm continues each day he is unable to return home. His advance parole document, which remains valid until April 14, 2025, is at risk of lapsing. Should that happen, even if Plaintiff were to prevail in his efforts before the Court, the irreparable harm would become permanent.

42. Plaintiffs suffers continuing harm because of Defendants unlawful actions.

VII. CLAIMS FOR RELIEF

Count I - Violation of the Administrative Procedure Act, 5 U.S.C. § 701, *et. seq:*
(Agency Action that is Arbitrary, and Capricious, or otherwise not in accordance with law)

36. The APA entitles "a person suffering legal wrong because of agency action or adversely affected or aggrieved by agency action . . . to judicial review thereof." 5 U.S. C. § 702.

37. As a DACA recipient and a holder of DACA benefits until October 22, 2026, Plaintiff was permitted to seek advance parole to travel temporarily abroad and return to the us. See 8 USC §1182 (d)(5)(A). *See also* 8 CFR § 212.5(f) and USCIS Adjudicator's Field Manual, § 54.1.

38. Defendants' failure to recognize Plaintiff's facially valid, and legally obtained advance parole document based solely on a belief that it "was approved in error" is arbitrary, capricious and contrary to law. Their prevention of Plaintiff's return to the US lacked

any statutory or regulatory authority. Insofar as Defendants' conduct was based on an incorrect understanding and application of law, it was unlawful per se.

39. Furthermore, Defendants' subsequent confiscation of Plaintiff's otherwise facially valid and properly obtained advance parole document without a receipt was in violation of CBP guidelines and policy and thus contrary to law.

40. Insofar as Defendants would wish to classify their actions as a revocation, there too Defendants failed to follow legal process for a revocation. Notwithstanding, even if they had properly revoked the advance parole document-which they did not- the revocation alone would still not have legally permitted Defendants from preventing Plaintiff's return to the US under the circumstances. *See Samirah* at 658, 659.

41. Finally, Defendants vandalization of Plaintiff's Mexican Passport by placing a notation that Plaintiff had been deported under the expedited removal provisions was unauthorized and impermissible-not to mention legally unsound- and thus should be deems as arbitrary and capricious, and contrary to law.

42. Under the APA, this Court has authority to "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Plaintiff is therefore entitled to the relief requested.

Count II - Violation of the Administrative Procedure Act, 5 U.S.C. § 701, *et. seq:*
(Violation of Regulations and Statute in denying return to the US)

43. The Immigration and Nationality Act and implementing regulations set forth procedures to determine admissibility of aliens to the United States that guarantee individuals in plaintiff's situation who holds an advance parole document to have his admissibility determined in a removal proceeding if CBP deems him inadmissible upon

his return to the United States 8 C.F.R. §1001.1(q) (an alien granted advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, shall not be considered an arriving alien for purposes of section 235(b)(1)(A)(i) of the Act [the provision allowing for expedited removal without recourse to a hearing]).

44. Defendants have prevented Plaintiff from having his case heard by an immigration Judge in accordance with these regulations. The regulations do not create any exception to issuance of an advance parole document or to a hearing before an immigration judge even where there is a removal order in place.

45. Congress has created a number of statutory provisions whereby individuals can be removed from, or denied entry to, the United States. See, 8 U.S.C. §§1225, §1228(b), 1229a, §1229c(a), §1231(a)(5). The scheme created by Congress is a comprehensive scheme, and any alien removed from, or denied entrance into, the United States must be processed under these statutes. These statutes constitute the only ways in which individuals may be ordered removed from the United States.

46. Defendants have not alleged that: (1) the Plaintiff engaged in fraud or other misconduct in order to obtain the travel document; (2) the Defendants were barred by statute or regulation from granting travel permission to the Plaintiff; (3) the Plaintiff is not validly on DACA or (4) the Plaintiff is inadmissible to the United States for any reason other than the existence of an in abstentia order- which is not a ground of inadmissibility under Board and Circuit precedent.

47. Defendants' prevention of Plaintiff's return on advance parole and instead subjecting him to expedited removal proceeding is contrary to the clear language of the statute, regulations and legal precedents, is arbitrary and capricious, constituted an abuse of

discretion, and is otherwise not in accordance with law.

48. Defendants' actions have caused Plaintiff immediate, irreparable and continuing harm. This is particularly true since his Advance parole document remains valid only until April 14, 2025, and Defendants' actions have placed him in grave risk of losing his DACA benefits. In light of this, Plaintiff is entitled to relief to avoid such a harsh result.

Count III - Violation of Procedural Due Process in denial of return to U.S

49. Under the Fifth Amendment to the United States Constitution, those threatened with the loss of liberty or property due to actions by the federal government are entitled to due process of law

50. The Plaintiff, as DACA recipient who had resided in the United States for nearly 36 years, had a liberty interest in being permitted to return to the United States. This protected liberty interest flowed from the statute and regulations which permitted Plaintiff's advance parole, and the actual grant of Advance Parole to the Plaintiff.

51. Plaintiff has a valid employment authorization document and was lawfully employed until he was denied his return to the US.

52. Plaintiff has complied with each and every requirement Defendants imposed upon him. He has reapplied for DACA each time his permission expired, he has maintained employment consistent with his valid employment authorization and he has paid all fees required for each application-including the advance parole document he was given by USCIS. Despite each of these things, Defendants never alerted Plaintiff to any issues or concerns before he left the United States. Plaintiff in essence relied on Defendants when they granted his advance parole and authorized him to make a temporary trip abroad and return.

53. Plaintiff left the United States in reliance with Defendants grant of advance

parole, but by then denying him permission to reenter the country, and subjecting him to expedited removal procedures., Defendants have effectuated the removal of the Plaintiff in means other than those authorized by Congress.

54. Defendants cannot effectuate *de facto* removal by revoking Advance Parole, consistent with the Due Process clause. *United States ex rel. Accardi v. Shaughnessy,* 347 U.S. 260, 268 n.8 (1954).

55. Procedural due process requires, in most cases, a hearing of some kind. *Mathews v. Eldridge*, 424 U.S. 319, 332-333, 96 S.Ct. 893, 901-902 (1976). The process due depends on three factors:

> [f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. 424 U.S. at 335, 96 S.Ct. at 903.

56. Plaintiff has a fundamental liberty interest in being permitted to return to the United States. He is simply not in the position of one applying for initial entry into the United States. Plaintiff has an established residence of long duration in the United States; his wife and children are here; he applied for and was granted DACA benefits, and that benefit remains until October 22, 2026.

57. The Procedures employed by Defendants granted Plaintiff no hearing, no notice, and no opportunity to be heard.

58. Defendants had multiple other means available to achieve its objective without denying the Plaintiff procedural fairness.

59. The cost and administrative burden of adopting these alternate procedures would be minimal, as the Defendant already possesses an entire agency

dedicated to processing removal cases.

60. Given the Plaintiff's rights and interests, the Government's interests, and the cost and availability of alternate means of protecting the Government's objectives, the procedures employed by the Government violated the Due Process clause of the Fifth Amendment.

Count IV - Mandamus Action to Compel Officers of to Perform their Duty

61. Plaintiff asserts claims for mandamus relief under 28 U.S.C. § 1361 which provides the authority to compel an agency to perform a duty owed to him.

62. DHS, through its sub-agency CBP, has a mandatory, non-discretionary duty to comply with the law and not prevent individuals with valid advance parole documents from being denied return to the US. By failing to adhere to legal constraints Defendants have failed to perform their duty under the law.

63. Plaintiff asks the Court to compel Defendants to perform their duties and adhere to the legal standards and procedures for allowing Plaintiff's return to the US pursuant to his proper and lawful grant of advance parole.

64. Defendants have caused, and will continue to cause, Plaintiff ongoing and substantial injury. He has already lost his job, been separated from his family and is at risk of losing his DACA benefits. Should his advance parole document Plaintiff will be unable to return without greater delay. Defendants have caused this urgency and have left Plaintiff in a peril that is imminent because of their failure to fulfill their duty diligently.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Honorable Court:

1. Declare that Defendants' failure to recognize and give full weight to a lawfully issued

advance parole document is in violation of the APA and the INA;

2. Declare that Defendants' confiscation of Plaintiff's facially valid and legally issued advance parole document was unlawful and any expedited removal proceeding that followed was in violation of the APA and the INA and therefore unlawful;
3. Declare Defendants actions in noting "deported" on Plaintiff's Mexican passport as unlawful and in violation of the APA;
4. Compel Defendants to rescind the expedited removal order obtained and entered in violation of the APA and INA and ensure that all immigration systems reflect that the order was void *ab initio* thereby preventing Plaintiff any further harm;
5. Compel Defendants, upon Plaintiffs return to the US to void out any markings made on Plaintiff's Mexican passport so prevent Plaintiff any future harm;
6. Compel Defendants to perform their duty and return the unlawfully seized advance parole document and arrange for Plaintiff to be returned to the United States forthwith, taking all needed steps to effectuate the same;
7. Grant such other relief as this Court deems proper under the circumstances; and
8. Grant attorney's fees, expenses and costs of court to her, pursuant to the Equal Access to Justice Act.

April 2, 2025 Respectfully Submitted,

/s/Amy Hsu

Amy Hsu
Texas Bar #24036808
Law Office of Amy Hsu, PLLC
2201 Main St.
Suite 840
Dallas, TX 75201
Tel. (214) 556-8401
amy.hsu@amyhsulaw.com

*/s/Rekha Sharma-Crawford**
Rekha Sharma-Crawford, TX Bar No. 789620
Sharma-Crawford Attorneys
515 Avenida Cesar E. Chavez
Kansas City, MO 64108
P: (816) 994-2300
F: (816) 994-2310
rekha@sharma-crawford.com
**pro hac vice motion forthcoming*