IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IMMIGRANT ADVOCATES RESPONSE COLLABORATIVE
150 State Street, 4th Floor
Albany, NY 12207;

AMERICAN GATEWAYS
314 E. Highland Mall Boulevard, Suite 501
Austin, TX 78752;

L.H.*
c/o National Immigrant Justice Center
111 W. Jackson Blvd., Suite 800
Chicago, IL 60604;

M.S.*
c/o National Immigrant Justice Center
111 W. Jackson Blvd., Suite 800
Chicago, IL 60604;

E.P.*
c/o National Immigrant Justice Center
111 W. Jackson Blvd., Suite 800
Chicago, IL 60604;

D.C.*
c/o National Immigrant Justice Center
111 W. Jackson Blvd., Suite 800
Chicago, IL 60604;

E.C.*
c/o National Immigrant Justice Center
111 W. Jackson Blvd., Suite 800
Chicago, IL 60604;

P.D.*
c/o National Immigrant Justice Center
111 W. Jackson Blvd., Suite 800
Chicago, IL 60604;

K.M.*
c/o National Immigrant Justice Center
111 W. Jackson Blvd., Suite 800
Chicago, IL 60604;

E.M.*
c/o National Immigrant Justice Center
111 W. Jackson Blvd., Suite 800

CLASS ACTION COMPLAINT

Case No. 25-cv-2279

Chicago, IL 60604;

M.K.*
c/o National Immigrant Justice Center
111 W. Jackson Blvd., Suite 800
Chicago, IL 60604;

M.D.*
c/o National Immigrant Justice Center
111 W. Jackson Blvd., Suite 800
Chicago, IL 60604;

R.A.*
c/o National Immigrant Justice Center
111 W. Jackson Blvd., Suite 800
Chicago, IL 60604;

J.L.*
c/o National Immigrant Justice Center
111 W. Jackson Blvd., Suite 800
Chicago, IL 60604;

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE,
950 Pennsylvania Avenue, NW
Washington, DC 20530;

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,
5107 Leesburg Pike, Suite 1902
Falls Church, VA 22041;

DEPARTMENT OF HOMELAND SECURITY,
245 Murray Lane, SW
Washington, DC 20528;

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,
500 12th Street, SW
Washington, DC 20536;

PAMELA BONDI, in her official capacity as Attorney General of the United States,
U.S. Department of Justice

950 Pennsylvania Avenue, NW
Washington, DC 20530;

SIRCE E. OWEN, in her official capacity as Acting Director of the Executive Office for Immigration Review,
5107 Leesburg Pike, Suite 1902
Falls Church, VA 22041;

KEVIN RILEY, in his official capacity as acting Regional Deputy Chief Immigration Judge of the Executive Office for Immigration Review
300 N. Los Angeles Street, Room 4330
Los Angeles, CA 90012

PHILIP TAYLOR, in his official capacity as acting Regional Deputy Chief Immigration Judge of the Executive Office for Immigration Review
500 N. Orange Ave., Suite 1100
Orlando, FL 32801

KRISTI NOEM, in her official capacity as Secretary of Homeland Security,
245 Murray Lane, SW
Washington, DC 20528;

TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement,
500 12th Street, SW
Washington, DC 20536;

Defendants.

***** Individual Plaintiffs have concurrently filed a motion to proceed under pseudonym.

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INTRODUCTION

1. For years, both the Department of Homeland Security (DHS) and the Department of Justice (DOJ) had policies limiting civil immigration-related arrests in immigration courts. These policies were rooted in the commonsense recognition that such arrests hamper the fair administration of the immigration process and create a palpable fear that disincentivizes people from appearing for their hearings. But in the first few days of the Trump administration, Defendants repealed those policies, exposing individuals who properly appear for their hearings, including to seek asylum and other relief, to the imminent threat of arrest and indefinite detention.

2. The potential for such arrests became a widescale reality in May, when Defendants implemented a second unprecedented policy of moving to dismiss removal proceedings under 8 U.S.C. § 1229a without notice. This policy enabled DHS to deploy its prior repeal of limits on courthouse arrests to detain noncitizens who show up for immigration-court proceedings—in good faith and at Defendants' instruction—and place those same people in expedited removal, a different, cursory removal process with almost no substantive or procedural protections that requires detention in most circumstances. *See* 8 U.S.C. § 1225.

3. DHS and DOJ have implemented their new campaign of courthouse arrests through coordinated policies designed to strip noncitizens of their rights under § 1229a and the Due Process Clause, exposing them to immediate arrest and expedited removal. Under these policies, Immigration and Customs Enforcement (ICE) agents go to immigration court, often with lists of people scheduled for a hearing.

4. Next, when one of those people is called to speak to the judge, the DHS attorney moves for dismissal without attempting to satisfy the government's own regulations that limit the bases for dismissing removal proceedings under § 1229a. *See* 8 C.F.R. § 239.2(a), (c). Rather than

showing that "[c]ircumstances *of the case* have changed," as required by the regulations, *id.* § 239.2(a)(7) (emphasis added), DHS's new policies allow it to seek dismissal based on changed circumstances external to the individual case.

5. DOJ's Executive Office for Immigration Review (EOIR) has issued corresponding guidance to immigration judges, directing them that any kind of changed circumstances constitutes a valid reason for dismissal. Furthermore, the EOIR guidance expressly instructs immigration judges that normal procedural protections—which provide the nonmoving party in immigration proceedings with notice of a motion and an opportunity to respond—do not apply to DHS motions to dismiss. Consistent with EOIR's instructions, many immigration judges are granting these motions on the spot, depriving noncitizens of their rights.

6. More recently, DHS has gone even further. It has now adopted the policy that it will arrest a noncitizen and place them in expedited removal even if the immigration judge does not immediately grant dismissal or if the noncitizen reserves appeal of the dismissal—either of which means that the full removal proceedings are not over. In plain terms, DHS is disregarding both immigration judges who permit noncitizens an opportunity to oppose dismissal and the pendency of an appeal of the dismissal decision. This policy results in concurrent full and expedited removal proceedings against the same individual, a result inconsistent with both longstanding DHS practice and the statutory mandate that, unless otherwise specified, full removal proceedings under § 1229a are the "the sole and exclusive procedure" for determining admissibility and removability. 8 U.S.C. § 1229a(a)(3).

7. The consequences of Defendants' actions are severe. Noncitizens, including most of the Individual Plaintiffs here, have been abruptly ripped from their families, lives, homes, and jobs for appearing in immigration court, a step required to enable them to proceed with their

applications for permission to remain in this country. Some of those affected have been present in the United States for years, and many have been separated from family, including U.S. citizens.

8. The aftermath of these courthouse arrests and dismissals for placement in expedited removal wreaks further havoc on people's lives. People in expedited removal almost always remain detained. They also face additional hurdles in pursuing immigration relief, including diminished access to legal counsel and advice, and some immigration benefits become unavailable to them altogether. Even those benefits that they may still seek become far harder to obtain: Unless a DHS asylum officer decides that the noncitizen has asserted a credible fear of persecution, the person is subject to immediate removal without judicial review.

9. By contrast, those undergoing removal proceedings under § 1229a have historically not been detained, can seek any immigration benefit for which they qualify, have an opportunity to present their cases in a full hearing on the merits, have time to prepare for that hearing and a greater ability to consult with counsel, and can appeal an adverse decision to the Board of Immigration Appeals (BIA) and then to the federal courts of appeals. Sudden arrest and dismissal of § 1229a proceedings robs noncitizens, including Individual Plaintiffs and the class they represent, of these fundamental protections.

10. Moreover, DHS has begun placing people in expedited removal even where the Immigration and Nationality Act (INA) *prohibits* it from doing so. DHS may subject certain noncitizens to expedited removal if DHS makes a determination that they are inadmissible using required procedures and does so within two years of their entry to the United States. 8 U.S.C. § 1225(b)(1)(A)(iii)(II); 8 C.F.R. § 235.3(b)(2). Yet Defendants are now placing in expedited removal people who have been "physically present in the United States continuously" for more

than two years and for whom no timely determination of inadmissibility was made. 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

11. In addition to severely harming Individual Plaintiffs and other similarly situated people, these events have fundamentally frustrated the core work of Organizational Plaintiffs, who provide legal advice and representation to immigrants and asylum seekers appearing before the immigration courts. Defendants' new policies have interfered with those activities and significantly increased the cost and burden of Organizational Plaintiffs' daily work. Organizational Plaintiffs have had to fundamentally alter their courthouse advice models, oppose motions to dismiss in immigration court, file emergency administrative appeals of removal cases that have been dismissed, and prepare clients and pro se noncitizens seeking advice for the expedited removal process. Likewise, Defendants' actions have significantly harmed Organizational Plaintiffs' ability to provide accurate, tailored counseling and advice and preparation. And, because the expedited removal process contemplates a diminished role for counsel, Organizational Plaintiffs are hamstrung in their ability to provide appropriate advocacy.

12. Plaintiffs bring this lawsuit to remedy Defendants' unlawful changes in policy and the substantial harms that follow. Specifically, Plaintiffs challenge four types of new policies: (1) Defendants' policies authorizing civil immigration arrests in immigration courts; (2) Defendants' guidance instructing DHS prosecutors to bring motions to dismiss and parallel guidance instructing immigration judges to entertain and grant these motions without following required procedures and on unlawful grounds; (3) DHS guidance that, on information and belief, instructs ICE agents to pursue expedited removal for people who have been present in the United States for more than two years, and (4) guidance that, on information and belief, instructs DHS to pursue expedited removal even where an individual's full removal proceedings remain ongoing.

Where available, Individual Plaintiffs seek relief on behalf of themselves and a class of similarly situated noncitizens.

JURISDICTION AND VENUE

13. This case arises under the Administrative Procedure Act (APA), 5 U.S.C. §§ 551 *et seq.*; the INA, 8 U.S.C. §§ 1101 *et seq*., and its implementing regulations; and the Due Process Clause of the Fifth Amendment to the United States Constitution.

14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. To the extent the policies at issue in this case are ones implementing 8 U.S.C. § 1225(b)(1), the Court also has jurisdiction under 8 U.S.C. § 1252(e)(3). Because this suit seeks relief other than money damages and instead challenges Defendants' unlawful actions, the United States has waived sovereign immunity from this suit under the APA. 5 U.S.C. § 702.

15. Venue is proper under 28 U.S.C. § 1391(e)(1) because Defendants are officers of the United States acting in their official capacity and agencies of the United States, several Defendants reside in this District, and a substantial part of the events or omissions giving rise to the claim occurred in this District. To the extent the policies at issue in this case are ones implementing 8 U.S.C. § 1225(b)(1), venue is also appropriate under 8 U.S.C. § 1252(e)(3)(A).

PARTIES

I. Plaintiffs

A. Individual Plaintiffs

16. Plaintiff L.H. was born in Venezuela and fears persecution because of her sexual orientation and opposition to the Venezuelan government. She entered the United States in August 2022 without inspection. Defendants chose not to place her in expedited removal and instead released her with a Notice to Appear (NTA). Within one year of her entry into the United States, L.H. applied for asylum. At her first hearing, on May 27, 2025, however, DHS orally moved to

dismiss her case without notice, and the immigration court granted that surprise motion. L.H. was arrested by ICE and detained in the courthouse and has received an expedited removal order. At present, L.H. remains detained in Ohio. She is awaiting immigration judge review of the negative finding in her credible fear interview, and she has separately appealed the dismissal of her immigration court case to the BIA.

17. Plaintiff M.S. was born in the Chechen Republic, which is controlled by Russia. M.S.'s father was involved in the Chechen war of independence, and M.S. fled Russia when he was himself targeted for his father's activities. M.S. entered the United States in November 2021 by presenting himself at a port of entry. Defendants chose not to place him in expedited removal and instead gave him an NTA, which was filed with the immigration court more than a year after M.S. received it. M.S., however, affirmatively applied for asylum within one year of his entry to the United States. At his first hearing, which was before the Chicago immigration court on June 9, 2025, DHS orally moved to dismiss his case without notice and without articulating what changed circumstances existed in his case. The immigration judge granted that motion over M.S.'s counsel's objection. M.S. filed a motion to reconsider, which was denied. Although M.S. was not detained at his hearing, he understands that his pending case was what prevented his detention and removal from the United States, and he now fears detention and separation from his family, including his U.S.-citizen child.

18. Plaintiff E.P. was born in Cuba and fears persecution because of his opposition to the Cuban government, which led to him being shot and imprisoned. His daughter and partner are present in the United States as lawful permanent residents. E.P. entered the United States in March 2022 without inspection. Defendants chose not to place him in expedited removal and instead gave him an NTA. E.P. applied for asylum and appeared at a hearing on his case in Miami on May 28,

2025. At that hearing, DHS orally moved to dismiss his case without notice and without articulating what changed circumstances existed in his case. The immigration judge granted that motion over E.P.'s objection. He was arrested by ICE at the courthouse and detained. He has been shipped to multiple different detention centers and is now detained in Tacoma, Washington, thousands of miles from his family. He received an expedited removal order and is waiting for a credible fear interview. E.P. appeared at his hearing without counsel and did not know how to appeal the dismissal of his immigration court case.

19. Plaintiff D.C. fled Ecuador after he was kidnapped and threatened by a man who objected to the way he and his father ran their church. He entered the United States without inspection in November 2022 and was detained for about a day. Defendants did not pursue expedited removal, and released him with an NTA. D.C.'s first hearing was scheduled for June 23, 2025, at the Fort Snelling, Minnesota, immigration court, and his notice stated he was to appear by video. But when D.C. appeared by video for that hearing, the immigration judge stated he needed to come to the court in person three days later. On June 26, 2025, D.C. appeared at his hearing in person, but the immigration judge informed him that his case had been dismissed without asking him his position. When he left the courtroom, D.C. was arrested and detained by ICE. He is detained in Minnesota, while his partner cares for their U.S.-citizen child alone. D.C. plans to appeal his dismissal, and is still within the 30-day appeal window to do so. He is awaiting a credible fear interview.

20. Plaintiff E.C. fled his native Cuba after his opposition to forced conscription and the communist government led to him being arrested and raped in custody. E.C. entered the United States in January 2022 without inspection. Defendants chose not to place him in expedited removal and instead gave him an NTA. E.C. applied for asylum and appeared at a hearing on his case on

May 21, 2025. At that hearing, DHS orally moved to dismiss his case without notice and without articulating any reasoning whatsoever. The immigration judge granted that motion. E.C.'s attorney did not object because she initially believed that this change would be a positive one that would allow E.C. to seek asylum affirmatively. But when E.C. left the court, he was arrested and detained. Though his case was before the Miami immigration court, he is now detained in Tacoma, Washington, thousands of miles from his family, including his U.S. citizen wife. He received an expedited removal order and is waiting for a credible fear interview. E.C. also filed a motion to reopen his full removal case, which remains pending.

21. Plaintiff P.D. was born in Cuba, and he fled that country after being arrested on multiple occasions for his opposition to the communist government. P.D. entered the United States in February 2022 without being inspected at a port of entry. Defendants chose not to place him in expedited removal and instead released him and later issued an NTA. P.D. applied for asylum in April 2022 and appeared at his first hearing in late 2023. He was set for a second hearing on May 27, 2025. At that hearing, DHS orally moved to dismiss his case without notice and, on information and belief, without articulating any change in circumstances. P.D.'s lawyer argued that his case should not be dismissed, but the judge granted the government's motion. As soon as P.D. left the courtroom, he was arrested and taken into custody. Though his case was before the Miami immigration court, he has been detained in multiple states and is now detained in Tacoma, Washington. He received an expedited removal order and is waiting for a credible fear interview.

22. Plaintiff K.M. was born in the Republic of Guinea. There, she faced forced marriage and female genital mutilation, and she fears return because of her opposition to those practices. K.M. entered the United States in March 2024 without inspection. Defendants chose not to place her in expedited removal and instead gave her an NTA. K.M. applied for asylum within one year

of her entry to the United States. When she appeared in immigration court on May 28, 2025, DHS orally moved to dismiss her case without notice and, on information and belief, without articulating any change in circumstances. K.M. was confused by what was happening at the hearing and later learned that the immigration judge granted the government's motion. K.M. was arrested by ICE at the courthouse and detained, and the event caused her so much distress that she fainted in the court. K.M. was then released from custody to a host family in Minnesota. Despite being released, K.M. received an expedited removal order and is waiting for a credible fear interview. Her appeal from the dismissal of her immigration court case is pending with the BIA.

23. Plaintiff E.M. is a Venezuelan gay man who is living with HIV. E.M. entered the United States in December 2023 by presenting at a port of entry with a CBP One appointment. Defendants did not put E.M. in expedited removal but granted him parole and served him with an NTA. E.M. filed an asylum application with the immigration court in November 2024. He appeared at his first hearing, in Las Vegas, Nevada, in February 2025. The immigration judge changed his venue to New York, New York, where he was scheduled for his second hearing on May 21, 2025. At that second hearing, E.M. appeared pro se. DHS moved to dismiss his immigration court proceedings without notice and, on information and belief, without articulating any change in circumstances. Despite E.M.'s requests to continue with his asylum application, the immigration judge represented to E.M. that he could apply for asylum through USCIS and dismissed his case. Following the hearing, ICE arrested E.M. in the courthouse. He is currently detained in Pennsylvania. He requested a credible fear interview but has not yet had one.

24. Plaintiff M.K. fled Liberia after enduring female genital mutilation and an abusive marriage. M.K. entered the United States in February 2024 without inspection. Defendants chose not to place her in expedited removal and instead gave her an NTA. M.K. applied for asylum

within one year of her entry to the United States. When she appeared in immigration court on May 28, 2025, DHS orally moved to dismiss her case without notice and, upon information and belief, without articulating any change in circumstances. M.K. speaks a rare language, and because the interpretation was poor, she did not understand what was happening at the hearing. Only later did she learn that the immigration judge granted the government's motion. K.M. was arrested by ICE at the courthouse and detained; she was so distressed by what happened that she required hospitalization. From the hospital, K.M. was transferred to a county jail in Iowa, and then to a detention center in Minnesota, where she remains. M.K. received an expedited removal order and is waiting for a credible fear interview. Her appeal from the dismissal of her immigration court case is pending with the BIA.

25. Plaintiff M.D. is a gay man from Guinea who fled persecution based on his sexual orientation. M.D. entered the United States in December 2023 and was released with an NTA rather than being placed into expedited removal. After he entered the United States, M.D. began dating a U.S. citizen, who is now his husband. In May 2024, M.D. appeared at the immigration court and filed his asylum application along with supporting documentation. At a later hearing, on June 23, 2025, DHS orally moved to dismiss his case without notice and, upon information and belief, without articulating any change in circumstances. Despite recognizing that M.D. might be eligible to apply for relief due to his marriage to a U.S. citizen, and despite M.D.'s pleas that he wished to continue his case in immigration court, the immigration judge granted DHS's motion. When M.D. left the courtroom, ICE agents arrested him. He is now subject to expedited removal and detained in Texas, thousands of miles from his husband.

26. Plaintiff R.A. is a gay man from Ecuador who was deported pursuant to an expedited removal order without receiving a credible fear interview. R.A. fled Ecuador after he

was harmed and threatened by government officials because of his pro-LGBTQ advocacy. In January 2025, he presented himself at a port of entry with a CBP One appointment. Defendants gave him an NTA, rather than placing him in expedited removal. He prepared an application for asylum and brought the completed form with him to his first hearing in immigration court, on June 4, 2025. However, when he appeared at that hearing, DHS moved to dismiss his case without prior notice and, upon information and belief, without articulating any change in circumstances. The immigration judge granted DHS's motion to dismiss over R.A.'s pleas to allow him to file the asylum application. ICE agents arrested and detained R.A. after his hearing and served him with an expedited removal order. Defendants deported R.A. to Ecuador less than 30 days after the immigration judge dismissed his case, during the period when R.A. could still timely appeal the dismissal order to the BIA. R.A. is now in hiding in Ecuador.

27. Plaintiff J.L. is a gay, HIV-positive man from Venezuela who faced harm because of his sexual orientation. J.L. entered the United States without inspection in March 2024 and was detained near the border for a few days. Defendants released him from custody with an ankle monitor and an NTA, instead of pursuing expedited removal. J.M. filed his asylum application less than three months later, in May 2024. Prior to his first hearing date, Defendants removed J.M.'s ankle monitor. J.M. appeared for his first hearing at the New York Federal Plaza immigration court on June 17, 2025. The immigration judge continued his case for a short time to allow him to find an attorney. At the second hearing, on July 1, 2025, J.M. was granted another continuance to look for an attorney, this time to March 2026. But when J.M. left the courtroom, ICE detained him. J.M. was detained in the Federal Plaza office building with dozens of other people for about a week, without access to his HIV medication. On or around July 9, 2025, he was transferred to the

Metropolitan Detention Center in Brooklyn, New York, where he remains detained. His next hearing date has been rescheduled to July 21, 2025.

B. Organizational Plaintiffs

28. Plaintiff Immigrant Advocates Response Collaborative (I-ARC) is a nonprofit organization dedicated to increasing access to justice and access to counsel for all immigrant New Yorkers. I-ARC is a membership organization, with over 80 immigration legal services providers in New York State as members. I-ARC itself runs a "Friend of the Court" program at immigration courts in New York City, where I-ARC's staff and volunteers assist *pro se* respondents appearing before immigration judges. Defendants' unlawful actions have directly interfered with I-ARC's core business by disrupting the ordinary operation of immigration court, making I-ARC's work more difficult and diminishing the number of clients it can serve.

29. Plaintiff American Gateways is a nonprofit organization with its principal office in Austin, Texas. American Gateways provides legal representation, advocacy, and education services to low-income noncitizens and their families in 23 central Texas counties. It operates a pro se assistance program at the immigration court in San Antonio, Texas. The purpose of this program is to provide information about the immigration court process to noncitizens appearing before the court without counsel. As a result of Defendants' actions, American Gateways' ability to provide effective pro se advice has been hampered. American Gateways also represents clients in removal proceedings in immigration court. As a result of Defendants' actions, American Gateways' clients have had their immigration court proceedings dismissed and have been arrested and placed in expedited removal proceedings. Defendants' actions have required attorneys at American Gateways to file appeals of the dismissal orders, oppose detention, and prepare clients

for the credible fear process, all of which have required American Gateways to expend additional resources, reduce the number of clients it can serve, and undermined the organization's core work.

II. Defendants

30. Defendant United States Department of Justice (DOJ) is a cabinet-level agency of the federal government. Immigration Judges employed by DOJ conduct full removal proceedings, *see* 8 U.S.C. § 1229a, and review negative credible fear determinations as part of the expedited removal process, *see id.* § 1225(b)(1)(B)(iii)(III).

31. Defendant Executive Office for Immigration Review (EOIR) is the sub-agency within DOJ that houses the immigration courts and the BIA.

32. Defendant Department of Homeland Security (DHS) is a cabinet-level agency of the federal government. DHS and its components, including Immigration and Customs Enforcement (ICE), are the agencies principally charged with implementing and enforcing the immigration laws and policies of the United States.

33. Defendant ICE is the sub-agency within DHS responsible for carrying out immigration enforcement and detention in the interior of the United States and for representing DHS in proceedings before the immigration courts.

34. Defendant Pamela Bondi is the Attorney General of the United States. She is sued in her official capacity. In that capacity, Defendant Bondi is charged with overseeing the DOJ and EOIR.

35. Defendant Sirce E. Owen is the Acting Director of EOIR. She is sued in her official capacity. In that capacity, Defendant Owen is responsible for setting policy as it pertains to EOIR and for overseeing the immigration courts.

36. Defendants Kevin Riley and Philip Taylor are the acting Regional Deputy Chief Immigration Judges for EOIR. They are sued in their official capacity. Defendants Riley and Taylor issued challenged guidance to immigration judges concerning the dismissal of ongoing removal proceedings.

37. Defendant Kristi Noem is the Secretary of Homeland Security. She is sued in her official capacity. In that capacity, Defendant Noem is responsible for overseeing the enforcement of the immigration laws and the implementation of enforcement policies at DHS.

38. Defendant Todd Lyons is the Acting Director of ICE. He is sued in his official capacity. In that capacity, Defendant Lyons is responsible for the enforcement of the immigration laws in the interior of the United States, the implementation of enforcement policies, and oversight of the DHS lawyers who appear before the immigration courts.

STATEMENT OF FACTS

I. Defendants Adopt New Policies to Dismiss Full Removal Proceedings and Arrest People Appearing for Immigration Hearings

39. A series of policy changes by DHS and DOJ operate in concert to facilitate Defendants' new practice of dismissing the cases of the Individual Plaintiffs and others who are in full removal proceedings under 8 U.S.C. § 1229a and arresting them in immigration courthouses.

A. Defendants Reverse Longstanding Policies Limiting Civil Immigration Arrests in or Near Immigration Courts

40. For decades, the government largely refrained from conducting civil immigration arrests at immigration courts (and other courthouses) because conducting such arrests would deter noncitizens from attending proceedings and disrupt the proper functioning of courts.

41. Though this practice existed for many years, it was formalized in DHS guidance issued in 2021 and EOIR guidance issued in 2023.

42. A DHS Memorandum dated April 27, 2021, permitted ICE agents to conduct "civil immigration enforcement action . . . in or near a courthouse" only in extremely limited circumstances. Arrests were permitted on the basis of "a national security threat," "an imminent risk of death, violence, or physical harm to any person," the "hot pursuit of an individual who poses a threat to public safety," or the "imminent risk of destruction of evidence material to a criminal case." *Civil Immigration Enforcement Actions in or near Courthouses* 2 (Apr. 27, 2021) (2021 DHS Memorandum).[1]

43. "In the absence of a hot pursuit," ICE was permitted to make civil arrests against "an individual who poses a threat to public safety" only if (1) it was "necessary to take the action in or near the courthouse because a safe alternative location for such action does not exist or would be too difficult to achieve the enforcement action at such a location," and (2) "the action [was] approved in advance by a Field Office Director, Special Agent in Charge, Chief Patrol Agent, or Port Director." *Id.* at 2. These limits applied to the immigration courts and other courts. *See id*.

44. A "core principle[]" underlying the 2021 DHS Memorandum was that "[e]xecuting civil immigration enforcement actions in or near a courthouse may chill individuals' access to courthouses, and as a result, impair the fair administration of justice." *Id.* at 1. DHS therefore limited courthouse arrests "so as to not unnecessarily impinge upon the core principle of preserving access to justice." *Id*.

[1] Memorandum from Tae Johnson, Acting Director of U.S. Immigration and Customs Enforcement & Troy Miller, Acting Comm'r of U.S. Customs and Border Protection, on Civil Immigration Enforcement Actions in or near Courthouses to ICE & CBP (Apr. 27, 2021), https://perma.cc/KJJ2-7JNW.

45. On December 11, 2023, EOIR issued Operating Policies and Procedures Memorandum (OPPM) 23-01, which formally adopted the principles and policies in the 2021 DHS Memorandum.[2] EOIR articulated four reasons for adopting its own policy.

46. *First*, EOIR recognized that courthouse enforcement actions would "inevitably produce a 'chilling effect' on noncitizens who appear before our immigration courts." OPPM 23-01, at 2.

47. *Second*, EOIR reasoned that permitting enforcement actions in or near immigration courthouses would "disincentivize noncitizens from appearing for their hearings," hindering the agency's efficiency and mission. *Id.*

48. *Third*, EOIR recognized that such enforcement actions "may create safety risks for those who may be present during such enforcement actions, including children and adults appearing for hearings, [Office of the Chief Immigration Judge] employees, and other building or facilities personnel." *Id*.

49. *Fourth*, EOIR recognized that a policy against courthouse immigration enforcement would "reinforce the separate and distinct roles of DHS and [EOIR]." *Id.*

50. Accordingly, in OPPM 23-01, EOIR concurred with and adopted DHS's policy that, absent the exigent circumstances outlined by DHS, civil immigration enforcement actions could not be taken in or near an immigration court. *Id.* at 2-3.

51. DHS and EOIR abandoned these policies in a series of documents issued between January and May 2025 (collectively, the Courthouse Arrest Guidance).

[2] Memorandum from Sheily McNulty, Chief Immigration Judge, on Operating Policies and Procedures Memorandum 23-01: Enforcement Actions in or Near OCIJ Space to All Assistant Chief Immigration Judges, Immigration Judges, Court Administrators, and Court Personnel (Dec. 11, 2023), https://perma.cc/5J3Z-Q5ZZ.

52. On January 20, 2025, then-acting DHS Secretary Benjamine Huffman directed DHS agencies to "rescind[] the Biden Administration's guidelines . . . that thwart law enforcement in or near so-called 'sensitive' areas." *Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the Abuse of Humanitarian Parole* (Jan. 21, 2025)[3]; *see also Enforcement Actions in or Near Protected Areas* (Jan. 20, 2025).[4] This brief directive did not contain substantive reasoning or engage with the rationales that informed prior policy.

53. On January 21, 2025, then-acting ICE Director Caleb Vitello issued interim guidance to ICE that superseded the 2021 DHS Memorandum. Caleb Vitello, Acting Director, U.S. Immigration & Customs Enforcement, Policy Number 11072.3, *Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses* (ICE Interim Arrest Guidance).[5] The ICE Interim Arrest Guidance broadly authorized ICE agents to conduct civil immigration enforcement actions—including arrests, interviews, and searches—in or near immigration courts and other courthouses. *Id.* at 2.

54. The ICE Interim Arrest Guidance stated that civil immigration enforcement actions in or near courthouses could "include actions against targeted [noncitizens]." *Id.* The Interim Arrest Guidance lists certain categories of potential "targets" but expressly states that enforcement conduct is "not limited to" the listed groups. *Id.*

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[3] Press Release, Homeland Security, Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the Abuse Humanitarian Parole (Jan. 21, 2025), https://perma.cc/D8BR-6U2H.

[4] Memorandum from Benjamine C. Huffman, Acting Secretary, on Enforcement Actions in or Near Protected Areas to Caleb Vitello, Acting Director of ICE & Pete R. Flores, Senior Official Performing the Duties of the Comm'r of CBP (Jan. 20, 2025), https://perma.cc/935P-UKBK.

[5] Memorandum from Caleb Vitello, Acting Director of ICE on Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses to All ICE Employees (Jan. 21, 2025), https://perma.cc/AGN9-24UK.

55. The ICE Interim Arrest Guidance also expressly condoned enforcement against "family members or friends accompanying the target [noncitizen] to court appearances or serving as a witness in a proceeding." *Id.* The ICE Interim Arrest Guidance stated that such arrests should be made "on a case-by-case basis considering the totality of the circumstances," but it provided no details as to relevant considerations. *Id.* This carte blanche authority to arrest witnesses and family members attending court proceedings constituted a marked reversal of ICE's longstanding policies, in place for at least a decade, prohibiting such arrests or strictly limiting them to special circumstances. *See, e.g.*, U.S. Immigration & Customs Enforcement, Directive Number 11072.1, *Civil Enforcement Actions Inside Courthouses* 1 (Jan. 10, 2018) (noting that such individuals "will not be subject to civil immigration enforcement action, absent special circumstances, such as where the individual poses a threat to public safety or interferes with ICE's enforcement actions")[6]; Philip T. Miller, Assistant Director for Field Operations, ICE Enforcement and Removal Operations, *Enforcement Actions at or Near Courthouses* 1 (Mar. 19, 2014) (authorizing courthouse arrests only for "specific, targeted" individuals in the highest level of enforcement priority, and expressly prohibiting the arrest of "collaterally present" individuals).

56. The ICE Interim Arrest Guidance did contain one limitation, suggesting that arrests in or near courthouses were not permissible if they were "precluded by laws imposed by the jurisdiction in which the enforcement action will take place." ICE Interim Arrest Guidance 2.

57. The ICE Interim Arrest Guidance did not address the core concerns articulated in the 2021 DHS Memorandum with respect to the chilling effect that enforcement actions could have and the fair administration of justice. Instead, the ICE Interim Arrest Guidance claimed

[6] Policy Directive from ICE on Civil Immigration Enforcement Actions Inside Courthouses (Jan. 10, 2018), https://perma.cc/2S3S-CVXE.

without support that courthouse arrests "can reduce safety risks" because individuals entering courthouses are screened for weapons and other contraband. *Id.* at 1. The ICE Interim Arrest Guidance also sought to justify courthouse enforcement as a necessity in "jurisdictions [that] refuse to cooperate with ICE." *Id.*

58. One week later, on January 28, 2025, EOIR followed ICE's lead with respect to its own courthouse arrests policy. Defendant Owen issued OPPM 25-06, which rescinds EOIR's OPPM 23-01 regarding immigration courthouse arrests. Sirce E. Owen, Acting Director, EOIR, OPPM 25-06, *Cancellation of Operating Policies and Procedures Memorandum 23-01* (Jan. 28, 2025) (EOIR Courthouse Arrest Memo).[7] The EOIR Courthouse Arrest Memo asserted that, because ICE had changed its policy regarding courthouse arrests, "there is no longer a basis to maintain" the prior EOIR policy limiting immigration enforcement actions in or near immigration courts. *Id.* at 1. The memo dismissed the prior policy's core concern that courthouse arrests would chill the exercise of the right to seek relief in immigration court, offering only the cursory assertion that this concern was "vague," "unspecified," and "contrary to logic." *Id.* The memo instead stated, with no explanation, that individuals with valid immigration claims have "no reason to fear any enforcement action by DHS." *Id.* at 2.

59. On May 27, 2025, Defendant Lyons issued a final version of the ICE Interim Arrest Guidance. Todd M. Lyons, Acting Director, U.S. Immigration & Customs Enforcement, Policy Number 11072.4, *Civil Immigration Enforcement Actions In or Near Courthouses* (May 27, 2025) (Final ICE Arrest Memorandum).[8] The Final ICE Arrest Memorandum remains in effect and is

[7] Memorandum from Sirce E. Owen, Acting Director of EOIR on the Cancellation of Operating Policies and Procedures to All of EOIR (Jan. 28, 2025), https://perma.cc/S9CB-FP96.
[8] Memorandum from Todd M. Lyons, Acting Director of ICE on Civil Immigration Enforcement Actions In or Near Courthouses to All ICE Employees (May 27, 2025), https://perma.cc/94F8-QGXG.

identical to the ICE Interim Arrest Guidance in almost all material respects. The sole exception is that the Final ICE Arrest Memorandum removes the provision of the Interim Arrest Guidance preventing courthouse arrests where such arrests would violate local law.

B. Defendants Instruct Agency Employees to Seek and Authorize Dismissal of Full Removal Proceedings to Facilitate Placement in Expedited Removal

60. On information and belief, on or about May 20, 2025, DHS issued guidance regarding, among other things, the dismissal of full removal proceedings under 8 U.S.C. § 1229a (DHS Dismissal Guidance). On information and belief, the DHS Dismissal Guidance "instruct[ed]" DHS attorneys to move to dismiss full removal proceedings in order to "help deportation officers . . . arrest people who" DHS believes are "'amenable' to . . . expedited removal." Hamed Aleaziz, et al., *How ICE Is Seeking to Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times (May 30, 2025).[9] Under the DHS Dismissal Guidance, agency attorneys are "encourage[ed] . . . to look for cases that could be dismissed, which could accelerate deportations of more people." *Id.* Once cases are identified for dismissal, the Guidance reportedly instructs the DHS attorneys to alert ICE in order "to give ICE officers at least two days to plan for an arrest in court and to give the courts a 24-hour warning as well." *Id.*

61. On or about May 30, 2025, Defendants Riley and Taylor issued corresponding guidance to immigration judges. Defendants Riley and Taylor, in their capacity as Acting Regional Deputy Chief Immigration Judges, sent an email with the subject line "Guidance on Case Adjudication" instructing immigration judges to relax the standards for dismissal of full removal proceedings (EOIR Dismissal Guidance).[10] The EOIR Dismissal Guidance stated that "DHS

[9] Hamed Aleaziz, *How ICE Is Seeking to Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times (May 30, 2025), https://perma.cc/TN6V-GKAE.

[10] Am. Immigr. Laws. Ass'n, *Practice Alert: EOIR Guidance to Immigration Judges on Dismissals and Other Adjudications* (June 12, 2025), https://perma.cc/2TWH-24W9.

Motions to Dismiss may be made orally and decided from the bench" without "additional documentation or briefing" and without the "10-day response period" specified in immigration court rules. The EOIR Dismissal Guidance also instructed immigration judges that any kind of changed circumstance provides sufficient grounds for dismissing a case.

62. The EOIR Dismissal Guidance violates governing regulations. Those regulations require that "motions submitted prior to the final order of an immigration judge shall be in writing and shall state with particularity the grounds therefor, the relief sought, and the jurisdiction," except when "otherwise permitted by the immigration judge." 8 C.F.R. § 1003.23(a).

63. Furthermore, once full removal proceedings have begun, 8 C.F.R. § 1239.2(c) permits DHS to move to dismiss proceedings only "on the grounds set out" in 8 C.F.R. § 239.2(a). Section 239.2(a) in turn permits dismissal only if the person in proceedings is a U.S. citizen, is not removable, has died, is not in the United States, or has cured the basis for the NTA; if the NTA "was improvidently issued"; or if "*[c]ircumstances of the case* have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government." 8 C.F.R. § 239.2(a)(1)-(7) (emphasis added). The EOIR Dismissal Guidance impermissibly broadens the last category to permit dismissal if *any* "circumstances have changed"—and thus, unlike the governing regulation, permits dismissal based on a generalized desire to shift people from full removal proceedings to expedited removal.

64. The EOIR Dismissal Guidance also violates relevant portions of the Immigration Court Practice Manual. For people who are not detained at the time of a hearing, that Manual requires motions for which a ruling will be sought at a hearing to be submitted in writing no less than 15 days before the hearing. *See* Immigration Court Practice Manual § 3.1(b)(1)(A)-(B). The Manual also requires that the non-moving party be given ten days to respond. *See id.*

65. The EOIR Dismissal Guidance states that DHS is seeking dismissals of full removal proceedings to facilitate expedited removals and that people "in the expedited removal proceedings" are subject to mandatory detention. The Guidance cites the EOIR Courthouse Arrest Memo, which authorizes DHS enforcement actions inside immigration courts. The EOIR Dismissal Guidance contains no reasoning or justification apart from a reference to a "great[] increase[]" in detained cases pending before EOIR.

66. On information and belief, at some point after the issuance of the DHS and EOIR Dismissal Guidance, Defendants issued supplemental policy documents, referred to here as Concurrent Proceedings Guidance, instructing DHS to pursue expedited removal concurrently with the process for seeking dismissal of full removal proceedings. On information and belief, this Concurrent Proceedings Guidance instructs DHS to proceed with the expedited removal process (including the credible fear interview) without waiting for the dismissal of full removal proceedings to become final, either by order of the immigration judge or—if the noncitizen appeals—affirmance of such an order by the BIA.

67. Defendants have never before placed noncitizens in full removal proceedings and expedited removal proceedings simultaneously. And their new policy of doing so is contrary to 8 U.S.C. § 1229a(a)(3), which provides that unless otherwise specified, full removal proceedings are the "sole and exclusive" process for adjudicating cases. A case in full removal proceedings remains ongoing until it is administratively final, which occurs following a decision by the BIA or "the expiration of the period in which the [noncitizen] is permitted to seek review of such order." 8 U.S.C. § 1101(a)(47)(B).

II. Substantive and Procedural Implications for Noncitizens Facing Expedited Removal In Lieu of Full Removal Proceedings

68. All Individual Plaintiffs (with the exception of J.L.) and similarly situated noncitizens, suffer severe harm when Defendants move them from full removal proceedings to expedited removal proceedings. As to J.L. though his proceedings have not yet been dismissed, he is detained and at imminent risk of facing that harm at his next hearing, which is set for next week.

69. Expedited removal is meant to "substantially shorten and speed up the removal process." *Make the Rd. N.Y. v. Wolf*, 962 F.3d 612, 618 (D.C. Cir. 2020). Expedited removal may be applied to certain noncitizens who arrive at the border or enter without inspection, typically those who lack valid travel documents. 8 U.S.C. § 1225(b)(1)(A)(i). Unless they express a fear of persecution or an intent to seek asylum, noncitizens subjected to expedited removal are ordered removed by an immigration officer "without further hearing or review." *Id.* § 1225(b)(1)(A)(i)-(ii). People subjected to expedited removal are thus unable to seek any relief other than asylum and other fear-based claims that might preclude removal.

70. Being subjected to these proceedings in lieu of the full removal process under Section 1229a comes at substantial cost to the fairness of the removal process. *See Khan v. Holder*, 608 F.3d 325, 329 (7th Cir. 2010) (describing the expedited removal process as "fraught with risk of arbitrary, mistaken, or discriminatory behavior").

71. A person who is placed in expedited removal and then expresses a fear of persecution or an intent to apply for asylum receives a "credible fear" screening interview before an asylum officer employed by U.S. Citizenship and Immigration Services (USCIS). 8 U.S.C. § 1225(b)(1)(B). A credible fear interview can occur very quickly after someone is placed into expedited removal, as few as 24 hours later, and while attorneys are permitted to be present, they

are not allowed to ask questions of the noncitizen. There is likewise only a cursory opportunity to present factual evidence and legal arguments in the credible fear process.

72. If the asylum officer finds that the person has a credible fear of persecution, DHS takes them out of the expedited removal process and places them in full removal proceedings in immigration court, *see* 8 C.F.R. § 208.30(e)(5)—the very proceedings that DHS has sought to dismiss for Individual Plaintiffs and others like them. If the asylum officer finds no credible fear of persecution, the noncitizen is removed unless they request review before an immigration judge. That review is brief (often lasting less than ten minutes), comes with limited opportunity for attorney participation or the submission of evidence, and happens just days after the negative credible fear finding. 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R. § 1208.30.

73. If the reviewing immigration judge finds that the person has a credible fear of persecution, they are placed in full removal proceedings in immigration court. 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R. § 1208.30. If, however, the judge affirms the asylum officer's adverse finding, the noncitizen is subject to removal "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(i), (iii). There is no opportunity to seek review before the BIA or an Article III judge. *See* 8 U.S.C. § 1252(a)(2)(A), (e).

74. People in expedited removal are generally subject to mandatory detention. The statute provides that a person shall be detained for the duration of the credible fear process and also for subsequent removal proceedings for a person who is found to have a credible fear of persecution.[11] 8 U.S.C. § 1225(b)(1)(B)(ii), (b)(1)(B)(iii)(IV), (b)(2)(A). Defendants recognize

[11] The issue of whether noncitizens who have been found to have a credible fear of persecution are entitled to a bond hearing as a matter of due process is currently pending before the Ninth Circuit Court of Appeals. *See Padilla, et al. v. ICE*, Case No. 24-2801 (9th Cir. 2024) (oral argument held on May 21, 2025).

only one narrow exception to this rule—that they may grant parole to a noncitizen under 8 U.S.C. § 1182(d)(5).

75. The combined effect of these provisions is that, absent extraordinary circumstances, the credible fear process occurs quickly and while the noncitizen is detained. And although a person is entitled to a "consultation period" (currently a minimum of 24 hours) before a credible fear interview, that period does not convey a right to counsel and "shall not unreasonably delay the [expedited removal] process." *Id.* § 1225(b)(1)(B)(iv); *see Las Americas Immigrant Advoc. Ctr. v. Wolf*, 507 F. Supp. 3d 1, 14 (D.D.C. 2020); *see also M.A. v. Mayorkas*, No. 1:23-cv-1843 (D.D.C. filed June 23, 2023) (challenging 24-hour consultation period); *Las Americas Immigrant Advoc. Ctr. v. DHS*, 2025 WL 1403811, at *19-20 (D.D.C. May 9, 2025) (striking down a reduction of the period to as little as four hours).

76. Full removal proceedings under 8 U.S.C. § 1229a, which have been dismissed in the cases of Individual Plaintiffs M.S., E.P., E.C., P.D., and R.A., confer substantially more rights. The dismissals of Individual Plaintiffs L.H., D.C., K.M., E.K., M.K., and M.D. are not final because either the appeal period has not run yet, or there is an appeal currently pending.

77. Full removal proceedings begin when DHS issues an NTA (Form I-862 Notice to Appear) to a noncitizen and also files that document with the immigration court. An NTA contains the charges of inadmissibility or removability and factual allegations against the noncitizen, and generally one of the first steps of a full removal process is for the noncitizen to admit or deny the charges. 8 U.S.C. § 1229a.

78. Full removal proceedings are adversarial, and are, unless otherwise specified in the INA, "the sole and exclusive procedure for determining whether [a noncitizen] may be admitted to the United States or, if the [noncitizen] has been so admitted, removed from the United States."

8 U.S.C. § 1229a(a)(3). Consistent with that statutory mandate, full removal proceedings are the primary means for adjudicating defensive claims to asylum and related protection and the only means for seeking other types of immigration relief.

79. In full removal proceedings, noncitizens have the right to counsel, to present evidence, and to cross-examine witnesses. 8 U.S.C. § 1229a(b)(2)-(4); 8 C.F.R. § 1003.16(b). Further, if DHS desires to amend the charges or factual allegations against a noncitizen, those modifications must be "in writing," and the immigration judge "shall read them" to the noncitizen and provide the opportunity to seek a continuance to respond to the charges. 8 C.F.R. § 1003.30.

80. People in full removal proceedings also have appellate rights that do not exist for those in expedited removal. They can appeal the decision of an immigration judge to the BIA and then, if necessary, seek review in a federal court of appeals. 8 U.S.C. §§ 1229a, 1252(a)-(b); 8 C.F.R. §§ 1003.12-1003.47.

81. A person in full removal proceedings may submit an application for asylum and related relief to the immigration judge as a form of relief from removal, 8 C.F.R. § 208.2(b), and can also seek other forms of relief. People in full removal proceedings may also seek a wide variety of relief that is unavailable in expedited removal, including adjustment of status to become a lawful permanent resident based on marriage to a U.S. citizen.

82. People in full removal proceedings are also not typically detained unless they have a criminal record that subjects them to mandatory detention under 8 U.S.C. § 1226(c). As a result, they have much greater ability to gather evidence, coordinate with supporting witnesses, consult with counsel, develop arguments, and otherwise prepare.

83. Finally, people in full removal proceedings have rights regarding the continuation of those proceedings. When an NTA is filed with an immigration court, jurisdiction vests with that

court, and DHS may not unilaterally cancel the proceedings. Instead, DHS must seek dismissal from the immigration judge. 8 C.F.R. §§ 239.2(c), 1239.2(c). DHS is permitted to move for dismissal "on the grounds set out under 8 CFR § 239.2(a)." *Id.*

84. Prior to granting dismissal, immigration judges must consider arguments made in opposition to dismissal. *Id.* § 1003.23(a).

85. If a case is dismissed by the immigration judge over the objection of a party, that party may appeal the dismissal to the BIA. The dismissal does not become final until and unless any proceedings on appeal are concluded. 8 C.F.R. § 1003.39; *see* 8 U.S.C. § 1101(a)(47)(B).

III. Defendants' Expanded Use of Expedited Removal

86. For nearly the entirety of its existence, expedited removal has applied only at the border and only to people who have just entered the United States. Previously, only people encountered within 100 miles of a U.S. international land border and within 14-days of their initial entry into the United States could be "place[d] in expedited removal proceedings." *See* 69 Fed. Reg. 48,877, 48,880 (Aug. 11, 2004).

87. Recently, Defendants expanded expedited removal to apply nationwide to noncitizens "who have been continuously present in the United States for less than two years." *See* 90 Fed. Reg. 8139, 8139-40 (Jan. 24, 2025) (January 2025 Notice). That expansion is being challenged in other cases in this district. *See Make the Road New York v. Noem*, No. 1:25-cv-00190 (D.D.C. filed Jan. 22, 2025); *CHIRLA v. Noem*, No. 1:25-cv-872 (D.D.C. filed Mar. 24, 2025).

88. Now, however, Defendants have gone even further: applying expedited removal to people who have been present in the United States for more than two years and proceeding with expedited removal proceedings while a person remains in full removal proceedings.

A. Defendants' Discretion to Bypass Expedited Removal

89. The use of expedited removal is, and always has been, discretionary. DHS has, in many circumstances, routinely exercised its discretion to give a noncitizen an NTA, and thereby initiate full removal proceedings under 8 U.S.C. § 1229a, instead of subjecting them to expedited removal. For example, DHS has done so to avoid unnecessary detention of families; for people who speak rare languages, on the basis that conducting a timely credible fear interview for these individuals would strain DHS's resources; and for people with medical needs or other serious vulnerabilities.

90. During the Biden administration, DHS exercised its discretion to forgo expedited removal based on numerous factors. For example, the Biden Administration issued regulations requiring people to enter the United States using a smartphone application called CBP One in order to retain eligibility to seek asylum. *See* 88 Fed. Reg. 31,314 (May 16, 2023). DHS often exercised its discretion to grant people who did so parole or, alternately, released such people without formally granting parole on their own recognizance or with supervision. When releasing people in these ways, DHS generally gave them either an NTA or a Notice to Report to an immigration office where they would receive an NTA.

B. Defendants' New, Unlawful Understanding of the Scope of Expedited Removal

91. Since late May 2025, Defendants have purported to interpret the expedited-removal statute in a novel way that reaches many noncitizens who have been in the United States for more than two years, including Plaintiffs L.H., M.S., E.P., D.C., E.C., and P.D.

92. Under the expedited removal statute, DHS Secretary may designate and apply expedited removal to noncitizens who "ha[ve] not been admitted or paroled into the United States, and who ha[ve] not affirmatively shown, to the satisfaction of an immigration officer, that the

[noncitizen] has been physically present in the United States continuously for the *2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph*." 8 U.S.C. § 1225(b)(1)(A)(i), (b)(1)(A)(iii)(II) (emphasis added).

93. The determination of inadmissibility is at the heart of the expedited removal process, in which a DHS officer is tasked with the solemn role of objective adjudicator traditionally afforded to judges or other neutral arbiters, without judicial oversight.

94. To make an inadmissibility determination under § 1225(b)(1)(A)(iii)(II), DHS must follow the multi-step implementing regulations. *See* 8 C.F.R. § 235.3(b)(2). Those regulations require DHS to take testimony in the form of in interview recorded by the officer as a "sworn statement" by the noncitizen regarding all pertinent "facts of the case" on Form I-867A&B; "advise" the noncitizen of the charges against them on a Form I-860, the Notice and Determination of Expedited Removal; serve those forms on the noncitizen; and screen the noncitizen for a credible fear of persecution. *See id*.; *see also* Customs and Border Protection Inspector's Field Manual, Chapter 17.15 (Feb. 10, 2006).[12] The regulations make clear that DHS "shall" take these steps "[i]n every case in which the expedited removal provisions will be applied." 8 C.F.R. § 235.3(b)(2).

95. Under the plain text of § 1225(b)(1)(A)(iii)(II), a noncitizen may be removed pursuant to the expedited removal process only if DHS takes these steps within two years of the noncitizen's arrival in the United States.

[12] Am. Immigr. Laws. Ass'n, *CBP Inspector's Field Manual* (Feb. 10, 2006), https://perma.cc/WW3D-W3HW.

96. The January 2025 Notice that expanded expedited removal confirms as much. That notice allows DHS to place in expedited removal only people who "have been continuously present in the United States for less than two years." 90 Fed. Reg. at 8140.

97. DHS does not take the steps needed to make a determination of inadmissibility under § 1225(b)(1)(A)(iii)(II) when it issues an NTA in immigration court. It does not take a sworn statement or issue Form I-860.

98. Rather, an NTA contains only an allegation of inadmissibility, *see* Form I-862 Notice to Appear, that can be disputed by the noncitizen in immigration court, *see* 8 C.F.R. § 1240.8. An NTA is thus a charge of inadmissibility, not a determination of inadmissibility. *See* 8 U.S.C. § 1229(a)(1).

99. On information and belief, on or about May 20, 2025, DHS issued new guidance that takes the position that a person can be subjected to expedited removal proceedings at any time so long as DHS alleged inadmissibility, presumably via an NTA, within two years after a noncitizen arrives in the United States.

100. DHS's new position violates § 1225(b)(1)(A)(iii)(II), the implementing regulations, and the January 2025 Notice. Yet Defendants have relied on this interpretation to seek the dismissal of full removal proceedings, execute courthouse arrests, and unlawfully place many individuals, including Plaintiffs L.H., M.S., E.P., D.C., E.C., and P.D. in expedited removal.

101. Defendants have expanded expedited removal in a second way. On information and belief, Defendants have recently issued the Concurrent Proceedings Guidance, which expands their understanding of the scope of expedited removal to include people who remain in *pending* full removal proceedings, as was the case for L.H., M.S., E.P., D.C., P.D., K.M., E.M., M.K., M.D.,

and R.A. In fact, Individual Plaintiff R.A. was deported while his dismissal order was not final because he was still in the appeal period.

IV. Harms to Plaintiffs

A. Individual Plaintiffs

102. The actions taken by Defendants have and will continue to cause irreparable harm to Individual Plaintiffs and the class of individuals that they seek to represent.

103. First, the unilateral dismissal of ongoing removal proceedings in immigration court under the policies challenged here causes severe harm. Most of the Individual Plaintiffs, and many other noncitizens like them, had already filed applications for asylum or another form of relief from removal. Many have been waiting a year or more to have that application heard and had prepared evidence in support of that application. Even in the "best case" scenario—where these individuals are able to return to full removal proceedings—the unilateral dismissal of their prior proceedings will have caused them to lose their place "in line," and they will likely face additional delay in the consideration of their claims. At best, they will be back at square one and forced to start the process anew. In turn, that will prolong their period of uncertainty in this country and prevent them from petitioning for family members to join them in a timely fashion. Plaintiff J.L., who has not yet had his removal proceedings dismissed, fears that such a dismissal is imminent in his case, which has been set for a hearing next week.

104. The arrest, and subsequent detention, likewise inflicts severe harm. Detention often results in family separation. Plaintiff D.C.'s fiancée, who recently gave birth to their child, faces recovering from birth-related complications and caring for an infant on her own after D.C.'s arrest at court. In some cases, that separation is by thousands of miles because people have been detained in one location (e.g., Miami) and detained in another location (e.g., Washington state). For

example, Plaintiffs M.D. and E.C. were taken into custody as their full removal cases were dismissed, and they are now detained and separated from their spouses. One Plaintiff, E.P., has been separated from his partner and child, who both have special needs and who are both lawful permanent residents, leaving him unable to care for them.

105. Even in the rare case that did not result in detention, family separation remains a risk. For example, Plaintiff M.S. was released when his proceedings were dismissed, but he now fears separation from his young child, who is a U.S. citizen. Plaintiff M.S. also fears that, if he is put back in full removal proceedings, as he should be following a CFI, he or his wife could be arrested at a future hearing.

106. The process of being arrested and detained while complying with a legal process has also caused serious harm. Plaintiffs K.M. and M.K. experienced serious distress when they learned that they were being arrested, and both required medical treatment. Numerous Individual Plaintiffs pleaded for an opportunity to keep going with their cases and felt extreme emotional distress when they were denied that opportunity.

107. Detention itself has also come at a serious cost. Plaintiffs R.A. and J.L., described being held in an overcrowded space that seems to have been a converted office space, without proper ventilation, without access to appropriate food, and limited ability to communicate to the external world. Plaintiffs J.L. and E.M. are both HIV positive, and at least J.L. has gone days without access to appropriate HIV care. Multiple Plaintiffs, including R.A., E.P., E.C., and P.D. describe being transferred between multiple detention centers across the country. It is ICE's practice to shackle people in four-point restraints (at their hands and feet) during such detention transfers, which often causes significant discomfort.

108. The placement of people arrested at courthouses in expedited removal likewise causes significant harm. As mentioned above, detention is generally mandatory for those in expedited removal. Furthermore, some people—even those with strong claims for asylum and related relief—will not successfully clear the credible fear screening process and therefore not be able to move forward with their application for asylum and related relief. For example, Plaintiff R.A. was deported to a country where he fears persecution without a credible fear interview, and Plaintiff L.H. was informed that she did not pass the credible fear interview and is awaiting review of that decision by an immigration judge. This is in part because people in immigration jails have difficulty gathering evidence and contacting witnesses and counsel and in part because attorneys play a very limited role in the credible fear process. Further, recent rules have heightened the screening standard for credible fear interviews and authorized officers to consider adverse factors that could previously be considered only in full removal hearings. *See* 89 Fed. Reg. 103,370 (Dec. 18, 2024); 89 Fed. Reg. 81,156, 81,284-285 (Oct. 7, 2024); 88 Fed. Reg. at 31,450-452.

109. Placement in expedited removal is even more harmful for people who qualify for other immigration relief. For example, Plaintiffs M.D. and E.C. are married to U.S. citizens and could receive immigration benefits from their relationships. The expedited removal process and, worse, an expedited removal *order* will make access to these related benefits more difficult or outright impossible.

B. Organizational Plaintiffs

110. Organizational Plaintiffs are also significantly harmed by Defendants' new policies.

111. I-ARC's core business activities have suffered because of Defendants' actions. I-ARC operates a Friend of the Court program, through which I-ARC provides assistance to pro se

respondents appearing in New York immigration court for initial master calendar hearings. Since the inception of I-ARC's Friend of the Court program in 2023, I-ARC has assisted more than 3,000 pro se respondents from forty-five different countries who speak over twenty different languages in seventeen different courtrooms. But because of Defendants' unlawful policy changes, I-ARC has experienced a stark decrease in the number of respondents it is able help each week through this program.

112. For example, I-ARC has had to modify its Friend of the Court programming on a daily basis to attempt to provide more accurate and useful information to pro se respondents. Historically, I-ARC has provided legal orientations and know your rights counseling to respondents that provided an overview of the court procedure and what they could expect. Now, those orientations take much longer, as I-ARC staff and volunteers must sit individually with each pro se respondent to discuss how to respond to the possibility that the individual's case could be dismissed, the individual could be detained, and the individual could be placed into expedited removal proceedings. As a result, I-ARC has had to reduce the number of respondents it can assist, and because of the uncertainty attendant to Defendants' actions, I-ARC's ability to provide accurate, effective, and tailored counseling has been impaired.

113. Because of the increased time necessary to conduct I-ARC's programming for pro se respondents, I-ARC has no staff time available to support, train, and orient new volunteers. As a result, I-ARC can use only returning volunteers to staff its Friend of the Court Program, further limiting the amount of programming it is able to provide and the number of pro se individuals it can assist.

114. Additionally, because Defendants' policies have caused significant fear in the immigrant community, fewer pro se respondents are appearing for their scheduled hearings. As a

result, I-ARC is able to assist far fewer individuals each week than it typically could prior to Defendants' new courthouse and arrest and dismissal policies. That change impedes I-ARC's core mission of facilitating justice and easing the burden put on attorneys.

115. American Gateways' core work has likewise suffered. That work includes representing noncitizens—including adults, children, and families—in full removal proceedings under 8 U.S.C. § 1229a and in bond proceedings before the immigration courts and the BIA. Another key component of American Gateways' core work involves the provision of legal information and guidance to individuals who are appearing pro se before the San Antonio, Texas, immigration court.

116. Defendants' actions seriously impede this core work. Defendants' actions are designed to detain and remove people from the full removal process, where their access to legal services is at its apex, so that they can be quickly deported via expedited removal proceedings. In those proceedings, American Gateways clients and the pro se individuals they seek to assist have less access to legal counsel, vanishingly little time to prepare their case, no opportunity to appeal, and no ability to seek certain immigration remedies. Defendants' actions thus impede American Gateways' representation of clients and its ability to advise pro se individuals

117. In addition, for clients who are placed into expedited removal proceedings, American Gateways now has a professional obligation to undertake new work in furtherance of its representative obligations to countermand Defendants' actions and to try to return their clients to the status quo ante. In particular, for its existing clients, American Gateways must file objections to DHS motions to dismiss, file appeals of immigration judges' dismissal decisions, prepare their clients for the credible fear process, and seek release from custody. None of these activities would

have been necessary but for Defendants' actions. Because American Gateways must take on these additional tasks to serve existing clients, it has substantially less capacity to take on new cases.

118. For American Gateways' work serving pro se individuals, many of the same harms apply and are made more complicated by the manner in which Defendants have undertaken this practice. Before Defendants' actions, American Gateways staff and volunteers could speak to pro se individuals in the hallway of the immigration court or in a small room dedicated to consultations. Now, however, because they do not know which individuals will be facing dismissal and they cannot learn that information except by being present inside each judge's courtroom, such an approach is impossible. The consequence of this change is not merely that American Gateways has had to move where it administers pro se advice; the process now requires it to devote substantially more staff to try to reach the same number of people. This increased staffing demand is exacerbated because consultations with pro se individuals take much longer than they previously did. American Gateways' staff must explain that DHS may seek to dismiss the immigration court proceedings, how the immigration judge may respond, and that ICE may seek to detain the individual and place them in expedited removal proceedings. And because they do not know who will face this harm, they must provide this fear-inducing information more broadly.

119. In addition, though American Gateways would ordinarily help pro se individuals with the process of seeking asylum or other immigration relief, it can no longer provide that assistance because individuals are swiftly taken from the immigration court into detention, and American Gateways staff will not have an opportunity—apart from any opportunity they had outside—to explain to these pro se individuals what to expect. American Gateways also has less opportunity to provide assistance because fear of arrest has created a chilling effect in the

immigrant community, leading fewer immigrants to appear for their scheduled hearings in immigration court.

120. As a result of Defendants' actions, American Gateways is harmed in its ability to represent immigrants and asylum seekers who are or were in full removal proceedings and must now undertake new work to engage with and defend against the expedited removal process for their clients. It must address a dramatic increase in the detention of their previously non-detained clients, and it must change its core activities to serve both its clients and the pro se people whom it seeks to advise as they appear in immigration court.

CLASS ACTION ALLEGATIONS

121. With respect to all counts except Counts Eight through Eleven, Individual Plaintiffs bring this action under Federal Rule of Civil Procedure 23(a) and (b)(2) on behalf of themselves and a class of all other persons similarly situated.

122. Individual Plaintiffs seek to represent the following Proposed Classes:

> **Arrest Class**: All noncitizens who were arrested, or are arrested in the future, by Defendants in a civil immigration enforcement action at or near an immigration courthouse on the day of their hearing in a removal proceeding under 8 U.S.C. § 1229a on or after January 21, 2025.
>
> **Dismissal Class**: All noncitizens whose removal proceedings under 8 U.S.C. § 1229a were dismissed by Defendants, or are dismissed in the future, without the noncitizen's consent, on or after May 20, 2025.

123. The proposed classes satisfy the numerosity requirement of Rule 23(a)(1) because the classes are so numerous that joinder of all members is impracticable. On information and belief, Defendants have subjected hundreds and possibly thousands of people to dismissals and courthouse arrests nationwide and will continue to do so on a widescale basis until and unless a court order prevents them from doing so.

124. The proposed classes satisfy the commonality requirement of Rule 23(a)(2) because their claims turn on common questions of law or fact that are capable of class-wide resolution. These common questions include, but are not limited to, whether the challenged policies violate the APA, the INA, and/or the Due Process Clause; and (as to the Dismissal Class) whether 8 C.F.R. §§ 239.2(a)(7), (c) and 8 C.F.R. §§ 1239.2(b), (c), which provide that an immigration officer may move to dismiss a proceeding based on changed "circumstances of the case," allow immigration officers to move to dismiss a proceeding based on changed circumstances external to the case, and whether an immigration judge is permitted to grant dismissal based on changed circumstances external to the case.

125. The proposed classes meet the typicality requirement of Rule 23(a)(3) because the claims of the representative Individual Plaintiffs are typical of the claims of the class. Each class member's claims arise from the same course of events (Defendants' adoption of the challenged policies), and each class member has experienced or will experience the same principal injuries (having their full removal proceedings under 8 U.S.C. § 1229a dismissed or being arrested in the immigration court).

126. The proposed class representatives meet the adequacy requirement of Rule 23(a)(4). The representative Individual Plaintiffs seek the same relief as the other members of the classes—declaratory relief and vacatur of the unlawful polices. Individual Plaintiffs are committed to defending the rights of all proposed class members fairly and adequately. They are aware of their obligations as proposed class representatives and are willing to dedicate time and effort to pursuing and representing the interests of the proposed class.

127. The proposed class representatives are represented by experienced attorneys from the National Immigrant Justice Center (NIJC), Democracy Forward, the Refugee & Immigrant

Center for Legal Education & Services (RAICES), and the Lawyers' Committee for Civil Rights of the San Francisco Bay Area. Proposed Class Counsel have extensive experience in immigration and administrative law, and in litigating class action lawsuits and other complex systemic cases in federal court on behalf of noncitizens.

128. The proposed classes also satisfy Rule 23(b)(2). Defendants have acted on grounds generally applicable to the classes by enacting the challenged policies. Equitable relief is therefore appropriate with respect to the classes as a whole.

CLAIMS FOR RELIEF

Claims Related to EOIR and ICE Courthouse Arrest Guidance

FIRST CLAIM FOR RELIEF
EOIR Policy Permitting Courthouse Arrests is Arbitrary and Capricious
(APA - 5 U.S.C. § 706(2)(A))
Class Count Raised by All Plaintiffs against all DOJ Defendants

129. The foregoing allegations are repeated and realleged as if fully set forth here.

130. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

131. The DOJ Defendants had longstanding practices against allowing DHS to make arrests or take enforcement actions in immigration courts except in limited circumstances not present here. Most recently, this policy was codified in OPPM 23-01, which was rescinded by the EOIR Courthouse Arrest Memo (OPPM 25-06).

132. The EOIR Courthouse Arrest Memo is arbitrary and capricious. Among other things, the memo offers explanations that run counter to the evidence before the agency, entirely fails to consider important aspects of the problem, and includes reasoning that is so implausible

that it could not be ascribed to a difference in view or the product of agency expertise. *See Motor Vehicle Mfrs. Assn. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

133. The EOIR Courthouse Arrest Memo likewise ignores the "serious reliance interests" that noncitizens, their loved ones, and witnesses have with respect to prior longstanding policies that prohibited arrests at immigration courts except in limited circumstances. *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 30 (2020).

134. For these and other reasons, the EOIR Courthouse Arrest Memo is arbitrary and capricious.

SECOND CLAIM FOR RELIEF
ICE Policies Authorizing Courthouse Arrests Are Arbitrary and Capricious
(APA - 5 U.S.C. § 706(2)(A))
Class Count Raised by All Plaintiffs against all DHS Defendants

135. The foregoing allegations are repeated and realleged as if fully set forth here.

136. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

137. DHS, including ICE, had longstanding policies against taking enforcement actions in immigration courts except in circumstances not present here. The ICE Interim Arrest Guidance and the Final ICE Arrest Memorandum reversed that policy. *See* Memorandum 11072.3, *Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses*; Memorandum 11072.4, *Civil Immigration Enforcement Actions In or Near Courthouses.*

138. Both the ICE Interim Arrest Guidance and the Final ICE Arrest Memorandum are arbitrary and capricious. Among other things, the ICE Interim Guidance and the Final ICE Arrest Memorandum offer explanations that run counter to the evidence before the agency, entirely fail to consider important aspects of the problem, and provide reasoning that is so implausible that it

could not be ascribed to a difference in view or the product of agency expertise. *State Farm*, 463 U.S. at 43.

139. The ICE Interim Arrest Guidance and the Final ICE Arrest Memorandum likewise ignore the "serious reliance interests" that noncitizens, their loved ones, and witnesses have with respect to prior longstanding policies that prohibited arrests at immigration courts except in limited circumstances. *See Regents*, 591 U.S. at 30.

140. For these and other reasons, the ICE Interim Arrest Guidance and the Final ICE Arrest Memorandum are arbitrary and capricious.

Claims Related to EOIR and DHS Dismissal Guidance

THIRD CLAIM FOR RELIEF
EOIR Dismissal Guidance Is Contrary to Law
(APA - 5 U.S.C. § 706(2)(A))
Class Count Raised by All Plaintiffs against all DOJ Defendants

141. The foregoing allegations are repeated and realleged as if fully set forth here.

142. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

143. The EOIR Dismissal Guidance instructs immigration judges that DHS dismissal motions may be made without advance notice or a response period and that any changed circumstances provide a sufficient basis for dismissal.

144. The INA provides that noncitizens in full removal proceedings "shall have a reasonable opportunity to examine the evidence against [them], to present evidence on [their] own behalf, and to cross-examine witnesses presented by the Government." 8 U.S.C. § 1229a(b)(4)(B).

145. Governing regulations permit dismissal of ongoing removal proceedings in immigration court only if "[c]ircumstances *of the case* have changed," not if external circumstances have changed. 8 C.F.R. § 239.2(a) (emphasis added); *see* 8 C.F.R. § 1239.2(c).

146. The EOIR Dismissal Guidance is contrary to law, including 8 U.S.C. § 1229a and 8 C.F.R. §§ 239.2, 1239.2.

FOURTH CLAIM FOR RELIEF
EOIR Dismissal Guidance is Arbitrary and Capricious
(APA - 5 U.S.C. § 706(2)(A))
Class Count Raised by All Plaintiffs against all DOJ Defendants

147. The foregoing allegations are repeated and realleged as if fully set forth here.

148. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

149. The Immigration Court Practice Manual instructs parties to file motions in advance of a hearing and allows the nonmoving party an opportunity to respond. See ICPM § 3.1(b)(1)(A)-(B). These rules, which EOIR generally treats as binding, confer significant procedural protections and benefits on noncitizens, who themselves typically have little knowledge of U.S. immigration law and who are often unrepresented by counsel during preliminary hearings.

150. The EOIR Dismissal Guidance exempts DHS trial attorneys from the requirement of filing motions in advance when seeking dismissal of removal proceedings under 8 U.S.C. § 1229a for placement into expedited removal proceedings. The EOIR Dismissal Guidance likewise instructs IJs that they need not provide the noncitizen with an opportunity to respond.

151. The EOIR Dismissal Guidance is arbitrary and capricious because, among other things, it does not satisfy the agency's duty to provide a reasoned explanation for its change in policy, *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016); fails to consider important

aspects of the problem, *State Farm*, 463 U.S. at 43; and overlooks significant reliance interests, *see Regents*, 591 U.S. at 30. It also violates the APA by creating a one-sided categorical exception to the agency's own binding procedures. *See U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

152. For these and other reasons, the EOIR Dismissal Guidance is arbitrary and capricious.

FIFTH CLAIM FOR RELIEF
DHS Dismissal Guidance is Contrary to Law
(APA - 5 U.S.C. § 706(2)(A))
Class Count Raised by All Plaintiffs Against DHS Defendants

153. The foregoing allegations are repeated and realleged as if fully set forth here.

154. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

155. On information and belief, DHS issued guidance on or around May 20, 2025, that instructed DHS attorneys to move to dismiss full removal proceedings in order to facilitate courthouse arrests and the transfer of people from full removal proceedings to expedited removal.

156. The INA provides that noncitizens in full removal proceedings "shall have a reasonable opportunity to examine the evidence against [them], to present evidence on [their] own behalf, and to cross-examine witnesses presented by the Government." 8 U.S.C. § 1229a(b)(4)(B).

157. Governing regulations permit dismissal of ongoing removal proceedings in immigration court only if "[c]ircumstances *of the case* have changed," not if external circumstances have changed. 8 C.F.R. § 239.2(a) (emphasis added); *see* 8 C.F.R. § 1239.2(c).

158. The DHS Dismissal Guidance is contrary to law, including 8 U.S.C. § 1229a and 8 C.F.R. §§ 239.2,1239.2.

SIXTH CLAIM FOR RELIEF
DHS Dismissal Guidance is Arbitrary and Capricious
(APA - 5 U.S.C. § 706(2)(A))
Class Count Raised by All Plaintiffs against all DHS Defendants

159. The foregoing allegations are repeated and realleged as if fully set forth here.

160. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

161. On information and belief, DHS issued guidance on or around May 20, 2025, that instructed DHS attorneys to move to dismiss full removal proceedings in order to facilitate courthouse arrests and the transfer of people from full removal proceedings to expedited removal.

162. On information and belief, the DHS Dismissal Guidance is arbitrary and capricious because, among other things, it does not satisfy the agency's duty to provide a reasoned explanation for its change in policy, *Encino Motorcars*, 579 U.S. at 221; fails to consider important aspects of the problem, *State Farm*, 463 U.S. at 43; and overlooks significant reliance interests, *see Regents*, 591 U.S. at 30.

163. For these and other reasons, the DHS Dismissal Guidance is arbitrary and capricious.

SEVENTH CLAIM FOR RELIEF
EOIR and DHS Dismissal Guidance Violate the Due Process Clause of the Fifth Amendment (APA - 5 U.S.C. § 706(2)(B))
Class Count Raised by All Plaintiffs against all DOJ Defendants

164. The foregoing allegations are repeated and realleged as if fully set forth here.

165. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "contrary to constitutional right." 5 U.S.C. § 706(2)(B).

166. The EOIR and DHS Dismissal Guidance authorize and encourages the dismissal of proceedings without providing noncitizens with timely notice or a meaningful opportunity to be

heard. The resulting dismissals strip noncitizens of critical rights and procedural protections that are available in full removal proceedings under 8 U.S.C. § 1229a but are unavailable in expedited removal proceedings.

167. The due process clause extends to all people, regardless of their citizenship status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). And at its most basic level, it offers notice and an opportunity to respond to government actions. *E.g.*, *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

168. Because the EOIR and DHS Dismissal Guidance violates a protected liberty interest and deprives noncitizens of a meaningful opportunity to be heard, it violates the due process clause of the Constitution.

Claims Related to Expansion of Expedited Removal to Cover People Present More than Two Years

EIGHTH CLAIM FOR RELIEF
DHS Policy Expanding Expedited Removal Beyond 2-Year Statutory Limit is Contrary to Law (APA - 5 U.S.C. § 706(2)(A))
Non-Class Count Raised by Organizational Plaintiffs and by Individual Plaintiffs L.H., M.S., E.P., D.C., E.C., and P.D. Against DHS Defendants

169. The foregoing allegations are repeated and realleged as if fully set forth here.

170. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A); see also 8 U.S.C. § 1252(e)(3)(A) (authorizing actions challenging policies implementing the expedited-removal statute as "in violation of law").

171. The expedited removal statute, 8 U.S.C. § 1225, is limited in its scope and is generally not meant to replace 8 U.S.C. § 1229a as the "sole and exclusive procedure" for determining whether a noncitizen may be admitted or removed from the United States. *Id.* § 1229a(a)(3). Accordingly, not all noncitizens are amenable to having their cases adjudicated in expedited removal proceedings.

172. One limit on expedited removal relates to a noncitizen's time in the United States. Expedited removal may be applied to any noncitizen "who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the [noncitizen] has been physically present in the United States continuously *for the 2-year period immediately prior to the date of determination of inadmissibility under this subparagraph*." 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (emphasis added).

173. Governing regulations require DHS to take various procedural steps, including recording a sworn statement concerning the underlying facts with Forms I-867A&B and providing the noncitizen with Form I-860, as part of a determination of inadmissibility under 8 U.S.C. § 1225(b)(1)(A)(iii)(II). *See* 8 C.F.R. § 235.3(b)(2).

174. DHS does not make a determination of inadmissibility "under" the relevant subparagraph when it issues a noncitizen with an NTA in immigration court.

175. On information and belief, on or about May 20, 2025, DHS issued written Guidance instructing DHS agents to place noncitizens who have been in the country for more than two years in expedited removal if the noncitizen received an NTA within two years after they arrived in the United States.

176. The Guidance is contrary to law, including 8 U.S.C. § 1225(b)(1)(A)(iii)(II) and 8 C.F.R. § 235.3(b)(2).

177. On information and belief, Individual and Organizational Plaintiffs can challenge this Guidance on a non-class basis because it constitutes a "written policy directive, written policy guideline, or written procedure" to implement the expedited removal statute and is reviewable under 8 U.S.C. § 1252(e)(3)(A)(ii); *see also id.* § 1252(e)(1)(B) (barring class challenges to the expedited removal process).

NINTH CLAIM FOR RELIEF

DHS Policy Expanding Expedited Removal Beyond 2-Year Statutory Limit is Arbitrary and Capricious (APA - 5 U.S.C. § 706(2)(A))
Non-Class Count Raised by Organizational Plaintiffs and by Individual Plaintiffs L.H., M.S., E.P., D.C., E.C., and P.D. Against DHS Defendants

178. The foregoing allegations are repeated and realleged as if fully set forth here.

179. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

180. On information and belief, on or about May 20, 2025, DHS issued written Guidance instructing DHS agents to pursue expedited removal for people who have been present in the United States for more than two years without having received a "determination of inadmissibility" under 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

181. On information and belief, this Guidance is arbitrary and capricious because, among other things, it does not satisfy the agency's duty to provide a reasoned explanation for its change in policy, *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016); fails to consider important aspects of the problem, *State Farm*, 463 U.S. at 43; and overlooks significant reliance interests, *see Regents*, 591 U.S. at 1.

182. On information and belief, Individual and Organizational Plaintiffs can challenge this Guidance on a non-class basis because it constitutes a "written policy directive, written policy guideline, or written procedure" to implement the expedited removal statute and is reviewable under 8 U.S.C. § 1252(e)(3)(A)(ii); *see also id.* § 1252(e)(1)(B) (barring class challenges to the expedited removal process).

Claims Related to Concurrent Proceedings Guidance

TENTH CLAIM FOR RELIEF
Concurrent Proceedings Guidance is Contrary to Law
(APA - 5 U.S.C. § 706(2)))
Count Raised by All Plaintiffs Against All Defendants

183. The foregoing allegations are repeated and realleged as if fully set forth here.

184. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A); *see also* 8 U.S.C. § 1252(e)(3)(A) (authorizing actions challenging policies implementing the expedited-removal statute as "in violation of law").

185. On information and belief, at some point after the issuance of the DHS and EOIR Dismissal Guidance, Defendants issued Concurrent Proceedings Guidance, instructing DHS to pursue expedited removal concurrently with the process for seeking dismissal of full removal proceedings and without waiting for those full removal proceedings to be completed.

186. The Concurrent Proceedings Guidance is contrary to 8 U.S.C. § 1229a(a)(3), which provides that unless otherwise specified, full removal proceedings are the "sole and exclusive" process for adjudicating cases.

187. The Concurrent Proceedings Guidance is also contrary to law because it enables Defendants to issue a removal order to and remove a noncitizen whose full removal case is not administratively final. A case in full removal proceedings becomes administratively final either following a decision by the BIA or "the expiration of the period in which the [noncitizen] is permitted to seek review of such order," whichever comes first. 8 U.S.C. § 1101(a)(47)(B)(ii).

188. On information and belief, Individual and Organizational Plaintiffs can challenge this Concurrent Proceedings Guidance on a non-class basis because it constitutes a "written policy directive, written policy guideline, or written procedure" to implement the expedited removal

statute and is reviewable under 8 U.S.C. § 1252(e)(3)(A)(ii); *see also id.* § 1252(e)(1)(B) (barring class challenges to the expedited removal process).

189. In the alternative, to the extent that Concurrent Proceedings Guidance is not a writing implementing the expedited removal system, it is reviewable under 28 U.S.C. § 1331 on a class-wide basis.

ELEVENTH CLAIM FOR RELIEF
Concurrent Proceedings Guidance is Arbitrary and Capricious
(APA - 5 U.S.C. § 706(2)(A))
Count Raised by All Plaintiffs against all Defendants

190. The foregoing allegations are repeated and realleged as if fully set forth here.

191. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

192. On information and belief, at some point after the issuance of the DHS and EOIR Dismissal Guidance, Defendants issued Concurrent Proceedings Guidance, instructing DHS to pursue expedited removal concurrently with the process for seeking dismissal of full removal proceedings and without waiting for those full removal proceedings to be completed.

193. On information and belief, the Concurrent Proceedings Guidance is arbitrary and capricious because, among other things, it can result in contradictory results in a single noncitizen's case—*i.e.* it creates a system where a person can have an expedited removal order and be removed pursuant to that order before the person's full removal proceedings became administratively final. There is no indication that Defendants have considered this important aspect of the problem, *State Farm*, 463 U.S. at 43.

194. In addition, given that Defendants have never endorsed the possibility of concurrent expedited and full removal proceedings, the Concurrent Proceedings Guidance is arbitrary and

capricious because it is an unexplained departure from past practice, *Encino Motorcars*, 579 U.S. at 221; and it overlooks significant reliance interests, *see Regents*, 591 U.S. at 30.

195. For these and other reasons, the Concurrent Proceedings Guidance is arbitrary and capricious.

196. On information and belief, Individual and Organizational Plaintiffs can challenge this Concurrent Proceedings Guidance on a non-class basis because it constitutes a "written policy directive, written policy guideline, or written procedure" to implement the expedited removal statute and is reviewable under 8 U.S.C. § 1252(e)(3)(A)(ii); *see also id.* § 1252(e)(1)(B) (barring class challenges to the expedited removal process).

197. In the alternative, to the extent that Concurrent Proceedings Guidance is not a writing implementing the expedited removal system, it is reviewable under 28 U.S.C. § 1331 on a class-wide basis.

PRAYER FOR RELIEF

Plaintiffs request that the Court grant the following relief:

a. Declare that EOIR OPPM 25-06 is arbitrary and capricious.

b. Vacate EOIR OPPM 25-06.

c. Preliminarily enjoin and/or exercise the Court's authority under 5 U.S.C. § 705 to provide relief pending review as to EOIR OPPM 25-06.

d. Declare that ICE Interim Arrest Guidance 11072.3 and ICE Final Arrest Memorandum 11072.4 are arbitrary and capricious.

e. Vacate ICE Interim Arrest Guidance 11072.3 and ICE Final Arrest Memorandum 11072.4.

f. Preliminarily enjoin and/or exercise the Court's authority under 5 U.S.C. § 705 to provide relief pending review as to ICE Interim Arrest Guidance 11072.3 and ICE Final Arrest Memorandum 11072.4.

g. Declare that the EOIR Dismissal Guidance is arbitrary and capricious, contrary to law, and violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

h. Vacate the EOIR Dismissal Guidance.

i. Preliminarily enjoin and/or exercise the Court's authority under 5 U.S.C. § 705 to provide relief pending review as to the EOIR Dismissal Guidance.

j. Declare that the DHS Dismissal Guidance is arbitrary and capricious, contrary to law, and violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

k. Vacate the DHS Dismissal Guidance.

l. Preliminarily enjoin and/or exercise the Court's authority under 5 U.S.C. § 705 to provide relief pending review as to DHS Dismissal Guidance.

m. Declare Defendants' guidance authorizing the use of expedited removal for people who have been in the United States for more than two years prior to issuance of a determination of inadmissibility under 8 U.S.C. § 1225(b) and its implementing regulations is contrary to law and arbitrary and capricious.

n. Vacate Defendants' guidance authorizing the use of expedited removal for people who have been in the United States for more than two years prior to issuance of a determination of inadmissibility under 8 U.S.C. § 1225(b) and its implementing regulations.

o. Declare that the Concurrent Proceedings Guidance is contrary to law and arbitrary and capricious.

p. Vacate the Concurrent Proceedings Guidance.

q. Preliminarily enjoin and/or exercise the Court's authority under 5 U.S.C. § 705 to provide relief pending review as to Concurrent Proceedings Guidance.

r. Grant class certification as to Counts One through Seven, allowing Individual Plaintiffs to represent themselves and other similarly situated noncitizens.

s. Restore Individual Plaintiffs to the procedural posture that they enjoyed prior to Defendants' unlawful actions.

t. Require Defendants to reinstate all class members' proceedings under 8 U.S.C. § 1229a that were dismissed pursuant to the EOIR and/or DHS Dismissal Guidance without the class member's consent.

u. Issue an order pursuant to the All Writs Act, 28 U.S.C. § 1651, to protect this Court's jurisdiction over the litigation by barring Defendants, for the duration of the litigation, from deporting any of the Individual Plaintiffs or transferring any Individual Plaintiff presently in custody to a jurisdiction different from the one in which they are presently detained.

v. Require Defendants to pay Plaintiffs reasonable attorneys' fees and costs.

w. Grant any other and further relief that this Court may deem just and proper.

Dated: July 16, 2025

Respectfully Submitted,

s/ Keren Zwick

Elena Goldstein (D.C. Bar No. 90034087)
Jeffrey B. Dubner (D.C. Bar No. 1013399)
Joshua M. Salzman (D.C. Bar No. 982239)***
Simon C. Brewer*, ***
Democracy Forward Foundation
P.O. Box 34553
Washington, DC 20043
T: (202) 448-9090
egoldstein@democracyforward.org
jdubner@democracyforward.org
jsalzman@democracyforward.org
sbrewer@democracyforward.org

Keren Zwick (D.D.C. Bar. No. IL0055)
Mark Fleming**
Mark Feldman***
Mary Georgevich**
Colleen Cowgill**
National Immigrant Justice Center
111 W. Jackson Blvd., Suite 800
Chicago, IL 60604
T: 312-660-1370
kzwick@immigrantjustice.org
mfleming@immigrantjustice.org
mfeldman@immgrantjustice.org
mgeorgevich@immigrantjustice.org

Jordan Wells** (Cal. Bar No. 326491)
Victoria Petty** (Cal. Bar No. 338689)
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
131 Steuart Street # 400
San Francisco, CA 94105
T: (415) 543-9444
jwells@lccrsf.org
vpetty@lccrsf.org

*Not admitted in D.C.; practicing under the supervision of Democracy Forward lawyers who are members of the D.C. Bar.

** Application for pro bono admission forthcoming.

*** Application for admission to D.D.C. pending

ccowgill@immigrantjustice.org

Richard Caldarone (D.C. Bar No. 989575)
Refugee & Immigrant Center for Legal Education & Services (RAICES)
P.O. Bo. 786100
San Antonio, TX 78278
T: (210) 960-3206
richard.caldarone@raicestexas.org