



On December 19, 2018, counsel for Petitioner attempted to confer with Counsel for Respondents, by calling and emailing Hector Ramirez, the Civil Chief of the United States Attorney's Office for the Southern District of Texas, Laredo Division, and did not hear back.

### **FACTS AND PROCEDURAL HISTORY**

Petitioner L-N- seeks a writ of habeas corpus seeking her release from prolonged immigration detention of nearly eleven months, without individualized review or determination by an Immigration Judge. As set forth in her habeas petition, immigration officials continue to detain L-N- at their discretion, even though she does not pose a flight risk or danger to the community.

Ms. L-N- fled for her life from her native XXX. *See* Habeas Petition ("Pet."), ¶¶ 23-29. She immediately sought asylum on the basis of being targeted by a criminal organization that had murdered her parents and brother and disappeared her sister. *Id.* XXX. *Id.*

Immigration officials sent Petitioner to an adult immigration detention center in Laredo, Texas, where she remained for a few days. Pet. ¶¶ 30. Immigration officials then transferred Petitioner to an adult women's immigration detention facility in Taylor, Texas, where she remained for several months. *Id.* On or about November 15, 2018, immigration officials transferred Petitioner back to the Laredo immigration detention center, where she remains detained today. *Id.*

In April, an asylum officer found that Petitioner had a credible fear of persecution, and he referred her to removal proceedings, in which she could apply for asylum. Pet. ¶ 31; Ex. B (XXX) Ex. C (XXX). DHS commenced removal proceedings in May 2018, Pet. ¶¶ 32-33, and Petitioner submitted her asylum application pro se in June 2018. Ex. D (April 12, 2018 DHS Notice to Appear); Ex. G (XXX). An Immigration Judge held her final hearing in October 2018, after a few continuances. Pet. ¶¶ 34-40; Ex. U (XXX).

In a written decision, the Immigration Judge denied her asylum application on October 11, 2018. Pet. ¶ 41; Ex. O (October 11, 2018 Written Decision of the Immigration Judge). Immigration Judge found Petitioner's testimony regarding her asylum case to be credible and consistent. *Id.* XXX. *Id.*

Petitioner appealed the decision to the Board of Immigration Appeals (BIA). Pet. ¶ 42; Ex. Q (November 7, 2018 BIA Notice of Appeal and BIA Filing Receipt for Appeal). She has a reasonable likelihood of success because of legal and factual errors in the Immigration Judge's decision. Pet. ¶¶ 43-44; Ex. O (IJ decision); Ex. N (XXX.). Currently, the BIA has no deadline for a determination of her appeal, and if she loses and then files a petition for review to the Fifth Circuit Court of Appeals, it is likely to take another eighteen months before a final decision is reached. Ex. U (Steglich dec).

Petitioner has requested that ICE grant her release on parole, pursuant to a 2009 memo authorizing parole for arriving asylum seekers. Pet. ¶¶ 14-22; Ex. A (December 8, 2009 ICE Memo: Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture); Ex. U (XXX.). ICE initially considered and denied her parole in May 2018, stating that she did not have proper identity documents and had not established that she was not a flight risk. Pet. ¶ 17; Ex. XXX.

In June 2018, Petitioner obtained a letter of support from Casa Marianella, a migrant shelter located in Austin, to show that she had a stable place to live and was not a flight risk, and later submitted that to ICE. Pet. ¶ 18; Ex. H (XXX). In late July and August, attorneys with American Gateways, a non-profit providing immigration legal services, emailed ICE officials about her parole, reminding them that ICE already had Petitioner's identification papers. Pet. ¶ 19; Ex. I (August 3, 2018 American Gateways Emails with ICE regarding Parole).

Petitioner obtained counsel in her asylum case on August 29, 2018. Pet. ¶20; Ex. J (August 29, 2018 Notice of Entry of Appearance as Attorney Elissa Steglich). Through counsel, she subsequently made a parole request on September 14, 2018 with supporting documentation. Pet. ¶20; Ex. L (September 14, 2018 Renewed Request for Parole with Supporting Documents). ICE denied that request without reason or explanation. Pet. ¶20. In late October 2018, after an inquiry, ICE officials informed Petitioner's counsel that since the Immigration Judge had denied her asylum, she would not be paroled. Pet. ¶21; Ex. P (October 8-30, 2018 Petitioner's Counsel's Emails with ICE regarding Parole). On December 14, 2018, through counsel, she made another parole request that is pending. Pet. ¶22; Ex. T (December 14, 2018 Renewed Parole Request with Supporting Documents).

L-N- poses no flight risk or danger. Pet. ¶¶ 47-51. If released, she would appear for all future hearings, including deportation if that were the ultimate result in her case. *Id.*; Ex. R (December 11, 2018 Declaration of L-N- ). She has a sponsor willing to assist her upon release, namely a shelter assisting asylum-seekers in Austin named Casa Marianella. *See* Ex. S (XXX). She also has a friend who is a University of Texas professor who is willing to assist her. Ex. V (XXX). She poses no danger, and has no criminal history. Pet. ¶¶ 47-51.

Petitioner also presents humanitarian reasons for release because her mental health condition has worsened during detention. Pet. ¶¶ 52-58. XXX.

## **ARGUMENT**

### **I. The Court Should Order Respondents to Make A Timely Response Based on 28 U.S.C. § 2243 and Rules Governing Habeas Petitions In District Courts**

L-N- requests that the Court order Respondents to make a timely response to her habeas petition within ten days. This Court has authority to order such relief, based on the Rules governing habeas proceedings in the United States district courts. *See* Rules Governing § 2254 Cases in the U.S. Dist. Cts., Rule 1(b) (“The district court may apply any or all of these rules to a habeas corpus petition [other than a § 2254 petition].”); Rule 4 (“If the petition is not dismissed [sua sponte], the judge must order the respondent to file [a] . . . response within a fixed time, or to take other action the judge may order.”).

In addition, 28 U.S.C. § 2243 provides further authority for this Court to grant Petitioner’s request. This provision provides in relevant part:

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

***The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.***

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

28 U.S.C. § 2243 (emphasis added).

Pursuant to Section 2243, this Court may order Respondents to file an answer or “return” on the habeas petition within three days, or additional time if good cause is shown. Here, Petitioner seeks an order requiring a response within twenty (calendar) days, which provides adequate time for the Respondents to marshal facts and legal arguments that they believe support her continued detention. This case does not require complex or protracted investigation by Respondents. ICE already has information that goes to flight risk and danger, including: Petitioner’s identity documents, address and financial information from her sponsor, and information about her total

lack of criminal history. *See* Pet. ¶¶ 47-51; Exs. L, T (XXX). In addition, ICE has the Immigration Judge’s ruling finding her testimony credible and consistent. *See* Pet. ¶ 41; Ex. O (IJ decision). No difficult factual questions prohibit Respondents from filing an answer to the habeas petition within twenty days.

Likewise, the legal arguments are clear. As set forth in the Petition, the critical questions are: (a) whether Petitioner’s continued detention is based on a legitimate governmental objective, that is, flight risk or danger to the community, and (b) whether the Due Process Clause permits her prolonged detention in the absence of procedural safeguards, namely an individualized determination of flight risk and danger by a neutral and impartial decision-maker. Pet. ¶¶ 59-81. Respondents have briefed these questions extensively before district courts, appellate courts, and the Supreme Court. Twenty days is more than adequate for Respondents to file an answer in this case.<sup>1</sup>

Additional grounds exist for requiring Respondents to timely respond. First, the habeas statute contemplates a timely hearing and remedy. “Congress has provided that once a petition for a writ of habeas corpus is filed, unless the court is of the opinion that the petitioner is not entitled to an order to show cause, the writ must be awarded ‘forthwith,’ or an order to show cause must be issued.” *Harris v. Nelson*, 394 U.S. 286, 298-99 (1969) (quoting 28 U.S.C. § 2243); *see also*, *Simpson v. Ortiz*, 995 F.2d 606, 609 (5th Cir. 1993). A habeas petition “is a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination.” *Van Buskirk v. Wilkinson*, 216 F.2d 735, 737-398 (9th Cir. 1954); *see also*, *McClellan v. Young*,

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<sup>1</sup> Given the importance of Petitioner’s liberty interest, the fact that three federal holidays occur in the twenty day response period should not give cause to extend the period.

421 F.2d 690, 691 (6th Cir. 1970); *Johnson v. Rogers*, 917 F.2d 11283, 1284 (10th Cir. 1990); *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000).

In light of this Congressional command, numerous district courts facing habeas petitions by non-citizens in federal immigration custody have required federal Respondents to answer within three to twenty days. *See* Ex. Z (collecting district court decisions ordering Respondents to answer the habeas petition within three to twenty days).

Second, while the Court undoubtedly has discretion to determine the order of civil actions before it, 28 U.S.C. § 1657 requires district courts to prioritize actions brought “under chapter 153” of Title 28, which is the chapter codifying habeas jurisdiction, over other civil actions. “Liberty’s priority over compensation is why 28 U.S.C. § 1657 specifies that requests for collateral relief go to the head of the queue.” *Post v. Gilmore*, 111 F.3d 556, 557 (7th Cir. 1997); *see United States v. Samples*, 897 F.2d 193, 195 (5th Cir. 1990) (“28 U.S.C. § 1657 requires that courts expedite [habeas petitions].”).

Third, L-N- mental health conditions provide additional bases of good cause for requiring Respondents to answer the petition within twenty days. XXX

Finally, Petitioner’s proposed timeframe of twenty days to answer will not prejudice the Respondents. As set forth *supra*, Respondents already know all of the facts relevant to whether she poses a flight risk or danger to the community. Petitioner has re-submitted those documents as exhibits to her habeas petition, to aid Respondents in their investigation. Respondents’ counsel are familiar with the Constitutional Due Process arguments at the heart of her petition. Therefore, Respondents will not suffer prejudice from being required to timely answer.

Petitioner should not have to wait longer for Respondents to answer when relevant law authorizes and contemplates a shorter time frame and because facts and circumstances warrant more expedited consideration L-N- habeas petition.<sup>2</sup>

### **CONCLUSION**

For the foregoing reasons, Petitioner respectfully requests that the Court issue an order requiring Respondents to answer her petition within twenty days, and Petitioner to file a reply within ten days thereafter, and scheduling a hearing on the Petition as soon as practicable thereafter.

December 19, 2018

Respectfully Submitted,

By: /s/ Ranjana Natarajan

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<sup>2</sup> The Court has the authority, pursuant to the Rules governing habeas petitions and 28 U.S.C. § 2243 and above-cited case law governing the timely disposition of habeas petitions, to issue the Order to Show Cause setting a schedule for Respondents' answer, without waiting for Respondents to answer this motion, which would cause further delay. The habeas petition itself seeks the same expedited schedule for an answer, reply, and hearing. Doc. 1 ("Prayer for Relief").



### **CERTIFICATE OF CONFERENCE**

I, Ranjana Natarajan, counsel for Petitioner, do hereby certify that on December 19, 2018 I attempted to confer with Counsel for Respondents, Hector Ramirez, Civil Chief of the United States Attorney's Office for the Southern District of Texas, Laredo Division, by email, regarding the foregoing motion. I did not yet receive an email response.

/s/ Ranjana Natarajan