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12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 BAYARTULGA AVIRMED, *et al.*,
15 Plaintiffs,
16 v.

Case No.: '25CV1310 DMS DEB

17 U.S. DEPARTMENT OF HOMELAND
18 SECURITY (DHS); KRISTI NOEM, in
19 her official capacity as Secretary of the
20 DHS; U.S. CITIZENSHIP AND
21 IMMIGRATION SERVICES (USCIS);
22 KIKA SCOTT, in her official capacity as
23 Senior Official Performing the Duties of
24 the Director of USCIS; CUSTOMS
25 AND BORDER PROTECTION (CBP);
26 PETE R. FLORES, in his official
27 capacity as Acting Commissioner of
28 CBP; IMMIGRATION AND
CUSTOMS ENFORCEMENT (ICE);
TODD LYONS, in his official capacity
as Acting Director of ICE; U.S.
DEPARTMENT OF JUSTICE (DOJ);

COMPLAINT

1 and PAMELA BONDI, in her official
2 capacity as Attorney General

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4 Defendants.
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8 **INTRODUCTION**

9 1. Plaintiff Bayartulga Avirmed (“Plaintiff”) brings this action and seeks a
10 Temporary Restraining Order and Preliminary Injunction preventing his
11 immediate removal from the United States. He seeks immediate orders directing
12 the U.S. Department of Homeland Security (“DHS”), Kristi Noem, in her official
13 capacity as Secretary of DHS; U.S. Citizenship and Immigration Services
14 (“USCIS”), Kika Scott, in her official capacity as Senior Official Performing the
15 Duties of the Director of USCIS, Customs and Border Protection (“CBP”), Pete
16 R. Flores, in his official capacity as Acting Commissioner of CBP, Immigration
17 and Customs Enforcement (“ICE”), Todd Lyons, in his official capacity as
18 Acting Director of ICE, U.S. Department of Justice (“DOJ”), and Pamela Bondi,
19 in her official capacity as Attorney General (together, “Defendants”) to comply
20 with their legal obligations under Section 504 of the Rehabilitation Act (“Section
21 504” or “Rehabilitation Act”) and the Administrative Procedures Act (“APA”) to
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1 ensure Mr. Avirmed's access to a qualified and appropriate Deaf interpreter, and
2 counsel of his choice during immigration processes.

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4 2. Mr. Avirmed is a 48-year-old Deaf man who cannot communicate orally and is a
5 citizen of Mongolia, where, because of his disability, has been repeatedly
6 subjected to life-threatening physical attacks, sanctioned or ignored by law
7 enforcement officials. As a result of being severely beaten during one of these
8 attacks, he suffered traumatic brain injury that adversely affected his memory,
9 his vision, and left him with fainting spells, confusion, and seizures.

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11 3. Mr. Avirmed is a disabled individual as defined in 29 U.S.C. § 705(20) and 6
12 C.F.R. § 15.3(d). He is also a significantly disabled individual as defined in 29
13 U.S.C. § 705(21). He communicates with others using Mongolian Sign Language
14 ("MSL") or reading/writing in Mongolian. He cannot understand or use
15 American Sign Language ("ASL").

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17 4. Because of his ongoing fear for his life, Mr. Avirmed left Mongolia. He
18 entered the United States and was arrested by CBP agents on or about
19 February 15, 2025, and sent to the Otay Mesa Detention Center ("OMDC")
20 for confinement and detention. At the time of his arrest, he notified CBP
21 agents that he was seeking asylum by handing them a letter, in English,
22 translated from Mongolian, notifying them of his intent and his disability. It
23 was clear that he required interpretation assistance given his disability. CBP
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1 refused to read or accept the letter.

2 5. In early April 2025, the County of San Diego’s Immigrant Rights Legal Defense
3 Program assigned Plaintiff *pro bono* counsel for his immigration proceedings
4 (“Immigration Counsel”).
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6 6. Despite repeated requests for appropriate interpretation assistance, Mr. Avirmed
7 has never been given the opportunity to fully and effectively present the grounds
8 for his asylum request. Defendants have been notified many times, by his
9 Immigration Counsel and his sister, that Mr. Avirmed requires an MSL
10 interpreter to effectively communicate. He suffered through interviews where
11 even the most basic information about his circumstances were completely mis-
12 interpreted—for example, identifying as his sponsor a non-existent daughter
13 named Virginia Washington, when his actual sponsor is his sister, who lives in
14 Virginia, near Washington, D.C. During fear screening processes, Mr. Avirmed
15 also requested the presence of Immigration Counsel as an accommodation, but
16 he was denied. His sponsor was also not allowed to be present at these screenings.
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18 7. Mr. Avirmed, through his sister and sponsor, identified and provided contact
19 information for individuals and services who could have competently provided
20 interpretation during the fear screening process. On numerous occasions between
21 April 14, 2025, and April 28, 2025, Mr. Avirmed’s Immigration Counsel
22 requested that Mr. Avirmed be afforded a credible fear interview by an asylum
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1 officer. Mr. Avirmed's Immigration Counsel was never notified that such an
2 interview was to take place. In fact, on April 16, 2025, she was advised by
3 officials at the Asylum Office overseeing Mr. Avirmed's case that his request had
4 never been referred to USCIS for a credible fear determination. Mr. Avirmed's
5 Immigration Counsel followed up with several additional requests for an
6 interview and requested that she be present. She was never advised that a credible
7 fear interview was being conducted.

10 8. Mr. Avirmed's Immigration Counsel also repeatedly invoked the protections
11 afforded to Plaintiff under the partial judgment and permanent injunction issued
12 in *Franco-Gonzalez v. Holder*, No. 10-cv-02211, 2013 WL 3674492 (C.D.Cal.
13 Apr. 23, 2013). Under that order, Plaintiff, as a disabled individual with serious
14 mental disorder or defect rendering him incompetent to represent himself, is
15 entitled to representation at all immigration proceedings.

18 9. Despite these requests, interviews were conducted outside the presence of
19 counsel without an MSL, and on at least one occasion, with an ASL interpreter
20 who was unable to effectively interpret. After that interview Mr. Avirmed
21 received a document in English, dated May 6, 2025, stating the following:

24 You were interviewed by a DHS asylum officer to determine whether
25 it is more likely than not that you will be tortured in MONGOLIA. The
26 assessment made by the DHS asylum officer, indicated below, will be
27 considered by DHS in determining whether you may be sent to
28 MONGOLIA. DHS will provide you with additional information
regarding how you will be processed.

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2 Additionally, a box was checked next to the statement that “You did not
3 establish it is more likely than not that you will be tortured in Mongolia.” The
4 information in this document was not communicated to Mr. Avirmed in a
5 language he understands, either MSL or written Mongolian.
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7 10. As a noncitizen seeking asylum, Mr. Avirmed is entitled to the protections
8 afforded to him under the Immigration and Nationality Act (“INA”), which
9 expressly guarantees an interview by an asylum officer (8 U.S.C. §
10 1225(b)(1)(A)(ii)); the right to have counsel or other representative present (8
11 U.S.C. § 1225(b)(1)(B)(iv)) at such an interview; and that he be provided the
12 opportunity for a review of a negative determination by that officer (8 U.S.C. §
13 1225(b)(1)(B)(iii)). Defendants did not follow those procedures. Instead, Plaintiff
14 believes that he was processed using procedures established after Executive
15 Order 10888 was issued, purporting to suspend the asylum process.
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19 11. Under guidances and directives issued to implement Executive Order 10888, Mr,
20 Arvirmed as a noncitizen seeking asylum, is entitled to have the protections
21 afforded to him under the United States’ agreement to comply with The
22 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment
23 or Punishment, and any proceedings implemented by Defendants that purport to
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1 provide those protections, including the procedures established to implement
2 Executive Orders.¹

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4 12. As a qualified individual with a disability, Mr. Avirmed is entitled to protections
5 under Section 504, which means he cannot “be excluded from, be denied the
6 benefits of, or otherwise be subjected to discrimination under any program or
7 activity” conducted by DHS. 29 U.S.C. § 794(a). Federal agencies and their
8 components must provide reasonable accommodations to ensure persons with
9 disabilities have meaningful access to the agency’s programs and activities.
10 *Alexander v. Choate*, 469 U.S. 287, 300-01 (1985). Defendants knowingly and
11 intentionally denied Mr. Avirmed his right to reasonable accommodations by
12 failing to provide him with an appropriate interpreter and/or written
13 communication in Mongolian that were necessary to ensure he has meaningful
14 access to the interviews done in connection with his asylum request.
15 Additionally, Defendants knowingly and intentionally denied Mr. Avirmed’s
16 requested accommodation by not allowing his Immigration Counsel to be present
17 during his immigration proceedings.
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24 ¹ Plaintiff does not concede that the expedited removal proceedings in which he is
25 currently moving through are lawful. However, Plaintiff is also aware that some of
26 the issues raised in his Complaint are currently pending before the U.S. District
27 Court for the District of Columbia, Refugee and Immigrant Center For Education
28 and Legal Services (*RAICES*), *et al.*, *v Noem, et al.*, USDC, DC, Case 1:25-cv-
00306. Plaintiff is a member of the putative class pending certification in this
matter, and is not seeking any determination of the merits or the likelihood of
success on the merits with respect to the issues raised in the RAICES case in this
application or motion.

1 13. Mr. Avirmed seeks an immediate Temporary Restraining Order preventing his
2 removal, from the United States until his motion for Preliminary Injunction, after
3 notice, can be heard. He seeks a preliminary injunction that requires
4 Defendants to: 1) refrain from taking any action to deport him to his country of
5 origin, Mongolia, or a different country until such time as he can be provided an
6 interview to determine whether he has a credible fear of persecution or torture,
7 and the opportunity to obtain review of any determination made based on that
8 review; 2) provide Mr. Avirmed a MSL interpreter at all interviews and/or
9 proceedings, formal and informal, connected with his asylum and/or CAT
10 application, including written communication in Mongolian; and 3) allow Mr.
11 Avirmed to be represented by and accompanied by counsel of his choosing at all
12 interviews and proceedings related to his asylum and/or CAT request.

17 JURISDICTION AND VENUE

18 14. This case arises under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794;
19 the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.; the INA, 8 U.S.C. §§
20 1101 et seq., and its implementing regulations.

22 15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. *See also*
23 8 U.S.C. § 1252(e)(3). Jurisdiction is proper pursuant to 28 U.S.C. §§ 1331 and
24 1343. This action seeks declaratory and injunctive relief under 28 U.S.C. §§
25 1343, 2201, and 2202, and 29 U.S.C. § 794a.

16. Venue is proper under 28 U.S.C. § 1391(e)(1) because Plaintiff is currently housed in the Otay Mesa Detention Center located in this District, and the events or omissions giving rise to the claim occurred in this District. *See also* 8 U.S.C. § 1252(e)(3).

PARTIES

17. Plaintiff, Bayartulga Avirmed (hereafter “Mr. Avirmed”) is a Deaf adult who cannot communicate orally as well as a citizen of Mongolia who, due to his disability, has a legitimate fear of persecution and life-threatening abuse if he is returned to Mongolia. He is currently in the custody of Immigration and Customs Enforcement (“ICE”), a component of the United States Department of Homeland Security (“DHS”) in the Otay Mesa Detention Center (“OMDC”). Defendant United States Department of Homeland Security (“DHS”) is a cabinet-level Department of the federal government. DHS and its components, U.S. Citizenship and Immigration Services (“USCIS”) Immigration and Customs Enforcement (“ICE”), and Customs and Border Protection (“CBP”), are the agencies of the federal government principally charged with implementing and enforcing provisions of the Immigration and Nationality Act (“INA”) related to the arrest, detention, and processing of asylum applications of individuals seeking admission to the United States.

18. Defendant Kristi Noem is the Secretary of DHS. Defendant Noem is sued in her official capacity. In that capacity, Defendant Noem is responsible for overseeing

1 enforcement and the implementation of provisions of the INA related to the
2 arrest, detention, and processing of asylum applications of individuals seeking
3 admission to the United States, and compliance with the applicable provisions of
4 the Rehabilitation Act. Defendant Noem is sued in her official capacity.
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6 19. Defendant USCIS is the DHS component responsible for conducting fear-based
7 screenings and assessments of noncitizens who seek to access the asylum process.
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9 20. Defendant Kika Scott is the Senior Official Performing the Duties of the Director
10 of USCIS. Defendant Scott is sued in her official capacity.
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12 21. Defendant CBP is the DHS component responsible for the initial processing and
13 detention of noncitizens who are apprehended at or between U.S. ports of entry.
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15 22. Defendant Pete R. Flores is the Acting Commissioner of CBP. Defendant Flores
16 is sued in his official capacity.

17 23. Defendant ICE is the DHS component responsible for carrying out removal
18 orders and overseeing immigration detention.
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20 24. Defendant Todd Lyons is the Acting Director of ICE. Defendant Lyons is sued
21 in his official capacity.
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23 25. Defendant United States Department of Justice (“DOJ”) is a cabinet-level
24 Department of the federal government. DOJ is charged with implementing and
25 enforcing certain provisions of the INA, including those related to the review of
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1 credible threat determinations made asylum officers as provided in 8 U.S.C. §
2 1225(b)(1)(B)(iii).

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4 26. Defendant Pamela Bondi is the Attorney General of the United States, the
5 principal officer in charge of DOJ. She is sued in her official capacity. In that
6 capacity, Defendant Bondi, along with Defendant Noem, is responsible for the
7 implementation and enforcement of immigration laws and applicable provisions
8 of the Rehabilitation Act.
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10 **STATUTORY AND REGULATORY REQUIREMENTS AND**
11 **PROTECTIONS**
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13 27. Section 504 of the Rehabilitation Act prohibits executive agencies, such as DHS
14 and its components (USCIS, CBP, and ICE), from denying persons with
15 disabilities the benefits of their programs and activities solely on the basis of
16 disability. *See* 29 U.S.C. § 794 (a). They must provide reasonable
17 accommodations, including communication access through appropriate
18 interpretation, during all aspects of immigration processes. *See Choate* at 300-
19 01. Section 504 imposes an affirmative obligation on those agencies to make their
20 benefits, programs and services accessible to such persons. *Updike v. Multnomah*
21 *County*, 870 F.3d 939, 949 (9th Cir. 2017). This includes the obligation to assess
22 and identify individuals with disabilities and take steps to ensure that they have
23 meaningful access to all aspects of the detention and removal system. *See*
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1 *Hunsaker v. Contra Costa Cnty.*, 149 F.3d 1041, 1043 (9th Cir. 1998), citing
2 *Alexander* at 299; *Armstrong v. Brown*, 732 F.3d 955, 958-62 (9th Cir. 2013).

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4 Upon notice of the need for an accommodation, a public entity must investigate
5 what constitutes a reasonable accommodation of the disabled person's need for
6 interpretation. *Updike* at 958.

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8 28.Regulations implementing Section 504 expressly require that Defendant DHS
9 "furnish appropriate auxiliary aids where necessary to afford an individual with
10 a disability an equal opportunity to participate in, and enjoy the benefits of, a
11 program or activity conducted by the Department.... [and] give primary
12 consideration to the requests of the individual with a disability." 6 C.F.R. § 15.60.

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14 29.Defendants have established procedures to address compliance with these
15 obligations and issued policies, directives, guidance and plans consistent with the
16 mandates of Section 504. *See, e.g.*, DHS Directive 065-01 Nondiscrimination for
17 Individuals with Disabilities in DHS-Conducted Programs and Activities (Non-
18 Employment) (Sept. 25, 2013); DHS Instruction 065-01-001 Instruction on
19 Nondiscrimination for Individuals with Disabilities in DHS-Conducted programs
20 and Activities (Non-Employment) (Mar. 7, 2015); USCIS Access and
21 Accommodations for Individuals with Disabilities: Plan for Access to USCIS
22 Public-Facing Programs and Activities (Oct. 2018) (instructing USCIS programs
23 to "update policies to reflect that sign language interpretation requests are not
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1 limited to American Sign Language”); A Guide to Interacting with People Who
2 Have Disabilities: A Resources Guide for DHS Personnel, Contractors, and
3 Grantees from the Office of Civil Rights and Civil Liberties, available at:

4 [//www.dhs.gov/sites/default/files/2023-](https://www.dhs.gov/sites/default/files/2023-10/23_1026_crcl_guide_to_interacting_with_people_who_have_disabilities_508.pdf)

6 [10/23_1026_crcl_guide_to_interacting_with_people_who_have_disabilities_50](https://www.dhs.gov/sites/default/files/2023-10/23_1026_crcl_guide_to_interacting_with_people_who_have_disabilities_508.pdf)

7 [8.pdf](https://www.dhs.gov/sites/default/files/2023-10/23_1026_crcl_guide_to_interacting_with_people_who_have_disabilities_508.pdf). These documents generally create and provide procedures to ensure the
9 proper implementation of Section 504. For example, the USCIS Policy Manual
10 states that in interviews with its officers, an individual may request an
11 accommodation, such as an appropriate sign language interpreter, to ensure equal
12 access to the component’s benefits, services, and activities. USCIS Policy
13 Manual, Chapter 6, Sections A-B. Similarly, ICE Directive 11071.1 Assessment
14 and Accommodations for Detainees with Disabilities (December 15, 2016)
15 (states that detained noncitizens with disabilities “may request and receive
16 appropriate auxiliary aids and services, reasonable accommodations, and
17 modifications to policies, practices, and procedures” and that these
18 accommodations may include things that allow for “effective communication”
19 such as interpreters or video remote interpreting services.
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24 30. The INA was enacted by Congress to create a comprehensive statutory system
25 allowing noncitizens fleeing persecution or torture to seek protection in the
26 United States. Congress has given these individuals statutory rights to apply for
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1 asylum and other protections. The Act prohibits the forced return of such
2 individuals to places where they face persecution or torture and establishes an
3 exclusive set of procedures for removing noncitizens from the United States and
4 adjudicating their claims for protection. In doing all this, Congress has struck a
5 careful balance between the interest in quickly removing those who cannot
6 qualify for protection and the need to ensure that people are not wrongfully
7 placed at risk of persecution or torture in another country.
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10 31. The Convention against Torture and Other Cruel, Inhuman or Degrading
11 Treatment or Punishment, was adopted by unanimous agreement of the United
12 Nations General Assembly on December 10, 1984, and signed by the United
13 States on April 18, 1988.
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16 32. “Any [noncitizen] who is physically present in the United States or who arrives
17 in the United States (whether or not at a designated port of arrival ...), irrespective
18 of such [noncitizen’s] status,” may apply for asylum. 8 U.S.C. § 1158(a)(1). Both
19 DHS and DOJ have promulgated regulations implementing this provision. *See*,
20 *e.g.*, 8 C.F.R. § 208.13 (DHS); 8 C.F.R. § 1208.13 (DOJ). To qualify for asylum,
21 a noncitizen must show a “well-founded fear of persecution” on account of “race,
22 religion, nationality, membership in a particular social group, or political
23 opinion.” 8 U.S.C. § 1101(a)(42). Individuals with disabilities are considered to
24 be within a particular social group which is characterized as being (1) composed
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1 of members who share a common immutable characteristic, (2) defined with
2 particularity, and (3) socially distinct within the society in question. *Acevedo*
3 *Granados v. Garland*, 992 F.3d 755, 761 (9th Cir. 2021).

5 33. In 1996, Congress established expedited removal to “substantially shorten and
6 speed up the removal process” for certain noncitizens arriving without
7 immigration documents. *Make the Rd. N.Y. v. Wolf*, 962 F.3d 612, 618 (D.C. Cir.
8 2020); *see* 8 U.S.C. § 1225(b)(1). Expedited removal by statute applies only to a
9 limited class of noncitizens who are inadmissible because they lack valid entry
10 documents (such as visas) or attempt to enter by fraud or misrepresentation. 8
11 U.S.C. § 1225(b)(1)(A); *id.* § 1182(a)(6)(C), (a)(7). Historically, these expedited
12 removal procedures have been applied to certain noncitizens who arrive at a port
13 of entry or are apprehended near the border after entering without inspection.
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17 34. Even if a noncitizen is placed in expedited removal proceedings, there are
18 specific provisions designed to safeguard access to asylum by ensuring that
19 noncitizens are screened to determine whether they have a “credible fear” of
20 returning to their country of origin. Specifically, if a noncitizen expresses the
21 intention to seek asylum or a fear of removal, they are entitled to an interview
22 with an asylum officer. 8 U.S.C. § 1225(b)(1)(A)(ii). A noncitizen “who is
23 eligible for such interview may consult with a person or persons of the
24 [noncitizen]’s choosing prior to the interview or any review thereof.” 8 U.S.C. §
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1 1225(b)(1)(B)(iv). If the asylum officer finds that the noncitizen does not have a
2 credible fear of persecution, the noncitizen has the right to a “prompt review by
3 an immigration judge of a determination.” 8 U.S.C. § 1225(b)(1)(B)(iii).
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5 35. The purpose of the interview with an asylum officer is to screen fear claims. It is,
6 in effect, a gateway to the asylum process. Noncitizens pass the screening
7 standard if they establish a “credible fear” of returning to their country of origin,
8 defined by statute as a “significant possibility” that the individual “could
9 establish eligibility for asylum” in removal proceedings. *Id.* § 1225(b)(1)(A)(ii),
10 (b)(1)(B)(v). Once the noncitizen demonstrates a credible fear—a relatively low
11 threshold according to 142 Cong. Rec. 25,347 (1996)—they are entitled to a full
12 removal hearing. This hearing includes both administrative and judicial review,
13 during which they can present their asylum claim.
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17 36. During the screening interview, the asylum officer asks the noncitizen a series of
18 questions. The officer then uses the noncitizen’s responses to determine whether
19 they have shown a credible fear of persecution. A critical part of the screening
20 interview process is ensuring that the noncitizen has the opportunity to fully
21 understand and respond to the asylum officer’s questions because their ability to
22 remain in the United States—while their application for asylum is reviewed—
23 depends on it.
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1 37. On January 20, 2025, Proclamation 10888 was issued by the Executive Office of
2 the President, purporting to be applicable to all noncitizens who entered the
3 United States after 1800 hours on January 20, 2025, and purporting to restrict
4 noncitizens entering from the southern border "...from invoking provisions of
5 the INA that would permit their continued presence in the United States,
6 including, but not limited to, section 208 of the INA, 8 U.S.C. 1158 ...",
7 effectively barring access to the asylum process.
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10 38. On or after January 31, 2025, Defendant USCIS issued its Guidance for Asylum
11 Officers and Asylum Office Staff and circulated it to field offices with
12 accompanying forms and operating procedures for implementing Proclamation
13 10888 as it related to the processing of noncitizens who entered from the southern
14 border after January 20, 2025, and requested asylum. Therein, Defendant DHS
15 "committed that it will not return persons that are likely to be tortured in the
16 designated country of return or removal" and directed that noncitizens "whose
17 entry is suspended or restricted pursuant to the EO who manifest[] fear in relation
18 to the Convention Against Torture (CAT) will be referred to USCIS for a CAT
19 assessment."
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21 39. Under the operating procedures issued to implement Proclamation 10888, asylum
22 seekers are to receive a CAT interview to determine whether there are substantial
23 grounds for believing that the noncitizen would be subjected to torture if
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1 removed. During this interview, the asylum officer elicits facts supporting the
2 request for protection from the asylum seeker, who must be able to answer
3 questions and provide detailed information. The asylum officer is required to read
4 certain statements to the asylum seeker and verify that those statements are
5 understood. As part of the process, the asylum office “must create a summary of
6 the material facts as stated by the individual....[and] at the conclusion of the
7 interview...review the summary with the individual and provide the individual
8 with an opportunity to correct any errors.” Convention Against Torture
9 Assessment Worksheet for Alien(s) Whose Entry Has Been Suspended and/or
10 Restricted Pursuant to INA §§ 212(f) or 215(a), Rev. 01/31/2025.
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14 40. The Administrative Procedures Act (“APA”) applies to all executive agencies
15 and sets judicial review standards for final agency actions. 5 U.S.C. §§ 551(1),
16 701-706. The APA provides that a “reviewing court shall . . . hold unlawful and
17 set aside agency action, findings, and conclusions to be . . . arbitrary, capricious,
18 an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §
19 706(2)(A). The APA also requires agency actions to be set aside when they are
20 “short of statutory right” or “without observance of a procedure required by law.”
21 *Id.* § 706(2)(C), (D).
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25 41. Additionally, where the rights of individuals are affected, the APA requires that
26 agencies follow their own procedures. *Morton v. Ruiz*, 415 U.S. 199, 235 (1974).
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1 “This is so even where the internal procedures are possibly more rigorous than
2 otherwise would be required.” *Id.*, see also *Church of Scientology of Cal. v.*
3 *United States*, 920 F.2d 1481, 1487 (9th Cir. 1990) (noting that “an administrative
4 agency is required to adhere to its own internal operating procedures”). The APA
5 requires that agencies comply with their own policy statements, agency manuals,
6 or other forms of guidance documents and internal procedures adopted without
7 notice-and-comment. See *Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004).

10 **FACTUAL ALLEGATIONS**

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12 42.Mr. Bayartulga Avirmed (“Plaintiff”) is a 48-year-old man from Mongolia who
13 is Deaf and cannot communicate orally and suffered a TBI in 2020. He fled
14 Mongolia in early 2025 because he was persecuted due to his disabilities.

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16 43.Mr. Avirmed only speaks Mongolian Sign Language (“MSL”). He can read and
17 write the Mongolian language but cannot read lips of the spoken Mongolian
18 language. He does not understand American Sign Language (“ASL”).

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20 44.CBP arrested Mr. Avirmed on or about February 15, 2025, near the southern
21 border. During his arrest and processing, Mr. Avirmed attempted to give CBP a
22 letter translated from Mongolian into English expressing his fear of return to
23 Mongolia on account of his disability, and intent to apply for asylum. CBP
24 officials refused to read or accept the letter. At that time, it was apparent to CBP
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1 officials that Mr. Avirmed was a disabled individual and unable to hear or
2 communicate orally.

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4 45.CBP did not provide Mr. Avirmed with an MSL interpreter at any point during
5 his arrest, processing, or detention by CBP officials.

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7 46.At some point in late February, CBP transferred Mr. Avirmed to Immigration &
8 Customs Enforcement-Enforcement & Removal Operations (“ICE-ERO”) for
9 confinement at the OMDC, where he is currently detained.

10
11 47.Upon arrival at OMDC, Mr. Avirmed attempted to give authorities at OMDC the
12 above-mentioned letter, expressing his fear of return to Mongolia and intent to
13 apply for asylum. It is unclear if ICE-ERO ever read his letter.

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15 48.On or about March 5, 2025, an official acting under the authority of, or at the
16 direction of Defendants, attempted to interview Mr. Avirmed without an
17 interpreter. Mr. Avirmed gave the official the above-mentioned letter expressing
18 his fear of return to Mongolia and intent to apply for asylum. The official wrote
19 the words “USA” and “Mongolia” on a piece of paper, and Mr. Avirmed
20 attempted to use body language to communicate that he feared returning to
21 Mongolia.
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24 49.Mr. Avirmed’s sister Bayalagmaa Avirmed, who is a U.S. citizen, began
25 communicating with ICE-ERO and the Asylum Office about his fear interview.
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1 She provided both offices with information that made clear her brother's need for
2 an MSL interpreter.

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4 50. In early April 2025, the County of San Diego's Immigrant Rights Legal Defense
5 Program assigned Mr. Avirmed *pro bono* immigration counsel ("Immigration
6 Counsel") for his immigration proceedings.

7
8 51. On April 16, 2025, Mr. Avirmed's Immigration Counsel emailed a Supervisory
9 Asylum Officer and the Asylum Office of USCIS and requested that Mr.
10 Avirmed only be interviewed in MSL and be provided necessary
11 accommodations for his disability. She also requested that she be allowed to
12 represent her client during his fear interview as an additional reasonable
13 accommodation given the effects of his TBI.

14
15
16 52. The same day, the Asylum Office responded by email, stating that Mr. Avirmed
17 "was not referred to USCIS for a credible fear interview" and to contact ICE or
18 CBP with questions.

19
20 53. On April 17, 2025, Mr. Avirmed's counsel contacted the Mental Health Team of
21 the Office of the Principal Legal Advisor ("OPLA") for San Diego. OPLA is the
22 branch of ICE that represents the DHS in removal and custody proceedings
23 before the immigration courts.

24
25 54. Immigration Counsel explained Mr. Avirmed's disabilities, including that fact
26 that he can only communicate in MSL and that he had suffered a past traumatic
27

1 brain injury. Immigration Counsel suggested that Mr. Avirmed should receive
2 safeguards and accommodations pursuant to the *Franco-Gonzalez* settlement, the
3 INA, and Section 504.
4

5 55. Immigration Counsel also requested that OPLA use its discretion to issue Mr.
6 Avirmed a Notice to Appear (“NTA”), the charging documents in removal
7 proceedings, to place Mr. Avirmed in removal proceedings in immigration court.
8

9 56. An OPLA mental health team attorney responded that counsel should send the
10 request for a discretionary NTA to ICE-ERO, and that it would “reach out to
11 OMDC Medical to inquire [if] a Qualified Mental Health Provider has [been]
12 found that meets the SMI criteria.”
13

14 57. On April 28, 2025, Immigration Counsel sent a request for a discretionary NTA
15 and safeguards and accommodations to ICE-ERO.
16

17 58. Immigration Counsel also filed a motion for custody redetermination with the
18 Otay Mesa Immigration Court, the adjudicator of the Executive Office for
19 Immigration Review (“EOIR”) agency serving the OMDC. The motion included
20 a request for safeguards and accommodations pursuant to *Franco-Gonzalez*,
21 *Matter of M.A.M.*, 25 I&N Dec. 474 (BIA 2011) and Section 504.
22
23

24 59. On May 2, 2025, a hearing was scheduled on Mr. Avirmed’s bond motion.
25 However, the Immigration Judge (“IJ”) determined that he lacked jurisdiction to
26
27
28

1 hear Mr. Avirmed's bond request because Mr. Avirmed had not yet been placed
2 into removal proceedings.

3
4 60. On May 6, 2025, Mr. Avirmed was interviewed by an ASL interpreter via video.

5 The interpreter was not using MSL. Mr. Avirmed did not understand the
6 interpreter. The interpreter did not appear to understand Mr. Avirmed. Although
7 it had been requested as a reasonable accommodation, Mr. Avirmed was not
8 allowed to have Immigration Counsel present during this interview.
9

10 61. On May 8, 2025, Mr. Avirmed received a one-page document titled "Convention
11 Against Torture Assessment Notice" with a box checked indicating that he "did
12 not establish it is more likely than not that you will be tortured in Mongolia." The
13 Notice was not explained to him in MSL or provided to him in written
14 Mongolian.
15
16

17 62. On May 12, 2025, Mr. Avirmed's Immigration Counsel filed a stay of removal
18 with ICE-ERO, stating that he was interviewed in the wrong language and that
19 his rights were violated under section 504. The request for stay is pending.
20

21 63. On May 15, 2025, officials went to Mr. Avirmed's cell to take him to an interview
22 with an ASL interpreter. Mr. Avirmed was unable to understand the interpreter,
23 and his roommate explained that to the officials.
24

25 64. ICE officials then called his Mr. Avirmed's sister, Bayalagmaa Avirmed, and
26 asked her to serve as an MSL interpreter. She explained that she was not
27
28

1 sufficiently proficient in MSL to serve as an interpreter. She again provided them
2 with the contact information for an MSL interpreter.

3
4 65. To date, and despite repeated notifications and requests, no official within DHS
5 or its components have ever communicated with Mr. Avirmed through an MSL
6 interpreter or provided him with written information in Mongolian at any point
7 during his arrest, detention and fear screening process/interview.
8

9 66. Despite repeated requests, and the need for accommodation, Mr. Avirmed has
10 never been allowed the assistance of counsel during the interviews by asylum
11 officials.
12

13 67. Under Defendants' current policies and procedures, because he has a negative
14 CAT determination, and no stay has been issued, Mr. Avirmed is in danger of
15 immediate removal to Mongolia without further notice or right of review.
16

17 **FIRST CAUSE OF ACTION**

18 **Violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794**

19 68. Plaintiff realleges and incorporates the allegation set forth in the preceding
20 paragraphs as though fully set forth here.
21

22 69. At all times relevant to this action, Defendants are federal executive agencies,
23 and officials thereof, within the meaning of the Rehabilitation Act. As such, they
24 are required to comply with the provisions of Section 504, and its implementing
25 regulations.
26
27
28

1 70. Defendants are, and were at all times relevant to this action, required to
2 reasonably accommodate Plaintiff's disabilities, to provide him with auxiliary
3 aids and services, and to ensure effective communication, by providing him with
4 appropriate and effective sign language interpretation in order to ensure that he
5 could meaningfully access and participate in all aspects of the immigration
6 system, and in particular the fear screening process.
7

8
9 71. Defendants are, and were at all times relevant to this action, obligated to give
10 primary consideration to the preferred method of communication expressed by
11 Plaintiff, as expressed by him directly, and through his sister/sponsor and counsel
12 of record, and to provide him with a Mongolian sign language interpreter. 6
13 C.F.R. § 15.60.
14

15
16 72. Defendants are, and were at all times relevant to this action, obligated to
17 affirmatively identify Plaintiff as an individual with disabilities and take all steps
18 necessary to ensure that he had meaningful access to all aspects of the
19 immigration system.
20

21 73. Defendants failed to comply with their obligations under Section 504 and its
22 implementing regulations when they failed to provide Plaintiff with a qualified
23 Mongolian Sign Language interpreter, consistent with his expressed preference
24 and demonstrated need to ensure accurate and effective communication between
25 Plaintiff and asylum/CAT decision makers.
26
27
28

1 74. Defendants failed to comply with their obligations under Section 504 and its
2 implementing regulations when they failed to provide Plaintiff with alternative
3 written communication in written Mongolian.
4

5 75. Defendants failed to comply with their obligations under Section 504 and its
6 implementing regulations when they failed to allow Plaintiff's counsel to be
7 present during the immigration processes, including his credible fear interview.
8

9 76. As a direct and proximate result of Defendants' failure to comply with their
10 obligations under Section 504, Plaintiff was denied participation in the asylum
11 and CAT processes solely on the basis of his disability.
12

13 77. As a direct and proximate result of Defendants' failure to comply with their
14 obligations under Section 504 to provide reasonable accommodations, Plaintiff
15 was denied the equal opportunity to participate in and enjoy the benefits of the
16 asylum and CAT processes.
17

18 78. As the direct and proximate result of Defendants' failure to comply with their
19 obligations under Section 504, Plaintiff has suffered a denial of his rights under
20 the INA, its implementing regulations, and the asylum and CAT policies and
21 procedures, and is at direct and imminent risk of being deported to Mongolia,
22 where he is likely to suffer life-threatening persecution on account of his
23 disability; or to a third country in which he has no contacts and is extremely
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1 unlikely to communicate in the language or have any mechanism to care for
2 himself.

3
4 79.If this court does not grant the requested relief, Plaintiff will suffer imminent and
5 irreparable harm based on the Defendants’ ability to immediately and without
6 further legal process remove Plaintiff from the United States.
7

8
9 **SECOND CAUSE OF ACTION**
10 **Violation of the Administrative Procedures Act (“APA”),**
11 **5 U.S.C. § 706(2)**

12 80.Plaintiff realleges and incorporates the allegation set forth in the preceding
13 paragraphs as though fully set forth here.

14 81.The Departments of Homeland Security (and its components) are “agenc[ies]”
15 under the APA. 5 U.S.C. § 551(1).
16

17 82.Agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise
18 not in accordance with law” is unlawful and courts are required to set aside such
19 action. 5 U.S.C. § 706(2)(A).
20

21 83.In failing to comply with the policies and procedures regarding disability access
22 applicable to Plaintiff accessing the asylum and CAT processes, Defendants have
23 prevented Plaintiff from vindicating his right to seek asylum based on grounds
24 of past persecution (8 U.S.C. § 1101(a)(42)), and denied his rights to an effective
25 interview with an asylum officer (8 U.S.C. § 1225(b)(1)(A)(ii)), 42 U.S.C. § 794;
26 6 C.F.R. § 15.60), to have counsel or other representative present during asylum
27
28

proceedings (8 U.S.C. § 1225(b)(1)(B)(iv)), and the opportunity for a review of a negative determination by that officer (8 U.S.C. § 1225(b)(1)(B)(iii)).

84. In doing so, Defendants have acted arbitrarily and capriciously. Among other arbitrary actions and omissions, Defendants have failed to provide reasoned explanations for their actions in denying Plaintiff equal access to immigration processes, failed to consider relevant factors including a traumatic brain injury, and departed from their own internal guidance and policies.

85. As a direct and proximate cause of Defendants' violation of the APA, Plaintiff is at direct and imminent risk of being deported to Mongolia, where he is likely to suffer life-threatening persecution on account of his disability; or to a third country in which he has no contacts, is unlikely to be able to communicate in the language or have any mechanism to care for himself.

86. If this court does not grant the requested relief, Plaintiff will suffer imminent and irreparable harm based on the Defendants' ability to immediately and without further legal process remove Plaintiff from the United States.

PRAYER FOR RELIEF

WHEREFORE Plaintiff prays that the Court grant the following relief:

1. Issue an immediate Order pursuant to Rule 65 of the Federal Rules of Civil Procedure, restraining Defendants from taking any action to deport or otherwise remove Plaintiff from the United States until such

1 time as a hearing on Plaintiff's Motion for Preliminary Injunction may
2 be heard;

3
4 2. Enter a Preliminary Injunction directing Defendants to

5 a. Conduct an interview by an asylum officer pursuant to 8 U.S.C.

6 § 1225(b)(1)(A)(ii)) for the purpose of determining whether

7 Plaintiff has demonstrated a credible fear of returning to his

8 country of origin based on the fear of persecution based on his

9 disability; and in the event that the asylum officer finds that the

10 Plaintiff does not have a credible fear of persecution, provide

11 Plaintiff with a prompt review by an immigration judge of a

12 determination; or, in the alternative, to;

13
14 b. Conduct an interview by an asylum officer consistent with the

15 guidance, policies and procedures implementing Proclamation

16 10888;

17
18 c. Make available to Plaintiff the services of a Mongolian Sign

19 Language Interpreter and written communication in Mongolian

20 during the asylum interview and any proceedings or processes

21 connected thereto at which Plaintiff is required or allowed to

22 provide information regarding his application for asylum and/or

23 protection under CAT, including but not limited to the

1 interview with the asylum officer and any review of the asylum
2 officer's determination;

3
4 d. As a reasonable accommodation, allow Plaintiff's counsel to be
5 present at and participate in the asylum interview and any
6 proceedings or processes connected thereto at which Plaintiff is
7 required or allowed to provide information regarding his
8 application for asylum and/or protection under CAT;

9
10 e. Refrain from taking any action to deport or otherwise remove
11 Plaintiff from the United States until such time as Plaintiff has
12 been provided an asylum officer interview, the opportunity for
13 review of that determination if necessary, and has exhausted or
14 had the opportunity to exhaust any other administrative or
15 judicial reviews provided by statute or regulation.

16
17
18 3. Enter judgment in favor of Plaintiff and against Defendants, finding
19 that Plaintiff was denied effective sign language interpretation in
20 violation of Section 504 and enjoining Defendants from failing to
21 provide adequate interpretation in the future;

22
23
24 4. Enter judgment in declaring that Defendants violated the
25 Administrative; Procedures Act by failing to comply with their
26 statutory and regulatory mandates, and internal policies, regarding
27
28

1 disability and effective communication access related to asylum
2 and/or CAT processes and proceedings;

3
4 5. For nominal damages, or actual damages, according to proof; and

5 6. For an award of reasonable attorneys' fees and costs of suit.

6 Respectfully submitted

7 Dated: May 21, 2025

Disabilty Law United

8 By: /s/ Cynthia L. Rice
9 Cynthia L. Rice
10 Laura Murchie
Attorneys for the Plaintiff

11 Disability Rights Law Center

12 By: /s/ Alegría De La Cruz
13 Alegría De La Cruz
Attorneys for the Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

BAYARTULGA AVIRMED

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Cynthia L. Rice, Disability Law United, 131 Steuart Street, Suite 400
San Francisco, CA 94105, 303 551-9389 (Additional Counsel on attached page)

U.S. Department of Homeland Security, Kristi Noem, in her official capacity as Secretary of DHS, (Additional Defendants on attached page.)

County of Residence of First Listed Defendant District of Columbia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'25CV1310 DMS DEB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☒ 446 Amer. w/Disabilities - Other ☐ 448 Education PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29U
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE May 21, 2025 SIGNATURE OF ATTORNEY OF RECORD /s/ Cynthia L. Rice, Disability Law United

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

BAYARTULGA AVIRMED v. U.S. Department of Homeland Security, et al.

Attachment A to Civil Cover Sheet (Additional Counsel for the Plaintiff)

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Fax: (303) 551-9389

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BAYARTULGA AVIRMED v. U.S. Department of Homeland Security, et al.

Attachment B to Civil Cover Sheet (Additional Defendants)

U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS);
KIKI SCOTT, in her official capacity as Senior Official Performing the
Duties of the Director of USCIS;
CUSTOMS AND BORDER PROTECTION (CBP);
PETE R. FLORES, in his official capacity as Acting Commissioner of CBP;
IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE);
TODD LYONS, in his official capacity as Acting Director of ICE;
U.S. DEPARTMENT OF JUSTICE (DOJ).