IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

I.M.,
c/o Democracy Forward Foundation
1333 H Street, NW, 11th Floor
Washington, DC 20005

Petitioner/Plaintiff,

v.

U.S. CUSTOMS & BORDER PROTECTION,
1300 Pennsylvania Avenue, NW
Washington, D.C. 20229;

U.S. DEPARTMENT OF HOMELAND SECURITY,
2707 Martin Luther King, Jr. Avenue, SE
Washington, DC 20528;

CHAD WOLF, Acting Secretary of the Department of Homeland Security, in his official capacity,
2707 Martin Luther King, Jr. Avenue, SE
Washington, DC 20528;

MARK MORGAN, Acting Commissioner of U.S. Customs & Border Protection, in his official capacity,
1300 Pennsylvania Avenue, NW
Washington, D.C. 20229;

TIMOTHY J. KLEIN, Customs & Border Protection Officer, in his official capacity,
1300 Pennsylvania Avenue, NW
Washington, D.C. 20229;

Customs & Border Protection Officer **BOCK**, in his official capacity,
1300 Pennsylvania Avenue, NW
Washington, D.C. 20229; and

JOSEPH CHAVEZ, Chief Customs & Border Protection Officer, in his official capacity,
1300 Pennsylvania Avenue, NW
Washington, D.C. 20229,

Respondents/Defendants.

Case No. [redacted]

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT

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INTRODUCTION

1. A consular officer in the U.S. State Department, appointed by the President and confirmed by the Senate, issued a business/tourism visa to Petitioner/Plaintiff I.M to enter and visit the United States. When I.M. arrived in the United States, however, low-level employees of U.S. Customs and Border Protection ("CBP"), never appointed by the President or the head of any Department, unilaterally decided to order I.M. removed from the country and revoke his visa. These unappointed employees exercising unreviewable discretion purported to issue binding adjudications of I.M.'s rights, expel him from the country, revoke his visa, and bar him from the United States for five years.

2. This exercise of sovereign authority to remove I.M. from the country and revoke his visa violates the Appointments Clause, one of "the significant structural safeguards of the constitutional scheme." *Edmond v. United States*, 520 U.S. 651, 659 (1997). To ensure public accountability for Congress, the President, and the Officers of the executive branch, the Framers required that all Officers be appointed by the President with the advice and consent of the Senate, or, where Congress authorizes and the Officer is an inferior Officer, by the "Heads of Departments," the President, or courts of law. *Id.* at 659–60; U.S. Const. art. II, § 2, cl. 2. As the Supreme Court has made clear, any employee of the United States government who "exercise[s] significant authority pursuant to the laws of the United States" and "occup[ies] a continuing position" is an "Officer" for purposes of the Appointments Clause and thus *must* be properly appointed. *Lucia v. SEC*, 138 S. Ct. 2044, 2051 (2018) (some internal quotation marks and citations omitted). Any order such officials issue without appointment is a nullity. *Id.* at 2055.

3. Under binding Supreme Court precedent, the Appointments Clause violation here is clear. The Supreme Court has repeatedly held the exercise of adjudicative power to be a significant authority reserved to Officers of the United States. *See, e.g.*, *Lucia*, 138 S. Ct. at 2053–55; *Edmond*, 520 U.S. at 662; *Ryder v. United States*, 515 U.S. 177, 182–86 (1995); *Freytag v. Comm'r of Internal Revenue*, 501 U.S. 868, 880–82 (1991). The Appointments Clause requires that adjudicators be appointed even where they "lack authority to enter a final decision,"

so long as they "exercise significant discretion" in functions such as "tak[ing] testimony, conduct[ing] trials, rul[ing] on the admissibility of evidence, and hav[ing] the power to enforce compliance with discovery orders." *Freytag*, 501 U.S. at 881–82.

4. Here, under 8 U.S.C. § 1225, unappointed employees chose whom to investigate, administered oaths, took testimony, rendered judgments about critical facts, and—most importantly—issued a final, binding removal order. This type of adjudicative power cannot be constitutionally exercised by a federal employee who has not been appointed as an Officer in accordance with the Appointments Clause.

5. For well over a century, the Supreme Court has made clear that the power "to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe," is a sovereign responsibility, the "final determination" of which is entrusted to "executive officers." *Nishimura Ekiu v. United States*, 142 U.S. 651, 659–60, 664 (1892); *accord Dep't of Homeland Sec'y v. Thuraissigiam*, 140 S. Ct. 1959, 1982 (2020). And it has long been equally clear that removal from the country is a solemn and severe decision. *See, e.g.*, *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010) ("[D]eportation is a particularly severe 'penalty.'" (citation omitted)). The devolution of this power to unappointed non-Officers cannot be squared with the Appointments Clause, nor with the Supreme Court's long history of applying the Clause to invalidate executive structures that disregard it.

6. This violation requires vacatur of the removal order purportedly issued against I.M. and the resulting revocation of his visa. The employees who purported to issue that order were not appointed under the Appointments Clause, yet they made legal and factual determinations unreviewable by any executive or judicial Officer and entered a final order adjudicating I.M.'s rights. This unlawful removal order, and the determinations supporting it, must be declared void *ab initio* and vacated. Similarly, the visa revocation predicated on the order and determination must be vacated, resulting in the reinstatement of I.M.'s visa. If, upon I.M.'s return to the United States, Respondents wish to pursue removal, Petitioner must be provided removal proceedings under 8 U.S.C. § 1229a before an Officer appointed in

compliance with the Appointments Clause. *See* 8 U.S.C. § 1252(e)(4) (prescribing a hearing under § 1229a as remedy when a court determines a petitioner was not ordered removed); *Lucia*, 138 S. Ct. at 2055 ("[T]he 'appropriate' remedy for an adjudication tainted with an appointments violation is a new 'hearing before a properly appointed official.'" (citation omitted)).

JURISDICTION AND VENUE

7. This Court has jurisdiction over the claims alleged in this Petition pursuant to 8 U.S.C. § 1252(e)(2)(B) and 28 U.S.C. § 1331.

8. 8 U.S.C. § 1252(e)(2)(B) provides jurisdiction over Count I because I.M. challenges "whether the petitioner was ordered removed" under 8 U.S.C. § 1225(b)(1). *See Dugdale v. U.S. CBP*, 88 F. Supp. 3d 1, 4 (D.D.C. 2015), *aff'd sub. nom. Dugdale v. Lynch*, 672 F. App'x 35 (D.C. Cir. 2016). The scope of review under § 1252(e)(2)(B) encompasses claims that a purported expedited removal order was invalid on its face or "was not lawfully issued due to some procedural defect." *Dugdale*, 88 F. Supp. 3d at 6.

9. The Court also has jurisdiction over Count I under the federal question statute, 28 U.S.C. § 1331, because I.M. raises challenges to the validity of his purported expedited removal order under the Appointments Clause of the U.S. Constitution. I.M. is challenging the action of an unappointed individual without authority to issue an order on behalf of the government, rather than an order authorized under 8 U.S.C. § 1225(b) and the Appointments Clause. *See Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 489 (2010) (holding that courts have jurisdiction to consider an Appointments Clause claim where a finding to the contrary would "foreclose all meaningful judicial review," the suit is "wholly collateral to a statute's review provisions" in that the petitioner could not first seek review from the agency, and the claim is "outside the agency's expertise" (internal quotation marks and citations omitted)).

10. Count II arises under the federal question statute, 28 U.S.C. § 1331, because I.M. brings a claim under the Administrative Procedure Act.

11. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1) because Respondents CBP and the Department of Homeland Security ("DHS") reside in this district. The venue provision of 28 U.S.C. § 2241 does not apply. *See* 8 U.S.C. § 1252(a)(5); *Dugdale*, 88 F. Supp. 3d at 4, 9 n.3 (holding that 8 U.S.C. § 1252(e) precludes application of 28 U.S.C. § 2241).

PARTIES

12. Petitioner I.M. is a [redacted]-year-old man from [redacted]. On August 23, 2019, I.M. was granted a two-year B1/B2 business/tourism visa by a Foreign Service Officer in the U.S. State Department, who was appointed by the President and confirmed by the Senate. On October 29, 2020, Respondent Klein purported to issue a determination that I.M. was inadmissible to the United States, to revoke his visa, and to order him removed from the United States. On November 27, 2020, pursuant to a final order of removal purportedly issued by Respondents Bock and Chavez, I.M. was removed from the United States.

13. Respondent CBP is a component of DHS headquartered in Washington, D.C., and is responsible for enforcing the immigration laws along the U.S. borders and at the ports of entry, including the expedited removal provisions under which I.M. was purportedly ordered removed.

14. Respondent DHS is a Department of the Executive Branch of the United States government, and is responsible for enforcing the immigration laws of the United States, including the expedited removal provisions under which I.M. was purportedly ordered removed.

15. Respondent Chad Wolf is sued in his purported[1] official capacity as the Acting Secretary of Homeland Security. In that capacity, he directs each of the component agencies within DHS, including CBP and United States Citizenship and Immigration Services ("USCIS"). In his purported official capacity, Respondent Wolf is responsible for the administration and

[1] The Government Accountability Office and several courts have determined that Respondent Wolf is not lawfully occupying the position of Acting Secretary. *See, e.g.*, *Nw. Immig. Rights Project v. USCIS*, No. 19-cv-3283, 2020 WL 5995206, at *17–24 (D.D.C. Oct. 8, 2020) (collecting cases and granting preliminary injunction).

enforcement of the immigration laws, within the limits of the Immigration and Nationality Act ("INA") and the U.S. Constitution.

16. Respondent Mark Morgan is sued in his official capacity as the Acting Commissioner of CBP. In his official capacity, Respondent Morgan is responsible for the administration and enforcement of the immigration laws, within the limits of the INA and the U.S. Constitution.

17. Respondent Timothy J. Klein is sued in his official capacity as a Customs and Border Protection Officer. In his official capacity, Respondent Klein purported to issue a determination that I.M. was inadmissible to the United States.

18. Respondent Bock is sued in his official capacity as a Customs and Border Protection Officer. In his official capacity, Respondent Bock purported to issue a determination that I.M. was inadmissible to the United States and an order to remove him from the United States. Respondent Bock's first name is unknown, as the purported expedited removal order identifies him only as "BOCK, CAR28942."

19. Respondent Joseph Chavez is sued in his official capacity as a Chief Customs and Border Protection Officer. In his official capacity, Respondent Chavez purported to review and approve the purported order to remove I.M. from the United States.

STATEMENT OF FACTS

20. I.M. is a [redacted]-year-old citizen of [redacted]. Ex. A ("I.M. Decl."), ¶ 2.

21. I.M. has devoted his career to empowering communities in [redacted] through education and sustainable farming. He is the founder of the [redacted] non-profit organization [redacted], the former farm manager for the [redacted] sustainable agriculture organization [redacted], and the founder of his own farm in [redacted]. *Id.* ¶¶ 5–6.

22. In 2016, his work came to the attention of Kirsten Spainhower, an Agriculture Development Specialist with the U.S. government. Ms. Spainhower began mentoring I.M. in her personal capacity to help him develop his skills in permaculture and sustainable agriculture and better aid his own community. *Id.* ¶ 4.

23. In 2019, Ms. Spainhower introduced I.M. to U.S. citizens Bill and Becky Wilson, the founders of Midwest Permaculture, an organization in Illinois that promotes sustainable agriculture practices. *Id.* ¶ 6.

24. Aided by letters of support from Ms. Spainhower and the Wilsons, I.M. obtained a B1/B2 business/tourism visa in August 2019. *Id.* ¶ 3. His visa was issued by a Foreign Service Officer at the U.S. Embassy in [redacted], who was appointed by the President and confirmed by the U.S. Senate.

25. I.M. visited the United States for three weeks in September and October 2019, meeting with Ms. Spainhower and then traveling to Illinois to learn from the Wilsons at Midwest Permaculture. He was not paid for any aspect of his visit and did not work in the United States, overstay his visa, or otherwise violate the terms of his visa in any way. *Id.* ¶¶ 3, 6–7.

26. When he returned to [redacted], I.M. continued his work in sustainable agriculture, beginning to consult with local farmers to help them make their farms more sustainable. Ms. Spainhower, continuing to mentor I.M. in her personal capacity, introduced him to another U.S. citizen agriculturalist, Emma Sutphen, who helped mentor I.M. as he continued to implement new practices at his and other local farms. *Id.* ¶ 8.

27. Ms. Sutphen offered I.M. the opportunity for informal, hands-on experience in sustainable agricultural techniques in the United States. He accepted that offer and planned a trip to return to the United States on his previously issued visa. As before, he funded the trip through a combination of savings, sponsorships, and fundraising, with Ms. Sutphen hosting him as her house guest. He planned to stay in the United States for approximately six months, as permitted by his visa, spending that time in Connecticut on Ms. Sutphen's farm and observing the preparations for the next growing season. *Id.* ¶ 12.

28. I.M. flew to the United States on October 29, 2020. *Id.* ¶ 13.

29. When I.M. arrived at O'Hare International Airport, he was stopped by CBP for secondary inspection, ostensibly because he possessed only $200 in cash on his person. *See id.*

¶ 14. During secondary inspection, CBP agents seized I.M.'s work and personal cellphones and required him to unlock them so that the agents could examine their contents. *Id.* ¶ 15.

30. Respondent Klein then interrogated I.M. about a text exchange in which I.M. said to a [redacted] friend and mentor that he would be able to earn money consulting while in the United States, through his ongoing consultancy for [redacted] farmers. *Id.* ¶ 16.

31. Despite I.M.'s explanation, Respondent Klein unilaterally concluded that I.M. was being paid by Ms. Sutphen's farm, rather than his [redacted] consultancy. *See id.*, Ex. 1 at 5. Respondent Klein then determined I.M. to be inadmissible to the United States under 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.*; *id.*, Ex. 2.

32. 8 U.S.C. § 1182(a)(7)(A)(i)(I) provides that an immigrant is inadmissible if, at the time of application for admission, he or she "is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 1182(a) of this title." At the time Respondent Klein purported to determine that I.M. was inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I), I.M. was in possession of a valid entry document (i.e., an unexpired nonimmigrant visa) and a valid unexpired passport.

33. Respondent Klein informed I.M. that he was being ordered removed from the United States, that he was barred from entering the United States or applying for a U.S. visa for a period of five years, and that his visa would be canceled. I.M. Decl., ¶¶ 17, 19; *id.*, Ex. 1 at 5–6.

34. While it had not been his intention to seek asylum, I.M. was worried about returning to [redacted]. I.M. had [redacted], for which he had twice received death threats—most recently from [redacted]. *Id.*, ¶¶ 11–12, 20.

35. I.M. therefore expressed his fear of return to [redacted]. A USCIS employee, who was not appointed by the President or the Secretary of Homeland Security, found I.M. to be

credible but nonetheless purported to determine that he did not demonstrate a significant possibility of establishing eligibility for asylum. *Id.* ¶ 21. On the basis of this determination, the employee purported to issue a negative credible fear determination. *Id.* I.M. appealed to an Immigration Judge, who affirmed the negative credible fear determination. *Id.*

36. As discussed below, neither the asylum officer nor the Immigration Judge had the ability to review Respondents' determination of inadmissibility, expedited removal order, or visa revocation.

37. On November 27, 2020, Respondent Bock purported to issue a new determination of inadmissibility, copying verbatim the findings made by Respondent Klein. *Id.*, Ex. 3; *see id.*, Ex. 2. Respondents Bock and Chavez then purported to issue an order of removal under 8 U.S.C. § 1225(b)(1). *Id.*, Ex. 3.

38. At an unknown time between October 29, 2020 and November 27, 2020, an unknown CBP agent (on information and belief, one of Respondents Klein, Bock, and Chavez) physically canceled I.M.'s visa by writing "REVOKED // 22 CFR 41.122e3" over it. *Id.*, Ex. 4.[2] 22 C.F.R. § 41.122(e)(3) allows immigration officers to revoke the visa of individuals who "request[] and [are] granted permission to withdraw the[ir] application for admission," which I.M. had not done.

39. After issuing the final removal order, Respondents Bock and/or Chavez immediately placed I.M. in an airplane and returned him to [redacted].

40. As discussed further *infra* ¶¶ 45–51, neither Respondents Klein, Bock, and Chavez, nor the USCIS employee who made a negative credible fear determination, were appointed by the Secretary of Homeland Security or the President of the United States as required by the Appointments Clause to exercise such sovereign powers of the United States.

[2] The visa revocation does not reveal which Respondent physically purported to cancel the visa. Respondent Klein had previously informed I.M. that his visa would be revoked.

LEGAL BACKGROUND

I. The Appointments Clause Requires Appointment of All Government Officials Exercising Significant Authority in Continuing Positions

41. The Appointments Clause provides that:

> [The President] . . . shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

U.S. Const. art. II, § 2, cl. 2.

42. The requirements of the Appointments Clause "[are] among the significant structural safeguards of the constitutional scheme" and are "designed to preserve political accountability relative to important government assignments." *Edmond*, 520 U.S. at 659, 663. The Appointments Clause applies "to all exercises of federal power." *Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649, 1657 (2020).

43. All "Officer[s] of the United States" must be "appointed in a specific manner, as prescribed in" the Appointments Clause. *Ass'n of Am. R.Rs. v. U.S. Dep't of Transp.*, 821 F.3d 19, 36 (D.C. Cir. 2016) (citing *Buckley v. Valeo*, 424 U.S. 1, 126 (1976) (per curiam)). The "default manner of appointment" for both principal and inferior Officers is appointment by the President with the advice and consent of the Senate. *Edmond*, 520 U.S. at 660. Congress may also authorize the President, a Department Head, or a court of law to appoint "inferior Officers." In such cases, "the final appointment must be made or approved by the Department Head personally; this authority cannot be delegated." Memorandum from the Solicitor General, U.S. Dep't of Justice, to Agency Gen. Counsels, *Guidance on Administrative Law Judges after Lucia v. SEC (S. Ct.)* 4 (July 2018), https://static.reuters.com/resources/media/editorial/-20180723/ALJ--SGMEMO.pdf. The Department Head must personally approve of each individual appointed to the relevant position. *See id.* at 4–5.

44. A federal government official, regardless of position or title, acts as an "Officer[] of the United States" for purposes of the Appointments Clause if: (1) the individual "exercis[es] significant authority pursuant to the laws of the United States," *Buckley*, 424 U.S. at 126, and (2) the exercise of that authority is "continuing," *United States v. Germaine*, 99 U.S. 508, 511–12 (1878); *see also Lucia*, 138 S. Ct. at 2051 (describing *Buckley* and *Germaine* as "set[ting] out [the Supreme] Court's basic framework for distinguishing between officers and employees" and thus determining whether appointment pursuant to the procedures specified in the Appointments Clause is required). An employee in a continuing position thus cannot exercise "significant authority pursuant to the laws of the United States" unless he or she has been appointed by the President or, with Congress's authorization, by a Head of Department or a court of law. *Buckley*, 424 U.S. at 126.

II. Immigration Officers Are Unappointed DHS Employees

45. The position of "immigration officer" is statutorily defined as "any employee or class of employees of the Service or of the United States designated by the Attorney General,[3] individually or by regulation, to perform the functions of an immigration officer specified by this chapter or any section of this title." 8 U.S.C. § 1101(a)(18). All CBP officers and asylum officers have been designated as immigration officers on a classwide basis. 8 C.F.R. § 1.2.

46. Despite the name, immigration "officers" are not appointed as Officers pursuant to the Appointments Clause.

47. Both Respondent Klein, who purported to issue a Determination of Inadmissibility against I.M., and Respondent Bock, who purported to issue a Determination of

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[3] Since the INA was enacted and most recently amended, Congress created DHS and transferred most of the authorities discussed herein to it. *See generally* Homeland Security Act of 2002, Pub. L. No. 107–296, 116 Stat. 2135 (codified at 6 U.S.C. § 101 *et seq.*); *see, e.g.*, 6 U.S.C. §§ 251, 275, 291, 557. All relevant references in the INA to "Attorney General" now refer to the Secretary of Homeland Security, and all relevant references to the INS now refer to CBP, Immigration and Customs Enforcement ("ICE"), and/or USCIS.

Inadmissibility and Order of Removal, hold the position of "CBP Officer." Respondent Chavez, who purported to approve the order of removal, holds the position of "Chief CBP Officer."[4]

48. Neither the President nor the Secretary of Homeland Security appoints CBP Officers, nor does the Secretary of Homeland Security personally approve the hiring of individual CBP Officers. *See* Ex. B ("Tomsheck Decl."), ¶¶ 5–6. Instead, agents are hired by CBP's Office of Human Management following a security review by CBP's Office of Professional Responsibility. *See id.* ¶ 5; Rebecca Gambler, Director, Homeland Security and Justice, *U.S. Customs & Border Protection: Progress and Challenges in Recruiting, Hiring, and Retaining Law Enforcement Personnel*, U.S. Government Accountability Office, Testimony Before the Subcomm. on Oversight, Management, and Accountability, H. Comm. on Homeland Security, at 4 (Mar. 7, 2019), https://www.gao.gov/assets/700/697349.pdf ("Gambler Test."). No approval or other participation by the Secretary of Homeland Security is required, nor is it typically involved. Tomsheck Decl., ¶ 6; Gambler Test., at 3–4.

49. Indeed, despite documented concerns about CBP corruption and the fact that CBP employees are arrested at a higher rate than any other law enforcement agency in the country, and despite evidence of shortcomings in its hiring process, CBP has in recent years taken steps to reduce the rigor of its hiring process, rather than adding secretarial oversight. *See* Tomsheck Decl., ¶ 7–10; Gambler Test., at 6 (detailing revisions to application, entrance examination, and polygraph requirement).[5]

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[4] For purposes of this case, there is no constitutionally relevant difference between CBP Officers and Chief CBP Officers. Accordingly, this Petition will refer to the positions collectively as "CBP Officers" for the sake of simplicity.

[5] *See, e.g.*, CBP, Office of Human Resources Management, *U.S. Customs and Border Protection Discipline Analysis Report—Fiscal Year 2018*, at 24–26 (2018), https://www.documentcloud.org/documents/6510092-Cbp-Discipline-Analysis-Report-fy18-Compressed.html; Justin Rohrlich & Zoe Schlanger, *Border officers are arrested 5 times more often than other U.S. law enforcement*, Quartz (July 16, 2019), https://qz.com/1664253/cbp-officers-arrested-5-times-as-often-as-other-law-enforcement.

50. Similarly, the USCIS employee who purported to determine that I.M. lacked a credible fear of persecution holds the position of "asylum officer." Neither the President nor the Secretary of Homeland Security appoints asylum officers, nor does the Secretary of Homeland Security personally approve the hiring of individual asylum officers. Instead, they are hired by USCIS's Office of Human Capital and Training following a security review by USCIS's Personnel Security Unit. *See* USCIS, "How to Apply" (Jan. 17, 2020), https://www.uscis.gov/about-us/careers/how-apply.

51. Both CBP Officers and asylum officers are paid a yearly salary and assigned ongoing duties over an open-ended tenure.

III. The Expedited Removal Process and the Role of Immigration Officers

52. Prior to 1996, any individual apprehended by immigration officers, whether apprehended at the border, at a port of entry, or in the interior of the United States, was entitled to a hearing (referred to as either an "exclusion proceeding" or "deportation proceeding," respectively) before an Immigration Judge. 8 U.S.C. §§ 1226(a), 1252(b) (1995).[6] The individual could appeal the Immigration Judge's exclusion or deportation order to the Board of Immigration Appeals ("BIA") and, thereafter, to an Article III court. 8 C.F.R. § 3.1(b)(1), (2) (1995); 8 U.S.C. § 1105a (1995). The INA also prescribed that the Attorney General, as the relevant principal Officer, could review, approve, modify, or reverse any order of exclusion or deportation issued by an Immigration Judge. *See* 8 U.S.C. §§ 1225(c), 1226(b), 1227(a)(1), 1252(b) (1995); 8 C.F.R. § 3.1(h) (1995).

53. In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. No. 104–208, 110 Stat. 3009–546 (amending 8 U.S.C. § 1101 *et seq.*). IIRIRA established two kinds of removal proceedings. The first, commonly

[6] When the INA was enacted in 1952, Immigration Judges were referred to as "special inquiry officers." *See* Dep't of Justice, *News and Information: Evolution of the U.S. Immigration Court System: Pre-1983* (last updated Apr. 30, 2015), https://www.justice.gov/eoir/evolution-pre-1983.

referred to as "regular removal," is conducted by an appointed Immigration Judge and is subject to both administrative and federal court review, as was the case pre-IIRIRA. 8 U.S.C. §§ 1101(b)(4), 1229a, 1252(a); 8 C.F.R. § 1003.1(b), (h).

54. However, IIRIRA also gave immigration officers a new power called "expedited removal," allowing those unappointed employees to summarily order aliens[7] removed from the United States. Congress made aliens arriving to the United States eligible for expedited removal and allowed the Attorney General (now, the Secretary of Homeland Security) to expand the category of aliens subject to expedited removal to include other aliens who have been within the United States for less than two years. 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). After a recent expansion, DHS now applies expedited removal to aliens apprehended anywhere within the United States who do not demonstrate, "to the satisfaction of an immigration officer, that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility." Notice Designating Aliens for Expedited Removal, 84 Fed. Reg. 35,409, 35,409 (July 23, 2019).

55. Pursuant to its expedited removal power, any immigration officer may order a person's removal from the United States if that immigration officer determines in his sole discretion that the person (1) is an alien; (2) lacks a visa or "other valid entry document" or has made any material misrepresentation connected to their admission; and (3) has not affirmatively shown, to the satisfaction of the immigration officer, that he or she falls outside the geographical and temporal limitations to the application of expedited removal. 8 U.S.C. § 1225(b)(1)(A)(i) (citing *id.* § 1182(a)(6)(C), (a)(7)); *id.* § 1225(b)(1)(A)(iii).

56. No appointed Officer needs to sign off on an expedited removal order to make it final. IIRIRA also eliminated any mechanisms by which the Secretary of Homeland Security or

[7] The INA defines "alien" as "any person not a citizen or national of the United States." 8 U.S.C. § 1101(a)(3).

Attorney General could review, approve, modify, or reverse an expedited removal order or any of its predicate factual determinations. *See id.* § 1225(b)(1)(A)(i), (b)(1)(B)(iii), (b)(1)(C).[8]

57. Appointed Officers play a very limited role in the expedited removal process. For most of the immigration officer's factual and legal determinations—for instance, whether the individual has a valid entry document, whether the individual made a material misrepresentation, and whether to issue the expedited removal order—IIRIRA provides no role for appointed Officers whatsoever.

58. Even in cases such as I.M.'s, where the immigration officer plainly erred in determining inadmissibility (here, determining that I.M. lacked a valid entry document and was therefore inadmissible under 8 U.S.C. § 1182(a)(7)), there is no avenue for review of the expedited removal order by an appointed Officer.

59. In cases where the individual expresses an intent to seek asylum or a fear of persecution, the immigration officer is required to refer the individual to an "asylum officer" for an interview. *Id.* § 1225(b)(1)(A)(ii). Like immigration officers, asylum officers are not appointed pursuant to the Appointments Clause. *Id.* § 1225(b)(1)(E). The INA defines an asylum officer as simply an immigration officer with specific training relevant to asylum law. *Id.* If the asylum officer determines that the individual does not have a credible fear of persecution, then the asylum officer orders removal. *Id.* § 1225(b)(1)(B)(iii)(I). The individual can then request review by an Immigration Judge of the credible fear determination, but the Immigration Judge cannot review any of the immigration officer's other determinations, nor the expedited removal order itself. *Id.* § 1225(b)(1)(B)(iii)(III). Neither expedited removal orders nor credible fear determinations are appealable to the BIA. 8 U.S.C. § 1225(b)(1)(A)(i), (b)(1)(C); 8 C.F.R. §§ 235.3(b)(2)(ii), 1003.42(f).

[8] Pursuant to regulation, the decision to issue an expedited removal order is not final until approved by a supervisor. *See* 8 C.F.R. § 235.3(b)(7). This may occur as low as the level of the "second line supervisor," *id.*, which is also an unappointed position.

60. Judicial review in Article III courts of expedited removal orders is also constrained. Habeas corpus petitions challenging expedited removal orders are limited to determinations of whether the petitioner (A) "is an alien," (B) "was ordered removed under [§ 1225(b)(1)]," and (C) "can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee, . . . or has been granted asylum." 8 U.S.C. § 1252(e)(2). The "implementation or operation of an order of removal," *id.* § 1252(e)(3)(a); "the application of [§ 1225(b)(1)] to individual aliens," *id.* § 1252(a)(2)(A); and the "procedures and policies adopted by the Attorney General to implement the provisions of [§ 1225(b)(1)]" are all unreviewable, *id.*, as is "whether the alien is actually inadmissible or entitled to any relief from removal," *id.* § 1252(e)(5).

61. Thus, here again, there is no avenue for review of plainly erroneous findings that an individual is inadmissible, such as the erroneous finding that I.M. was inadmissible under 8 U.S.C. § 1182(a)(7).

62. Once an immigration officer issues an expedited removal order, the affected individual may be removed at any time, subject only to the credible fear process described above. *See id.* § 1231(a)(1)(A). This can occur within hours. Until removal, the affected individual is mandatorily detained. *Id.* § 1231(a)(2).

63. An expedited removal order comes with significant consequences beyond removal itself. Noncitizens who are issued expedited removal orders are subject to a five-year bar on admission to the United States unless they qualify for a discretionary waiver. *Id.* § 1182(a)(9)(A)(i), (iii). Similarly, noncitizens issued expedited removal orders after having been found inadmissible based on misrepresentations are subject to a lifetime bar on admission to the United States unless they are granted a discretionary exception or waiver. *Id.* § 1182(a)(6)(C).

64. Individuals who experience persecution or harm following an expedited removal order and subsequently seek to reenter the United States to seek protection are at risk of felony prosecution for federal illegal reentry, *id.* § 1326; are ordinarily deemed ineligible for asylum;

and are only eligible for a more limited form of relief called withholding of removal, 8 C.F.R. § 1208.31(e); 8 U.S.C. § 1231(b)(3).[9]

65. Additionally, once an immigration officer purports to issue an expedited removal order, DHS regulations purport to allow that immigration officer to revoke any visa that the U.S. State Department has granted to the subject of the expedited removal order. 22 C.F.R. § 41.122(e)(2), (4).

66. Together with the purported expedited removal order, Respondents Klein, Bock, and/or Chavez purported to cancel I.M.'s visa. I.M. Decl., Ex. 4; *see supra* n.2. Rather than acting under 22 C.F.R. § 41.122(e)(2) or (4), they purported to cancel I.M.'s visa under 22 C.F.R. § 41.122(e)(3), which authorizes immigration officers to cancel visas only of individuals who "request[] and [are] granted permission to withdraw the[ir] application for admission."

67. On information and belief, I.M.'s visa was issued by a Foreign Service Officer appointed by the President with the advice and consent of the Senate. Thus, Respondents Klein, Bock, and/or Chavez, despite being unappointed, purported to revoke the decision of an appointed principal Officer.

ARGUMENT

68. As explained above, the Appointments Clause prohibits federal government employees in continuing positions from "exercising significant authority pursuant to the law of the United States" unless they are appointed pursuant to the Clause's requirements. *Buckley*, 424 U.S. at 126.

69. Issuance of an expedited removal order is a significant authority of the United States. Because the expedited removal order purportedly issued against I.M. was issued by

[9] Withholding of removal claims are subject to a higher burden of proof than asylum claims. *See INS v. Stevic*, 467 U.S. 407, 411–12 (1984). Additionally, withholding of removal does not prohibit the government from removing the noncitizen to a third country; does not create a path to lawful permanent resident status and citizenship; and does not permit a noncitizen's spouse or minor child to obtain lawful immigration status derivatively. *See R–S–C v. Sessions*, 869 F.3d 1176, 1180 (10th Cir. 2017).

unappointed employees rather than an appointed Officer, it is void *ab initio*. And because the visa revocation was both issued by an unappointed employee and predicated on the improper inadmissibility determination and expedited removal order, the visa revocation must be vacated, reinstating I.M.'s visa. If, upon I.M.'s return to the United States, Respondents wish to pursue removal, Petitioner must be provided removal proceedings under 8 U.S.C. § 1229a before an Officer appointed in compliance with the Appointments Clause. *See* 8 U.S.C. § 1252(e)(4); *Lucia*, 138 S. Ct. at 2055.

I. Expedited Removal Is a Significant Authority of the United States

70. The expedited removal power created by section 1225(b)(1) is a quintessential significant authority of the federal government.

71. First, expedited removal is significant because it is an adjudicative authority: the authority to issue final and binding orders resolving factual questions and applying legal standards to individuals. *See* 8 U.S.C. § 1225(b)(1)(A)(i); 8 C.F.R. § 235.3(b)(2).

72. The Supreme Court has repeatedly held that adjudicative authority is significant. *See, e.g.*, *Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2200 (2020) (director of agency an executive Officer where she "may unilaterally issue final decisions"); *Lucia*, 138 S. Ct. at 2053–54 (holding adjudicative authority to be significant even though reviewable by an Officer).

73. An employee issuing an expedited removal order functions as investigating officer, prosecutor, and final adjudicator simultaneously—a combination of powers even more significant than those found to require appointment in previous cases. *See, e.g.*, *Freytag*, 501 U.S. at 881–82 (special trial judges were Officers where they had authority to "take testimony, conduct trials, rule on the admissibility of evidence, and . . . enforce compliance with discovery orders"); *Morrison v. Olson*, 487 U.S. 654, 671–72 (1988) (special counsel with authority to investigate and prosecute crimes was an Officer despite lack of authority to adjudicate or penalize); *Nishimura Ekiu*, 142 U.S. at 662–63 (immigration inspectors were Officers where they had authority "to inspect and examine [aliens]"; "to administer oaths, and to take and consider

testimony touching the right of any such aliens to enter the United States"; and to make decisions about "the right of any alien to land"). Here, where officials issue orders that have "last-word capacity," *Lucia*, 138 S. Ct. at 2054, the requirement of appointment is even more important.[10]

74. Second, the decision whether to admit or exclude a person from the country is a quintessentially sovereign authority of the United States. *See, e.g.*, *Thuraissigiam*, 140 S. Ct. at 1982 ("[T]he power to admit or exclude aliens is a sovereign prerogative . . . ." (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982))); *Arizona v. United States*, 567 U.S. 387, 394–95 (2012) (the federal government's "inherent power as sovereign" is the source of its "broad, undoubted power over the subject of immigration and the status of aliens"). Dating as far back as the first immigration acts, the Supreme Court has required governmental agents making final immigration determinations to be appointed as Officers. *See Nishimura Ekiu*, 142 U.S. at 660 ("[T]he final determination of those facts may be in trusted by congress to *executive officers* . . . ." (emphasis added)); *Thuriassigiam*, 140 S. Ct. at 2006 (Sotomayor, J., dissenting) (summarizing *Nishimura Ekiu* as "considering whether immigration officer's appointment was unconstitutional such that his actions were invalid"). A position tasked with determining whether a person may be excluded from the United States is thus "an office that exercises national power," *Aurelius Inv.*, 140 S. Ct. at 1668 (Thomas, J., concurring), and is therefore subject to the Appointments Clause.

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[10] The final, unreviewable nature of many of the determinations underlying an expedited removal order makes the power to issue that order a power that can properly be exercised only by a *principal* Officer, not an inferior Officer. *See, e.g.*, *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320, 1329 (Fed. Cir. 2019), *cert. granted*, — U.S. —, No. 19-1452 (Oct. 13, 2020) (Administrative Patent Judges were principal Officers where "[n]o presidentially-appointed officer has independent statutory authority to review a final written decision of the [judges] before the decision issues on behalf of the United States"); *Intercollegiate Broad. Sys., Inc. v. Copyright Royalty Bd.*, 684 F.3d 1332, 1340 (D.C. Cir. 2012) (Copyright Royalty Judges were principal Officers because their determinations were not "reversible or correctable by any other officer or entity within the executive branch," even though their procedural rules and legal determinations were reviewable by principal Officer). However, because Respondents Klein, Bock, and Chavez were not appointed at all, the Court need not determine whether they are principal Officers or merely inferior Officers.

75. Third, expedited removal is an exercise of significant authority by virtue of the enormous discretion that it imparts to the officials implementing it. Immigration officers exercise "significant discretion," *Freytag*, 501 U.S. at 882, in determining whether to issue an order of expedited removal. For example, an agent has authority to "interrogate any alien or person [they] believe[] to be an alien," 8 U.S.C. § 1357(a)(1), by conducting an unrecorded interview that can take place without any witnesses and need not include a translator unless the agent deems it necessary. 8 C.F.R. § 235.3(b)(2)(i). That brief encounter, the substance of which is entirely within the agent's control and discretion, forms the principal basis for the agent's factual and legal determinations and his or her decision to issue an order of removal. *See, e.g.*, *Khan v. Holder*, 608 F.3d 325, 327–29 (7th Cir. 2010).

76. This process grants tremendous discretion to an agent making inadmissibility determinations. *Id.* For example, the agent has the sole and unreviewable discretion to determine that a noncitizen with an otherwise valid visa or entry document intends to violate the terms of the visa or entry document (such as the length of stay or intention to work). *See, e.g.*, *id.* at 326–27. As the Seventh Circuit summarized:

> The troubling reality of the expedited removal procedure is that a CBP officer can create [inadmissibility] by deciding to convert the person's status from a non-immigrant with valid papers to an intending immigrant without the proper papers, and then that same officer, free from the risk of judicial oversight, can confirm his or her suspicions of the person's intentions and find the person guilty of that charge. The entire process—from the initial decision to convert the person's status to removal—can happen without any check on whether the person understood the proceedings, had an interpreter, or enjoyed any other safeguards.

Id. at 329; *see also, e.g.*, *Blanco Ayala v. United States*, — F.3d —, 2020 WL 7050099, at *3 (4th Cir. Dec. 2, 2020) ("Discretion lies at the heart of the DHS law enforcement function."). This significant, unilateral power is unparalleled in U.S. law and cannot be vested in an unappointed employee.

77. Fourth, the authority vested in unappointed officials by the expedited removal process is "significant" because many aspects of the discretion and power wielded above are essentially unreviewable. An order of expedited removal does not require signature or review by any appointed Officer. 8 U.S.C. § 1225(b)(1)(A)(i), (b)(1)(B)(iii). The immigration officer's decision thus has "independent effect." *Lucia*, 138 S. Ct. at 2053. And once the decision is rendered, review by an Immigration Judge is available *only* to determine whether the individual ordered removed has a credible fear of persecution. 8 U.S.C. § 1225(b)(1)(B)(iii)(III). The Immigration Judge may not consider whether the immigration officer correctly found the individual "inadmissible under section 1182(a)(6)(C) or 1182(a)(7)," *id.* § 1225(b)(1)(A), whether they are entitled to any other relief, or even whether they are in fact an alien.

78. Finally, the consequences of the exercise of the expedited removal power are by any measure "significant": an individual against whom an expedited removal order has been issued can be detained and removed from the country immediately. *Id.* § 1231. "[T]he power to seek daunting . . . penalties against private parties on behalf of the United States" is "a quintessentially executive power," *Seila Law*, 140 S. Ct. at 220, and "deportation is a particularly severe 'penalty,'" *Padilla*, 559 U.S. at 365 (citation omitted). Accordingly, this power may only be entrusted "by congress to executive officers." *Nishimura Ekiu*, 142 U.S. at 660.

II. Respondents Klein, Bock, and Chavez Are in Continuing Positions Established by Law

79. In order to require appointment, a position must be a "'continuing' position established by law." *Lucia*, 138 S. Ct. at 2051 (citation omitted). This concept "embraces the ideas of tenure, duration, emolument, and duties," which must be "continuing and permanent, not occasional or temporary." *Germaine*, 99 U.S. at 511–12.

80. Respondents Klein, Bock, and Chavez hold continuing positions established by law.

81. CBP Officers are not "appointed essentially to accomplish a single task, and when that task is over the office is terminated." *Morrison*, 487 U.S. at 672. Rather, they are in open-

ended positions whose "duties continue, though the person be changed." *United States v. Maurice*, 26 F. Cas. 1211, 1214 (C.C.D. Va. 1823) (Marshall, J.); *see also* Officers of the United States Within the Meaning of the Appointments Clause, 31 U.S. Op. O.L.C. 73, 2007 WL 1405459, at *22 (Apr. 16, 2007) (position is continuing where duties are "not contingent on a particular person's holding it").

82. CBP Officers receive a fixed salary in exchange for ongoing performance of duties, rather than receiving piecework pay contingent on performance of occasional duties.

83. CBP Officers' "tenure, duration, emolument, and duties" are thus "continuing and permanent, not occasional or temporary." *Germaine*, 99 U.S. at 511–12. CBP Officers are therefore employees in continuing positions for purposes of the Appointments Clause.

III. Because the Expedited Removal Order Purportedly Entered Against I.M. Was Issued by Unappointed Employees in Continuing Positions, It Must Be Vacated and I.M.'s Visa Must Be Reinstated

84. As established above, the issuance of an expedited removal order is the exercise of a significant authority pursuant to the laws of the United States, but the purported expedited removal order against I.M. was issued by unappointed employees. Accordingly, it is invalid and void *ab initio*. *Lucia*, 138 S. Ct. at 2055.

85. An order issued by officials who "had not been appointed in accordance with the dictates of the Appointments Clause" is "not valid *de facto*." *Ryder*, 515 U.S. at 179. That is, it is a "nullity." *Lee v. Berryhill*, No. 18-cv-214, 2018 WL 8576604, at *1 (E.D. Va. Dec. 20, 2018); *see also, e.g., Lucia*, 138 S. Ct. at 2055; *NLRB v. Noel Canning*, 573 U.S. 513, 521–22 (2014).

86. I.M. therefore has not been ordered removed under section 1225(b)(1).

87. "[A] litigant challenging governmental action as void on the basis of the separation of powers is not required to prove that the Government's course of conduct would have been different in a 'counterfactual world' in which the Government had acted with constitutional authority." *Seila Law*, 140 S. Ct. at 2196 (quoting *Free Enter. Fund*, 561 U.S. at 512 n.12); *see also id.* ("[W]e have found it sufficient that the challenger 'sustain[s] injury' from

an executive act that allegedly exceeds the official's authority." (quoting *Bowsher v. Synar*, 478 U.S. 714, 721 (1986))). Rather, as the Supreme Court has repeatedly held, "'one who makes a timely challenge to the constitutional validity of the appointment of an officer who adjudicates his case' is entitled to relief." *Lucia*, 138 S. Ct. at 2055 (quoting *Ryder*, 515 U.S. at 182).

88. Accordingly, the expedited removal order purportedly issued against I.M. must be vacated. If, upon I.M.'s return to the United States, Respondents wish to pursue removal, I.M. must be provided removal proceedings under 8 U.S.C. § 1229a before an Officer appointed in compliance with the Appointments Clause. *See* 8 U.S.C. § 1252(e)(4); *Lucia*, 138 S. Ct. at 2055.

89. Additionally, because the expedited removal order purportedly issued against I.M. was a nullity, Respondents Klein, Bock, and Chavez lacked authority to revoke I.M.'s visa under 22 C.F.R. § 41.122(e)(2) or (e)(4)[11] and that visa revocation too was unlawful under both the Administrative Procedure Act and the Appointments Clause. The revocation of I.M.'s visa must be vacated, which would have the effect of reinstating his visa.

CLAIMS FOR RELIEF

COUNT I

Claim for Writ of Habeas Corpus Under 8 U.S.C. § 1252(e)(2) and/or Relief Under the Appointments Clause

90. I.M. realleges and incorporates the allegations of all preceding paragraphs.

91. Respondents Klein and Bock purported to issue a conclusive Determination of Inadmissibility against I.M. under 8 U.S.C. § 1225(b)(1). Respondents Bock and Chavez purported to issue a conclusive Order of Removal against I.M. under 8 U.S.C. § 1225(b)(1).

92. Determinations of inadmissibility and expedited removal orders are exercises of significant authority pursuant to the laws of the United States.

[11] The subsection that Respondents Klein, Bock, and/or Chavez cited when purporting to cancel I.M.'s visa, 22 C.F.R. § 41.122(e)(3), could not under any circumstance authorize the revocation of I.M.'s visa, because he had not "request[ed] . . . permission to withdraw [his] application for admission." Because Respondents Klein, Bock, and/or Chavez lacked authority to revoke the visa under *any* subsection of § 41.122(e), the Court need not decide whether Respondents' apparent scrivener's error has any consequences for the legality of their purported revocation.

93. Respondents Klein, Bock, and Chavez hold continuing positions established by law. Therefore, they cannot issue determinations of inadmissibility or orders of removal without being appointed pursuant to the Appointments Clause. U.S. Const. art. II, § 2, cl. 2.

94. Neither the President nor the Secretary of Homeland Security appointed Respondents Klein, Bock, or Chavez pursuant to the Appointments Clause.

95. Because I.M.'s determination of inadmissibility and expedited removal order were issued by officials wielding significant authority in continuing positions who had not been appointed pursuant to the Appointments Clause, the determination of inadmissibility and order of removal were invalid and void *ab initio*. *See Lucia*, 138 S. Ct. at 2055.

COUNT II

Claim for Relief Under 5 U.S.C. § 706

96. I.M. realleges and incorporates the allegations of all preceding paragraphs.

97. Respondent Klein, Bock, and/or Chavez purported to revoke I.M.'s visa under 22 C.F.R. § 41.122(e)(3), which authorizes revocation of a visa if the visaholder "requests and is granted permission to withdraw [his] application for admission."

98. I.M. neither requested nor was granted permission to withdraw his application for admission, and thus 22 C.F.R. § 41.122(e)(3) did not authorize the visa revocation. Because the purported removal order was a nullity, the purported visa revocation could not have been authorized by 22 C.F.R. § 41.122(e)(2) or (4) even if Respondents had acted on those grounds. Therefore, the purported revocation of I.M.'s visa was not in accordance with law, 5 U.S.C. § 706(2)(A), and was in excess of statutory authority, 5 U.S.C. § 706(2)(C).

99. Additionally, the revocation of a visa is a significant authority of the United States. Because the purported revocation was issued by an official in a continuing position who had not been appointed pursuant to the Appointments Clause, it was not in accordance with law, 5 U.S.C. § 706(2)(A), and was in excess of statutory authority, 5 U.S.C. § 706(2)(C).

100. Accordingly, the revocation must be held unlawful and set aside.

PRAYER FOR RELIEF

WHEREFORE, I.M. requests that this Court:

A. Declare that the determination of inadmissibility and order of removal purportedly issued against I.M. violated the Appointments Clause;

B. Declare the determination of inadmissibility and order of removal purportedly issued against I.M. invalid and void *ab initio*;

C. Hold unlawful and set aside the purported revocation of I.M.'s visa;

D. Order Respondents to reinstate I.M.'s visa;

E. If Respondents choose to seek I.M.'s removal upon his return, order Respondents to place I.M. into removal proceedings before a properly appointed Immigration Judge in accordance with 8 U.S.C. § 1252(e)(4) and 8 U.S.C. § 1229a;

F. Award I.M.'s counsel reasonable attorneys' fees under the Equal Access to Justice Act, and any other applicable statute or regulation; and

G. Grant such other and further relief as the Court deems equitable, just, and proper.

Dated: December 7, 2020

/s/ Steven P. Croley

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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2020, I caused a true and correct copy of the foregoing to be filed electronically with the Clerk of the Court on the ECF system and transmitted to counsel registered to receive electronic service.

/s/ Steven P. Croley
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