STEPHEN W. MANNING, OSB # 013373
stephen@innovationlawlab.org
JORDAN CUNNINGS, OSB # 182928
jordan@innovationlawlab.org
NELLY GARCIA ORJUELA, OSB #223308
nelly@innovationlawlab.org
TESS HELLGREN, OSB # 191622
tess@innovationlawlab.org
INNOVATION LAW LAB
333 SW 5th Ave., Suite 200
Portland, OR 97204-1748
Telephone: +1 503-922-3042

Attorneys for Petitioner

**UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

**Portland Division**

L-J-P-L-, an adult,

Petitioner,

v.

DREW BOSTOCK, Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO");TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE"); U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY; and PAMELA BONDI, Attorney General of the United States,

Respondents.

Case No. 25-cv-01390-IM

Agency No. A XXX-XXX-629

**DECLARATION OF KATHLEEN MARIE LOWMAN PRITCHARD IN SUPPORT OF PETITIONER'S MOTION TO RECONSIDER**

**DECLARATION OF KATHLEEN MARIE LOWMAN PRITCHARD IN SUPPORT OF PETITIONER'S MOTION TO RECONSIDER**

I, KATHLEEN MARIE LOWMAN PRITCHARD, under penalty of perjury, do solemnly declare:

1. I am an attorney licensed and in good standing to practice in the State of Oregon. I am a member of the American Immigration Lawyers Association ("AILA"). I am over 18 years of age and have personal knowledge of the facts described herein and the documents attached as exhibits are true copies of documents that are available to me as L-J-P-L-'s immigration counsel through the EOIR Case Portal ("ECAS"), the e-filing system used by the Immigration Courts and the Board of Immigration Appeals (the Executive Office for Immigration Review).
2. On August 15, 2025, I entered my appearance as counsel in L-J-P-L-'s INA § 240 removal proceedings by filing Form EOIR-28, Notice of Appearance as Attorney through ECAS. My Form EOIR-28 was accepted by the Court that same day.
3. Once an attorney's Form EOIR-28 has been accepted on ECAS, the attorney gains access to the electronic Record of Proceeding ("ROP"), which contains all documents filed by all parties as well as any and all orders and notices issued by the Immigration Court in the removal proceeding in question.
4. In reviewing the Record of Proceeding, I was able to confirm that Counsel for the Department of Homeland Security ("DHS") had filed a Motion to Dismiss L-J-P-L-'s INA § 240 proceedings with the Seattle Immigration Court on August 12, 2025.

5. Through a notice dated September 2, 2025, the Immigration Court rejected the Department of Homeland Security's Motion to Dismiss. *See* Ex. A, Copy of Immigration Court's Notice Rejection DHS Motion to Dismiss.
6. Counsel for DHS has not since re-filed its Motion to Dismiss, so there is no Motion to Dismiss L-J-P-L-'s removal proceedings pending before the Immigration Court at this time. Though DHS does have discretion over certain prosecutorial decisions, once INA § 240 removal proceedings have commenced, the DHS cannot unilaterally dismiss proceedings. As such, should DHS move to dismiss L-J-P-L-'s removal proceedings again in the future, the Immigration Judge's decision on that motion would not be a forgone conclusion. Rather, the Immigration Judge would be required, under binding caselaw, to consider any opposition to dismissal filed by L-J-P-L- and weigh which party has presented the more legally compelling justification for their position.
7. As of today, September 24, 2025, L-J-P-L-'s INA § 240 removal proceedings remain active and pending before Immigration Judge Shane Johnson of the Seattle Immigration Court. L-J-P-L- is scheduled to appear before Judge Johnson for a hearing in his removal proceedings on November 18, 2026 at 8:30a.m. *See* Ex. B, Copy of Screenshot from ECAS.
8. Despite the fact that L-J-P-L-'s INA § 240 removal proceedings remained pending, Immigration and Customs Enforcement referred L-J-P-L- to USCIS for a Reasonable Fear Interview in late August of 2025.

9. After the District Court declined to order L-J-P-L-'s release in his habeas action, I explained to L-J-P-L- that he could continue fighting his immigration case. I further explained that the process of fighting his immigration case would likely take several months and that he would almost certainly remain detained during that time.
10. On August 15, 2025, I sent a Form G-28 (notice of representation as counsel) to the Immigration and Customs Enforcement ("ICE") Enforcement and Removal Operations ("ERO") office in Tacoma where L-J-P-L- was being detained. On August 29, 2025, I sent a G-28 to USCIS via email to inform the Asylum Office that I am L-J-P-L-'s immigration counsel and that I would be representing L-J-P-L- in his Reasonable Fear Interview.
11. On or about September 4, 2025, an Asylum Officer met with L-J-P-L- by telephone to conduct his Reasonable Fear Interview. L-J-P-L- called me later that day and told me that though he had informed the Asylum Officer that he had an attorney and wanted his attorney to be present during his interview, the officer told him that it was not necessary for me to be present and had declined to add me to the call. I could not have planned to be physically present in the room with L-J-P-L- during his interview because USCIS did not inform me that L-J-P-L-'s Reasonable Fear Interview had been scheduled. L-J-P-L- told me that he had communicated to the Asylum Officer that he did not wish to proceed with the Reasonable Fear Interview process.
12. L-J-P-L- explained to me that he did not want to proceed with his Reasonable Fear Interview because, although he was still afraid of returning to Guatemala, he could not stand to continue in detention for an uncertain amount of time.

13. On September 4, 2025, I emailed USCIS to request any and all documentation relating to the Reasonable Fear Interview L-J-P-L- had that day. USCIS never provided me with any documentation from L-J-P-L-'s Reasonable Fear Interview. I used L-J-P-L-'s most recent A# in my initial request, and the Asylum Office wrote back indicating that no such person had been referred to them for a fear interview. I responded, this time providing L-J-P-L-'s previous A# but I received no response from USCIS. *See* Ex. C, Declarant's September 4 and September 5 emails to USCIS.
14. On September 10, 2025, I received correspondence from ICE ERO indicating that USCIS had "rendered a decision" on L-J-P-L-'s Reasonable Fear Interview and that ERO was actively working on scheduling L-J-P-L-'s removal to Guatemala.
15. On September 17, 2025, I checked the ICE detainee locator, which showed L-J-P-L- was no longer in custody, which I took to mean that he had been deported.
16. On September 18, 2025, I learned through L-J-P-L-'s counsel in his habeas case that DHS had, earlier that week, put L-J-P-L- on a plane to remove him to Guatemala, but that upon landing in Guatemala, DHS officers had told L-J-P-L- that he would not be exiting the plane and instead flew him back to the United States. I confirmed these facts with L-J-P-L- himself during a telephone call with him on September 23, 2025.
17. Despite learning that L-J-P-L- had been returned to the U.S. on September 18, I was unable to speak with L-J-P-L- until September 23 because it took multiple phone calls and emails to (1) confirm where L-J-P-L- was being detained, (2) make contact with the facility where L-J-P-L- is being detained, and (3) hear back from the facility with regard to my request for a confidential call with my client. Whereas there is a phone

number publicly available for El Paso's long-standing ICE detention center known as the El Paso Service Processing Center, there is no phone number publicly available online for the temporary detention facility recently erected at Fort Bliss where L-J-P-L- is currently being held.

18. I believe that L-J-P-L- was flown back to the United States because DHS realized that he remains in active, pending INA § 240 removal proceedings before the Seattle Immigration Court and DHS correctly determined that it was unlawful to remove L-J-P-L while his INA § 240 removal proceedings remain pending. In my experience as an immigration attorney, the government's determination is both legally correct under a plain reading of 8 U.S.C. § 1229a(a)(3) and also conforms with the most workable reading of the statute because, as explained below, it is impracticable for a reinstatement proceeding and an INA § 240 proceeding to proceed concurrently.

19. If a noncitizen passes a Reasonable Fear Interview, the noncitizen must be referred by DHS to the Immigration Court for Withholding-Only removal proceedings (INA § 241(b)(3) proceedings). Withholding-Only proceedings are separate and distinct from INA § 240 proceedings and the rights afforded respondents in INA § 240 proceedings are more expansive than those provided to respondents in withholding-only proceedings. There is no mechanism for "converting" existing INA § 240 proceedings into withholding-only proceedings. As such, had L-J-P-L- decided to proceed with his Reasonable Fear Interview and received a positive finding from the Asylum Officer, DHS would have been obliged to issue a Notice to Appear to commence withholding-only proceedings in his case. However, the commencement of withholding-only

proceedings would not automatically cancel nor negate L-J-P-L-'s pending INA § 240 proceedings. As such, unless and until the Immigration Judge in L-J-P-L-'s pending INA § 240 proceedings agreed to dismiss that case, L-J-P-L- would have had *two* separate cases concurrently pending before the Immigration Court – a withholding-only case and an INA § 240 case – with neither immigration judge bound to follow the judgement of the other. This situation could have led to the nonsensical result of a single respondent being granted asylum in their INA § 240 proceedings but ordered removed in their concurrent withholding-only proceedings[1] with no clear indication of which order - the grant of asylum or the order of removal - should be given legal force.

20. Similarly, had DHS proceeded to remove L-J-P-L to Guatemala rather than properly returning him to the U.S. as they did, L-J-P-L's INA § 240 proceedings would have remained open along with his I-589 Application for Asylum, which is currently pending before the Seattle Immigration Court, notwithstanding his removal from the country. L-J-P-L- would have still had a hearing before the Seattle Immigration Court scheduled for November 18, 2026, regardless of his deportation. Customarily, if a respondent fails to appear at a scheduled hearing in INA § 240 proceedings, the immigration judge will order them removed *in absentia*. As such, here, had the

[1] Withholding of removal has a higher burden of proof as compared to what is required to establish asylum eligibility (*see* 8 C.F.R. § 208.16(b)(2), noting that an applicant for withholding of removal must establish that it is "more likely than not" that the persecution they fear will come to pass whereas an asylum applicant need only show that there is at least a 10% chance they will face the persecution they fear (*see INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987)), so it is possible that a single applicant with a single set of facts could *meet* their burden to establish asylum eligibility in an INA § 240 proceeding but be found to have *failed* to meet the *higher* standard required for withholding of removal in a concurrent withholding-only proceeding.

government proceeded to improperly remove L-J-P-L- in spite of his pending INA § 240 proceedings, L-J-P-L- would have been at risk of receiving an *in absentia* removal order upon failing to appear for the scheduled November 18, 2026, hearing, a manifestly unjust and nonsensical result – to punish a respondent for failing to appear when it was the U.S. government which removed him from the country and made his appearance at the scheduled hearing impossible.

I hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 24th day of September, 2025, in Portland, OR.

*/s/Kathleen Pritchard*

Kathleen Marie Lowman Pritchard
INNOVATION LAW LAB
333 SW Fifth Ave. Ste. 200
Portland, OR 97204
Telephone: +1 971-259-3428
Facsimile: +1 503 241-7733
kate@innovationlawlab.org