Shawn N. Anderson
United States Attorney
Mikel W. Schwab
Jessica F. Cruz
Assistant United States Attorneys
Sirena Plaza, Suite 500
108 Hernan Cortez Avenue
Hagåtña, GU 96910
(671) 472-7332

Yaakov M. Roth
Principal Deputy Assistant Attorney General
Civil Division
Christopher Ian Pryby
Trial Attorney
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, DC 20044-0878
(202) 514-2000

Counsel for Respondents–Defendants

IN THE DISTRICT COURT OF GUAM

NOU XIONG, next friend for V.L., et al.,

Petitioners–Plaintiffs,

v.

SERGIO ALBARRAN, in his official capacity as San Francisco Field Office Director for U.S. Immigration and Customs Enforcement,[*] et al.

Respondents–Defendants.

Case No. 25-cv-00026

RESPONDENTS–DEFENDANTS' MOTION FOR SANCTIONS ON COUNSEL FOR PETITIONERS–PLAINTIFFS

(WITH MEMORANDUM OF LAW AND EXHIBITS IN SUPPORT)

[*] Sergio Albarran is automatically substituted for Ken Sherman and Stephen Green as their successor in official responsibility for Guam. Fed. R. Civ. P. 25(d).

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Introduction

Petitioners' counsel Joshua J. Schroeder, acting in bad faith, unreasonably and vexatiously multiplied proceedings by maintaining positions without bases in fact and law, without making a reasonable, competent inquiry, and for an improper purpose. With no evidence in support and with knowledge to the contrary, Schroeder argued that the government was removing petitioner Vang Lor[2] under the Alien Enemies Act ("AEA"). Schroeder knew that assertion to be false—that Lor had instead been convicted of attempted murder and was being removed under a final removal order issued under the Immigration and Nationality Act ("INA") and that this Court lacked jurisdiction to entertain a challenge to that order's execution.

Schroeder nevertheless persisted in making frivolous arguments for the improper purpose of forestalling Lor's lawful removal to Laos—in not only this Court but also in the United States District Court for the Northern District of Texas and the United States Court of Appeals for the Ninth Circuit. Schroeder's vexatious conduct has cost American taxpayers—requiring the government to respond to repeated, patently meritless filings in three separate courts; to take Lor off his original flight to Laos and hold him in custody in Guam for days; and to arrange new travel to Laos once this Court dismissed Schroeder's meritless petition.

This Court should sanction Schroeder's conduct. It should impose sanctions to deter Schroeder from continuing to multiply baseless proceedings. And given the nationally important need for the government to enforce the immigration laws, sanctions are essential for general deterrence of misconduct. As the President has explained, the immigration system is "replete with examples of unscrupulous behavior by attorneys and law firms," behavior that thwarts the

[2] Because electronic access to the docket entries in this case are restricted under Fed. R. Civ. P. 5.2(c), the government uses Lor's name in full in this filing.

ability of the Executive to carry out the will of the people as legislated by Congress. *See* Mem. for Att'y Gen. & Sec'y of Homeland Sec., *Preventing Abuses of the Legal System and the Federal Court*, DCPD-202500387, at 1 (Mar. 21, 2025) ("*Preventing Abuses*").

This Court should therefore impose sanctions on Schroeder under 28 U.S.C. § 1927 and its inherent powers.

Background

1. Lor, a native of Laos, is ordered removed from the United States under the INA after his conviction for attempted murder.

Lor, a native of Laos, was admitted to the United States as a lawful permanent resident in December 1987. ECF No. 16-1, at 8. In 1998, Lor pleaded guilty in California state court to attempted murder and was sentenced to a total of 22 years of imprisonment. *Id.* at 9. In February 2018, the Department of Homeland Security ("DHS") commenced removal proceedings under the INA by serving a notice to appear on Lor and filing it with the immigration court in Adelanto, California. *Id.* at 6–7; *see generally* 8 U.S.C. § 1229a. The notice to appear charged him as removable for committing an aggravated felony after admission to the United States.

In March 2018, Lor appeared pro se in removal proceedings before an immigration judge. *See* Ex. A ("IJ Hr'g Audio"). He affirmatively waived his right to counsel, *id.* at 0:35–0:50, and answered the notice to appear, *id.* at 1:25–2:35 (denying Laotian citizenship but admitting he was born there, and correcting the allegation that his prison term was only 9 years). After the immigration judge found Lor removable as charged and directed his removal to Laos, *id.* at 5:05–6:15, Lor disclaimed any fear of return to Laos and affirmed that he wished to be removed there, *id.* at 6:10–6:25. The immigration judge asked further questions to see if Lor might be entitled to any other relief or protection from removal, but Lor denied all facts tending to do so. *See id.* at 6:35–8:35. The immigration court again asked Lor if he wanted to obtain counsel

before finalizing the removal order, but Lor stated that he wished to conclude his case and waived his right of appeal. *Id.* at 8:35–9:00, 10:30–10:50; *see also* ECF No. 16-1, at 4; Ex. B ("Online Docket") (showing that removal was ordered and no appeal was received). Lor was accordingly ordered removed pursuant to Laos pursuant to the INA.

2. President Trump invokes the AEA to designate certain Venezuelan nationals as alien enemies subject to detention and removal.

In March 2025, the President issued a Proclamation invoking the AEA, 50 U.S.C. § 21, to detain and remove Venezuelan nationals who are members of Tren de Aragua ("TdA"), a designated foreign terrorist organization. Proclamation No. 10,903, *Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua*, 90 Fed. Reg. 13,033, 13,034 (Mar. 20, 2025) (the "Proclamation"). Persons designated as alien enemies may challenge their detention and removal under the Proclamation only by petition for a writ of habeas corpus. *Trump v. J.G.G.*, 145 S. Ct. 1003, 1005 (2025).

Lor was never designated an alien enemy under the Proclamation—and indeed could not be, given his Laotian nationality. Proclamation § 1, 90 Fed. Reg. at 13,034.

3. Schroeder files an initial habeas petition in the Northern District of Texas and obtains an order prohibiting Lor's removal, necessitating that the government take Lor off a flight en route to Laos.

In April 2025, Lor was detained by U.S. Immigration and Customs Enforcement ("ICE") at the Prairieland detention facility in Texas. *See* ECF No. 16-2, at 10; *see also id.* at 13 (stating he was transferred to Bluebonnet, also in Texas). On May 24, Lor called his wife Nou Xiong to tell her he would be removed to Laos at 1:00 a.m. the next day. ECF No. 17-2 ¶¶ 1, 9.

On May 25, representing Lor and Xiong, Schroeder filed a petition for a writ of habeas corpus in the Northern District of Texas, which had jurisdiction over Lor's detention site. *See generally* ECF No. 17-2. Schroeder represented that it was "not exactly clear to [him] what

immigration status" Lor had. *Id.* ¶ 11. The petition alleged that Lor "has had no due process" and "no chance to be heard before an impartial decision maker." *Id.* ¶ 17. The petition alleged that Lor was being "held in actual or constructive military detention and [was] being treated as a prisoner of war" and that his "removal appears to be an extraordinary rendition without any process, notice, or known legal basis." *Id.* ¶¶ 20, 159. It identified 20 claims for relief, each one tied to the AEA and the Proclamation. *Id.* ¶¶ 214–310.

Shortly after the petition was filed, the district court ordered the government not to remove Lor from the United States. ECF No. 18-2, at 2. Schroeder then filed motions for a temporary restraining order ("TRO") and class certification. ECF No. 17-2, at 73–99, 100–16.

On May 26, the government made an emergency request to clarify that the court's order did not prevent Lor's removal under his removal order issued under the INA, rather than under the AEA and Proclamation, to which Lor was not subject. ECF No. 16-1, at 1–2. Included were Lor's removal order, notice to appear in removal proceedings, and his criminal records. *See id.* at 4–11. The government further explained that it would incur "logistical difficulties and expenses" if it could not complete Lor's planned removal to Laos. *Id.* at 1–2.

The plane carrying Lor landed at Guam at a planned stopover. ECF No. 16-2, at 3; *see also* ECF No. 22-4, at 12 ¶¶ 4–6. Because the district court's order preventing Lor's removal from the United States was still in effect at the time, the government disembarked Lor in Guam, and the flight continued to Laos without him. ECF No. 16-2, at 3–4. The government housed Lor in Hagåtña Detention Center. ECF No. 22-4, at 12–13 ¶¶ 7–8.

4. After the Northern District of Texas denies his TRO motion, Schroeder renews his TRO motion and moves to transfer proceedings to this Court.

Presented with the evidence of Lor's removability under the INA, the Northern District of Texas denied the TRO motion, finding that Lor had not shown a likelihood of success because

the government's evidence showed that he was not being removed under the AEA. ECF No. 16-3, at 3–4. The court also allowed the government to remove Lor under the INA. *Id.* at 4.

Schroeder filed a renewed TRO motion shortly thereafter in which he continued to invoke the AEA. He argued that the INA was inextricably intertwined with the AEA. *See* ECF No. 16-5, at 2 (citing only that the procedures for designating a foreign terrorist organization are found in the INA, even though those procedures are irrelevant to the AEA's operation). He further charged that the government had "transformed immigration enforcement into a military matter" and was giving immigrants "no notice or an opportunity to be heard regarding how and where immigrants are removed to, or if they are killed, or removed into the ocean." *Id.* He objected that Lor's removal order had not been served on Lor's counsel and that no notice had been given "to explain how the removal . . . complies with U.S. treaty obligations that prelude [sic] torture and removal to a place where torture and death are likely to occur." *Id.* at 2–3. And Schroeder asserted that the government had violated the district court's order not to remove Lor from the United States. *Id.* at 3.

On May 27, the government responded, noting it was "meritless and border[ed] on nonsensical" for Schroeder to recast as a violation of Lor's rights the government's compliance with the court's order by taking Lor off the removal flight in Guam—which the government did in compliance with an order "that was issued at [Schroeder]'s request." ECF No. 16-2, at 5. The government provided additional evidence that Lor had received notice of his impending removal. *Id.* at 10–14. And the government observed that Lor could have challenged his removal order through an administrative appeal and then a petition for review in a court of appeals—but that 8 U.S.C. § 1252(g) now deprived the district court of jurisdiction over the habeas petition challenging his removal order's execution. *Id.* at 7–8.

On May 28, Schroeder filed an emergency motion with the district court, seeking a transfer of venue to this Court under 28 U.S.C. § 1406 or, alternatively, a dismissal without prejudice for lack of venue. ECF No. 22-4, at 3 (criticizing the district court for allowing its jurisdiction to be "destroyed" and arguing that jurisdiction and venue now lay exclusively in Guam under *J.G.G.*, 145 S. Ct. at 1006, among other authorities). As the government pointed out, this argument was meritless because "venue [is] determined at the outset of litigation and [is] not affected by subsequent events," *Moler v. Wells*, 18 F.4th 162, 166 n.7 (5th Cir. 2021) (alterations in original), and transfer is permissible under § 1406 only to a district in which the case could have been brought "at the time of filing in the transferor court," *Phillips v. Ill. Cent. Gulf R.R.*, 874 F.2d 984, 988 (5th Cir. 1989). Because Lor was in the Northern District of Texas when Schroeder filed the petition, venue lay there alone.

On May 30, Schroeder filed a reply to the government's May 27 filing. ECF No. 22-5. He contended that the case could have been filed in Guam if the government had given previous notice that it was going to take Lor off the flight in Guam. *Id.* at 3. He accused the government of "subterfuge" in its venue argument, characterizing the argument as an admission that the writ of habeas corpus has been suspended, and he argued without citing any supporting authorities that the Fifth Circuit's interpretation of "could have been brought" in the text of 28 U.S.C. § 1406(a) to mean the moment of filing is "arbitrary." *Id.* at 4. He insinuated that the government intended to lie about removing Lor or other immigrants, instead subjecting them to "death by firing squad, marooning [them] on deserted islands, or drowning them in the sea." *Id.* at 5. And he again accused the government—without any evidence and contrary to law—of intentionally destroying the jurisdiction of the Northern District of Texas by transferring Lor to Guam. *Id.* at 5–6.

5. After receiving the government's evidence of Lor's removal order, speaking with Lor by phone, and working closely with Lor's immigration attorney, Schroeder files a substantially identical habeas petition on Lor's behalf in this Court and continues to assert claims challenging the application of the AEA to Lor.

On June 1, 2025, while the Northern District of Texas case was still pending, Schroeder filed in this Court a habeas petition substantially the same as the one he filed there. *See* ECF No. 1. He continued to assert AEA-related claims even after having received evidence of Lor's removal order, subsequently speaking with Lor by phone, and "working closely with [the attorney] who [was] representing [Lor] in his immigration matter." *See* Ex. C ("Notice of Electronic Filing") (filed at 4:11 p.m. Central time); ECF No. 22-4, at 12 ¶ 4 (declaring he spoke with Lor about three hours later, around 5:00 p.m. Pacific time on May 26); ECF No. 7-2 ¶ 5; *see also* ECF No. 5 (retaining all AEA-related claims).

On June 2, Schroeder filed an emergency TRO motion in this Court. ECF Nos. 6 & 6-1. The motion again challenged Lor's removal and detention as under the AEA. ECF No. 6-1, at 7, 15–21; *see also id.* at 8 (disclaiming that the motion "s[ought] release from immigration detention or to prohibit the government from removing any individual who may lawfully be removed under the immigration laws"). And the motion made the false claims that Lor "was not given notice regarding why he is being removed," was not "given a chance to rebut any such allegations before an impartial decision maker," and was "not given proper notice about where he was being removed to." *Id.* at 14. In an attached declaration made under penalty of perjury, Schroeder asserted that Lor's criminal history and immigration status were "unclear" to him. ECF No. 6-2 ¶ 7. His declaration did not mention the evidence of Lor's criminal history or removal order previously provided to Schroeder, nor did it explain why that evidence was so doubtful as to make Lor's criminal history and immigration status "unclear." And, although Schroeder stated that he "ha[d] personal knowledge of the facts stated" in his declaration, *id.* ¶ 1,

he made several statements "on knowledge and belief" or "on information and belief" for which he gave no basis for his personal knowledge: that there were people "similarly situated" to Lor in the group of Venezuelans flown to El Salvador on March 15, 2025; that Lor "was one of the group originally targeted to be removed to South Sudan"; and that the other passengers on the flight to Laos were "detained in a compound" there, "the conditions of which are presently unknown," *id.* ¶¶ 27–29.

Schroeder also filed a motion for class certification. ECF Nos. 7 & 7-1. There, he asserted that all members of the putative class suffered the common injury of "unlawful denial of their statutory rights to the removal and detention procedures contained in the INA." ECF No. 7-1, at 3. He contended that Lor's legal claims were "typical" of the putative class's claims. *Id.*; *see also id.* at 6 (asserting that Lor was representative of others subject to the Proclamation under the AEA "because they are in ICE detention as military prisoners" and "have been accused of affiliation with Tren de Aragua or other terrorist faction [sic]"). The motion expressly excluded from the class "individuals who may be removed pursuant to other authorities, such as the immigration laws." *Id.* at 6.

After receiving these filings, this Court ordered that Lor not be removed from Guam or the United States without 48 hours of advance notice to this Court. ECF No. 8.

6. The Northern District of Texas dismisses the first habeas petition for lack of subject-matter jurisdiction, finding no basis in law or fact for relief in any federal district court.

On June 3, in response to an order of the Northern District of Texas to address that court's subject-matter jurisdiction, Schroeder instead argued that personal jurisdiction or venue was lacking because Lor was now in custody in Guam. *See generally* ECF No. 22-6.

On June 4, the Northern District of Texas issued an order dismissing the habeas petition. ECF No. 16-7. Noting that Schroeder's filing had not addressed the government's argument that

8 U.S.C. § 1252(g) barred habeas jurisdiction, the district court considered the issue conceded. *Id.* at 4. The district court further found that Lor and Schroeder "lacked a basis in law and fact to seek relief in any federal district court." *Id.* Schroeder did not withdraw the habeas petition and his pending motions in this Court following the district court's ruling.

7. Following the Northern District of Texas's ruling, Schroeder persists in asserting baseless theories of this Court's jurisdiction and making unfounded accusations against the government.

On June 5, the government responded to the TRO motion in this Court. ECF No. 16, at 4 (emphasizing that Schroeder's petition and motion were "once again seeking an order enjoining [Lor]'s removal under the AEA, *despite knowing [his] removal is under the INA*"). The government again invoked 8 U.S.C. § 1252(g) as a bar to this Court's jurisdiction. *Id.* at 11 (citing *Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022)). The government also opposed class certification, noting that Lor had not shown himself to be a member of his proposed class because he was not a Venezuelan national or TdA member, requirements to be designated an alien enemy under the Proclamation. ECF No. 17, at 6; *see also id.* at 8 (noting that Lor's notice to appear and removal proceedings took place years before the Proclamation was issued).

On June 6, Schroeder replied to the government's opposition papers. ECF No. 18. In that reply, Schroeder contended that the government's evidence of Lor's removal under the INA was an "unnoticed allegation." *Id.* at 3. Failing to respond to the government citation of binding precedent to the contrary, Schroeder contended that the government's assertion that this Court lacked jurisdiction in habeas violated the Suspension Clause. *Id.* at 4–6; *but see Rauda*, 55 F.4th at 779–80. He continued to contend, without evidence or authority in support, that the government was not removing Lor under the INA but under some unspecified war power. ECF No. 18, at 8. He claimed that Lor's counsel had an entitlement to notice when the government initially sought to remove Lor, again without citing any authority, and ignoring the evidence that

Lor had already received due process in his immigration proceedings. *Id.* at 9, 14. He contended, falsely, that "the Government has yet to provide exact notice of which crimes and where and how and why they resulted in the near-removal of" Lor. *Id.* at 16; *but see* ECF No. 16-1. And Schroeder accused the government, without evidence, of using the INA "to accomplish process-less death sentences, indefinite detentions, torture, and other horrors" and of the "attempted murder" of Lor. ECF No. 18, at 16.

8. At the hearing on his motions, Schroeder gives evasive, nonresponsive, or conflicting answers to this Court's questions.

On Saturday, June 7, this Court held a hearing on the TRO and class-certification motions, at which Schroeder appeared for the petitioners. ECF No. 32, at 4:5–12. There, Schroeder again contended that the government designated Lor an alien enemy. *See id.* at 9:1–5. In response to this Court's question whether he was "arguing in [his] motion here before this court as [he] did in the Texas federal Court that [he's] seeking an order enjoining [Lor's] removal under the Alien Enemies Act," Schroeder responded affirmatively. *Id.* at 12:13–18. He also asserted jurisdiction under *Boumediene v. Bush*, 553 U.S. 723 (2008). *Id.* at 13:8–14.

This Court next asked why Schroeder contended that Lor did not receive notice of his removal. *Id.* at 14:8–9. Schroeder did not give a responsive answer. *See id.* at 14:10–15:16. This Court asked whether Schroeder disputed any of the documents the government had submitted as evidence that Lor had a removal order under the INA. *Id.* at 15:17–25. Schroeder again gave a nonresponsive answer, instead saying that those documents had not been given to Lor's counsel before the government began to remove Lor. *Id.* at 16:1–11. This Court asked Schroeder whether the government's filing of documents in the Northern District of Texas was "the first time [Schroeder had] actually received notice about" Lor's immigration history. *Id.* at 16:17–19. Schroeder admitted that he "had a little bit of history" because he was a California attorney and

Lor's crime was committed there. *Id.* at 16:20–17:1. This Court attempted to clarify the extent of Schroeder's previous knowledge of Lor's immigration history and the relevant documents, but Schroeder continued to give nonresponsive answers. *Id.* at 17:13–19:13. Eventually, Schroeder stated that he first received the documents via the government's opposition to his first TRO motion in the Northern District of Texas. *Id.* at 20:2–10.

With that information, this Court next asked Schroeder about the government's arguments as to the INA. *Id.* at 20:15–18. He responded that "this is not a normal immigration way of handling a removal" and again asserted—without citing authority—that the government should have provided notice of the removal to Lor's counsel first. *Id.* at 20:23–21:8. Redirecting Schroeder from discussing a different case, this Court asked him whether he understood that the government's position was that it had already provided Lor multiple notices before his removal. *Id.* at 22:2–11. Schroeder partially agreed that he was "not really pushing the Alien Enemies Act" but instead "saying that there is an exception then within [the INA] that . . . will entitle [Lor] not to be subject to removal." *Id.* at 23:21–25, 24:4–5. But he added that "the government cannot remove anyone to Laos or anywhere else without the sovereign consent of those nations," and that even if removal proceedings had been proper, there would remain legal questions because the law must "ensure that people aren't killed or destroyed because a removal order is not a license to kill." *Id.* at 24:5–14.

This Court sought Schroeder's concession that Lor's removal was allowed pursuant to the INA so long as the process was followed correctly and that Schroeder's only remaining argument was that Laos "may not want to receive or may refuse to receive" Lor. *Id.* at 24:15–21. Schroeder did not answer, instead reviving his argument that due process had been violated because Lor and his counsel had "not been informed or told where he's going." *Id.* at 24:22–25:13.

This Court returned to the question of its jurisdiction, to which Schroeder answered with nonresponsive statements about policy, followed by an assertion that this Court had jurisdiction purely because Lor's custodian was in Guam. *Id.* at 25:14–26:17.

Asked whether Lor's removal order stated the location to which he would be removed, Schroeder asserted that he had not been served with the order and that it had not been given to him in "any normal way." *Id.* at 26:18–24. When asked whether he had received notice of the removal order, Schroeder equivocated—responding that he had received it "through the Court, not in a normal way." *Id.* at 27:1–7.

Schroeder continued to shift positions on whether Lor was being removed under the Proclamation. In response to this Court's statement that Lor "is not in custod[y] or facing removal under the proclamation that [Schroeder said] he is or under the Alien Enemies Act," *id.* at 30:10–13, Schroeder responded that it was "extremely unclear" whether that assessment was accurate because the government had given him no notice before attempting to remove Lor. *Id.* at 30:13–16; *see also id.* at 31:4–8 (reiterating that it was not "clear at all" that Lor was being removed "pursuant to the removal order issued by the immigration judge"). But Schroeder refused to agree that he was alleging Lor was instead being removed under the AEA and Proclamation. *Id.* at 32:22–33:18. This Court again sought clarification whether Schroeder was retracting the claims that Lor was subject to the Proclamation, and Schroeder said that, although he was not retracting the AEA claims, he was also arguing that the government in general was not "following . . . any law." *Id.* at 33:19–22, 35:7–8.

In rebuttal, Schroeder repeated his argument that under the Suspension Clause, the INA could not bar habeas jurisdiction. *Id.* at 47:4–49:20 (again failing to acknowledge the contrary binding precedent of *Rauda*). He also again asserted that he "definitely and certainly [had] proof

that [he had] not been given" notice. *Id.* at 50:17–21; *but see id.* at 50:25–51:3 (acknowledging that the government had contacted Schroeder just before filing documents in the Northern District of Texas relating to Lor's removal proceedings).

9. This Court dismisses the case for lack of jurisdiction, Schroeder prematurely seeks a stay pending appeal, and Schroeder appeals to the Ninth Circuit, where he repeats his unsupported arguments in a motion for a stay pending appeal and impugns this Court's impartiality without evidence.

After the hearing, Schroeder filed a premature motion to stay this Court's judgment pending appeal, before this Court had entered judgment. ECF No. 21.

On June 9, this Court entered an order denying Schroeder's TRO and class-certification motions, dismissing the amended petition with prejudice, and denying the motion for a stay pending appeal as premature. ECF No. 25. This Court observed that Schroeder's filings did not "address or rebut" the government's evidence that Lor was being removed under the INA. *Id.* at 6 ("Ultimately, Petitioner contends, without evidence, that the Respondents' proffer is misleading as to the true reasons for [Lor]'s removal."); *see also id.* at 7–8 ("[D]espite the court's efforts . . . to have Petitioner identify independent grounds for the court's jurisdiction under the INA, Petitioner ultimately agrees with Respondents: the claims asserted in the Amended Petition are predicated on Petitioner's purported detention and removal under the AEA and the President's statements or proclamations made thereunder. . . . [T]his is contrary to the evidence provided and to the limitation of this court's jurisdiction under the INA."). Final judgment dismissing the case was entered. ECF No. 26. Lor was removed to Laos shortly after. *See* Ex. D ("Mot. for Stay Pending Appeal"), at 14.

That day, Schroeder filed a petition for leave to appeal in the Ninth Circuit under 28 U.S.C. § 1292(b)—even though this Court had entered final judgment and had not certified a question for interlocutory appeal. Ex. E ("Pet. for Leave to Appeal"). He then filed a motion for

a stay pending appeal in that case, contending yet again that the government had not provided Lor due process and that there was a "functional suspension" of habeas corpus. Mot. for Stay Pending Appeal 9. He contended that the government's removal of Lor had been in contempt of this Court's June 2 order by failing to give 48 hours of advance notice. *Id.* at 14. Finally, he attacked this Court's impartiality, contending that this Court was "doing [this Court's] best not to catch the eye of the President or his supporters to maintain [this Court's] position as Chief Judge for as long as possible." *Id.* at 15–16.

On June 10, Schroeder filed a notice of appeal of this Court's judgment, ECF No. 28, initiating a separate case in the Ninth Circuit.

On June 12, the Ninth Circuit issued an order dismissing the petition for leave to appeal because this Court did not certify its order for interlocutory appeal. ECF No. 29, at 2. The court of appeals further denied the motion for a stay pending appeal. *Id.* Finally, the court left in effect the briefing schedule in the case initiated by the notice of appeal. *Id.* That appeal is still pending.

Legal Standard

This Court may require an attorney to pay "excess costs, expenses, and attorneys' fees" for "multipl[ying] the proceedings in any case unreasonably and vexatiously." *Lake v. Gates*, 130 F.4th 1064, 1070 (9th Cir. 2025) (quoting 28 U.S.C. § 1927). These sanctions are available for "unnecessary filings and tactics once a lawsuit has begun." *In re Keegan Mgmt. Co. Sec. Litig.*, 78 F.3d 431, 435 (9th Cir. 1996); *see also In re Girardi*, 611 F.3d 1027, 1064 (9th Cir. 2010) (R. & R. of Tashima, J., as special master) (describing "§ 1927's duty to correct or withdraw litigation positions after it becomes obvious that they are meritless"). These sanctions are imposed "personally" on the attorney. 28 U.S.C. § 1927. Sanctions under § 1927 "must be supported by a finding of subjective bad faith," meaning that the attorney "knowingly or recklessly" either "raises a frivolous argument" or "argues a meritorious claim for the purpose of

harassing an opponent." *Lake*, 130 F.4th at 1070 (quoting *Blixseth v. Yellowstone Mountain Club, LLC*, 796 F.3d 1004, 1007 (9th Cir. 2015)).

This Court also has the inherent power to issue sanctions "when a party has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 (1991) (quoting *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 258–59 (1975)). Although "recklessness, without more, does not justify sanctions under a court's inherent power," sanctions are nonetheless "available for a variety of types of willful actions, including recklessness when combined with an additional factor such as frivolousness, harassment, or an improper purpose." *Fink v. Gomez*, 239 F.3d 989, 993–94 (9th Cir. 2001).

A finding of subjective bad faith may be based on considerations such as the timing of the filing and the frivolous nature of the filing. *See Lake*, 130 F.4th at 1070. Obduracy—or stubborn persistence—also satisfies the bad-faith requirement. *In re Itel Secs. Litig.*, 791 F.2d 672, 675 (9th Cir. 1986). Mental state may be inferred from all the circumstances, *see, e.g.*, Guam Rules of Pro. Conduct r. 1.0(a), (f). Although the burden of proof necessary to establish bad faith for compensatory sanctions is an open question in the Ninth Circuit, a finding by clear and convincing evidence suffices. *Lahiri v. Universal Music & Video Distribution Corp.*, 606 F.3d 1216, 1219 (9th Cir. 2010); *In re Facebook, Inc. Consumer Privacy User Profile Litig.*, 655 F. Supp. 3d 899, 925 (N.D. Cal. 2023).

An attorney acts recklessly by "depart[ing] from ordinary standards of care [in a way] that disregards a known or obvious risk of material misrepresentation." *In re Girardi*, 611 F.3d at 1039 n.4. Recklessness also inheres in "failing to live up to [an attorney's] personal obligation" as an attorney of record. *Id.* at 1062 (R. & R. of Tashima, J.) (quoting *In re Mitchell*, 901 F.2d 1179, 1188 (3d Cir. 1990), for the proposition that "[t]he fact that an attorney of record may

make an agreement with some other person, attorney or layman, regarding a division of labor, does not diminish the attorney's *personal responsibility* for compliance with the rules of this court, *and liability for discipline if those rules are not complied with*").

A frivolous filing is one "that is both baseless and made without a reasonable and competent inquiry." *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir. 1990) (en banc)."[T]he mere existence of one non-frivolous claim is not dispositive." *Id.* Although "a more cursory inquiry" by an attorney "will be tolerated" when the attorney must act within a short span of time, such a cursory inquiry is not tolerated when the attorney "has ample time to investigate," *id.* at 1364, or the attorney has notice of evidence refuting the assertion, *see id.* at 1366 (upholding finding of frivolousness for amended complaint alleging involvement of law firm in implementing and administering employment-benefit plan after plan's president and law firm gave sworn statements that law firm had nothing to do with either).

An improper purpose may be manifest even if an assertion is nonfrivolous. *See Fink*, 239 F.3d at 992. Although "mere tardiness" or a "negligent[] fail[ure] to comply with local court rules that required admission to the district court bar" do not constitute an improper purpose, *id.* at 992–93, the filing of an objection in one case to exact fee concessions in another does, *In re Itel*, 791 F.2d at 675. The patent frivolousness of a filing is "highly probative" of the filing's improper purpose, as is "conduct[ing] absolutely no inquiry" before making an assertion. *Townsend*, 929 F.2d at 1362, 1366; *see also In re Girardi*, 611 F.3d at 1063–64 (R. & R. of Tashima, J.) (stating that a "failure to make a reasonable and competent inquiry" of a person's claim—despite being aware that the person "would misrepresent facts"—"constitute[d] evidence of an improper purpose").

Argument

1. Schroeder is liable for sanctions.

a. Schroeder knowingly or recklessly made frivolous arguments.

As laid out above, Schroeder made myriad meritless contentions in his filings in this Court. Most egregiously, Schroeder's assertions that Lor was being removed under the AEA were baseless, and he knew they were.

Schroeder knew about Lor's INA removal order throughout the proceedings in this Court. The government filed Lor's notice to appear, Lor's removal order, and abstract of criminal judgment as exhibits in the Northern District of Texas on May 26, six days before Schroeder initiated proceedings here. *See* Notice of Electronic Filing. And Schroeder admitted in response to this Court's questions that he had actual notice of that filing shortly after it was docketed. ECF No. 32, at 20:2–10; *see also id.* at 50:25–51:3 (stating he immediately responded to that filing by the government, showing that he received actual notice of the filing around 2:11 p.m. Pacific). *Even if* Schroeder may have had a justifiable reason to file his initial pleading in the Northern District of Texas, that reason did not persist as he became privy to evidence that his client was not being removed under the AEA, regardless of whatever objections he had to the propriety of the evidence's service.

And Schroeder also knew that Lor, who is Laotian, would not have been designated an alien enemy under the Proclamation and therefore was not being removed under the AEA. *See* Proclamation § 1, 90 Fed. Reg. at 13,034. So Schroeder had two good reasons to question whether the AEA was really the basis for removing Lor.

Schroeder had multiple opportunities to inquire into that issue. For example, Schroeder and Lor spoke by phone three hours after Schroeder was served the INA removal order and associated documents. *See* ECF No. 22-4, at 12 ¶ 4. Schroeder could have asked Lor then about

the removal order. If Lor indeed denied the validity of his INA removal order to Schroeder, that denial is nowhere alleged or mentioned in Schroeder's filings.

Schroeder could also have looked up information on the Department of Justice's online docket for Lor's removal proceedings using Lor's A-number, which was on the removal order and notice to appear that Schroeder received. That docket reveals that Lor had been ordered removed in March 2018 and that no administrative appeal had been received. *See* Online Docket.[3] And Schroeder was also "working closely" with Lor's immigration counsel, who would have been able to confirm Lor's removal order. *See* ECF No. 7-2 ¶ 5.

And even if Schroeder could not have performed any of that inquiry in the six days before filing his initial petition in this Court, he had ample time to do so as the case developed. *See Townsend*, 929 F.2d at 1364 (stating that, in exigent circumstances, "a more cursory inquiry will be tolerated than when [an attorney] has ample time to investigate").

From the wealth of opportunities Schroeder had to follow up on the removal order he was served in the Northern District of Texas case, this Court can infer that Schroeder *knew* Lor's INA removal order was indeed valid. Other evidence corroborates that conclusion. His equivocating responses to this Court's questioning show that he knew his position was baseless. *E.g.*, ECF No. 32, at 32:1–21 ("MR. SCHROEDER: Well, there is an allegation that [Lor] can be lumped in[with Venezuelan nationals]. . . . THE COURT: So are you saying your client is being included with the Venezuelan nationals as he's being removed? MR. SCHROEDER: And what I'm saying is that there is more than one proclamation."). This Court can also conclude that

[3] Exec. Off. for Immigr. Rev., U.S. Dep't of Justice, *Automated Case Information*, https://acis.eoir.justice.gov/en/ (last visited Aug. 1, 2025).

Schroeder knew that his arguments were frivolous because his behavior, as explained below, manifested the improper purpose of blocking Lor's lawful removal to Laos.

Separately from his repeated baseless assertions that Lor was being removed under the AEA, Schroeder also knew that this Court lacked jurisdiction in habeas to enjoin the execution of Lor's removal order. *See* 8 U.S.C. § 1252(g); *Rauda*, 55 F.4th at 777. Indeed, his assertions to this Court that the government's arguments effectively meant that the writ was suspended as to Lor, *see* ECF No. 18, at 4–5; ECF No. 32, at 29:19–30:9, 33:11–18, 47:4–20, 49:11–20, indicate that Schroeder understood this legal conclusion. But instead of acknowledging the contrary binding precedent of *Rauda* and reasonably arguing for its reversal, *see* Fed. R. Civ. P. 11(b)(2), Schroeder repeatedly refused to give responsive answers—or gave shifting answers—to this Court's questioning about the bases for his claims. *E.g.*, *compare* ECF No. 32, at 12:13–18, *with id.* at 23:21–25, 24:4–5, *with id.* at 32:22–33:18, *with id.* at 33:19–22, 35:7–8. This Court should infer that he knew his position was baseless.

And even if Schroeder did not *know* that his arguments were frivolous, at a minimum, he *recklessly* maintained his frivolous arguments. It is not just that a reasonable attorney in his circumstances would have made the proper inquiry. He was on notice from the documents filed in the Northern District of Texas that Lor was indeed being removed under an INA removal order, with multiple ways of corroborating that information, yet he nevertheless persisted in asserting otherwise. His conduct—even without assuming knowledge—was thus a "departure from ordinary standards of care that disregard[ed] a known or obvious risk of material misrepresentation." *In re Girardi*, 611 F.3d at 1038 n.4.[4]

[4] That Schroeder knew his arguments were frivolous is even more likely because he holds himself out as an expert in immigration and habeas law. *See* ECF No. 7-1, at 13; ECF No. 7-2 ¶¶ 2–3; ECF No. 32, at 33:22–36:4, 50:25–52:9. And even if he did not know his arguments were frivolous, his expertise implies recklessness with even greater force, for the "ordinary standards of care" are higher for an expert in that subject matter.

Thus, clear and convincing evidence demonstrates that Schroeder knowingly or recklessly made frivolous arguments.

b. Schroeder made his frivolous filings for an improper purpose—to delay the government's lawful execution of Lor's removal to Laos.

Clear and convincing evidence also shows that Schroeder made his frivolous filings for an improper purpose. The patent frivolousness of Schroeder's filings is "highly probative" of their improper purpose. *Townsend*, 929 F.2d at 1362. Indeed, as noted in *Townsend*, "conduct[ing] absolutely no inquiry" is sufficient to sustain a finding of improper purpose. *Id.* at 1366. And here, there is no indication that Schroeder inquired into the accuracy of the government's evidence that would obviate any basis for the habeas petition.

Schroeder's improper purpose is also evident from the timing of his filings. He filed a habeas petition in this Court, *see* ECF No. 1 (filed June 1), after having lost his initial TRO motion in the Northern District of Texas, *see* ECF No. 16-3 (entered May 26), and filing a renewed TRO motion and motion to transfer venue in that court, *see* ECF No. 16-5 (filed May 26); ECF No. 22-4 (filed May 28), both of which were still pending. Because he had lost his initial TRO motion—based on the government's evidence that Lor was being removed under the INA, not the AEA—and because the Northern District of Texas had rescinded its prohibition on Lor's removal under the INA, ECF No. 16-3, at 4, Lor was subject to removal at any time. Given the recent high-profile litigation on the validity of the Proclamation and removals under the AEA, *see J.G.G.*, 145 S. Ct. 1003; *A.A.R.P. v. Trump*, 145 S. Ct. 1364 (2025), the filing of another habeas petition to challenge Lor's removal as "under the AEA" exhibits the improper purpose of being designed to prevent the government's execution of Lor's lawful removal under the INA.

c. Schroeder's obduracy in the face of repeated notice that his arguments were baseless constitutes bad faith.

A separate basis for a finding of bad faith is Schroeder's obduracy. He was stubbornly persistent in making baseless arguments despite ample notice, as described above, of the fact that Lor had a removal order under the INA, *see* ECF No. 16-1; that Lor was not subject to the Proclamation as a Laotian, *see* Proclamation § 1, 90 Fed. Reg. at 13,034; and that this Court did not have jurisdiction in habeas over what amounted to a challenge to the execution of Lor's removal order, 8 U.S.C. § 1252(g). And that persistence continues today on appeal.

2. This case is especially deserving of substantial monetary sanctions.

Under 28 U.S.C. § 1927, this Court may impose on a sanctioned attorney "personally" "the excess costs, expenses, and attorneys' fees reasonably incurred because of [the attorney's] conduct." *Id.* And under its inherent powers, this Court may award compensatory sanctions for all fees and costs "incurred 'because of' the misconduct," including "fees and costs incurred in moving for sanctions." *In re Facebook*, 655 F. Supp. 3d at 925–26 (quoting *Pennsylvania v. Del. Valley Citizens' Counsel for Clean Air*, 478 U.S. 546, 564 (1986)).

Substantial sanctions awards are justified by a pattern of misconduct. *See Chambers*, 501 U.S. at 56–57 (full reasonable attorney's fees awarded against party whose actions "were 'part of [a] sordid scheme of deliberate misuse of the judicial process'" designed to defeat opponent's claim "by harassment, repeated and endless delay, mountainous expense and waste of financial resources" (alteration in original) (quoting *NASCO, Inc. v. Calcasieu Television & Radio, Inc.*, 124 F.R.D. 120, 128 (W.D. La. 1989))). They are also warranted in extreme cases of reckless or willful misconduct. *See In re Girardi*, 611 F.3d at 1066–67 (R. & R. of Tashima, J.) (assessing hundreds of thousands of dollars in sanctions for "the persistent use of known falsehoods").

And sanctions are important as a deterrent to further misconduct by the sanctioned attorney and by members of the bar generally—especially when the case at issue "may mislead the public and cause baseless concern about a topic of national importance." *Lake*, 130 F.4th at 1070 (in the Rule 11 context); *see also Lucas v. Jos. A. Bank Clothiers, Inc.*, 217 F. Supp. 3d 1200, 1208 (S.D. Cal. 2016) ("Faced with the kind of litigation misconduct established here, a court is duty bound to take action to redress it, and to try to deter future misconduct. To do nothing, or to simply dismiss a case under aggravated circumstances like these, creates a risk that courts will be viewed by unscrupulous litigants as an organ for committing fraud.").

a. Schroeder's willful misconduct exhibits gross disrespect for the law.

"The court cannot and will not tolerate members of the bar employing the use of known falsehood to further their objectives, no matter how appealing the underlying cause of their clients may be." *In re Girardi*, 611 F.3d at 1067 (R. & R. of Tashima, J.). But that is what Schroeder has done. Having been warned multiple times that his client had a valid removal order, Schroeder nevertheless persisted in delaying the lawful execution of that order, claiming without any basis in fact that the government was treating Lor as an alien enemy under the Proclamation. And he has refused to give straight answers when challenged on the grounds for his claims—not only at this Court's June 7 hearing, but also in failing to respond to the government's jurisdictional objections based on 8 U.S.C. § 1252(g), despite the Northern District of Texas's order to do so. That is not the conduct of a forthright but mistaken advocate. His evasiveness evidences knowledge of his guilt and an unwillingness to accept responsibility for his actions.

Schroeder's pattern of knowing or reckless misrepresentations has extended to three separate courts, including this Court. He multiplied proceedings unnecessarily and abused judicial process for the improper purpose of obstructing the enforcement of the immigration

laws. In short, none of what Schroeder has done is becoming of a lawyer. He deserves substantial sanctions.

b. Deterrence is especially important in a case like this, which touches on issues of national importance.

Sanctions are especially warranted because Schroeder's contentions "may mislead the public and cause baseless concern about a topic of national importance." *Lake*, 130 F.4th at 1070 (in the Rule 11 context). Removal under the Proclamation and the AEA is an active area of litigation throughout the country, having reached the Supreme Court twice so far. *See J.G.G.*, 145 S. Ct. 1003; *A.A.R.P.*, 145 S. Ct. 1364. Frivolously asserting that a valid INA removal is occurring under the contested Proclamation needlessly inflames an already heated debate. Sanctions are needed to deter further frivolous claims that would stoke unnecessary controversy.

It is essential to deter attorneys from bringing groundless actions to delay or defeat the enforcement of the law. Doing so evidences a lack of respect for the law. *Contra, e.g.*, Guam Rules of Pro. Conduct r. 8.4(d). And especially in a case like this, touching on a topic of "national importance," *Lake*, 130 F.4th at 1070, a failure to deter will encourage the filing of similar actions around the country in attempts to forestall lawful removals. Such filings would hamstring the effective removal of aliens unlawfully in the United States, including those with serious criminal histories such as Lor, threatening the public safety. *See Preventing Abuses* 2. It is thus crucial to use substantial monetary sanctions to deter widespread improper filings in removal cases like this one.

Conclusion

This Court should impose sanctions "personally" on Schroeder under 28 U.S.C. § 1927 and this Court's inherent powers. The sanctions should include compensatory sanctions for "the excess costs, expenses, and attorneys' fees reasonably incurred because of [his] conduct."

28 U.S.C. § 1927; *see also In re Facebook*, 655 F. Supp. 3d at 925–26 (compensatory sanctions available under inherent powers for costs and fees incurred because of sanctioned conduct). This Court should further impose nonmonetary sanctions to the extent that this Court finds just and proper.

RESPECTFULLY SUBMITTED this 1st day of August, 2025.

SHAWN N. ANDERSON
United States Attorney
Districts of Guam and the NMI

By: /s/ Mikel W. Schwab
MIKEL W. SCHWAB
JESSICA F. CRUZ
Assistant U.S. Attorneys

YAAKOV M. ROTH
Principal Deputy Assistant Attorney General
Civil Division

By: /s/ Christopher Ian Pryby
CHRISTOPHER IAN PRYBY
Trial Attorney

Counsel for Respondents–Defendants