UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TOUNI GHAMELIAN

Petitioner,

v.

NIKITA BAKER, *in her official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Baltimore Field Office*,

KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security*,

Respondents.

AMENDED PETITION FOR A WRIT OF HABEAS CORPUS

Case No. 1:25-cv-01206-SAG

INTRODUCTION

1. Petitioner Touni Ghamelian ("Petitioner") hastily filed a habeas petition on July 1, 2025, to prevent potentially imminent removal to an unknown country without due process. Since the filing of that petition, new facts have come to light. This amended petition for a writ of habeas corpus amends the factual basis for the petition and the relief sought.

2. In brief, upon learning that Respondents re-detained Petitioner for the purpose of pursuing his removal to Mexico or Spain, Petitioner filed with the Board of Immigration Appeals an emergency motion to reopen. Exh. A in support of Petitioner's Traverse and Opposition to Respondents' Motion to Dismiss. The motion seeks reopening for three reasons: (i) to prevent a gross miscarriage of justice because a precedential decision issued in 2015 by the U.S. Court of Appeals for the Ninth Circuit, the jurisdiction in which Petitioner's removal proceedings were conducted, establishes that Petitioner's conviction does not render him removable as charged and that he should be restored to lawful permanent resident status; (ii) to afford Petitioner an

opportunity—his first ever—to demonstrate before an immigration judge that his life or freedom would be threatened in Mexico; and (iii) to permit Petitioner to apply for withholding of removal under 8 U.S.C. § 1231(b)(3)(A), and deferral and withholding of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988) ("CAT") (collectively, "fear-based relief from removal"), based on materially changed circumstances in Iran.

3. Petitioner seeks the following relief: (i) an order staying his removal while he pursues administrative and judicial review of his emergency motion to reopen; (ii) an order requiring Respondents to provide Petitioner with reasonable notice and a meaningful opportunity to be heard regarding any claim Petitioner may have to fear-based relief from removal, should Respondents seek to remove Petitioner to a country other than Iran, Spain, or Mexico; (iii) an order requiring Respondents to release Petitioner until such time as his removal is shown to be significantly likely in the reasonably foreseeable future.

JURISDICTION AND VENUE

4. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq*.

5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 *et seq*. (habeas corpus); art. I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); 5 U.S.C. § 701 (Administrative Procedure Act); and 28 U.S.C. § 2201 (injunctive relief pursuant to the Declaratory Judgment Act).

6. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their detention. *See, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Habeas is also the appropriate vehicle to challenge a removal that does not comply with the Constitution or duly enacted statutes. *See Heikkila v. Barber*, 345 U.S. 229, 235-36 (1953) (recognizing availability of habeas to vindicate due process rights violated by deportation procedures); *see also Trump v. J.G.G.*, 604 U.S. ___, 2025 WL 1024097 at *1 (Apr. 7, 2025) (holding that individuals whom the government seeks to deport in circumvention of the immigration laws under the Alien Enemies Act can challenge their removal in habeas).

7. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this district and division at Immigration and Customs Enforcement's ("ICE's") Baltimore Hold Room Facility in Baltimore, Maryland.

REQUIREMENTS OF 28 U.S.C. § 2243

8. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

9. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and

imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

10. Petitioner Touni Ghamelian is an Iranian citizen of Armenian heritage who is detained at Port Isabel Service Detention Center in Los Fresnos, Texas. When these proceedings commenced, Petitioner was detained by Respondents in the State of Maryland. As an ethnic Armenian and Christian, Petitioner fled Iran's fundamentalist regime with his family when he was a young boy. Petitioner was admitted to the United States as a refugee on December 4, 1986, at the age of 10. Petitioner later adjusted status to lawful permanent resident. Petitioner faces imminent removal to Spain, Mexico, or some other unknown country. On April 30, 1998, an Immigration Judge ordered Petitioner removed to Spain, or in the alternative, to Iran, and denied Petitioner's application for withholding of removal.

11. Respondent Nikita Baker is the Field Office Director of the ICE Enforcement and Removal Operations Baltimore Field Office and is the federal agent charged with overseeing all ICE detention centers in Maryland. Ms. Baker is a legal custodian of Petitioner. She is sued in her official capacity.

12. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). She is sued in her official capacity.

LEGAL FRAMEWORK

Protection for Individuals who Fear Harm and the Convention Against Torture

13. Noncitizens in immigration removal proceedings can seek three main forms of relief based on their fear of returning to their home country: asylum, withholding of removal, and

relief under the regulations implementing the Convention Against Torture ("CAT"). There are several circumstances that can make a noncitizen ineligible for asylum. *See* 8 U.S.C. § 1158(a)(2). There are fewer restrictions on eligibility for withholding of removal, *id.* § 1231(b)(3)(B)(iii), and no restrictions on eligibility for CAT deferral of removal. 8 C.F.R. § 1208.16.

14. To be granted withholding of removal, a noncitizen must show that his or her "life or freedom would be threatened in [his or her country of origin] because of [his or her] race, religion or nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A). The noncitizen will be ineligible for withholding of removal if an Immigration Judge finds that the noncitizen, "having been convicted by a final judgment of a particularly serious crime is a danger to the community of the United States." 8 U.S.C. § 1231(b)(3)(B)(ii).

15. To be granted CAT relief, a non-citizen must show that "it is more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. §1208.16(c)(2). An applicant for withholding of removal or CAT relief must show a higher likelihood of persecution or torture than the likelihood of persecution an asylum applicant must demonstrate. *See id*; 8 C.F.R. §1208.16(b).

Statutory Framework for Third Country Removal

16. Congress established the statutory process for designating countries to which noncitizens may be removed, 8 U.S.C. § 1231(b)(1)-(3).[1]

[1] References to the Attorney General in Section 1231(b) refer to the Secretary of DHS for functions related to carrying out a removal order and to the Attorney General for functions related to selection of designations and decisions about fear-based claims. 6 U.S.C. § 557. The Attorney General has delegated the latter functions to the immigration courts and Board of Immigration Appeals. *See* 8 C.F.R. §§ 1208.16, 1208.17, 1208.31,1240.10(f), 1240.12(d).

17. In removal proceedings, the Immigration Judge designates a country of removal pursuant to the criteria identified in subsections (b)(1) and (b)(2). An immigration judge is under no obligation to consider fear-based claims about a country that is not a "proposed country of removal." *See* 8 C.F.R. § 1208.16(b). As was discussed by the court in *D.V.D. v. DHS*, raising all the countries in which a noncitizen would have a fear-based claim is "both impossible as a practical matter, since the immigration court does not normally consider claims about countries no proposed as a country of removal, and fails to consider that conditions change in countries . . . over time." __ F. Supp. 3d __, 2025 WL 1142968, at *20 (D. Mass. 2025).

18. Subsections (b)(1) and (b)(2) designate countries and alternative countries to which the noncitizen may be removed. 8 U.S.C. §§ 1231(b)(1)(B)–(C), 1231(b)(2)(A)–(E). Critically, both Subsections (b)(1) and (b)(2) have a specific carve-out provision prohibiting removal of persons to countries where they face persecution or torture. Specifically, § 1231(b)(3)(A), entitled "Restriction on removal to a country where [noncitizen's] life or freedom would be threatened," reads:

> **Notwithstanding paragraphs [b](1) and [b](2)**, the Attorney General **may not remove** [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion.

Id. § 1231(b)(3)(A) (emphasis added).

19. Similarly, with respect to the CAT, the implementing regulations allow for removal to a third country, but only where they are not likely to be tortured; "The immigration judge shall also inform the [noncitizen] that removal has been deferred only to the country in which it has been determined that the [noncitizen] is likely to be tortured, and that the

[noncitizen] may be removed at any time to another country where he or she is not likely to be tortured." 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2).

20. The implementing regulations also permit removal to a third country if the Secretary of State has "obtained from the government of a specific country that an alien would not be tortured there if the alien were removed to that country." 8 C.F.R. § 1208.18(c)(1). The regulations further provide that "the Attorney General shall determine, in consultation with the Secretary of State, whether the assurances are sufficiently reliable to allow the [noncitizen's] removal to that country consistent with Article 3 of the Convention Against Torture." 8 C.F.R. § 1208.18(c)(2)

Due Process Requirements for Presentation of Fear-Based Claims Before Third-Country Removals

21. For individuals in removal proceedings, the on-the-record designation of a country or countries of removal provides notice and an opportunity to permit a noncitizen who fears persecution or torture in the designated country (or countries) to file an application for protection. *See* 8 C.F.R. § 1240.10(f) (stating that the "immigration judge shall notify the [noncitizen]" of the proposed countries of removal); 8 C.F.R. § 1240.11(c)(1)(i) ("If the [noncitizen] expresses fear of persecution or harm upon return to any of the countries to which the [noncitizen] might be removed pursuant to § 1240.10(f) . . . the immigration judge shall . . . [a]dvise [the noncitizen] that he or she may apply for asylum in the United States or withholding of removal to those countries[.]").

22. Pursuant to § 1231(b)(3)(A), courts have repeatedly held that individuals cannot be removed to a country that was not properly designated by an IJ if they have a fear of persecution or torture in that country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.

1999); *see also Kossov v. INS*, 132 F.3d 405, 408–09 (7th Cir. 1998); *El himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf. Protsenko v. U.S. Att'y Gen.*, 149 F. App'x 947, 953 (11th Cir. 2205) (per curiam) (permitting designation of third country where individuals received "ample notice and an opportunity to be heard").

23. The Supreme Court of the United States has held that "[T]he Fifth Amendment entitles [noncitizens] to due process of law." *A.A.R.P. v. Trump*, 605 U.S. ___, ___, 145 S. Ct. 1364, 1367 (2025) (quoting *Trump v. J. G. G.*, 604 U.S. ___, ___, 145 S. Ct. 1003, 1006 (2025) (per curiam) (slip op., at 3)). The Court has also held that notice of removal must be such that it allows noncitizens to "actually seek habeas relief . . . before such removal occurs." *Trump v. J. G. G.*, 145 S. Ct. at 1006.

24. Indeed, notice is only meaningful if it is presented sufficiently in advance of the deportation to stop the deportation, is in a language the person understands, and provides for an automatic stay of removal for a time period sufficient to permit the filing of a motion to reopen removal proceedings so that a third country for removal may be designated as required under the regulations and the noncitizen may present a fear-based claim. *Andriasian*, 180 F.3d at 1041; *see Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019) ("A noncitizen must be given sufficient notice of a country of deportation [such] that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation.").

25. Providing such notice and opportunity to present a fear-based claim prior to deportation also implements the United States' obligations under international law. *See* United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United

National Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8 U.S.C. § 1231(b)(3)); *see also INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting that the Refugee Act of 1980 "amended the language of [the predecessor statute to § 1231(b)(3)], basically conforming it to the language of Article 33 of the United Nations Protocol"); United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature Dec. 10, 1984, art. III, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, 114; FARRA at 2681–822 (codified at Note to 8 U.S.C. § 1231) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subject to torture, regardless of whether the person is physically present in the United States."); United Nations Committee Against Torture, General Comment No. 4 ¶ 12, 2017, Implementation of Article 3 of the Convention in the Context of Article 22, CAT/C/GC/4 ("Furthermore, the person at risk [of torture] should never be deported to another State where he/she may subsequently face deportation to a third State in which there are substantial grounds for believing that he/she would be in danger of beings subjected to torture.").

Detention of Noncitizens with a Removal Order

26. 8 U.S.C. § 1231 governs the detention of noncitizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)-(6). The "removal period" begins once a noncitizen's removal order "becomes administratively final." 8 U.S.C. § 1231(a)(1)(B).[2] The removal period lasts for 90 days, during which ICE "shall remove the [noncitizen] from the United States" and

[2] There are two other events that trigger the start of the removal period, which are not applicable here. *See* 8 U.S.C. § 1231(a)(1)(B)(ii)-(iii).

"shall detain the [noncitizen]" as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the noncitizen within the 90-day removal period, the noncitizen "may be detained beyond the removal period" if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6) (emphasis added).

27. Revocation of release for individuals with final removal orders whom ICE released after their 90 day removal period is governed by 8 C.F.R . § 241.4. Revocation of release is only authorized when (1) the purposes of release have been served; (2) the noncitizen violates a condition of release; (3) it is appropriate to enforce a removal order or to commence removal proceedings against a noncitizen; or (4) the conduct of the non-citizen, or any other circumstance, indicates that release would no longer be appropriate. 8 C.F.R. 241.4(l)(2)(i-iv). Revocation under this regulation is subject to strict requirements regarding the procedure for revocation. 8 C.F.R. § 241.4(l).

28. Revocation of release for individuals whom ICE released following a determination by the Headquarters Post-Order Detention Unit (HQPDU) that there is no significant likelihood of removal in the reasonably foreseeable future is governed by 8 C.F.R. § 241.13. They may be re-detained only if they violate a condition of release or ICE has determined that, due to changed circumstances, their removal is suddenly significantly likely in the reasonably foreseeable future. 8 C.F.R. § 241.13(i); *see Probodanu v. Sessions*, 387 F. Supp. 3d 1031, 1041 (C.D. Cal. 2019) (explaining sole grounds for revocation of release of noncitizen released on order of supervision); *see also Djadju v. Vega*, 32 F. 4th 1102, 1109 (11th Cir. 2022) (noting that government "conceded at oral argument that before it could redetain [the noncitizen], it would need to overcome various administrative hurdles -- showing, for example,

that [the noncitizen] violated the order of supervision, or that he would likely be removed in the reasonably foreseeable future -- making it unlikely that he would be re-detained while the administrative stay is in place.").

29. To avoid "indefinite detention" that would raise "serious constitutional concerns," the Supreme Court in *Zadvydas* construed § 1231(a)(6) to contain an implicit time limit. 533 U.S. at 682. *Zadvydas* dealt with two noncitizens who could not be removed to their home country or country of citizenship due to bureaucratic and diplomatic barriers. The Court held that § 1231(a)(6) authorizes detention only for "a period reasonably necessary to bring about the [noncitizen]'s removal from the United States." *Id.* at 689. Six months of post-removal order detention is considered "presumptively reasonable." *Id.* at 701.

30. But the "*Zadvydas* Court did not say that the presumption is irrebuttable, and there is nothing inherent in the operation of the presumption itself that requires it to be irrebuttable." *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008). "Within the six-month window," the noncitizen bears the burden of "prov[ing] the unreasonableness of detention." *Id.* Once six months have elapsed since the "removal period" began, if there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the Government to justify continued detention. *Zadvydas*, 533 U.S. at 701; *see also Cesar*, 542 F. Supp. 2d at 903 ("[T]he presumption scheme merely suggests that the burden the detainee must carry within the first six months of [postorder] detention is a heavier one than after six months has elapsed").

FACTS

31. Petitioner is an Iranian national. He is ethnically Armenian and Christian. As a young boy, he and his family fled Iran's Islamic fundamentalist regime. He has resided in the United States since 1986, having entered the country as a refugee when he was approximately nine years old with his parents and brother and was granted lawful permanent resident. His parents and brother are U.S. citizens. He is also the father to a U.S. citizen son with his long-time U.S. citizen domestic partner, as well as a small business owner in Maryland, slated to soon open a brick-and-mortar restaurant.

32. On October 22, 1996, Petitioner plead guilty to voluntary manslaughter, in violation of the California Penal Code, an offense the Ninth Circuit later determined is not an aggravated felony. On December 27, 1997, Respondents issued Petitioner a Notice to Appear, alleging Petitioner was deportable for having been convicted of an aggravated felony. ECF No. 8-2. Petitioner was detained for approximately one month before being granted bond. The presiding immigration judge sustained the ground of deportability. ECF No. 8-4 at 2. On April 30, 1998, the immigration judge denied Petitioner's application for withholding of removal based on a determination that Petitioner's conviction constituted a "particularly serious crime" that barred him from eligibility for withholding of removal. *Id.* at 8-4 at 10-11; 8 U.S.C. § 1231(b)(3)(B)(ii). The immigration judge did not reach the merits of Petitioner's claim that he was more likely than not to face persecution in Iran, and undertook a cursory analysis of Petitioner's application for protection under the Convention Against Torture, merely stating that the court "considered matters under the torture convention" and declaring "there is simply nothing that would point to any reasonable expectation that by government auspices, this young would be subject to torture." ECF No. 8-4 at 11. The immigration judge ordered Petitioner

removed to Spain, or in the alternative, Iran. ECF No. 8-3. Petitioner appealed the Immigration Judge's decision, and on February 10, 2000, the BIA dismissed the appeal. ECF No. 8-5.

33. On April 3, 2003, Respondents issued a Warrant of Removal against Petitioner, ECF No. 8-8, and on information and belief, Petitioner was detained for three months. On November 30, 2004, Petitioner was released pursuant to an Order of Supervision. Exhibit A. Petitioner complied with all aspects of his Order of Supervision and regularly reported to Respondents for check-ins. Petitioner's supervision was reduced over time from monthly check-ins, to three-month check-ins, to six-month check-ins, to annual check-ins. Petitioner was next scheduled to report to Respondents on July 17, 2025.

34. Because Petitioner was subsequently released following the "removal period" contemplated at 8 U.S.C. § 1231(a)(1), Petitioner believes the Respondents were unable to secure travel documents for Petitioner to Spain or Iran.

35. On February 18, 2025, ICE issued a directive encouraging the increased use of third-country removals against individuals like the Petitioner who were previously released from custody notwithstanding their final removal orders because ICE concluded their removal was not significantly likely in the reasonably foreseeable future.

36. On March 30, 2025, DHS issued a memorandum titled Guidance Regarding Third Country Removals ("Memo"). Exhibit B. The memo sets forth new procedures for third country removals where blanket "diplomatic assurances" permit removing noncitizens "without the need for further procedures." Only if blanket diplomatic assurances are not received will the noncitizen be informed of their pending removal to a third country. Then, only if the noncitizen affirmatively expresses a fear of persecution or torture will they be given a fear screening of

some kind. The fear screening is held *within 24 hours* of notification of the third country, and if the bureaucrat who conducts the fear screening determines that the noncitizen does not have a sufficiently reasonable fear of persecution, the noncitizen will be removed with no additional procedures.

37. On July 9, 2025, the acting director of U.S. Immigration and Customs Enforcement issued a memo adding additional guidance to the March 30 Memo. This new memo permits immigration officers to deport noncitizens to third countries *with as little as six hours' notice* in "exigent circumstances." Maria Sacchetti, et al., *ICE Memo Outlines Plan to Deport Migrants to Countries Where They Are Not Citizens*, WASH. POST, July 13, 2025, https://www.washingtonpost.com/immigration/2025/07/12/immigrants-deportations-trump-ice-memo/. The memo further permits deporting noncitizens to countries that have not provided diplomatic assurances within 24 hours' notice to the noncitizen. *Id.*

38. Upon information and belief, DHS and the U.S. Department of State have secured blanket diplomatic assurances from third countries to which they intend to deport noncitizens. Such "assurances" amount to little more than generic commitments not to torture deportees. Apparently, diplomatic assurances from *South Sudan* were deemed sufficiently credible by the U.S. Department of State that DHS deported numerous noncitizens there. Mattathias Schwartz, *Trump Administration Poised to Ramp up Deportations to Distant Countries*, N.Y. TIMES, July 13, 2025, https://www.nytimes.com/2025/07/13/us/south-sudan-third-country-deportations.html.

39. On June 23, 2025, the Supreme Court lifted a preliminary injunction that had previously barred DHS from deporting noncitizens to unspecified third countries without first

providing notice and a meaningful opportunity to challenge removal. *DHS v. D.V.D.*, ___ S. Ct. ___ , 2025 WL 1732103 (June 23, 2025).

40. Petitioner was apprehended by ICE agents at his home in Gaithersburg, Maryland, on Saturday, June 28, 2025. He was initially detained in the Baltimore Hold Room in Baltimore, Maryland and was transferred to Texas on July 1, 2025. He is presently detained at Port Isabel Service Detention Center in Los Fresnos, Texas.

41. On or around June 28, 2025, Respondents provided Petitioner with three documents: a "Notice of Revocation of Release" and two separate "Notices of Removal." The Notice of Revocation of Release states that the decision to revoke release "has been made based on a review of your official alien file and a determination that there are changed circumstances in your case." ECF No. 8-9 at 1. The Notice of Revocation of Release further states, "Your case is *under review* by the Government of Spain and Mexico for the issuance of a travel document to facilitate your removal from the United States." *Id.* (Emphasis added). The Notice of Revocation of Release provides that Petitioner "will promptly be afforded an informal interview at which [he] will be given an opportunity to respond to the reasons for the revocation," and it was signed "for" Respondent Nikita Baker, Acting Field Office Director. *Id.* The "Notices of Removal" only state that "U.S. Immigration and Customs Enforcement (ICE) *intends* to remove you to Mexico [or Spain]." (emphasis added). *See* ECF Nos. 8-10 and 8-11.

42. Petitioner was told by a Deportation Officer that Respondents were attempting to remove him to Mexico or Spain. Petitioner expressed fear of persecution in Mexico, but the Deportation Officer indicated Respondents would still seek to remove Petitioner to Mexico regardless.

CLAIMS FOR RELIEF

COUNT I
Petitioner's Potential Removal Violates the Due Process Clause

43. Petitioner restates and realleges all paragraphs as if fully set forth here.

44. The Due Process Clause of the Fifth Amendment to the U.S. Constitution "entitles aliens to due process of law in the context of removal proceedings." *Trump v. J. G. G.*, 604 U. S. ___, ___ (2025) (per curiam) (slip op., at 3) (internal quotation marks omitted). "Procedural due process rules are meant to protect" against "the mistaken or unjustified deprivation of life, liberty, or property." *Carey v. Piphus*, 435 U. S. 247, 259 (1978). The Court has long held that "no person shall be" removed from the United States "without opportunity, at some time, to be heard." *The Japanese Immigrant Case*, 189 U. S. 86, 101 (1903). Due process requires notice that is "reasonably calculated, under all the circumstances, to apprise interested parties" and that "afford[s] a reasonable time . . . to make [an] appearance." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 314 (1950). In the context of seeking habeas relief, the Court has found "a detainee must have sufficient time and information to reasonably be able to contact counsel, file a petition, and pursue appropriate relief." *A.A.R.P. v. Trump*, 605 U.S. ___, ___, 145 S. Ct. 1364, 1367–68 (2025).

45. If Respondents seek in the future to remove Petitioner to a country other than Iran, Mexico, or Spain, due process requires that they provide Petitioner with notice of that country and a meaningful opportunity to be heard on any fear-based claim to relief from removal he may seek to advance.

46. With respect to Petitioner's pending emergency motion to reopen, due process principles demand that Petitioner's removal be stayed pending administrative and judicial review of that motion.

COUNT II
Petitioner's Potential Removal Violates the Immigration and Nationality Act and Regulations Implementing Convention Against Torture

47. Petitioner restates and realleges all paragraphs as if fully set forth herein.

48. It would be a violation of the INA and the regulations implementing the CAT for Respondents to remove Petitioner without giving him notice of the third country to which he is being removed or a meaningful opportunity to establish that his life or freedom would be threatened in the third country.

49. The INA and the regulations implementing the CAT require an individualized assessment of the risks faced by the noncitizen in the contemplated country of removal.

50. Most recently, United Nations experts, including the Special Rapporteur on torture, have emphasized in light of Respondents' increased use of third country removals the United States' obligation under the CAT to prevent refoulement (the return of an individual to a country where they will likely be tortured), and that prevention of refoulement requires an individualized and country-specific assessment. *See* UN Experts Alarmed by Resumption of US Deportations to Third Countries, Warn Authorities to Assess Risks of Torture, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, https://www.ohchr.org/en/press-releases/2025/07/un-experts-alarmed-resumption-us-deportations-third-countries-warn (July 8, 2025).

51. The UN Committee Against Torture and the International Committee of the Red Cross have emphasized the importance of preventing "chain refoulement."[3] The UN Committee Against Torture has clearly stated that countries' obligations under the CAT require that "the person at risk should never be deported to another State from which the person may subsequently face deportation to a third State in which there are substantial grounds for believing that the person would be in danger of being subjected to torture." General Comment No. 4, UN COMMITTEE AGAINST TORTURE, CAT/C/GC/4, at ¶ 4 (2017), https://www.ohchr.org/en/documents/general-comments-and-recommendations/catcgc4-general-comment-no-4-2017-implementation.

52. The INA prohibits the United States from removing a noncitizen to a country if "the alien's" life or freedom would be threatened in that country because of "the alien's" race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1231(b)(3)(A).

53. The regulations implementing the CAT do not allow the United States to remove an individual to a country based solely on blanket diplomatic assurances from that country's government that it will not persecute or torture deportees from the United States. *See* 8 C.F.R. § 1208.18(c); General Comment No. 4, *supra* para. 48, at ¶ 20 ("[D]iplomatic assurances from a State party to the Convention to which a person is to be deported should not be used as a loophole to undermine the principle of non-refoulement as set out in article 3 of the Convention, where there are substantial grounds for believing that the person would be in danger of being

[3] The International Committee of the Red Cross defines chain refoulement as "the prohibition against transferring a person to an authority where there is a risk that the receiving authority would transfer the person to another authority in violation of the principle of non-refoulement." *Note on migration and the principle of non-refoulement*, Int'l Rev. of the Red Cross, at 5 (2018), https://international-review.icrc.org/sites/default/files/irrc-904-19.pdf

subjected to torture in that State."). Indeed, the regulations make clear that obtaining diplomatic assurances is an extraordinary process, relating to a specific individual, where a select few high-level officers are sufficiently involved to provide such assurance in an individual case. The regulation states that "[t]he Secretary of State may forward to the Attorney General assurances that the Secretary has obtained from the government of a specific country that an alien would not be tortured there if the alien were removed to that country." 8 C.F.R.§ 1208.18(c)(1) (emphasis added); *see also* 8 C.F.R. § 1208.18(c)(2), (c)(3) (referencing "the alien").

54. These references in 8 U.S.C. § 1231(b)(3)(A) and the regulations implementing the CAT to a singular individual ("an alien," "the alien") show that any diplomatic assurance must be specific to the individual and cannot be a categorical diplomatic assurance, covering all individuals deported to a particular country. *See, e.g., Niz-Chavez v. Garland*, 593 U.S. 155, 161 (2021) (examining the "ordinary meaning" of statutory text and finding that "[t]o an ordinary reader—both in 1996 and today—'a' notice would seem to suggest just that: 'a' single document"); *see also Khouzam v. Att'y Gen.*, 549 F.3d 235, 259 (3d Cir. 2008) (finding that notwithstanding diplomatic assurances, a lack of individualized assessment violated due process rights).

55. If Respondents have obtained from Mexico or any other third country to which they may be contemplating removing Petitioner, blanket diplomatic assurances that Petitioner and other deportees from the United States to said third country will not be persecuted or tortured, such blanket assurances do not offer protection against torture by nonstate actors, nor do they address the danger of chain refoulement, as has occurred following a recent third country removal. The U.S. District Court for the District of Massachusetts has concluded that DHS's

March Memo "provides no process whatsoever to individuals whom DHS plans to remove to a country from which the United States has received diplomatic assurances." *D.V.D. v. DHS*, __ F. Supp. 3d __, 2025 WL 1142968, at *22 (D. Mass. 2025).

56. Depriving Petitioner of adequate notice of the country to which he will be removed and of a meaningful opportunity to raise a fear claim, even in the face of blanket diplomatic assurances, would be fundamentally incompatible with the statutory and regulatory prohibition on removal to a country where the noncitizen's life or freedom would be threatened.

57. If Respondents seek in the future to remove Petitioner to a country other than Iran, Mexico, or Spain, the Immigration and Nationality Act and the regulations implementing the Convention Against Torture requires that they provide Petitioner with notice of that country and a meaningful opportunity to be heard on any fear-based claim to relief from removal he may seek to advance.

58. With respect to Petitioner's pending emergency motion to reopen, the Immigration and Nationality Act and the regulations implementing the CAT require that they permit Petitioner to remain in the United States while he pursues administrative and judicial review.

COUNT III
Failure to Adhere to Required Revocation Release Procedures in Violation of the Due Process Clause and 8 C.F.R. § 241.4(l)

59. Petitioner realleges and incorporates by reference the paragraphs above.

60. 8 C.F.R. § 241.4(l) outlines the requirements for revoking a noncitizen's release from immigration detention. The Executive Associate Commissioner for Field Operations has the authority and discretion to revoke a noncitizen's release under four circumstances: the

purposes of release have been served, the noncitizen violations a condition of release, it is appropriate to enforce a removal order, or the noncitizen's conduct or any other circumstance indicated that release would no longer be appropriate. 8 C.F.R. § 241.4(l)(2). The field office district director "may also revoke release" of a noncitizen when (1) revocation is in the public interest, and (2) circumstances "do not reasonably permit" referring the case to the Executive Associate Commissioner for Field Operations. *Id.*

61. Petitioner has not violated any terms of his Order of Supervision, and Respondents have not demonstrated how any of the four circumstances for revoking Petitioner's release have been met. Respondents have also failed to demonstrate how the revocation of Petitioner's release is in the public interest and how the circumstances "do not reasonably permit" referring the case to the Executive Associate Commissioner to justify someone signing "for" Respondent Baker.

COUNT IV
Petitioner's Detention Violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6)

62. Petitioner realleges and incorporates by reference the paragraphs above.

63. 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for "a period reasonably necessary to bring about the alien's removal from the United States." 533 U.S. at 689, 701.

64. On information and belief, Petitioner was detained for approximately one month during his proceedings before the Immigration Judge. The Petitioner was also detained for the entirety of the 90-day removal period in 2004.. Petitioner continues to be detained since June 28, 2025.

65. Petitioner's continued detention has become unreasonable because his removal is not reasonably foreseeable. The Notice of Revocation of Release only states that the Governments of Spain and Mexico are reviewing Petitioner's case for issuance of a travel documents, and the Notices of Removal provide no timeline for Petitioner's removal. Therefore, his continued detention violates 8 U.S.C. § 1231(a)(6), and he must be immediately released.

COUNT IV
Arbitrary Detention in Violation of the Due Process Clause

66. Petitioner restates and realleges all paragraphs as if fully set forth here.

67. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; *accord Flores*, 507 U.S. at 306.

68. The Due Process Clause "[u]ndoubtedly" prohibits arbitrary deprivations of liberty. *In re Kemmler*, 136 U.S. 436, 448–49 (1890).

69. Petitioner's liberty has been and is being deprived arbitrarily. Nothing justifies ICE's action to detain him given his unblemished twenty-one-year compliance with the conditions of his release.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Order Respondents and individuals acting in concert with them to provide adequate notice of any proposed countries of removal other than Mexico or Spain;

2. Order Respondents and individuals acting in concert with them to provide Petitioner a meaningful opportunity to contest removal to Mexico or other proposed third country of removal not yet disclosed to Petitioner.
3. Stay Petitioner's removal until the Board of Immigration Appeals has had an opportunity to decide Petitioner's Motion to Reopen.
4. Order Respondents and individuals acting in concert with them to immediately release Petitioner from Respondent's custody;
5. Enjoin Respondents and individuals acting in concert with them from re-detaining Petitioner unless such re-detention is authorized by law, including 8 C.F.R. § 241.4;
6. Award Petitioner his costs and reasonable attorneys' fees in this action as provided under the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statute; and
7. Grant such further relief as the Court deems just and proper.

Date: July 14, 2025

Respectfully submitted,

By:

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VERIFICATION PURSUANT TO 28 U.S.C. §2242

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner and with Petitioner's family and friends the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Date: July 14, 2025

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Counsel for Petitioner

EXHIBIT LIST

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of July 2025, I electronically filed the foregoing Amended Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief with the Clerk of the Court using the CM/ECF system, and served a copy of such filing via electronic mail upon:

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/s/ K. Catherine Walker
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