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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Juan Sanchez-Hernandez

Petitioner,

v.

Fred Figueroa, Warden, Eloy Detention Center; John E. Cantu, Field Office Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security; Kristi Noem, Secretary of U.S. Department of Homeland Security; and Pam Bondi, Attorney General of the United States, in their official capacities.

Respondents.

No. 2:25-cv-02351-PHX- DWL-MTM

AMENDED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Challenge to Unlawful Incarceration Under Color of Immigration Detention Statutes; Request for Declaratory and Injunctive Relief

INTRODUCTION

1. Petitioner Juan Sanchez-Hernandez, a.k.a. Angel Sanchez Hernandez, ("Ms. Sanchez" or "Petitioner"), by and through his undersigned counsel, hereby files this amended petition for writ of habeas corpus and complaint for declaratory and injunctive relief[1] to compel his immediate release from the immigration detention where he has been held by the U.S. Department of Homeland Security ("DHS") since being unlawfully re-detained on June 19, 2025, without at any point having been provided a due process hearing to determine whether his detention is justified. Ms. Sanchez was granted deferral of removal under the Convention Against Torture in 2022, and has been reporting to ICE on a regular basis since her release from detention more than three years ago. Her removal order to Honduras is deferred and the government has made no indication of intent to reopen the case, nor of any other country willing to accept her, and thus her re-detention by ICE must be held unlawful as it is limitless in duration. Thus, Ms. Sanchez's detention is both unconstitutional because it is indefinite, and illegal because she was not provided any pre-deprivation hearing and before her recent detention by ICE.

2. Ms. Sanchez was informed weeks after her detention that she would be removed to Mexico. She expressed fear of removal and was told she would have a reasonable fear interview. However, since that time, no such interview has occurred. The government later asserted in response to Ms. Sanchez's preliminary TRO that

[1] Petitioner Ms, Sanchez files this first amended petition as a matter of course pursuant to Fed. R. Civ. Pro. 15(a), as 21 days have not yet passed since service of the original petition. 28 U.S.C. § 2242 (a petition "may be amended or supplemented as provided in the rules of procedure applicable to civil actions"); Fed. R. Civ. Pro. 15(a)(1)(A) ("A party may amend its pleading once as a matter of course no later than…21 days after serving it.").

Mexico had in fact amended its policy and would no longer accept her. Accordingly, there is no possibility of removal to Honduras, Mexico, or any country.

3. Given the Supreme Court of the United States' decision on June 23, 2025, in *U.S. Department of Homeland Security, et al. v. D.V.D., et al.*, No. 24A1153, 2025 WL 1732103 (June 23, 2025), which stayed the nationwide injunction that had precluded Respondents from removing noncitizens to third countries without notice and an opportunity to seek fear-based relief, U.S. Immigration and Customs Enforcement ("ICE") appears emboldened and intent to implement its campaign to send noncitizens to far corners of the planet—places they have absolutely no connection to whatsoever[2]—in violation of clear statutory obligations set forth in the Immigration and Nationality Act ("INA"), binding treaty, and due process. In the absence of the nation-wide injunction, individual lawsuits like the instant case are the only method to challenge the illegal third-country removals. Accordingly, Ms. Sanchez has relied on this Court's July 15, 2025 order that the government must provide three business days notice prior to removing her to a third country and urges that notice period be lengthened and the order made permanent.

4. Petitioner, Juan Angel Sanchez-Hernandez, is a citizen of Honduras and no other country.

5. On December 15, 2022, Petitioner was granted deferral of removal to Honduras under the Convention Against Torture under 8 C.F.R. § 1208.17(a) after the

[2] CBS News, "Politics Supreme Court lets Trump administration resume deportations to third countries without notice for now" (June 24, 2025), available at: https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-to-third-countries-without-notice/.

immigration judge agreed that she had established it was more likely than not that she would be tortured in Honduras. To date, Respondents have not taken any steps to reopen or rescind the grant of relief.

6. ICE released the Petitioner on an order of supervision on January 18, 2023. Since that time, Petitioner has not been convicted of any crimes, nor has the Petitioner violated the terms of her order of supervision with ICE.

7. On June 19, 2025, Petitioner was called into her probation office. Without warning and without any explanation for the legal or factual basis of her detention, Petitioner was detained by ICE. For approximately one week, she was denied her hormone treatment, essential medication not only to maintain her transgender identity, but also a delicate medication without which her hormonal levels began to fluctuate. Petitioner, a transgender woman, is housed with male noncitizens at the Eloy Detention Center.

8. Prior to her unlawful detention, Petitioner was dutifully attending scheduled check-ins with ICE pursuant to her release on supervision. She now remains in detention at Eloy Detention Center at the time of filing this habeas corpus petition.

9. By statute and regulation, ICE has the authority to re-detain a noncitizen previously ordered removed only in specific circumstances, including where an individual violates any condition of release or the individual's conduct demonstrates that release is no longer appropriate. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). That authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the particular facts of Ms. Sanchez's case,

due process required notice and a hearing, prior to any re-arrest, at which she was afforded the opportunity to advance his arguments as to why she should not be re-detained.

10. Here, Respondents created a reasonable expectation that Ms. Sanchez would be permitted to live and work in the United States without being subject to arbitrary arrest and removal.

11. This reasonable expectation creates constitutionally-protected liberty and property interests. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972) (reliance on policies and practices may establish a legitimate claim of entitlement to a constitutionally-protected interest); *see also Texas v. United States*, 809 F.3d 134, 174 (2015), *affirmed by an equally divided court*, 136 S. Ct. 2271 (2016) (explaining that "DACA involve[s] issuing benefits" to certain applicants). These benefits are entitled to constitutional protections no matter how they may be characterized by Respondents. *See, e.g., Newman v. Sathyavaglswaran*, 287 F.3d 786, 797 (9th Cir. 2002) ("[T]he identification of property interests under constitutional law turns on the substance of the interest recognized, not the name given that interest by the state or other independent source.") (internal quotations omitted).

12. Further, the Supreme Court has limited the potentially indefinite post-removal order detention to a maximum of six months, because removal is not reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Because Ms. Sanchez's removal to Honduras is deferred under the Convention Against Torture, removal is not reasonably foreseeable in this case, and the government has not provided her with notice, evidence, or an opportunity to be heard on this issue either before arbitrarily re-detaining him. Her continued detention without any reasonably

foreseeable end point is thus unconstitutionally prolonged in violation of clear Supreme Court precedent.

13. The basic principle that individuals placed at liberty are entitled to process before the government imprisons them has particular force here, where Ms. Sanchez was released from ICE detention three and a half years ago, after which she began to rebuild her life, including by securing employment. Under these circumstances, DHS was required to afford her the opportunity to advance arguments in favor of her freedom before it robbed her of her liberty. She must therefore be released from custody and should not be re-detained unless and until DHS proves that given her detention has the potential to be unconstitutionally indefinite, that her removal is actually reasonably foreseeable. Several federal district courts have already ordered similar relief. See *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP (HC), 2025 WL 1808697; *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735. During any custody redetermination hearing that occurs, the Immigration Judge must further consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk that DHS may establish.

14. Moreover, under the INA, Respondents have a statutory obligation to remove Ms. Sanchez only to the designated country—in this case, Honduras. 8 U.S.C. § 1231(b)(2)(A)(ii). If Ms. Sanchez is to be removed to a third country, Respondents must first assert a basis under 8 U.S.C. § 1231(b)(2)(C) and ICE must provide her with sufficient notice and an opportunity to respond and apply for fear-based relief as to that country, in compliance with the INA, due process, and the binding international treaty: The Convention Against Torture and Other Cruel,

Inhuman or Degrading Treatment or Punishment. Currently, DHS has a policy of removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country; the U.S. District Court for the District of Massachusetts previously issued a nationwide preliminary injunction blocking such third country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture, in recognition that the government's policy violates due process and the United States' obligations under the Convention Against Torture. *D.V.D., et al. v. U.S. Department of Homeland Security, et al*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The U.S. Supreme Court has since granted the government's motion to stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa*, No. 24A884 (June 27, 2025) limiting nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals only disagreement with the nature, and not the substance, of the nationwide preliminary injunction. Similarly, in this individual habeas petition, this Court has preliminarily ordered that she cannot be removed to any third country unless she is first provided with adequate notice and a meaningful opportunity to apply for protection under the Convention Against Torture.

CUSTODY

15. Petitioner is in the physical custody of Respondents and held at Eloy Detention Center (EDC) in Eloy, Arizona. At the time of this filing, Petitioner continues to be detained at EDC. EDC is a facility that contracts with ICE to hold

people awaiting removal. Petitioner is in direct control of Respondents and their agents.

JURISDICTION

16. This action arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et. Seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IRRIRA"), Pub. L. No. 104-208, 110 Stat. 1570. This Court has subject matter jurisdiction and may grant relief under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. § 1331 (federal question). This Court also has jurisdiction to hear this case under the Suspension Clause of Article I of the United States Constitution. *INS v. St. Cyr,* 533 U.S. 289 (2001). The Court may also grant relief under 28 U.S.C. §§ 2201 (declaratory relief).

17. Because Petitioner challenges her custody, jurisdiction is proper in this Court. While the courts of appeals have jurisdiction to review removal orders through petitions for review, *see* 8 U.S.C. §§ 1252(a)(1) and (b), the federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness of their detention. *See, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075–76 (9th Cir. 2006).

VENUE

18. Venue is proper in the District of Arizona pursuant to 28 U.S.C. §§ 1391(b) and (e) and local rules of this court because a substantial part, if not all, of the events or omissions giving rise to these claims occurred in this district, where

Respondents reside, and where Petitioner is detained.

REQUIREMENTS OF 28 U.S.C. § 2243

19. 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. *See* 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).

20. 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

All Respondents listed below are sued in their official capacities.

21. Petitioner Juan Angel Sanchez-Hernandez is a noncitizen who is a national and citizen of Honduras. Respondents seek to deport her without any legal process whatsoever, and in violation of an immigration judge's order and a federal regulation prohibiting them from doing so.

22. Respondent Fred Figueroa is Warden at the Eloy Detention Center (EDC), a facility that holds Petitioner and other immigrants awaiting removal in Eloy, Arizona. He is the Petitioner's immediate custodian and resides in the judicial district

of the United States Court for the District of Arizona.

23. Respondent John A. Cantu is the Field Office Director for the Phoenix Field Office of U.S. Immigration and Customs Enforcement's ("ICE") Enforcement and Removal ("ERO") division. The Phoenix Field Office's area of responsibility includes the entire state of Arizona. Respondent Cantu has the authority to order Petitioner's release or continued detention. As such, Respondent Cantu is a legal custodian of Petitioner.

24. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security ("DHS"). She is responsible for the implementation and enforcement of the immigration laws and oversees ICE. As such, Respondent Noem has ultimate custodial authority over Petitioner.

25. Respondent Pamela Bondi is the Attorney General of the United States. The Immigration Judges who decide removal cases and application for relief from removal do so as her designees.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

26. Petitioner has exhausted administrative remedies to the extent required by law. She has requested information and release and has been told only the government may seek to send her to a third country, including Mexico. Thus, the only remedy for Petitioner's continued potentially indefinite detention is by way of this constitutional habeas challenge.

STATEMENT OF FACTS

27. Petitioner, Juan Angel Sanchez-Hernandez, is a citizen of Honduras and no other country.

28. On December 15, 2022, Petitioner was granted deferral of removal under the Convention Against Torture under 8 C.F.R. § 1208.17(a) after the immigration judge agreed that she had established it was more likely than not that she would be tortured in Honduras. *Doc. 1-2* Ex. A. (Immigration Judge Order). To date, Respondents have not taken any steps to reopen or rescind the grant of relief. *Doc 1-2* Ex. B. (EOIR Automated Case Information)

29. ICE released the Petitioner on an order of supervision on January 18, 2023. *Doc 1-2* Ex. C (Order of Supervision) Since that time, Petitioner has not been convicted of any crimes, nor has the Petitioner violated the terms of her order of supervision with ICE.

30. On June 19, 2025, Petitioner was called into her probation office. Without warning and without any explanation for the legal or factual basis of her detention, Petitioner was detained by ICE. For approximately one week, she was denied her hormone treatment, essential medication not only to maintain her transgender identity, but also a delicate medication without which her hormonal levels began to fluctuate. Petitioner, a transgender woman, was housed with male noncitizens at the Eloy Detention Center.

31. Prior to her unlawful detention, Petitioner was dutifully attending scheduled check-ins with ICE pursuant to her release on supervision. She now remains in detention at Eloy Detention Center at the time of filing this habeas corpus petition. *See Doc 1-2* Ex. D (ICE Detainee Locator screenshot).

32. ICE has informed Petitioner that they would like to remove her to Mexico. But since Petitioner has no claim to legal immigration status in Mexico, then

Mexico will promptly send her to Honduras, where it has already been determined that she will face torture. This chain refoulment would violate the treaty obligations under the CAT and its implanting regulations just as surely as if Respondents carried out the removal directly to Honduras. In addition, the Petitioner has a fear of Mexico based on her transgender identity. On July 7, 2025, undersigned counsel first contacted the asylum office to enter appearance in the interview, and was told that it would be scheduled at a later date. To date, no interview has been scheduled.

33. In a brief filed on July 11, 2025, the government stated that "Mexico has accepted to accept her." Doc. 14 at 13. Later, the government amended this filing, indicating that an hour before filing their brief, Mexico had informed the DHS that "it generally would no longer accept removals from third countries." Doc. 20 at 2. The DHS sent Mexico a request to accept her on June 27, 2025, and to date has received not response. Doc. 14-1 at 5. Since her June 19, 2025 detention, the only reason Ms. Sanchez has been given for her detention is to send her to Mexico, though Mexico continues not to accept her today.

34. On July 18, 2025, two ICE officers provided the Petitioner with an "informal interview" at which she described her compliance with all reporting requirement, two years of employment, and connection with family and a romantic partner in the Phoenix community. Asked whether ICE would release the Respondent since Mexico's change in policy, the officers replied that Mexico was always "changing its mind" and that a request for the Petitioner's release from custody was pending decision from headquarters.

35. Respondents currently lack any factual or legal basis to detain

Petitioner, since Respondents cannot establish that that Petitioner will likely be removed from the United States in the reasonably foreseeable future.

36. Ms. Sanchez is also at risk of being unlawfully removed to a third country without constitutionally adequate notice and a meaningful opportunity to apply for protection under the Convention Against Torture, in violation of the INA, binding international treaty, and due process.

37. Intervention from this Court is therefore required to ensure that Ms. Sanchez does not continue to suffer irreparable harm in the form of unjustified, prolonged, and indefinite detention, and further violation of his rights in the form of summary removal to a third country.

38. Petitioner has exhausted all administrative remedies. No further administrative remedies are available to Petitioner.

LEGAL FRAMEWORK

Protection under the Convention Against Torture

39. Deferral of removal under the Convention Against Torture (CAT), an international treaty obligation, is governed by implanting regulations. 8 C.F.R. § 1208.17. CAT deferral prohibits the government from removing a noncitizen to a country where she is more likely than not to be tortured. *See* 8 C.F.R. § 1208.17(a). This form of relief is mandatory if the applicant meets the standard and is distinct from asylum in that it does not lead to permanent residency.

40. To qualify for CAT deferral, the noncitizen bears the burden of proving that it is more likely than not that they would face torture if returned to their country of origin. The government may not remove an individual with a valid CAT deferral

order to that country unless the order is formally terminated following the procedures set forth in the regulations. *See* 8 C.F.R. § 1208.17(d).

41. Federal regulations provide a procedure by which a grant of CAT deferral issued by an immigration judge may be terminated: DHS must move to reopen the removal proceedings before the immigration judge and must prove, by a preponderance of the evidence, that the individual would no longer face torture. 8 C.F.R. § 1208.24(f). Only after termination may removal proceed.

42. However, CAT deferral is a country-specific form of relief. Should the government wish to remove an individual with a grant of CAT deferral to some other country, it must first provide that individual with notice and an opportunity to apply for CAT deferral as to that country as well, if appropriate. 8 U.S.C. § 1231(b)(3)(A). See also *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *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. 2005) (per curiam) (permitting removal to third country only where individuals received "ample notice and an opportunity to be heard").

Right to a Hearing Prior to Pre-incarceration

43. Following a final order of removal, including one deferred under CAT, ICE is directed by statute to detain an individual for ninety (90) days in order to effectuate removal. 8 U.S.C. § 1231(a)(2). This ninety (90) day period, also known as "the removal period," generally commences as soon as a removal order becomes administratively final. *Id.* at § 1231(a)(1)(A); § 1231(a)(1)(B).

44. If ICE fails to remove an individual during the ninety (90) day removal

period, the law requires ICE to release the individual under conditions of supervision, including periodic reporting. 8 U.S.C. § 1231(a)(3) ("If the alien . . . is not removed within the removal period, the alien, pending removal, shall be subject to supervision."). Limited exceptions to this rule exist. Specifically, ICE "may" detain an individual beyond ninety days if the individual was ordered removed on criminal grounds or is determined to pose a danger or flight risk. 8 U.S.C. § 1231(a)(6). However, ICE's authority to detain an individual beyond the removal period under such circumstances is not boundless. Rather, it is constrained by the constitutional requirement that detention "bear a reasonable relationship to the purpose for which the individual [was] committed." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Because the principal purpose of the post-final-order detention statute is to effectuate removal, detention bears no reasonable relation to its purpose if removal cannot be effectuated. *Id.* at 697.

45. Post-final order detention is only authorized for a "period reasonably necessary to secure removal," a period that the Court determined to be presumptively six months. *Id.* at 699-701. After this six (6) month period, if a detainee provides "good reason" to believe that his or her removal is not significantly likely in the reasonably foreseeable future, "the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701. If the government cannot do so, the individual must be released.

46. That said, detainees are entitled to release even before six months of detention, as long as removal is not reasonably foreseeable. *See* 8 C.F.R. § 241.13(b)(1) (authorizing release after ninety days where removal not reasonably

foreseeable). Moreover, as the period of post-final-order detention grows, what counts as "reasonably foreseeable" must conversely shrink. *Zadvydas* at 701.

47. Even where detention meets the *Zadvydas* standard for reasonable foreseeability, detention violates the Due Process Clause unless it is "reasonably related" to the government's purpose, which is to prevent danger or flight risk. See *Zadvydas*, 533 U.S. at 700 ("[I]f removal is reasonably foreseeable, the habeas court should consider the risk of the alien's committing further crimes as a factor potentially justifying confinement within that reasonable removal period") (emphasis added); *Id.* at 699 (purpose of detention is "assuring the alien's presence at the moment of removal"); *Id.* at 690-91 (discussing twin justifications of detention as preventing flight and protecting the community). Thus, Ms. Sanchez must be released from custody because she does not pose a danger or flight risk that warrants post-final-order detention, regardless of whether her removal can be effectuated within a reasonable period of time. This is especially so because ICE has already found that Ms. Sanchez was suitable for an order of supervision because she does not pose a danger to the community, after which she completed her parole and was successfully on probation.

48. The government's own regulations contemplate this requirement. They dictate that even after ICE determines that removal is reasonably foreseeable—and that detention therefore does not per se exceed statutory authority—the government must still determine whether continued detention is warranted based on flight risk or danger. *See* 8 C.F.R. § 241.13(g)(2) (providing that where removal is reasonably foreseeable, "detention will continue to be governed under the established standards"

in 8 C.F.R. § 241.4).

49. The regulations at 8 C.F.R. § 241.4 set forth the custody review process that existed even before *Zadvydas*. This mandated process, known as the post-order custody review, requires ICE to conduct "90-day custody reviews" prior to expiration of the ninety-day removal period and to consider release of individuals who pose no danger or flight risk. 8 C.F.R. § 241.4(e)-(f). Among the factors to be considered in these custody reviews are "ties to the United States such as the number of close relatives residing here lawfully"; whether the noncitizen "is a significant flight risk"; and "any other information that is probative of whether" the noncitizen is likely to "adjust to life in a community," "engage in future acts of violence," "engage in future criminal activity," pose a danger to themselves or others, or "violate the conditions of his or her release from immigration custody pending removal from the United States." *Id.*

50. Individuals with final orders who are released after a post-order custody review are subject to Forms I-220B, Order of Supervision. 8 C.F.R. § 241.4(j). After an individual has been released on an order of supervision, as Ms. Sanchez was, ICE cannot revoke such an order without cause or adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3).

Petitioner's Protected Liberty Interest in Her Release

51. Petitioner's liberty from immigration custody is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

52. For three and a half years preceding her re-detention on June 19, 2025, Petitioner exercised that freedom under her prior release from ICE custody in 2022. She thus retained a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972). Moreover, the Supreme Court has recognized that post-removal order detention is potentially indefinite and thus unconstitutional without some limitation. *Zadvydas*, 533 U.S. at 701.In this case, in the absence of a repatriation agreement that actually permits Petitioner's removal to Honduras, her removal is not foreseeable at all, let alone reasonably. Therefore, her continued detention is unconstitutional.

53. Just as importantly, Petitioner continued presenting herself before ICE for her regular check-in appointments for the past three and a half years, where ICE did not seek to re-arrest her during this time. ICE instead gave her a future date and time to appear again.

54. In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. The Court further noted that "the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its

termination inflicts a grievous loss on the parolee and often others." *Id.* In turn, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 482.

55. This basic principle—that individuals have a liberty interest in their release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. See, e.g., *Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by Morrissey." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (*citing Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

56. In fact, it is well-established that an individual maintains a protectable liberty interest even where the individual obtains liberty through a mistake of law or fact. *See id.; Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868,

873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to society, so it "would be inconsistent with fundamental principles of liberty and justice" to return him to prison) (internal quotation marks and citation omitted).

57. Here, when this Court "'compar[es] the specific conditional release in [Petitioner's case], with the liberty interest in parole as characterized by Morrissey,'" it is clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner's release "enables [her] to do a wide range of things open to persons'" who have never been in custody or convicted of any crime, including to live at home, work with his community, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

58. Since her release in 2022, which came after approximately 17 TK years of incarceration and several months in ICE custody, Petitioner has been focused on rebuilding her life, including by reconnecting with family and securing employment.

Petitioner's Liberty Interest Mandated a Due Process Hearing Before Redetention

59. Petitioner asserts that, here, (1) where her detention is civil, (2) where she has diligently complied with ICE's reporting requirements on a regular basis, and (3) where on information and belief ICE officers arrested Petitioner based on a possibility of removal to Mexico that the government has stipulated in these proceedings is no longer possible, her removal is therefore not reasonably foreseeable and potentially indefinite, and due process mandates that she was required to receive

notice and a hearing before an Immigration Judge prior to any re-detention.

60. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Petitioner's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws in order to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (*citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

61. The Supreme Court "usually has held that the Constitution requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the

variables in the Mathews equation—the value of predeprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing predeprivation process," can the government avoid providing pre-deprivation process. Id.

62. Because, in this case, the provision of a pre-deprivation hearing was both possible and valuable to preventing an erroneous deprivation of liberty, ICE was required to provide Petitioner with notice and a hearing prior to any re-incarceration and revocation of her OSUP. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S. at 985; see also *Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, "the balance weighs heavily in favor of [Petitioner's] liberty" and required a pre-deprivation hearing before an Immigration Judge, which ICE failed to provide.

Petitioner's Private Interest in Her Liberty is Profound

63. Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey, 408* U.S. at 482. In addition, the principles espoused in Hurd and Johnson—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Petitioner, who have also been released from prior ICE custody. Parolees and probationers have

a diminished liberty interest given their underlying convictions. *See, e.g., U.S. v. Knights,* 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes,* 607 F.3d at 891-92; *Hurd,* 864 F.3d at 683. Thus, Petitioner retains a truly weighty liberty interest even though she was under conditional release prior to her re-arrest.

64. What is at stake in this case for Petitioner is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior release decision and be able to take away his physical freedom, i.e., his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder,* 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana,* 504 U.S. 71, 80 (1992). *See also Zadvydas,* 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

65. Thus, it is clear that there is a profound private interest at stake in this case, which must be weighed heavily when determining what process he is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35.

The Government's Interest in Keeping Petitioner in Detention is Low and the Burden on the Government to Release Her from Custody is Minimal

66. The government's interest in keeping Petitioner in detention without a

due process hearing is low, and when weighed against Petitioner's significant private interest in her liberty, the scale tips sharply in favor of releasing Petitioner from custody unless and until the government demonstrates that she is a flight risk or danger to the community. It becomes abundantly clear that the *Mathews* test favors Petitioner when the Court considers that the process Petitioner seeks—release from custody after ICE has already found that Ms. Sanchez does not pose a danger to the community and she has since completed parole and been successfully on probation, where she has been at liberty over three and a half years and where nothing in the interim has changed to warrant re-detention after —is a standard course of action for the government. In the alternative, providing Petitioner with a hearing before an Immigration Judge to determine whether there is evidence that Petitioner is a flight risk or danger to the community would impose only a de minimis burden on the government, because the government routinely conducts these reviews for individuals in Petitioner's same circumstances. 8 C.F.R. § 241.4(e)-(f).

67. As immigration detention is civil, it can have no punitive purpose. The government's only interests in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas, 533 U.S.* at 690. Moreover, the Supreme Court has made clear that indefinite detention of noncitizens who cannot be removed to the country of the removal order, is unconstitutional. In this case, the government cannot plausibly assert that it had a sudden interest in detaining Petitioner due to alleged dangerousness, or due to a change in the foreseeability of his removal to Honduras or any country, as her circumstances have not changed since her release

from ICE custody in 2022, particularly given Mexico's stated policy not to accept third country removals when in apparently had accepted them at the time of the Petitioner's detention.

68. Petitioner has continued to appear before ICE on a regular basis for each and every appointment that has been scheduled. *See Morrissey, 408 U.S.* at 482 ("'It is not sophistic to attach greater importance to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom'") (*quoting United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

69. As to flight risk, Petitioner's post-release conduct in the form of full compliance with her check-in requirements further confirms that she is not a flight risk and that she is likely to present herself at any future ICE appearances, as she always has done. The government's interest in detaining Petitioner at this time is therefore low. That ICE has a new policy to attempt third country removals to new and different countries, which in response continue to either say nothing or to communicate an intent to *not* accept noncitizens, as in the case of Mexico, does not constitute a material change in circumstances or increase the government's interest in detaining her. Moreover, nothing has changed regarding the lack of foreseeability of her removal to Honduras, Mexico, or any country.

70. Release from custody until ICE assesses and demonstrated that Petitioner is a flight risk or danger to the community, or that her detention is not going to be indefinite, is far less costly and burdensome for the government than keeping her detained. As the Ninth Circuit noted in 2017, which remains true today,

"[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996. If, in the alternative, the Court chooses to order a hearing for Petitioner at which the government bears the burden of justifying his continued detention, the government would bear no additional cost if the hearing is scheduled within seven days, rather than allowing Petitioner to sit in detention for days or weeks awaiting a hearing.

Without Release from Custody until the Government Provides a Due Process Hearing, the Risk of an Erroneous Deprivation of Liberty is High

71. Releasing Petitioner from custody until she is provided a pre-deprivation hearing would decrease the risk of her being erroneously deprived of her liberty. Before Petitioner can be lawfully detained, she must be provided with a hearing before an Immigration Judge at which the government is held to show that her detention will not be indefinite, or that the circumstances have changed since her release in 2022 such that evidence exists to establish that Petitioner is a danger to the community or a flight risk.

72. Under the process that ICE maintains is lawful—which affords Petitioner no process whatsoever—ICE can simply re-detain her at any point if the agency desires to do so, as ICE did on June 19, 2025. Petitioner has already been erroneously deprived of his liberty when she was detained at her check in, and the risk she will continue to be deprived is high if ICE is permitted to keep her in detention after making a unilateral decision to re-detain her. Pursuant to 8 C.F.R. § 241.4(l), revocation of release on an OSUP is at the discretion of the Executive Associate Commissioner. Thus, the regulations permit ICE to unilaterally re-detain

individuals, even for an oversight of any kind. After re-arrest, ICE makes its own, one-sided custody determination and can decide whether the agency wants to hold Petitioner. 8 C.F.R. § 241.4(e)-(f).

73. By contrast, the procedure Petitioner seeks—release from custody until he is provided a hearing in front of an Immigration Judge at which the government that his detention will not be indefinite, or otherwise that the circumstances have changed since his release in 2021 to justify his detention—is much more likely to produce accurate determinations regarding these factual disputes. *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the "risk of error is considerable when just determinations are made after hearing only one side"). "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under Mathews can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano ("Diouf II")*, 634 F.3d 1081, 1091-92 (9th Cir. 2011).

74. Due process also requires consideration of alternatives to detention at any custody redetermination hearing that may occur. The primary purpose of immigration detention is to ensure removal if reasonably foreseeable. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if, as here, removal is not actually foreseeable. Accordingly, alternatives to detention must be considered in

determining whether Petitioner's re-incarceration is warranted.

ICE'S Failure to Comply With Its Own Regulations Are Grounds For Release

75. Under 8 CFR 241.4(l)(2), the Executive Associate Commissioner of the Service is authorized to revoke release in the exercise of discretion when it is appropriate to enforce a removal order. 8 CFR 241.4(l)(2)(iii). When circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner, a "district director" and revocation is in the "public interest," a district director may also make the discretionary decision. 8 CFR 241.4(l)(2)

76. In *Ceesay v. Kurzdorfer*, the government asserted that an internal delegation order indicated the Assistant Field Office Directors are delegated with the proper authority by the "district director" indicated in the regulations. *Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at *17 (W.D.N.Y. May 2, 2025). The Court in *Ceesay* held that not only was this delegation suspect, but that no findings were made by the district director to support the determination to revoke release as required by regulation. The *Ceesay* court ordered release due to ICE's failure to comply with its regulations, making the Petitioner's detention unlawful. Similarly, in Ms. Sanchez's case, only an Assistant Field Office Director has made the determination to revoke her parole, which is not in compliance with ICE's own regulatory requirements.

77. In addition, the *Ceesay* court found that ICE had failed to provide an "informal interview" required by the regulations to occur promptly after detention. *Id.* at TK. This too was a failure to conform to regulatory requirements. *Id.* Other district courts have similarly found that ICE's failure to articulate reasons for

detention, as required by 8 CFR 241.4(l)(2), as grounds for release. *See Hoac, Phan.* Here too, the Petitioner was not provided an interview promptly, and in fact, the interview, first offered on July 11, 2025 date, did not finally occur until July 16, 2025, nearly a month after her detention. The interview was therefore not prompt, nor has any reason been articulated for Ms. Sanchez's detention other than the possibility of removal to Mexico, which was negated based on Mexico's July 11, 2025 change in policy.

78. Under the INA, Respondents have a clear and non-discretionary duty to execute final orders of removal only to the designated country of removal. The statute explicitly states that a noncitizen "shall remove the [noncitizen] to the country the [noncitizen] . . . designates." 8 U.S.C. § 1231(b)(2)(A)(ii) (emphasis added). And even where a noncitizen does not designate the country of removal, the statute further mandates that DHS "shall remove the alien to a country of which the alien is a subject, national, or citizen. *See id.* § 1231(b)(2)(D); see also generally *Jama v. ICE,* 543 U.S. 335, 341 (2005).

79. As the Supreme Court has explained, such language "generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive," *Nat'l Ass'n of Home Builders v. Defenders of Wildlife,* 551 U.S. 644, 661 (2007) (*quoting Ass'n of Civilian Technicians v. Fed. Labor Relations Auth.*, 22 F.3d 1150, 1153 (D.C. Cir. 1994))*; see also Black's Law Dictionary* (11th ed. 2019) ("Shall" means "[h]as a duty to; more broadly, is required to . . . . This is the mandatory sense that drafters typically intend and that courts typically uphold."); *United States v. Monsanto,* 491 U.S. 600, 607 (1989) (finding that "shall" language

in a statute was unambiguously mandatory). Accordingly, any imminent third country removal fails to comport with the statutory obligations set forth by Congress in the INA and is unlawful.

80. Moreover, prior to any third country removal, ICE must provide Petitioner with sufficient notice and an opportunity to respond and apply for fear-based relief as to that country, in compliance with the INA, due process, and the binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

81. The U.S. District Court for the District of Massachusetts previously issued a nationwide preliminary injunction blocking such third country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture, in recognition that the government's policy violates due process and the United States' obligations under the Convention Against Torture. *D.V.D., et al. v. U.S. Department of Homeland Security, et al. v.,* No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The U.S. Supreme Court has since granted the government's motion to stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa,* No. 24A884 (June 27, 2025) limiting nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals only disagreement with nature, and not the substance, of the nationwide preliminary injunction.

82. Thus, it is clear that if Ms. Sanchez were to be removed to any third country it would violate his due process rights unless he is first provided with constitutionally adequate notice and a meaningful opportunity to apply for protection under the Convention Against Torture. In the absence of any other injunction,

intervention by this Court is necessary to protect those rights.

CLAIMS FOR RELIEF

COUNT ONE
Unlawful Redetention

83. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-82.

84. Petitioner was previously released by Respondents because she did not pose a danger or flight risk. As long as she complies with the conditions of release, Respondents have authority to revoke release only if circumstances have changed. 8 C.F.R. § 241.13(i)(2); 8 C.F.R. § 1231(a)(6).

85. Respondents' actions are arbitrary, capricious, an abuse of discretion, and contrary to law. 5 U.S.C. § 706(a)(2)(A). The fact that a decision-making process involves discretion does not prevent an individual from having a protectable liberty interest. *Young v. Harper*, 520 U.S. 143, 150 (1997); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1001 (N.D. Cal 2018) (Corley, J.). Just like people on pre-parole, parole, probation status, bail, or bond have a liberty interest, so too does Petitioner have a liberty interest in remaining out of custody on his Forms I-220B OSUP. *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 2019 WL 6251231 (N.D. Cal. 2019). He should therefore be immediately released and in the future provided a full and fair hearing before an Immigration Judge where the government bears the burden of showing that circumstances have changed such that his removal is reasonably foreseeable, and otherwise evidence of his dangerousness and flight risk. *Id.*

COUNT TWO
Violation of Procedures for Revocation of Release

86. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-82.

87. Respondents must notify Petitioner of the reason for her detention. 8 C.F.R. § 241.13(i)(3). The regulations also require Respondents to afford Petitioner an initial interview promptly after her detention at which she can respond to the purported reasons for revocation. *Id.*

88. Respondents have not provided Petitioner adequate and timely notice of the reasons for revocation. Respondents did not timely provide Petitioner with an initial interview or an opportunity to respond. The interview that occurred was several weeks after the Petitioner's detention and ICE did not provide a meaningful reason for revocation, other than the possibility of a change in Mexican policy in the future.

COUNT THREE
Violation of the INA and Applicable Regulations

89. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-82.

90. The INA provides for detention during the ninety (90) day "removal period" that begins immediately after a noncitizen's order of removal becomes final. 8 U.S.C. § 1231(a)(1). After the ninety (90) day removal period, the INA and its applicable regulations provide that detaining noncitizens is generally permissible only upon notice to the noncitizen and after an individualized determination of dangerousness and flight risk. *See* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(d), (f), (h)

& (k).

91. Respondents are not permitted to detain Petitioner on the basis of her prior order of removal and without any determination of whether circumstances have changed such that his removal is reasonably foreseeable, and a determination of his danger and flight risk, by an Immigration Judge. This is especially true where, as here, Petitioner received a determination from the agency issuing them Forms I-220B permitting her to remain out of custody in the first place. 8 C.F.R. § 241.13(i)(2)-(3).

COUNT FOUR
Procedural Due Process/ Unconstitutionally Indefinite Detention
U.S. Const. amend. V

92. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-82.

93. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

94. Other than as punishment for a crime, due process permits the government to take away liberty only "in certain special and narrow nonpunitive circumstances ... where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. 678, 690. Such special justification exists only where a restraint on liberty bears a "reasonable relation" to permissible purposes. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992). In the immigration context, those purposes are "ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community." *Zadvydas*, 533 U.S. at 690

(quotations omitted).

95. Those substantive limitations on detention are closely intertwined with procedural due process protections. *Foucha*, 504 U.S. 78-80. Noncitizens have a right to adequate procedures to determine whether their detention in fact serves the purposes of ensuring their appearance or protecting the community. *Id.* at 79; *Zadvydas*, 533 U.S. 692; *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 949 (9th Cir. 2008). Where laws and regulations fail to provide such procedures, the habeas court may assess whether the noncitizen's immigration detention is reasonably related to the purposes of ensuring his appearance or protecting the community, *Zadvydas*, 533 U.S. at 699, or require release.

96. Under this framework, Petitioner's release is required because his re-detention violates his due process rights.

97. Further, Petitioner had a vested liberty interest in his release. Due Process does not permit the government to strip her of that liberty without a future hearing prior to any re-detention. *See Morrissey*, 408 U.S. at 487-488.

98. Because Petitioner's detention is unconstitutionally indefinite, it is unlawful. Moreover, because Petitioner faces detention without any meaningful determination of whether circumstances have changed such that his removal is reasonably foreseeable, and whether he poses a danger or flight risk, her detention violates due process.

99. Petitioner's re-detention is unconstitutionally indefinite because she cannot be removed to Honduras, Mexico or any country. Thus, her removal is not reasonably foreseeable in this case, and the government has not provided her with

notice, evidence, or an opportunity to be heard on this issue either before arbitrarily re-detaining her. Her continued detention without any reasonably foreseeable end point is thus unconstitutionally prolonged in violation of clear Supreme Court precedent. *Zadvydas v. Davis*, 533 U.S. at 701.

100. Moreover, because Petitioner poses no danger or flight risk, her detention was and is not reasonably related to its purposes, and is unlawful.

101. Further, because she was not provided with a hearing prior to her re-detention, and her continuing unlawful and constitutionally indefinite detention without adequate process is an ongoing violation of his due process rights, the only remedy of this violation is his immediate release from immigration detention, as well as a future hearing prior to any re-detention where DHS must prove that his detention is not unlawful.

COUNT FIVE
Procedural Due Process – Unconstitutionally Inadequate Procedures Regarding Third Country Removal
U.S. Const. amend. V

102. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-82.

103. The Due Process Clause of the Fifth Amendment requires sufficient notice and an opportunity to be heard prior to the deprivation of any protected rights. U.S. Const. amend. V; *see also Louisiana Pacific Corp. v. Beazer Materials & Services, Inc.*, 842 F.Supp. 1243, 1252 (E.D. Cal. 1994) ("[D]ue process requires that government action falling within the clause's mandate may only be taken where there is notice and an opportunity for hearing.").

104. Petitioner has a protected interest in her life. Thus, prior to any third

country removal, Petitioner must be provided with constitutionally-compliant notice and an opportunity to respond and contest that removal if he has a fear of persecution or torture in that country.

105. For these reasons, Petitioner's removal to any third country without adequate notice and an opportunity to apply for relief under the Convention Against Torture would violate her due process rights. The only remedy of this violation is for this Court to maintain its order not to let Petitioner be summarily removed to any third country unless and until she is provided constitutionally adequate procedures.

ATTORNEY FEES AND COSTS

106. If Petitioner prevails, Petitioner requests attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Order that Petitioner's detention is unlawful in violation of *Zadvydas* because her removal is not reasonably foreseeable;

c. Order that Petitioner's detention is unlawful in violation of 8 C.F.R. § 241.4(l)(2) because the proper official did not make a determination regarding changed circumstances showing that there is a significant likelihood that she may be removed in the reasonably foreseeable future;

d. Order that Petitioner's detention is unlawful in violation of 8 C.F.R. § 241.13(i)(2) because there are no changed circumstances showing that there is

a significant likelihood that she may be removed in the reasonably foreseeable future;

e. Order the immediate release of Petitioner from custody because her detention is not reasonably foreseeable in violation of *Zadvydas*;

f. Order the immediate release of Petitioner from custody because her detention is unlawful in violation of 8 C.F.R. § 241.4(l)(2);

g. Order the immediate release of Petitioner from custody because her detention is unlawful in violation of 8 C.F.R. § 241.13(i)(2);

h. Order the immediate release of Petitioner from custody on any other basis that this Court finds proper;

. Order that, prior to any future re-detention, Petitioner is provided a hearing before an Immigration Judge where DHS bears the burden of justifying Petitioner's re-detention, and that the Immigration Judge must further consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk that DHS may establish;

j. Order that Petitioner cannot be removed to any third country without first being provided constitutionally-compliant procedures, including:

   a. Written notice to Petitioner and counsel of the third country to which she may be removed, in a language that Petitioner can understand, provided at least 21 days before any such removal;

   b. A meaningful opportunity for Petitioner to raise a fear of return for eligibility for protection under the Convention Against Torture, including a reasonable fear interview before a DHS officer;

c. If Petitioner demonstrates a reasonable fear during the interview, DHS must move to reopen her underlying removal proceedings so that she may apply for relief under the Convention Against Torture;

d. If it is found that Petitioner does not demonstrate a reasonable fear during the interview, a meaningful opportunity, and a minimum of 15 days, for Petitioner to seek to move to reopen her underlying removal proceedings to challenge potential third-country removal;

e. Award Petitioner reasonable costs and attorney fees; and

f. Grant such further relief as the Court deems just and proper.

Dated: July 23, 2025

Respectfully submitted,

/s/ Gregory Fay
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Attorney for Plaintiff

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

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

Dated: July 23, 2025

/s/ Gregory Patrick Fay
Gregory Patrick Fay