UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Peymon Haidari, Plaintiff, Kristi Noem, Secretary of Homeland Security; Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Mary De Anda-Ybarra, El Paso ICE Field Office Director; ICE Facility Administrator (name currently unknown) at El Paso Service Processing Center. Defendants.	No. 3:25-cv-00250 -- LS

PLAINTIFF'S AMENDED COMPLAINT AND PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. "In matters of life and death, it is best to proceed with caution. In this case, the Government [wants to take] the opposite approach." *Dep't of Homeland Sec. v. D.V.D.*, No. 24A1153, 2025 U.S. LEXIS 2487, at *1 (June 23, 2025) (Sotomayor, J., dissenting). This suit seeks to prevent the needless government approach of throwing caution to the wind in its desire to deport a man who arrived in this country over 40 years ago, is married to a U.S. citizen, and has minor U.S. children, to Iran or, alternatively, to an unknown third country.

2. The Plaintiff Peymon Haidari arrived in the United States from Iran in 1984. He held lawful permanent resident (LPR) status until 1999 when an Immigration Judge (IJ) ordered his removal

to Iran. In 2002, after three years of holding the Plaintiff in detention, the Department of Homeland Security (DHS) was unable to arrange his removal to Iran. The Plaintiff was consequently released on an Order of Supervision (OSUP) which he held without incident for over twenty years. During this time-period he has had no further issues with law enforcement.

3. In violation of the Plaintiff's OSUP agreement, the Defendants re-detained the Plaintiff and are detaining him at the El Paso Service Processing Center without bail. The Plaintiff's custody is unlawful because no statute allows for his re-detention when his removal to Iran is still not reasonably foreseeable.

4. The 90-day removal period, moreover, does not restart with the Defendant's re-detention of the Plaintiff.

5. The re-detention of the Plaintiff, moreover, was done without due process of law and in violation of the Defendants' own regulations. The regulations provide that a re-detention may take place where there is a "change in circumstances" making removal reasonably foreseeable. 8 C.F.R. § 241.13(i)(2). Documents provided to the Plaintiff's attorney on August 12, 2025, demonstrate that there was no such "change in circumstances" justifying the re-detention of the Plaintiff. *See Exh. A*. Indeed, in making the arrest, the Immigration and Customs Enforcement (ICE) officer had no assurances from Iran that the Plaintiff will be allowed to return; in fact, the arresting officer's report indicates that they were not even aware that he had a final order of removal.

6. The Defendants are holding the Plaintiff in custody while they attempt to arrange his deportation to Iran. When that effort fails the Defendants represent that they will remove him to a third country without meaningful notice about what country they intend to deport him to and inadequate process of law for him to challenge removal to such a third country, all in violation of the due process clause of the Fifth Amendment.

7. During his removal proceeding, the Plaintiff contested his removal and had an opportunity to contest removal to Iran based on a claim of fear of return. The Plaintiff brings this action, in part, to prevent the DHS from deporting him to a *third* country—a country never designated by the IJ for removal—without first providing him notice or opportunity to contest removal on the basis that he holds a fear of persecution, torture, and death if deported to that third country.

8. DHS' policy or practice of failing to afford these basic, minimal protections violates the Immigration and Nationality Act, the Foreign Affairs Reform and Restructuring Act 2 of 1998, the Due Process Clause of the Fifth Amendment, and the treaty obligations of the United States. Indeed, the Office of the Solicitor General (OSG) recognized these legal obligations when it informed the Supreme Court in *Pham v. Guzman Chavez* that DHS will not deport to a third country noncitizens with final orders who have already been granted protection by an immigration judge (IJ) until after the individual receives meaningful notice of the opportunity to assert a fear-based claim against removal to that third country. Transcript of Oral Argument, No. 19-897 at 20-21 (U.S. Jan. 11, 2021).

9. In sum, the Plaintiff seeks a writ of habeas corpus for his immediate release from custody since (a) his re-detention after the completion of the initial removal period was without due process of law or a change in circumstances, (b) his removal to Iran is not reasonably foreseeable and (c) he seeks an order from this Court mandating the DHS to provide notice about the third country it intends to remove him to and provide him an opportunity to contest removal based on persecution and/or torture.

II. PARTIES

10. Plaintiff Peymon Haidari, also known as "Peyman," is a noncitizen who is currently in immigration detention at the El Paso Service Processing Center in El Paso, Texas.

11. Defendant Kristi Noem is the Secretary of Homeland Security and is charged with implementing the immigration laws of the United States. Secretary Noem is being sued in her official capacity.

12. Defendant Todd M. Lyons is the Acting Director of ICE, a sub-agency of Homeland Security. It is under ICE's authority that the Plaintiff is being held without bond. Acting Director Lyons is being sued in his official capacity.

13. Defendant Mary De Anda-Ybarra is the El Paso ICE Field Office Director. It is under Defendant De Anda-Ybarra's order that the Plaintiff is in immigration custody. Defendant De Anda Ybarra is being sued in her official capacity.

14. Defendant ICE Facility Administrator (name currently unknown) is the Warden and/or immediate custodian at the El Paso Service Processing Center in El Paso, Texas. The Facility Administrator is the Plaintiff's immediate custodian and sued in his or her official capacity.

III. JURISDICTION

15. This Court has subject matter jurisdiction over Plaintiff's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The Court also has jurisdiction pursuant to 28 U.S.C. § 1331 (Federal Question Jurisdiction) inasmuch as the case is a civil action arising under the laws of the United States.

16. Although only the Court of Appeals has jurisdiction to review removal orders directly through a petition for review, *see* 8 U.S.C. §§ 1252(a)(l), (b), district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001).

17. Venue is proper in this district because the Plaintiff is detained within this district, and a substantial amount of the events giving rise to this claim occurred within this district. 8 U.S.C. § 1391(e)(1).

IV. STATUTORY AND REGULATORY FRAMEWORK GOVERNING RE-DETENTION OF NON-CITIZENS ISSUED AN OSUP.

18. When an individual is ordered removed, 8 U.S.C. § 1231(a) authorizes the government to detain the individual during the "removal period," defined as the 90-day period during which "the Attorney General shall remove the [noncitizen] from the United States." 8 U.S.C. §1231(a)(1)(A). The removal period begins on the latest of the following:

(1) the date the order of removal becomes administratively final;

(2) if the removal order is judicially reviewed and the court orders a stay, the date of the court's final order; and

(3) if the noncitizen is released from non-immigration detention or confinement, the date of that release.

8 U.S.C. § 1231(a)(1)(B)(i-iii). In this case, only 8 U.S.C. §1231(a)(1)(A)(1) is applicable. Critically, § 1231 "contains no provisions for pausing, reinitiating, or refreshing the removal period after the 90-day clock runs to zero." Transcript of Motions Hearing at 32, *Cordon-Salguero v. Noem, et al*, 1:25-cv-01626-GLR (D. Md. June 18, 2025).

19. Once the removal period has expired, the government "may" detain a noncitizen only if they fall into one of the four categories under § 1231(a)(6): (1) individuals who are inadmissible; (2) individuals who are removable on specified grounds; (3) individuals determined to be a danger to the community; or (4) individuals determined to be unlikely to comply with the order of removal. However, under § 1231(a)(6) "[o]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute," and the noncitizen must be

released. *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court held that six months is a presumptively reasonable for post-order detention. *Id.*

20. Upon release, a noncitizen subject to a final order of removal is typically placed under an order of supervision with conditions. 8 U.S.C. § 1231(a)(3), (6). Revocation of such release is governed by 8 C.F.R. § 241.13(i). The regulation purports to allow ICE to revoke an order of supervised released if the noncitizen violates the terms of their release or "on account of changed circumstances," there is a "significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2); *see also* 8 C.F.R. § 241.4(b)(4).

21. "These regulations clearly indicate, that upon revocation of supervised release, it is the Service's burden to show a significant likelihood that the [noncitizen] may be removed." *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 U.S. Dist. LEXIS 148899 (E.D. Tex. Aug. 2, 2025) (citing *Nguyen v. Hyde*, No. 25-cv-11470, 2025 U.S. Dist. LEXIS 117495, 2025 WL 1725791 (D. Mass. June 20, 2025) (finding *Zadvydas* 6-month presumption not applicable where [noncitizen] is "re-detained" after having been on supervised release and that respondents failed to meet their burden to show a substantial likelihood of removal is now reasonably foreseeable) and *Tadros v. Noem*, No. 25-cv-4108, 2025 U.S. Dist. LEXIS 113198, 2025 WL 1678501 (D. N.J. June 13, 2025) (finding 6-month presumption had long lapsed while petitioner was on supervised release and it is respondent's burden to show removal is now likely in the reasonably foreseeable future)).

22. Upon a determination of a change in circumstances, the regulations provide the following "procedures" that the Defendants must follow when they revoke a noncitizen's release:

> [T]he [noncitizen] will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification. The [noncitizen] may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or

> she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

8 C.F.R. § 241.13(i)(3). The prevailing statute 8 U.S.C. § 1231(a)(6), unlike the regulation, contains no such allowance for re-detention upon a finding of changed circumstances.

V. PROCEDURES GOVERNING REMOVAL TO DESIGNATED COUNTRIES

A. Section 240 Removal Proceedings.

23. In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). The Act generally retained prior procedures for removal hearings for all noncitizens—i.e., full immigration court hearings, appellate review before the Board of Immigration Appeals, and federal court review. *See* 8 U.S.C. §§ 1229a,1252(a). In these removal proceedings (commonly referred to as "Section 240" proceedings), the noncitizen is entitled to select a country of removal. 8 U.S.C. § 1231(b)(2)(A); *see also* 8 C.F.R. § 1240.10(f) ("[T]he immigration judge shall notify the respondent that if he or she is finally ordered removed, the country of removal will in the first instance be the country designated by the respondent . . . ."). The IJ will designate the country where the person "is a subject, national, or citizen," if either the noncitizen does not select a country or as an alternative in the event the noncitizen's designated country does not accept the individual. 8 U.S.C. § 1231(b)(2)(D). The IJ also may designate alternative countries, as specifically set out by § 1231(b)(2)(E). For individuals placed in Section 240 proceedings upon arrival, the statute provides designation to the country from which the individual boarded a vessel or aircraft and then can consider alternative countries. *See* 8 U.S.C. § 1231(b)(1); *see also* 8 C.F.R. § 1240.10(f).

24. As stated by the District Court of Massachusetts:

> When the Government wants to remove an individual, the normal path is through removal

> proceedings, requiring an evidentiary hearing before an Immigration Judge ("IJ"). 8 U.S.C. 1229a. Removal proceedings determine not only *whether* an individual may be removed from the United States but also to *where* he may be removed. In the first instance, the [noncitizen] is entitled to select a country of removal. *Id.*; 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). If the [noncitizen] does not do so, the IJ will designate the country of removal and may also designate alternative countries. 8 C.F.R. § 1240.10(f).

D.V.D. v. United States Dep't of Homeland Sec., No. 25-10676-BEM, 2025 U.S. Dist. LEXIS 74197, at *3 (D. Mass. Apr. 18, 2025).

25. An IJ must provide sufficient notice and opportunity to apply for protection from a designated country of removal. 8 C.F.R. § 1240.10(f) (providing that the "immigration judge shall notify the respondent" of designated countries of removal); § 1240.11(c)(1)(i) (providing that the IJ shall "[a]dvise the [noncitizen] that he or she may apply for asylum in the United States or withholding of removal to [the designated countries of removal]").

26. Asylum is a form of protection available in Section 240 removal proceedings. An IJ may grant asylum in the exercise of discretion where the applicant demonstrates a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion" in their country of origin. 8 U.S.C. §§ 1101(a)(42), 1158(b)(1)(A); *see also* 8 C.F.R. §§ 208.1, 1208.1. Once granted asylum, an individual generally cannot be deported to their country of origin or any other country absent subsequent unlawful conduct, evidence of fraud in the asylum application, or a fundamental change in country conditions. *See generally* 8 U.S.C. § 1158(c)(2); 8 C.F.R §§ 208.24, 1208.24.

27. For individuals determined to be ineligible for asylum, Congress further provided, with certain exceptions not relevant here, that "notwithstanding [8 U.S.C. §§ 1231(b)(1) and (2)], the Attorney General [i.e., DHS] may not remove [a noncitizen] to a country if the Attorney General [(i.e., an immigration judge)] 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." 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. This form of protection, known as withholding of removal, is mandatory; i.e., it cannot be denied to eligible individuals in the exercise of discretion. Unlike asylum, the protection of withholding of removal is country-specific.

28. Individuals in Section 240 proceedings who are ineligible for withholding of removal, are still entitled to receive protection under the Convention Against Torture (CAT), in the form of withholding or deferral of removal, upon demonstrating a likelihood of torture if removed to the designated country of removal. *See* Foreign Affairs Reform and Restructuring Act (FARRA) (codified as n.8 to U.S.C. § 1231); 8 C.F.R. §§ 208.16(c), 208.17(a), 1208.16(c), 1208.17(a); 28 C.F.R. § 200.1. Like withholding of removal under 8 U.S.C. § 1231(b)(3), CAT protection is mandatory. *Id.* With respect to any individual granted deferral of removal under CAT, the IJ "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).

29. An IJ may only terminate a grant of CAT protection based on evidence that the person will no longer face torture. DHS must move for a new hearing and provide evidence "relevant to the possibility that the [noncitizen] would be tortured in the country to which removal has been deferred and that was not presented at the previous hearing." 8 C.F.R. §§ 208.17(d)(1), 1208.17(d)(1). If a new hearing is granted, the IJ must provide notice "of the time, place, and date of the termination hearing," and must inform the noncitizen of the right to "supplement the information in his or her initial [withholding or CAT] application" "within 10

calendar days of service of such notice (or 13 calendar days if service of such notice was by mail)." 8 C.F.R. §§ 208.17(d)(2), 1208.17(d)(2).

30. Individuals in Section 240 proceedings are entitled to an administrative appeal to the BIA along with an automatic stay of deportation while the appeal is pending, and to seek judicial review of an adverse administrative decision by filing a petition for review in the court of appeals. *See* 8 U.S.C. §§ 1101(a)(47)(B), 1252(a); 8 C.F.R. §§ 1003.6(a), 1240.15.

B. Withholding of Removal Only Proceedings

31. Individuals who have been deported and subsequently return to the United States without inspection are subject to a summary removal process known as reinstatement of removal. *See* 8 U.S.C. § 1231(a)(5); 8 C.F.R. § 241.8. This summary process is carried out by DHS officers. Individuals subject to reinstatement orders are barred from seeking most forms of relief from removal, including asylum.

32. Some individuals who are not lawful permanent residents are subject to a separate summary removal process—known as Section 238(b) administrative removal—if a DHS officer determines that they are deportable due to an aggravated felony conviction. *See* 8 U.S.C. § 1228(b); 8 C.F.R. § 238.1(b)(1). That process is also carried out by DHS officers and, like individuals subject to reinstatement orders, individuals with 238(b) administrative removal orders are barred from most forms of relief from removal, including asylum.

33. However, consistent with the United States' commitment to non-refoulement—the fundamental principle that no one should be returned to a country where they would face persecution, torture, cruel, inhuman, or degrading treatment, or serious harm—critical protections from removal remain available in reinstatement and 238(b) administrative removal proceedings: withholding of removal under 8 U.S.C. § 1231(b)(3) and CAT protection. *See* 8

C.F.R. §§ 241.8(e), 238.1(f)(3); *see also* 8 C.F.R. §§ 208.31, 1208.31. Individuals who express a fear of return to their countries of origin are given the opportunity to demonstrate a reasonable fear of persecution or torture in interviews before asylum officers. *Id.* If the asylum officer determines their fear is not reasonable, the individual can seek review of that determination before an IJ in reasonable fear proceedings. 8 C.F.R. §§ 208.31(g), 1208.31(g). If either the asylum officer or the reviewing IJ finds their fear is reasonable, the individual is placed in withholding-only proceedings before an IJ where they can seek protection from deportation by applying for withholding of removal and/or CAT protection. 8 C.F.R. §§ 208.31(e), (g)(2); 1208.31(e), (g)(2).

34. If the IJ denies the withholding and/or CAT application, the individual may seek review before the BIA. 8 C.F.R. §§ 208.31(e), (g)(2)(ii); 1208.31(e), (g)(2)(ii). Judicial review of these orders and administrative decisions is available by filing a petition for review in the court of appeals. 8 U.S.C. § 1252(a).

VI. STATUTORY SCHEME FOR REMOVAL TO A THIRD COUNTRY

35. "Third-country removals are burdensome for the affected noncitizen, so Congress has sharply limited their use. They are permissible only after the Government tries each and every alternative noted in the statute, and determines they are all 'impracticable, inadvisable, or impossible.' §§1231(b)(1)(C)(iv), (2)(E)(vii)." *D.V.D.,* 2025 U.S. LEXIS 2487, at *2-3 (Sotomayor, J., dissenting).

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

37. Subsection (b)(1) applies to noncitizens "[a]rriving at the United States," including from a contiguous territory, but expressly contemplates arrival via a "vessel or

aircraft." It designates countries and alternative countries to which the noncitizen may be removed. 8 U.S.C. § 1231(b)(1)(B) (removal to contiguous country from which the noncitizen traveled), 1231(b)(1)(C) (alternative countries).

38. Subsection (b)(2) applies to all other noncitizens, and like Subsection (b)(1), designates countries and alternative countries to which the noncitizen may be removed. 8 U.S.C. § 1231(b)(2)(A) (noncitizen's designation of a country of removal), 1231(b)(2)(B) (limitation on designation), 1231(b)(2)(C) (disregarding designation), 1231(b)(2)(D) (alternative country), 1231(b)(2)(D) (alternative countries), 1231(b)(2)(E) (additional removal countries).

39. 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.

40. Similarly, with respect to the Convention Against Torture, the implementing regulations allow for removal to a third country, but only "where he or she is not likely to be tortured." 8 C.F.R. §§ 208.17(b)(2); 1208.17(b)(2). As Justice Sotomayor explained:

> Noncitizens facing removal of any sort are entitled under international and domestic law to raise a claim under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U. N. T. S. 113. Article 3 of the Convention prohibits returning any person "to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. The United States is a party to the Convention, and in 1998 Congress passed the Foreign Affairs Reform and Restructuring Act to implement its commands. The Act provides that "[i]t 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 subjected to torture, regardless of whether the person is physically present in the United

> States." §2242(a), 112 Stat. 2681-822, codified as note to 8 U. S. C. §1231. It also directs the Executive to "prescribe regulations to implement" the Convention. §2242(b), 112 Stat. 2681-822. Those regulations provide, among other things, that "[a] removal order . . . shall not be executed in circumstances that would violate [*4] Article 3." 28 CFR §200.1 (2024).

D.V.D., 2025 U.S. LEXIS 2487 at *3-4.

41. In *Jama v. Immigr. & Customs Enf't*, the Supreme Court addressed the designation procedure under Subsection (b)(2). 543 U.S. 335, 347-48 (2005). Critically, the Court stated that noncitizens who "face persecution or other mistreatment in the country designated under § 1231(b)(2), . . . have a number of available remedies: asylum; withholding of removal; relief under an international agreement prohibiting torture . . . ." *Id.* at 348 (citing 8 U.S.C. §§1158(b)(1), 1231(b)(3)(A); 8 C.F.R. §§ 208.16(c)(4), 208.17(a)).

42. Although individuals granted CAT protection may be removed to a third country, the regulations provide that they may not be removed to a country where they are 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).

43. Notably, the regulations also provide that protection under CAT may be terminated based on evidence that the person will no longer face torture but nevertheless provides certain protections to noncitizens. First, the regulations require DHS to move for a new hearing, requiring that DHS support their motion for the new hearing with evidence "relevant to the possibility that the [noncitizen] would be tortured in the country to which removal has been deferred and that was not presented at the previous hearing." 8 C.F.R. §§ 208.17(d)(1), 1208.17(d)(1). Second, even if a new hearing is granted, the regulations require that the IJ

provide the noncitizen with notice "of the time, place, and date of the termination hearing. Such notice shall inform the [noncitizen] that the [noncitizen] may supplement the information in his or her initial application for withholding of removal under the Convention Against Torture and shall provide that the [noncitizen] must submit any such supplemental information within 10 calendar days of service of such notice (or 13 calendar days if service of such notice was by mail)." 8 C.F.R. §§ 208.17(d)(2), 1208.17(d)(2). Thus, not only is the noncitizen provided notice, but also an opportunity to submit documentation in support of their claim for protection.

44. "In other words, third-country removals are subject to the same mandatory protections that exist in removal or withholding-only proceedings." *D.V.D.*, 2025 U.S. Dist. LEXIS 74197, at *6.

A. DHS' Obligation to Provide Notice and Opportunity to Present a Fear-Based Claim Before Deportation to a Third Country

45. For individuals in removal proceedings, the designation of a country of removal (or, at times, countries in the alternative that the IJ designates) on the record 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 "immigration judge shall notify the [noncitizen]" of 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[.]").

46. Pursuant to § 1231(b)(3)(A), courts 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); *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 designation of third country where individuals received "ample notice and an opportunity to be heard").

47. 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, 189 U.N.T.S. 150, 19 U.S.T. 6259 (July 28, 1951); United Nations Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, 19 U.S.T. 6223 (Jan. 31, 1967); 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)); *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"); *see also* United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (June 26, 1987); FARRA at 2681–82 (codified at n.8 under 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 subjected to torture, regardless of whether the person is physically present in the United States."); U.N. Comm. Against Torture, Gen. Comment No. 4, Implementation of Article 3 by States Parties, U.N. Doc. CAT/C/GC/4 at ¶ 12 (2017) ("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 being subjected to torture.").

48. Meaningful notice and opportunity to present a fear-based claim prior to deportation to a country where a person fears persecution or torture are also fundamental due process protections under the Fifth Amendment. *See Andriasian*, 180 F.3d at 1041; *Protsenko*, 149 F. App'x at 953; *Kossov*, 132 F.3d at 408; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Similarly, a "last minute" IJ designation of a country during removal proceedings that affords no meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process." *Andriasian*, 180 F.3d at 1041.

49. The federal government has repeatedly acknowledged these obligations. In 2005, in jointly promulgating regulations implementing 8 U.S.C. § 1231(b), the Departments of Justice and Homeland Security asserted that "[a noncitizen] will have the opportunity to apply for protection as appropriate from any of the countries that are identified as potential countries of removal under [8 U.S.C. § 1231(b)(1) or (b)(2)]." Execution of Removal Orders; Countries to Which Aliens May Be Removed, 70 Fed. Reg. 661, 671 (Jan. 5, 2005) (codified at 8 C.F.R. §§ 241, 1240, 1241). Furthermore, the Departments contemplated that, in cases where ICE sought removal to a country that was not designated in removal proceedings, namely, "removals pursuant to [8 U.S.C. § 1231(b)(1)(C)(iv) or (b)(2)(E)(vii)]," DHS would join motions to reopen "[i]n appropriate circumstances" to allow the noncitizen to apply for protection. *Id.*

50. Furthermore, consistent with the above-cited authorities, at oral argument in *Guzman Chavez*, the Assistant to the Solicitor General represented that the government must provide a noncitizen with notice and an opportunity to present a fear-based claim before that noncitizen can be deported to a non-designated third country. Tr. of Oral Argument, No. 19-897, at 20-21. Specifically, the following exchange between Justice Kagan and Vivek Suri, Assistant to the Solicitor General, took place:

JUSTICE KAGAN: . . . [S]uppose you had a third country that, for whatever reason, was willing to accept [a noncitizen]. If -- if -- if that [noncitizen] was currently in withholding proceed -- proceedings, you couldn't put him on a plane to that third country, could you?

MR. SURI: We could after we provide the [noncitizen] notice that we were going to do that.

JUSTICE KAGAN: Right.

MR. SURI: But, without notice --

JUSTICE KAGAN: So that's what it would depend on, right? That -- that you would have to provide him notice, and if he had a fear of persecution or torture in that country, he would be given an opportunity to contest his removal to that country. Isn't that right?

MR. SURI: Yes, that's right.

JUSTICE KAGAN: So, in this situation, as to these [noncitizens] who are currently in withholding proceedings, you can't put them on a plane to anywhere right now, isn't that right?

MR. SURI: Certainly, I agree with that, yes.

JUSTICE KAGAN: Okay. And that's not as a practical matter. That really is, as -- as you put it, in the eyes of the law. In the eyes of the law, you cannot put one of these [noncitizens] on a plane to any place, either the -- either the country that's referenced in the removal order or any other country, isn't that right?

MR. SURI: Yes, that's right.

Id.

51. 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; *Aden*, 409 F. Supp. 3d at 1009 ("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.").

52. An opportunity to present a fear-based claim is only meaningful if the noncitizen is not deported before removal proceedings are reopened. *See Aden*, 409 F. Supp. 3d at 1010 (holding that merely giving petitioner an opportunity to file a discretionary motion to reopen "is not an adequate substitute for the process that is due in these circumstances" and ordering reopening); *Dzyuba v. Mukasey*, 540 F.3d 955, 957 (9th Cir. 2008) (remanding to BIA to determinate whether designation is appropriate).

B. DHS Routinely Violates Its Obligations to Provide Notice and Opportunity to Present a Fear-Based Claim Before Deportation to a Third Country

53. As a matter of policy or practice, DHS violates the statutory, regulatory, and due process framework by depriving Plaintiffs of any notice, let alone meaningful notice, and any opportunity, let alone a meaningful opportunity, to present a fear-based claim prior to deportation to a third country.

54. Although DHS has a nondiscretionary duty to provide both these protections, DHS routinely fails to do so.

55. In litigation involving a plaintiff who was removed to a third country after being granted withholding of removal to Cuba, DHS has admitted it has no policy to provide notice or

an opportunity to apply for protection regarding removal to a third country. *See Ibarra-Perez v. United States*, No. 2:22-cv-01100-DWL-CDB (D. Ariz. Jun. 29, 2022). In both written discovery and two depositions of DHS witnesses conducted pursuant to Federal Rule of Civil Procedure 30(b)(6), the government repeatedly stated it has no obligation to provide written or oral notice if it intends to deport a noncitizen to a third county, and has no written policy requiring such written notice; instead, the government claimed that if such notifications are provided, they are usually oral. *Id.* In addition, the government admitted it has no policy to ensure a noncitizen has an opportunity to seek fear-based protection from removal to a third country before that removal takes place. *Id.*

56. DHS' routine failure to provide meaningful notice and opportunity to present a fear-based claim prior to deportation to a third country has led to hundreds of unlawful deportations, placing individuals at serious risk of persecution, torture, and/or death.

C. Increased Third Country Deportation Efforts and Re-detention Directive

57. Defendants have been in longstanding violation of their obligation to provide noncitizens with meaningful notice and an opportunity to present a fear-based claim to an immigration judge before DHS deports them to a third country.

58. On information and belief, until January 20, 2025, the number of individuals subjected to DHS' policy or practice was relatively small.

59. Prior to taking office, the Trump Administration stated its intention to pressure 19 third countries to accept noncitizens ordered deported from the United States.

60. On January 20, 2025, President Trump signed an Executive Order, entitled Securing our Borders, in which he instructed the Secretary of State, Attorney General, and DHS Secretary to "take all appropriate action to facilitate additional international cooperation and

agreements, . . ., including [safe third country agreements] or any other applicable provision of law." *See* Exec. Order No. 14165, 90 Fed. Reg. 8467, 8468 (Jan. 20, 2025).

61. In early February, news outlets reported that Secretary of State Marco Rubio visited several Central American countries to negotiate increased acceptance of noncitizens in or arriving in the United States, including individual with final removal orders.

62. On or about February 18, 2025, ICE issued a directive instructing officers to review cases for third country deportations and re-detained previously released individuals, including individuals granted withholding or removal or CAT protection and individuals previously released because removal was not reasonably foreseeable.

63. On March 5, 2025, the New York Times reported: "[ICE leadership] are considering deporting people who have been found to have a legitimate fear of torture in their home countries to third nations, according to documents obtained by The New York Times." Ainsley, Julia, NBC News. *Incoming Trump Administration Plans to Deport Some Migrants to Countries Other Than Their Own*(Nov. 12, 2024); Commonwealth of the Bahamas, *Statement from the Office of the Prime Minister on the Trump Administration Transition Team Proposa*l (Dec. 5, 2024) (rejecting Trump transition team proposal to "to accept deportation flights of migrants from other countries"); Montoya-Galvez, Camilo, CBS News. *Trump Eyes Asylum Agreement with El Salvador to Deport Migrants There* (Jan. 27, 2025); Lee, Matthew, AP News. *Guatemala Gives Rubio a Second Deportation Deal for Migrants Being Sent Home from the US* (Feb. 5, 2025); Miroff, Nick, et. al., The Washington Post. *Trump Seeks to Fast-Track Deportations of Hundreds of Thousands* (Feb. 28, 2025); Aleaziz, Hamed, et. al., N.Y. Times., *Frustration Grows Inside the White House Over Pace of Deportations* (Mar. 5, 2025).

64. On March 6, 2025, Reuters published a copy of the February 18, 2025 directive. The directive expressly instructs officers to review the cases of noncitizens granted withholding of removal or protection under CAT "to determine the viability of removal to a third country and accordingly whether the [noncitizen] should be re-detained" and, in the case of those who previously could not be removed because their countries of citizenship were unwilling to accept them, to "review for re-detention . . . in light of . . . potential for third country removals."

65. On March 30, DHS issued another guidance, which Justice Sotomayor described as follows:

> On March 30, DHS issued a second guidance document, which contained a two-step process for executing third-country removals. If a country provides the United States with what DHS believes to be "credible" "assurances that aliens removed from the United States will not be persecuted or tortured," then (the policy says) DHS may remove the noncitizen to that country without any process. See App. to Application for Stay of Injunction 54a-55a (App.) The Government says this policy permits DHS to change someone's "deportation country to Honduras . . . at 6:00 a. m., put [them] on a plane, and fl[y them] to Honduras" 15 minutes later. ECF Doc. No. 74, p. 12 (Tr. Apr. 10, 2025).
>
> In the absence of credible "assurances" from a foreign country, the policy provides, "DHS will first inform the alien of" her impending removal. App. 55a. Even so, the policy prohibits officers from providing the noncitizen with an affirmative opportunity to raise her fear of torture. Only one who "states a fear of removal" unprompted will be given a screening interview, which will take place "within 24 hours of referral." *Ibid.* Those who cannot establish their eligibility for relief at the screening interview can apparently be deported immediately, without a chance to provide evidence or seek judicial review. See ECF Doc. 74, at 52-53.

D.V.D., 2025 U.S. LEXIS 2487, at *7.

66. On or about July 9, 2025, the ICE Director issued written guidance to all ICE employees to immediately adhere to the Secretary of Homeland Security, Kristi Noem's, March 30, 2025 guidance.

67. The March 30, 2025, guidance does not comport with minimal due process requirements. *Id.* at *50 ("The March Guidance provides no process whatsoever to individuals whom DHS plans to remove to a country from which the United States has received blanket diplomatic assurances.").

68. The Massachusetts District court has stated that it "finds it likely that Defendants have applied and will continue to apply the alleged policy of removing aliens to third countries without notice and an opportunity to be heard on fear-based claims—in other words, without due process." *Id.* at *49.

69. Since on or about January 20, 2025, on information and belief, DHS has dramatically increased the number of individuals being re-detained and/or deported to third countries and being considered for deportation to a third country.

VII. FACTS

70. The Plaintiff immigrated to the United States in 1984 when he was 14 years-old. His wife and children are all citizens of the United States.

71. In or around December 1999, the Plaintiff was arrested in New Mexico for possession of a controlled substance with intent to distribute. He was represented by counsel who advised him to plead guilty to the offense.

72. The Plaintiff's attorney in the criminal case has admitted that he was unaware that the Plaintiff was not a citizen of the United States. Accordingly, the attorney did not advise the Plaintiff about the immigration consequences of the conviction or seek plea alternatives in violation of the Sixth Amendment. *See Padilla v. Kentucky*, 559 U.S. 356 (2010). In a post-conviction hearing held after the conviction, the judge found that it was not credible that the Plaintiff would have sought trial based on his immigration status based, in part, on his finding that in light of there being no

diplomatic relations between the U.S. and Iran there was no likelihood the defendant would be deported from the United States.[1]

73. As a result of his conviction, the immigration authorities detained the Plaintiff and initiated a Section 240 removal proceeding against him. During this proceeding, Iran was designated as the country of removal. The IJ decided, and the Board of Immigration Appeals (BIA) affirmed, that the Plaintiff should be deported to Iran. No other country was designated.

74. The Plaintiff spent three years in ICE detention from 1999-2002, while the government processed his 240 proceeding and attempted to remove him to Iran. Concluding that the Plaintiff's deportation to Iran was not reasonably foreseeable, he was released and placed on an OSUP.

75. For the last 23 years, the Plaintiff has dutifully complied with this OSUP. He reports whenever DHS requires it. He has held work authorization and maintained gainful employment. He has had no further arrests and has not violated his OSUP in any way whatsoever.

76. On June 24, 2025, the DHS detained the Plaintiff. The Form I-213 is the record ICE uses to record its reasons for arresting a noncitizen. *See Exh. A.* The arresting officer's report states that the Plaintiff was arrested to be placed in "removal proceedings" based on his unlawful presence in the United States. *Id.* The Form I-213 does not state whether ICE conducted any analysis regarding whether there was a "change in circumstances" that render the Plaintiff's removal to Iran reasonably foreseeable. *Id.*

77. In violation of their own regulations, the Defendants failed to timely notify the Plaintiff about the reasons for their reasons for revoking his release. 8 C.F.R. § 241.13(i)(2)-(3). Based on information in the Form I-213, the reason for revocation was not on account of a change in

[1] Notably, the trial judge applied the wrong standard of review when determining prejudice for a violation of the 6th Amendment. *See Lee v. U.S.*, 137 S.Ct. 1958 (2017).

circumstances making the Plaintiff's removal reasonably foreseeable. *See Exh. A.* Indeed, the government did not provide notice that his release was revoked until August 12, 2025—approximately one month and half *after* he was re-detained. *See Exh. B.*

78. The notice of revocation, moreover, claims, without evidence, that the Defendants will "expeditiously" remove the Plaintiff to Iran. *Id.* This claim is belied by their failure to effectuate such a removal or to obtain any documentation from Iran allowing his re-entry. Moreover, removal to Iran is not reasonably foreseeable, in part, because an Iranian passport is required for return to that country. *See United States v. Nikparvar-Fard*, No. 18-101-1I, 2019 U.S. Dist. LEXIS 117710, *22 (E.D. Penn. July 11, 2019) (Court citing to testimony from an attorney representing Iranian Interests Section of the Islamic Republic of Iran in the U.S.: "That is because, for Iranian-born individuals, like Dr. Nikparvar-Fard, 'if you're born in Iran, if you want to go back to Iran, you have no choice, it doesn't matter how many citizenships you have, you have to have [an] Iranian passport.'"). The Plaintiff, having resided in the U.S. for over 40 years, has no such passport.

79. In violation of their own regulations, the Defendants failed to "conduct an initial informal interview promptly after his or her return to Service custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.13(i)(3). Indeed, the Defendants did not provide the Plaintiff this interview until August 12, 2025—over a month and half *after* he was detained. *See Exh. C.* Moreover, the Defendants failed to provide the Plaintiff with sufficient notice to allow him to prepare a response and they attempted to hold this interview without involving his attorney who filed his notice of appearance with the agency on July 3, 2025. *See Exh. D.* Adequate notice to prepare a response to ICE's interview request and the involvement of the Plaintiff's attorney are both guaranteed by ICE's own regulations. 8 C.F.R. § 241.4(h)(2) ("The district director or Director of the Detention and

Removal Field Office will provide written notice to the detainee approximately 30 days in advance of the pending records review so that the [noncitizen] may submit information in writing in support of his or her release. The [noncitizen] may be assisted by a person of his or her choice, subject to reasonable security concerns at the institution and panel's discretion, in preparing or submitting information in response to the district director's notice.").

80. DHS has represented that if it is unable to remove the Plaintiff to Iran, it will attempt to remove him to a third country. However, in violation of law, the Defendants have not provided the Plaintiff notice about which third country it intends to remove him. Nor have the Defendants provided the Plaintiff a meaningful opportunity to contest removal by asserting a fear of persecution or torture to the unknown third country.

VIII. EXHAUSTION OF ADMINISTRATIVE REMEDIES

81. The Plaintiff has exhausted his administrative remedies to the extent required by law.

IX. CLAIMS FOR RELIEF

82. The Plaintiff alleges and incorporates by reference the paragraphs alleged above.

COUNT I

FIFTH AMENDMENT DUE PROCESS CLAUSE VIOLATION

No notice about third country of removal and no meaningful process available to contest it.

83. The INA, FARRA, and implementing regulations mandate meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country. The Defendants' current policies outlined in its March 30, 2025 policy memorandum fail to provide adequate protection.

84. Plaintiff has a due process right to meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country. *See,*

e.g., *Aden*, 409 F. Supp. 3d at 1004. Plaintiff also has a due process right to implementation of a process or procedure to afford these protections. *See, e.g.*, *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991). Plaintiff also has a due process right to not be re-detained pursuant to the March 30, 2025, directive because Defendants have no procedural protections to ensure meaningful notice and an opportunity to present a fear-based claim prior to removal to a third country. *Zadvydas*, 533 U.S. at 690.

85. Accordingly, the Court should declare that Defendants have violated Plaintiff's constitutional right to due process and that the Due Process Clause affords Plaintiff the right to a process and procedure ensuring that DHS provides meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country and ordering Plaintiff released since his removal is not reasonably foreseeable without a meaningful process in place.

COUNT II

PLAINTIFF SHOULD BE RELEASED BECAUSE HIS RE-DETENTION WAS IN VIOLATION OF DUE PROCESS OF LAW

86. The INA requires mandatory detention of individuals with final removal orders only during the 90-day removal period. 8 U.S.C. § 1231(a)(2).

87. A noncitizen who is not removed within that period "shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3).

88. While 8 U.S.C. § 1231(a)(6) permits detention beyond the removal period in certain situations, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Zadvydas*, 533 U.S. at 699.

89. No statute permits Defendants to re-detain an individual who has been released under § 1231(a)(3) without evidence that removal is now reasonably foreseeable or that the individual has violated the conditions of their release.

90. The regulation provides that a release may be revoked upon a showing a change in circumstances that makes removal reasonably foreseeable. *See* 8 C.F.R. § 241.13(i)(2). In this case, there was no finding of a change in circumstances showing that removal to Iran is reasonably foreseeable. Nor did the Plaintiff receive timely notification of the revocation and was not afforded a meaningful opportunity to respond. *See* 8 C.F.R. § 241.13(i)(3). His re-detention, as such, violates his due process rights.

91. 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.

92. Plaintiff was previously detained by ICE and released after an individualized custody determination that considered any danger or unmitigable flight risk. He has a liberty interest in remaining free from physical confinement where removal is not reasonably foreseeable and he has not violated the conditions of his release. Defendants have violated this liberty interest by revoking his OSUP without providing adequate notice or an opportunity to be heard, and by failing to present changed circumstances that would make removal reasonably foreseeable. *See Nikparvar-Fard*, 2019 U.S. Dist. LEXIS 117710 at *22 ("That is because, for Iranian-born individuals, like Dr. Nikparvar-Fard, 'if you're born in Iran, if you want to go back to Iran, you have no choice, it doesn't matter how many citizenships you have, you have to have [an] Iranian passport.'").

93. Moreover, government agencies are required to follow their own regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 U.S. Dist. LEXIS 136000, *16 (E.D. Cal. July 16, 2025). A violation of the

Accardi doctrine may constitute a violation of the Fifth Amendment Due Process Clause and justify release from detention. *See, e.g., United States v. Teers*, 591 F. App'x 824, 840 (11th Cir. 2014); *Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 U.S. Dist. LEXIS 84258, at *48 (W.D.N.Y. May 2, 2025) (citing *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017)).

COUNT III

RELIEF UNDER THE EQUAL ACCESS TO JUSTICE ACT

94. The Plaintiff seeks and is entitled to recover reasonable attorney fees, expenses and costs pursuant to the Equal Access to Justice Act. 28 U.S.C.§ 2412.

X. PRAYER FOR RELIEF

For the foregoing reasons, the Plaintiff requests that the Defendants be cited to appear and that, upon due consideration, the Court enter an order:

a. Granting a writ of habeas corpus finding that the Plaintiff's detention is in violation of the due process clause;
b. Providing declaratory relief that the Plaintiff's detention is unlawful;
c. Ordering the Plaintiff's release from custody;
d. Awarding Plaintiff reasonable attorney's fees, expenses and costs; and
e. Granting Plaintiff such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Lance Curtright
Lance Curtright
Texas Bar No. 24032109
Lance@dmcausa.com

/s/ Alejandra Martinez

Alejandra Martinez
Texas Bar No. 24096346
Alejandra.Martinez@dmcausa.com

De Mott, Curtright, Armendariz
Texas Bar No. 24032109
8023 Vantage Drive, Ste. 800
San Antonio, Texas 78230
(210)590-1844 (telephone)
(210)212-2116 (facsimile)

ATTORNEYS FOR PLAINTIFF