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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Nasir Mohammad MOHAMMAD-QASIM,

Petitioner-Plaintiff,

v.

John CANTU, Field Office Director of Phoenix Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

Todd M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Kristi NOEM, in her Official Capacity, Secretary, U.S. Department of Homeland Security; and

Pam BONDI, in her Official Capacity, Attorney General of the United States;

Respondents-Defendants.

Case No. 2:25-cv-02637-SMB-MTM

A [redacted]

FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS 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, Nasir Mohammed Qasim-Qasim ("Petitioner"), Agency number [redacted] by and through his undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to prevent the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) from continuing to detain him in an immigration jail pending resolution of his removal case without first providing him a due process hearing where the government bears the burden to demonstrate to a neutral adjudicator that he is a danger to the community or a flight risk by clear and convincing evidence.

2. Petitioner also seeks an order enjoining the DHS from violating the Immigration Judge's August 3, 2020 grant of Withholding of Removal and grant of protection under the Convention Against Torture Protection, by removing him to any country without first providing a full and fair removal hearing. Exh. A, BIA Dec. Aug. 4, 2022, affirming IJ grant of withholding and CAT protection.

3. Petitioner also seeks an order enjoining DHS from continuing to violate the administratively final bond release order issued by an Immigration Judge on November 17, 2020. Exh. B, BIA Dec. February 14, 2025, finding IJ bond order was administratively final.

4. Petitioner lastly seeks his immediate release from detention in Arizona where ICE unlawfully re-detained on July 25, 2025, and continues to imprison him without a hearing and without demonstrating that he is a flight risk or danger to the community, as required by the Due Process clause of the Fifth Amendment.

5. As background, the DHS previously incarcerated Petitioner for over five years in Eloy Detention Center, pending resolution of his immigration case. After an Immigration Judge found Petitioner was not a flight risk or danger, he was granted a $5,000 bond and released on November 17, 2020. DHS appealed. The BIA dismissed the appeal as moot on February 14, 2025, since the IJ's grant of withholding of removal and CAT had been affirmed by the BIA in 2022 and was therefore administratively final. *Id.*

6. During the past 4.5 years of freedom, Petitioner has not been had any ICE reporting requirements. He has, however, been gainfully employed and started his own company, and has had no criminal history.

7. Petitioner has also diligently litigated his removal proceedings since his release. The most recent IJ to grant him asylum was in August 2020; that judge also granted Petitioner withholding of removal and CAT protection. DHS appealed. The BIA affirmed the IJ's grant of withholding of removal and CAT, but sustained the appeal on asylum. Thus, withholding and CAT are administratively final, providing mandatory protection from removal.

8. In 2023, Petitioner appealed the BIA's denial of asylum to the Ninth Circuit. *Mohammad-Qasim v. Bondi*, Case No. 23-1821.

9. In February 2025, ICE issued a new policy, announcing it would begin removing immigrants like Petitioner to third countries without a full and fair hearing on whether the individual fears harm from that country.[1] ICE then removed several immigrants with withholding and CAT grants, like Petitioner, to Guantanamo Bay, CECOT in El Salvador, and to a war-zone in Sudan.[2] On April 18, 2025, a federal district court in Massachusetts certified a nation-wide class, which includes Petitioner.[3]

10. During his May 14, 2025 oral argument, the Ninth Circuit panel explicitly asked government counsel what would happen if the government wanted to remove Petitioner to another

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[1] *See* Feb. 18, 2025 ICE policy, *available at* https://immigrationlitigation.org/wp-content/uploads/2025/03/1-4-Att-C-Feb-18-2025-Directive.pdf

[2] *See* Protected Whistleblower Disclosure of Erez Reuveni Regarding Violation of Laws, Rules & Regulations, Abuse of Authority, and Substantial and Specific Danger to Health and Safety at the Department of Justice at 16-21, *available at* https://s3.documentcloud.org/documents/25982155/file-5344.pdf

[3] *See D.V.D. v. DHS*, --- F. Supp. 3d ---, 2025 WL 1142968, at *11 (D. Mass. Apr. 18, 2025) *available at* https://immigrationlitigation.org/wp-content/uploads/2025/04/64-Class-Cert-PI-Order.pdf (certifying class members as:

> All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

country. *See Mohamed-Qasim v. Bondi*, Case No. 23-1821, oral argument *available at* https://www.youtube.com/watch?v=rGuAMPb-G6U, time stamp 19:17. Government counsel responded that, by statute and regulation, the government would be required to move to reopen proceedings to provide Petitioner with an opportunity to seek protection for any third country, before the government could remove him to another country, and stated that she was unaware of any intention of the Department to remove Petitioner to a third country. *Id.*

11. On July 21, 2025, the Ninth Circuit's mandate issued. *See Mohamed-Qasim v. Bondi*, Case No. 23-1821.

12. The government has filed no motion to reopen with the BIA. Exh. C, EOIR Automated Case Information accessed July 25, 2025 (noting no motion to reopen has been lodged).

13. Yet on July 25, 2025, ICE no-notice arrested Petitioner at his place of employment. He was given no reason for his arrest, much less why he was now a flight risk, a danger to his community, or had violated any terms of his release.

14. Indeed, there have been no negative changes in Petitioner's circumstances. For the past 4.5 years Petitioner has lived in freedom, worked lawfully at multiple jobs and even started his on rental arbitrage business. Further, on July 11, 2025, Petitioner requested the Phoenix Police Department certify his I-918B so he can apply for a U visa, a visa for victims of violent crime who have bene helpful to law enforcement's investigation, based off his reporting of being robbed at knife-point. He is also filed a report with the FBI in the hopes of helping the agency apprehend his human trafficker from when he was a child trafficking victim. He filed a T visa application on August 4, 2025.

15. Plaintiff is in ICE custody in Eloy Detention Center, in Eloy, Arizona.

16. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE has the authority to re-arrest a noncitizen and revoke their bond, only where there has been a change in circumstances since the individual's release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in litigation that any change in circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.

2018) (emphasis added). 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 Petitioner's case, due process requires notice and a hearing, *prior to any re-arrest*, at which he is afforded the opportunity to advance his arguments as to why his release should not be revoked.

17. That basic principle—that individuals placed at liberty are entitled to process before the government imprisons them—has particular meaning here, where Petitioner's detention was ***already*** found to be unnecessary to serve its purpose. An Immigration Judge previously found that he need not be incarcerated to prevent flight or to protect the community, and no circumstances have changed that would justify re-arrest.

18. Therefore, at a minimum, in order to lawfully re-arrest Petitioner, the government must first establish, by clear and convincing evidence and before a neutral decision maker, that he is a danger to the community or a flight risk, such that his re-incarceration is necessary.

19. Further, the constitution prohibits prolonged detention. *Zadvydas v. Davis*, 533 U.S. 678 (2001) (finding detention is "prolonged" and therefore unconstitutional when there is "no significant likelihood of removal in the foreseeable future"). Here, Petiitoner has been granted protection under the CAT and withholding of removal. No motion to reopen has been filed to otherwise disturb this final administrative order. Thus, under these statutes, there is *zero* likelihood of Petitioner's removal in the foreseeable future and therefore even one day in detention is unconstitutional.

CUSTODY

20. Petitioner is currently in the custody of ICE at Eloy Detention Center in Arizona. Petitioner is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

21. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq., the regulations implementing the INA, the Foreign Affairs Reform and Restructuring Act of

1998 (FARRA), Pub. L. No. 105–277, div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1998) (codified as Note to 8 U.S.C. § 1231), the regulations implementing the FARRA, the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*; and 5 U.S.C. § 552 *et. seq.*

22. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as the instant case is a civil action arising under the laws of the United States. Because Plaintiff is in immigration custody, 28 U.S.C. § 2241 also provides jurisdiction. The Court may grant declaratory and injunctive relief pursuant to 5 U.S.C. §§ 705-06, 28 U.S.C. § 1651, 28 U.S.C. §§ 2201–02, 28 U.S.C. § 2241, and its equitable powers. The government has waived its sovereign immunity pursuant to 5 U.S.C. § 702.

23. This Court also has jurisdiction over the present action pursuant Art. 1, § 9, Cl. 2 of the United States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the common law.

REQUIREMENTS OF 28 U.S.C. § 2243

24. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC 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).

25. 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).

26. Habeas corpus must remain a swift remedy. Importantly, "the statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). The Ninth Circuit warned against any action creating the perception "that courts are more concerned with efficient trial management than with the vindication of constitutional

rights." *Id.*

VENUE

27. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the Respondents are employees or officers of the United States, acting in their official capacity; because a substantial part of the events or omissions giving rise to the claim occurred in the District of Arizona. Petitioner is under the jurisdiction of the Phoenix ICE Field Office, ICE unlawfully re-arrested him at his Phoenix, Arizona workplace, in violation of 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981), and he is being imprisoned on information and belief in Arizona. There is no real property involved in this action.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

28. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* (*quoting Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Petitioner asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

29. No statutory exhaustion requirements apply to Petitioner's claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

30. Moreover, Petitioner wrote ICE, an AUSA, and OIL counsel for the Ninth Circuit matter on July 25, 2025, raising these arguments; ICE has still not released Petitioner. Because Petitioner's grant of withholding and CAT protection is a final administrative order, the BIA has already held that the Agency has no jurisdiction to consider a bond. Exh. B. Therefore, Petitioner

has exhausted all remedies available.

PARTIES

31. Petitioner is a citizen and national of Afghanistan who entered the U.S. as a refugee child of his adoptive mother, who is also his biological aunt, and his brother. While a Lawful Permanent Resident, he briefly departed and re-entered the U.S. about ten years ago and has remained in the country since. He was later convicted of a crime involving fraud; DHS put him into removal proceedings, where his residency was revoked and he was granted asylum, withholding, and CAT protection.

32. Petitioner was deemed neither a danger to his community or a flight risk by an Immigration Judge and released on $5,000 bond in November 2020. Exhibit B. He was released; DHS appealed. The BIA subsequently deemed the appeal moot, because by the time the BIA was able to address it, Petitioner's grant of withholding and CAT had already been affirmed by the BIA, making his order administratively final.

33. Respondent John CANTU is the Field Office Director of ICE, in Phoenix, Arizona, and is named in his official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Petitioner.

34. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Petitioner.

35. Respondent Kristi NOEM is the Secretary of DHS and is named in her official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Petitioner.

36. Respondent Pam BONDI is the Attorney General of the United States and the most senior official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the authority to interpret the immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

STATEMENT OF FACTS

37. Petitioner is a citizen and national of Afghanistan who entered the U.S. in 2002, as a refugee child of his adoptive mother, who is also his biological aunt, and his brother. Petitioner was subsequently trafficked by his adoptive mother/aunt, who forced him to work rather than allowing him to attend high school and withheld food from him and threatened to contact immigration and the police as methods of control. He was granted lawful permanent residency in 2005.

38. DHS issued a Notice to Appear on June 18, 2015, and took Petitioner into ICE custody.

39. On August 3, 2020, the IJ granted asylum, withholding of removal, and CAT. DHS appealed.

40. Meanwhile, after five years of ICE detention and in light of the IJ's grant of relief, the IJ reconsidered Petitioner's flight risk, danger to the community, and national security, and granted a $5,000 bond in November 2020. On November 17, 2020, ICE released Petitioner following the IJ's release order. DHS appealed.

41. On August 4, 2022, the BIA affirmed the IJ's grant of withholding and CAT. Thus, these forms of relief became final on August 4, 2022. The BIA sustained DHS's appeal on the grant of asylum, however. Petitioner timely appealed to the Ninth Circuit.

42. In February 2025, the BIA dismissed DHS's appeal of the IJ's bond decision granting a $5,000 bond, finding DHS's appeal was moot due to Petitioner having a final administrative order. Exhibit B.

43. On May 14, 2025, the Ninth Circuit Court of Appeals held oral argument. Undersigned counsel appeared as did OIL attorney Sunah Lee. The panel explicitly asked Ms. Lee if the government had any intention of removing Petitioner to a third country, and if it did, what would

be the procedure for doing so. Ms. Lee assured the Court that she was unaware of any plan to remove Petitioner, and if such a plan arose, the government would be required by statute and regulation to file a motion to reopen with the BIA so that Petitioner could have a full and fair hearing on his removability to a third country. *See Mohamed-Qasim v. Bondi*, Case No. 23-1821, oral argument available at https://www.youtube.com/watch?v=rGuAMPb-G6U, time stamp 19:17.

44. The Ninth Circuit affirmed the BIA's decision; thus, withholding of removal and CAT remain, but not asylum. The Court's mandate issued July 21, 2025.

45. On July 25, 2025, ICE detained Petitioner at his workplace. Upon his arrest, ICE officers did not articulate any reason why he was now a flight risk, a danger to his community, or how he had violated any conditions of his 2020 bond release.

46. This is because ICE cannot make such a statement. Over the last 4.5 years Petitioner has lived in freedom, he has simply worked and been a good member of society. He has reported several crimes to the government, some of which he was a victim of. He has had no new criminal history and has remained in complete compliance with the law.

47. Petitioner has asked ICE to release him. ICE has not done so. Intervention from this Court is therefore required to ensure that Petitioner is released from his current custody based his unlawful arrest, returned to his home in Phoenix, Arizona, where ICE can then provide him with a hearing before determining to re-arrest him pursuant to the Due Process Clause of the Fifth Amendment.

LEGAL BACKGROUND

I. Pre-Incarceration Hearing

A. Right to a Hearing Prior to Re-incarceration.

48. In Petitioner's particular circumstances, the Due Process Clause of the Constitution makes it unlawful for Respondents to re-arrest him without first providing a pre-deprivation hearing before a neutral decision maker to determine whether circumstances have materially changed since his release from custody in November 2020, such that detention would now be warranted on the basis that he is a danger or a flight risk by clear and convincing evidence.

49. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to revoke an immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. at 640, the BIA has recognized an implicit limitation on ICE's authority to re-arrest noncitizens. There, the BIA held that "where a previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance." *Id.* In practice, DHS "requires a showing of changed circumstances both where the prior bond determination was made by an immigration judge *and* where the previous release decision was made by a DHS officer." *Saravia*, 280 F. Supp. 3d at 1197 (emphasis added). The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances … ICE cannot redetain Panosyan.").

50. ICE has further limited its authority as described in *Sugay*, and "generally only re-arrests [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances." *Saravia*, 280 F. Supp. 3d at 1197, *aff'd sub nom. Saravia for A.H.*, 905 F.3d 1137 (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case law and ICE practice, ICE may re-arrest a noncitizen who had been previously released on bond only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

51. ICE's power to re-arrest a noncitizen who is at liberty following a release from custody is also constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). In this case, the guidance provided by *Matter of Sugay*—that ICE should not re-arrest a noncitizen absent changed circumstances—failed to protect Petitioner's weighty interest in his freedom from any lawful detention.

52. The District of Arizona has recognized that when the government seeks to revoke or stay a noncitizen's release from custody, due process under the Fifth Amendment requires a meaningful opportunity to be heard before the deprivation occurs. *See Organista v. Sessions*, No.

CV-18-00285-PHX-GMS (D. Ariz. Feb. 8, 2018). Applying the familiar three-factor test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), the court weighed 1) the private liberty interest at stake; 2) the risk of erroneous deprivation; and 3) the burden on the government – to assess whether the Petitioner was afforded "the fundamental requirement of due process – the opportunity to be heard at a meaningful time and manner." *Organista,* CV-18-00285-PHX-GMS at 4; *City of Los Angeles v. David*, 538 U.S. 715, 717 (2003). In weighing the *Matthews* factors, the court declared that "there is no meaningful dispute that Petitioner has a liberty interest in being heard before the BIA can prolong his detention." *Id.* at 4.

53. Federal district courts in California have also repeatedly recognized that the demands of due process and the limitations on DHS's authority to revoke a noncitizen's release from custody set out in DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen on bond, like Petitioner *before* ICE re-detains him. *See, e.g.*, *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest).

B. Petitioner's Protected Liberty Interest in His Conditional Release

54. 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*, 533 U.S. at 690.

55. Since November 2020, Petitioner exercised that freedom under ICE's order

releasing him from custody. As he was released from custody, he retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding unlawful 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).

56. 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.

57. This basic principle—that individuals have a liberty interest in their conditional 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).

58. 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).

59. Here, when this Court "'compar[es] the specific 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 him 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, care for his family, including his U.S. citizen niece and nephew, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

60. Petitioner is already protected from removal, because he has been granted withholding of removal and CAT protection, both of which automatically provide a stay of removal. The government has done nothing to disrupt the final administrative order.

61. Further, Petitioner's past circumstances likely meet the qualifications for T nonimmigrant status. This status is designed for individuals who have endured severe hardships, and in his case, it is based on a harrowing history of labor trafficking that began when he was only fourteen years old. For years, he faced labor exploitation and starvation at the hands of his trafficker, underscoring the urgent need for his release from detention and for protection from further harm.

62. He also likely qualifies for a U visa, available to victims of violent crime in the U.S. who have been helpful to law enforcement's investigation. Specifically, Plaintiff was robbed at knife-

point and reported this to law enforcement, helping the agency prosecute the crime. Petitioner sought certification from the Phoenix Police Department on July 11, 2025.

C. Petitioner's Liberty Interest Mandates a Hearing Before any Re-Arrest and Revocation of Release from Custody

63. Petitioner asserts that, here, (1) where his detention would be civil; (2) where he has been at liberty for 53 months, during which time he has complied with all conditions of release; (3) where no change in circumstances exist that would justify his lawful detention; and (4) where the only circumstance is ICE's move to arrest as many people as possible because of the new administration, due process mandates that he be released from his unlawful custody and receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest or revocation of his custody release.

64. "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)).

65. 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.*

66. Because, in this case, ICE is required to release Petitioner from his unlawful custody and provide Plaintiff with notice and a hearing *prior* to any re-incarceration and revocation of his bond. *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 requires a pre-deprivation hearing before a neutral adjudicator.

D. Petitioner's Private Interest in His Liberty is Profound

67. 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 been released pending civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. 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 he is under conditional release.

68. 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 decision releasing him from custody and to take away—without a lawful basis—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).

69. 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.

E. The Government's Interest in Re-Incarcerating Petitioner Without a Hearing is Low and the Burden on the Government to Refrain from Re-Arresting Him Unless and Until He is Provided a Hearing That Comports with Due Process is Minimal

70. The government's interest in detaining Petitioner without a due process hearing is low, and when weighed against Petitioner's significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents to release Petitioner from his unlawful custody and refrain from re-arresting him unless and until the government demonstrates by clear and convincing evidence that he 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 he seeks—notice and a hearing regarding whether he has violated any conditions of his release, and, if so, providing Petitioner with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing 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 provides this sort of hearing to individuals like Petitioner.

71. 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. In this case, the government cannot plausibly assert that it has any lawful basis for detaining Petitioner. Petitioner has already been granted mandatory, non-discretionary protection from removal, which DHS appealed and lost. The BIA's grant is a final administrative order. Thus, the government has no legal interest in detaining Petitioner. Further, to do so at this point would necessarily be prolonged detention—DHS has not moved to reopen and therefore the order remains final—and his lawful removal is impossible and therefore not foreseeable.

72. Petitioner was also already determined by an Immigration Judge not to be a danger to the community or a flight risk in November 2020 and has done nothing to undermine that determination. *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).

73. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the government's interest in detaining him.[4]

74. Moreover, the "fiscal and administrative burdens" that his immediate release and a lawful

[4] *See* "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January 26, 2025), available at: https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/.; "Stephen Miller's Order Likely Sparked Immigration Arrests And Protests," Forbes (June 9, 2025), https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/ ("At the end of May 2025, 'Stephen Miller, a senior White House official, told Fox News that the White House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day,' reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.").

pred-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Petitioner does not seek a unique or expensive form of process, but rather a routine hearing regarding whether his bond should be revoked and whether he should be re-incarcerated.

75. 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. Petitioner has been granted relief and therefore that comes with a stay of removal. ICE's unlawful action of placing him in custody for an unforeseeably long amount of time is more of a financial burden than releasing him and providing any pre-custody hearing before any future re-arrest occurs.

76. In the alternative, providing Petitioner with a hearing before this Court (or a neutral decisionmaker) regarding release from custody is a routine procedure that the government provides to those in immigration jails on a daily basis. At that hearing, the Court would have the opportunity to determine whether circumstances have changed sufficiently to justify his re-arrest. But there is no justifiable reason to re-incarcerate Petitioner prior to such a hearing taking place. As the Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in revoking parole without some informal procedural guarantees." *Morrissey*, 408 U.S. at 483.

77. Releasing Petitioner from unlawful custody and enjoining his re-arrest until ICE (1) moves for a bond re-determination before an IJ and (2) demonstrates by clear and convincing evidence that Petitioner is a flight risk or danger to the community is far *less* costly and burdensome for the government than keeping him detained. g to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996.

F. Without a Due Process Hearing Prior to Any Re-Arrest, the Risk of an Erroneous Deprivation of Liberty is High, and Process in the Form of a Constitutionally Compliant Hearing Where ICE Carries the Burden Would Decrease That Risk

78. Releasing Petitioner from unlawful custody and providing him a pre-deprivation hearing

would decrease the risk of him being erroneously deprived of his liberty. Before Petitioner can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the government is held to show that there has been sufficiently changed circumstances such that ICE's November 2020 release from custody determination should be altered or revoked because clear and convincing evidence exists to establish that Petitioner is a danger to the community or a flight risk.

79. On July 25, 2025, Petitioner did not receive this protection. Instead, he was detained by ICE, without notice, at work despite Petitioner having complied with the conditions of his release since 2020 and having a final administrative order prohibiting his removal, and there have been no material changes in his circumstances.

80. By contrast, the procedure Petitioner seeks—a hearing in front of a neutral adjudicator at which the government must prove by clear and convincing evidence that circumstances have changed to justify his detention *before* any re-arrest—is much more likely to produce accurate determinations regarding factual disputes, such as whether a certain occurrence constitutes a "changed circumstance." *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).

81. 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 a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternatives to detention that could

mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in determining whether Petitioner's re-incarceration is warranted.

II. Section 240 Removal Proceedings

82. 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; 8 U.S.C. § 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 8 U.S.C. § 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).

83. 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) (emphasis added); 8 C.F.R. § 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]").

84. 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.

85. 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. Protection of withholding of removal and CAT is country-specific.

86. 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* FARRA (codified as Note to 8 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).

87. An IJ may only terminate a grant of CAT protection based on evidence that the person will no longer face torture in the designated country. 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).

88. 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.

III. Withholding-Only Proceedings

89. 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.

90. 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.

91. 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).

92. 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).

IV. Statutory Scheme for Removal to a Third Country

93. Congress established the statutory process for designating countries to which noncitizens may be removed, 8 U.S.C. § 1231(b)(1)-(3).[5]

94. 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).

95. 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).

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

96. Critically, both Subsections (b)(1) and (b)(2), have a specific carve-out provision prohibiting removal of persons to countries where they face persecution or torture. Specifically, § 1231(b)(3)(A), entitled "Restriction on removal to a country where [noncitizen's] life or freedom would be threatened," reads:

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

Id. § 1231(b)(3)(A) (emphasis added).

97. 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).

98. In *Jama v. Immigr. & Customs Enf't*, the Supreme Court addressed the designation procedure under Subsection (b)(2). 543 U.S. 335 (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 . . . ." *Jama*, 543 U.S. 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)).

99. 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).

100. 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, after 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.

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

101. 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[.]").

102. Pursuant to § 1231(b)(3)(A), courts repeatedly have 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").

103. Providing such notice and opportunity to present a fear-based claim prior to deportation also implements the United States' obligations under international law. *See* United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8 U.S.C. § 1231(b)(3)); *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, opened for signature Dec. 10, 1984, art. III, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, 114; FARRA at 2681–822 (codified at Note to 8 U.S.C. § 1231) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."); United Nations Committee Against Torture, General Comment No. 4 ¶ 12, 2017, Implementation of Article 3 of the Convention in the Context of Article 22, CAT/C/GC/4 ("Furthermore, the person at risk [of torture] should never be deported to another State where he/she may subsequently face deportation to a third State in which there are substantial grounds for believing that he/she would be in danger of being subjected to torture.").

104. 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.

105. The federal government has repeatedly acknowledged these obligations. In June 2001, the former Immigration and Naturalization Service drafted a document entitled "Notice to

Alien of Removal to Other than Designated Country (Form I-913)," which would have provided noncitizens with written notice of deportation to a third country and a 15-day automatic stay of removal to allow the noncitizen to file an unopposed motion to reopen removal proceedings and accompanying Form I-589 (protection application) before an IJ. See Attachment A, Records Produced in Response to Freedom of Information Act (FOIA) Litigation, Nat.'l Immigr. Litigation Alliance v. ICE, No. 1:22-cv-11331-IT (D. Mass. filed Aug. 17, 2022), at 2022-ICLI-00055* 9-14. Almost twenty years later, in June 2020, DHS again drafted a model "Notice of Removal to Other than Designated Country," that likewise provided these protections. See Attachment B, Records Produced in Response to FOIA Litigation, Nat.'l Immigr. Litigation Alliance v. ICE, No. 1:22-cv-11331-IT (D. Mass. filed Aug. 17, 2022), at 2022-ICLI-00055* 8 (Notice).[6]Although neither form was ever published, both reflect how notice must be provided to be meaningful.[7]

106. Additionally, 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. pts. 241, 1240, 1241) (supplementary information). 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.

107. Furthermore, consistent with the above-cited authorities, at oral argument in *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), the Assistant to the Solicitor General

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[6] The complete production is available at https://tinyurl.com/2t868ykr. Pages 1-7 (Bates 2022-ICLI-00055* 1-7) indicate that the notice was drafted on or about May 21, 2020.

[7] The forms fell short of providing a meaningful opportunity to present a fear-based claim, however, because they placed the burden on the noncitizen to file a motion to reopen.

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. Specifically, at oral argument in that case, 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.

See Transcript of Oral Argument at 20-21, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021).

108. 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.").

109. 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).

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

110. As a matter of policy or practice, DHS violates the statutory, regulatory, and due process framework by depriving Plaintiff 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.

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

112. DHS has no written policy to provide, or guarantee provision of, either of these protections.

113. DHS did not produce any policy in response to the FOIA request and subsequent litigation for such a policy in *Nat.'l Immigr. Litigation Alliance v. ICE*, No. 1:22-cv-11331-IT (D. Mass filed Aug. 17, 2022).

114. 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. filed 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. 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.

115. Nonetheless, DHS has, in a limited number of cases over the years, filed a motion to reopen removal proceedings to designate a new country and allow a noncitizen to pursue a fear-based claim, demonstrating that it is aware of what should be done to provide a meaningful opportunity to seek protection prior to removal to a third country.

116. 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.

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

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

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

119. Prior to taking office, the Trump Administration stated its intention to pressure third countries to accept noncitizens ordered deported from the United States.[8]

120. 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

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[8] Julia Ainsley, *Incoming Trump Administration Plans to Deport Some Migrants to Countries Other Than Their Own*, NBC News (Dec. 5, 2024); Commonwealth of the Bahamas, *Statement from the Office of the Prime Minister on the Trump Administration Transition Team Proposal* (Dec. 5, 2024) (rejecting Trump transition team proposal to "to accept deportation flights of migrants from other countries").

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).

121. 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.[9]

122. 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. Attachment C.[10]

123. 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."[11]

124. On March 6, 2025, Reuters published a copy of the February 18, 2025, directive.[12] 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."

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[9] Camilo Montoya-Galvez, *Trump Eyes Asylum Agreement with El Salvador to Deport Migrants There*, CBS News (Jan. 27, 2025); Matthew Lee, *Guatemala Gives Rubio a Second Deportation Deal for Migrants Being Sent Home from the US*, AP News (Feb. 5, 2025).

[10] Nick Miroff and Maria Sacchetti, *Trump Seeks to Fast-Track Deportations of Hundreds of Thousands*, The Washington Post (Feb. 28, 2025).

[11] Hamed Aleaziz and Zolan Kanno-Youngs, *Frustration Grows Inside the White House Over Pace of Deportations*, N.Y. Times (Mar. 5, 2025).

[12] Ted Hesson and Kristina Cooke, Trump Weighs Revoking Legal Status of Ukrainians as US Steps Up Deportations, Reuters (Mar. 6, 2025). The article links to the directive (Attachment C): https://fingfx.thomsonreuters.com/gfx/legaldocs/gkpljxxoqpb/ICE_email_Reuters.pdf (last visited Aug. 3, 2025).

125. 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.

VIII. The T Visa Statute and Congressional Intent versus DHS's Regulations

126. Congress created the T nonimmigrant visa in 2000 as part of the Victims of Trafficking and Violence Protection Act (VTVPA) to protect trafficking survivors from removal so they can access humanitarian relief and aid law enforcement, and eventually apply for lawful permanent residency.

127. The T visa allows victims to remain in the United States for an initial period of up to four years if they comply with any reasonable request for assistance from law enforcement in the detection, investigation, or prosecution of human trafficking or qualify for an exemption or exception. 22 U.S.C. § 7101; 8 U.S.C. §§ 1101(a)(15)(T), 1184(o); 8 C.F.R. § 214.11.

128. The primary purpose of T visas is to offer protection to victims of trafficking while simultaneously enabling them to assist law enforcement agencies in the investigation and prosecution of trafficking crimes. This purpose aligns with the humanitarian and law enforcement goals set by Congress, recognizing the severe exploitation and abuse experienced by trafficking victims and their need for safety and stability to recover and assist in legal proceedings.

129. Congress intended the T visa program to provide stability and protection to trafficking victims while they assist law enforcement. The statutory framework and legislative history demonstrate that Congress did not intend for trafficking victims to face deportation while their applications remain pending. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000).

130. Congress has expressly recognized the importance of ensuring that trafficking victims are not removed while their applications are pending. House Report 116-458 states that ICE is prohibited from removing individuals with pending Violence Against Women Act (VAWA), U Visa, or T Visa applications or pending appeals related to such visas. This legislative directive demonstrates Congress's intent to shield trafficking victims from deportation

while their applications are being adjudicated.

131. The T visa statute and legislative history confirm that Congress did not intend for trafficking victims to face deportation while their applications remain pending. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000). House Report 116-458 further clarifies that ICE's removal of individuals with pending T visa applications is contrary to congressional intent and undermines the statutory purpose of the T visa program. Indeed, to qualify for a T visa, applicants must "be physically present in the United States." 8 U.S.C. § 1101(a)(15)(T)(i); 8 C.F.R. §§ 214.11(b)(1)-(4).

132. However, 8 C.F.R. § 214.204(b)(2)(i) allows ICE to remove T visa applicants before USCIS adjudicates their T visa applications, effectively eliminating their eligibility for relief. This regulatly plainly contradicts the T visa's very legislative purpose and protections, leaving trafficking victims vulnerable to deportation before their applications can be properly reviewed.

133. DHS policy recognizes that trafficking victims should not be removed without coordination with law enforcement. A January 31, 2025, ICE memorandum confirms that ICE is required to conduct deconfliction before executing a removal order against a T visa applicant. This process ensures that a removal does not interfere with an active investigation. Despite this policy, ICE has failed to conduct deconfliction in Plaintiff's case, even though he has reported his trafficking to law enforcement. By apparently moving forward with Plaintiff's removal without verifying whether law enforcement has initiated an investigation, ICE is acting inconsistently with both its own internal guidance and congressional directives prohibiting the removal of T visa applicants. This failure to follow established policy further demonstrates that ICE's discretion to remove T visa applicants is being applied arbitrarily and in a manner that frustrates the statutory protections Congress intended.

CLAIMS FOR RELIEF

Count I

Procedural Due Process, U.S. Const. Amend. V

134. The allegations in the above paragraphs are realleged and incorporated herein.

135. 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.

136. Petitioner has a vested liberty interest in his lawful conditional release. Due Process does not permit the government to strip him of that liberty without a hearing before this Court. *See Morrissey*, 408 U.S. at 487-488.

137. The Court must therefore order that ICE release Petitioner from his current unlawful custody.

138. Prior to any re-arrest, the government must provide him with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia,* whether clear and convincing evidence demonstrates, taking into consideration alternatives to detention, that Petitioner is a danger to the community or a flight risk, such that his re-incarceration is warranted. During any custody redetermination hearing that occurs, this Court or, in the alternative, a neutral adjudicator must consider alternatives to detention when determining whether Petitioner's re-incarceration is constitutional and warranted.

Count II

Fifth Amendment Due Process Clause

139. The allegations in the above paragraphs are realleged and incorporated herein.

140. The Due Process Clause of the Fifth Amendment forbids the government from depriving individuals of their right to be free from unjustified deprivations of liberty. U.S. Const. amend. V.

141. Petitioner has a vested liberty interest in his conditional release. Due Process does not permit the government to strip him of that liberty without it being tethered to one of the two constitutional bases for civil detention: to mitigate against the risk of flight or to protect the community from danger.

142. Since November 2020, Petitioner has fully complied with the conditions of release imposed on him by ICE, thus demonstrating that he is neither a flight risk nor a danger. Re-arresting him now would be punitive and violate his constitutional right to be free from the unjustified deprivation of his liberty.

143. For these reasons, Petitioner's continued unlawful custody and any subsequent re-arrest without first being provided a hearing would violate the Constitution.

144. The Court must therefore order that he be released from custody.

145. The Court must order the government to not re-arrest him in any subsequent action without a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia,* whether clear and convincing evidence demonstrates, taking into consideration alternatives to detention, that Petitioner is a danger to the community or a flight risk, such that his re-incarceration is warranted. During any custody redetermination hearing that occurs, this Court or, in the alternative, a neutral adjudicator must consider alternatives to detention when determining whether Petitioner's re-incarceration is warranted.

Count III

Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (C)
Third Country Removal Policy, Practice

146. The allegations in the above paragraphs are realleged and incorporated herein. The APA entitles "a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . to judicial review." 5 U.S.C. § 702.

147. The APA compels a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary [or] capricious, . . . otherwise not in accordance with law," id. § 706(2)(A), or "short of statutory right," id. § 706(2)(C).

148. Defendants have a policy or practice of failing to provide noncitizens who have final removal orders with meaningful notice and opportunity to present a fear-based claim prior to deportation to a third country.

149. Defendants' policy or practice is arbitrary and capricious. It deprives individuals with final removal orders of meaningful notice of DHS' intent to deport them to a third country and deprives them of an opportunity to present a fear-based claim to an immigration judge prior to deportation to a third country. It endangers their lives and safety by subjecting them to the very persecution and torture they fear in the third country.

150. In addition, Defendants' February 18, 2025 directive explicitly instructing DHS officers to review cases for removal to third countries and to re-detain individuals prior to providing notice of the third country and an opportunity to apply for protection is arbitrary and capricious and not in accordance with law because Defendants have no mechanism to ensure meaningful notice and an opportunity to present a fear-based claim prior to removal to a third country. As such, their civil detention is not tied to a lawful purpose.

151. Defendants' policy or practice is also not in accordance with law, short of statutory rights, and violates the INA, FARRA, and implementing regulations all of which mandate that Defendants refrain from removing Plaintiff to a third country where they will likely be persecuted or tortured, thus requiring Defendants to provide meaningful notice of deportation to a third country and the opportunity to present a fear-based claim to an immigration judge before deporting an individual to a third country, yet Defendants do not do so.

152. Accordingly, the Court should hold unlawful and set aside Defendants' policy or practice of failing to provide noncitizens who have final removal orders with meaningful notice and opportunity to present a fear-based claim prior to deportation to a third country.

153. The Court also should order Defendants to provide Plaintiff with meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country, and should set aside Defendants' February 18, 2025 directive to re-detain Plaintiff until he has been provided meaningful notice and opportunity to apply for protection.

Count IV

Administrative Procedure Act, 5 U.S.C. § 706(1)

154. The allegations in the above paragraphs are realleged and incorporated herein.

155. The APA empowers federal courts to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

156. The INA, FARRA, and implementing regulations, and the Constitution mandate meaningful notice and opportunity to present a fear-based claim to an immigration judge before

DHS deports a person to a third country. Defendants have unlawfully withheld the provision of these statutory, regulatory, and constitutional rights.

157. Accordingly, the Court should compel Defendants to provide Plaintiff with meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country.

Count V

Fifth Amendment Due Process Clause and Administrative Procedure Act, 5 U.S.C. § 706(2)(D)

158. The allegations in the above paragraphs are realleged and incorporated herein.

159. 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.

160. 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 v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). 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 February 18, 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 v. Davis*, 533 U.S. 678, 690 (2001). The APA also compels a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

161. By failing to implement a process or procedure to afford Plaintiff meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country and by re-detaining previously released individuals pursuant to the February 18, 2025 directive, Defendants have violated Plaintiff's substantive and procedural due

process rights and are not implementing procedures required by the INA, FARRA, and the implementing regulations.

162. 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 ensuring that Plaintiff is not re- detained pursuant to the February 18, 2025 directive.

163. The Court should enjoin Defendants from failing to provide Plaintiff with meaningful notice and opportunity to present a claim for protection to an immigration judge before DHS deports a person to a third country. The Court should also set aside the implementation of the February 18, 2025 directive to re-detain Plaintiff, to the extent it is this directive that Defendants have relied upon to re-detain Plaintiff. The Court should direct the release of Plaintiff until Defendants provide meaningful notice and an opportunity to apply for protection.

Count VI

Declaratory Judgment, 28 U.S.C. § 2201

164. The allegations in the above paragraphs are realleged and incorporated herein.

165. Under 28 U.S.C. § 2201(a), a court "may declare the rights and other legal relations of any interested party seeking such declaration."

166. Plaintiff seeks a declaration that the Immigration and Nationality Act, the Foreign Affairs Reform and Restructuring Act of 1998, implementing regulations, the Due Process Clause of the Fifth Amendment, and the treaty obligations of the United States require Defendants to provide meaningful notice and opportunity to present a fear-based claim to an immigration judge prior to deportation and prior to re-detaining Plaintiff based on potential removal to a third country.

167. Defendants have a policy or practice of ignoring these statutory, regulatory, and constitutional mandates.

168. Accordingly, Plaintiff requests that the Court declare his rights and legal relations under the INA, and FARRA and implementing regulations and the Due Process Clause of the Fifth Amendment.

Count VII

Violation of 8 U.S.C. § 1231(a) and Fifth Amendment Due Process Clause

169. The allegations in the above paragraphs are realleged and incorporated herein

170. 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).

171. 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).

172. While § 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.

173. No statute permits Defendants to re-detain an individual who has been granted withholding of removal and CAT, has been given no reason for re-detention, has filed no motion to reopen proceedings with the BIA, and who was also previously released under § 1231(a)(3) without evidence that removal is now reasonably foreseeable or that the individual has violated the conditions of their release.

174. Indeed, Plaintiff's removal is either immenent because it will be unlawful, or it is going to be prolonged, which is also unlawful. 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.

175. Plaintiff previously detained by ICE and released after an individualized custody determination that considered any danger or unmitigable flight risk. They have a liberty interest in remaining free from physical confinement where removal is not reasonably foreseeable, they have not violated the conditions of their release, and where re-detention is unlawful because

Defendants have not created a lawful mechanism to ensure that noncitizens receive meaningful notice and an opportunity to present a fear-based claim before deportation to a third country.

176. For these reasons, Defendants have violated the INA, implementing regulations, and the Due Process Clause of the Fifth Amendment.

Count VIII
Violation FOIA, 5 U.S.C. § 552
Failure to Proactively Disclose Records
(Against Defendant DHS)

177. The allegations in the above paragraphs are realleged and incorporated herein.

178. Defendant DHS is obligated under 5 U.S.C. § 552(a)(2)(B) and (a)(2)(C) to proactively disclose "those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register" and "administrative staff manuals and instructions to staff that affect a member of the public."

179. Defendant DHS may not "rel[y] on, use[], or cite[] as precedent" any "final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public" against a party unless the material is "indexed and either made available or published as provided by [5 U.S.C. § 552(a)(2)(E)]" or "the party has actual and timely notice of the terms thereof." 5 U.S.C. § 552(a)(2)(E).

180. The February 18, 2025 directive is a statement of policy adopted by DHS but not published in the Federal Register and an instruction to staff which affects members of the public.

181. On information and belief, Defendant DHS has similar statements of policy, instruction, or guidance covered by 5 U.S.C. § 552(a)(2)(E) related to Defendants' increased efforts to deport noncitizens to third countries exist.

182. Defendant DHS has failed to proactively disclose the February 18, 2025 directive and/or related statements of policy, instruction, or guidance covered by 5 U.S.C. § 552(a)(2)(E), and no legal basis exists for Defendant DHS's failure to proactively disclose these materials.

183. Defendant DHS has nonetheless relied upon the February 18, 2025 directive, and has possibly relied on other statements of policy or instruction or guidance covered by 5 U.S.C. § 552(a)(2)(E), against Plaintiff.

184. Defendant DHS's failure to proactively disclose the February 18, 2025 directive and other statements of policy, instruction, or guidance covered by 5 U.S.C. § 552(a)(2)(E), is in violation of 5 U.S.C. § 552(a)(2). Defendant DHS's reliance on these materials against Plaintiff is violation of 5 U.S.C. § 552(a)(2)(E).

185. For these reasons, Defendants cannot rely on or use the February 18, 2025 directive to re-detain Plaintiff.

Count IX
Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (C)
T Visa Regulation Permitting Petitioner's Removal
Prior to T visa Adjudication Conflicts with T Visa Statute

186. The allegations in the above paragraphs are realleged and incorporated herein.

187. Congress created the T visa to serve a narrow and essential purpose: to protect trafficking survivors from removal so they can access humanitarian relief and aid law enforcement. The regulation at issue, 8 C.F.R. § 214.204(b)(2)(i), directly undermines that statutory design. It allows DHS to eliminate a trafficking victim's eligibility for relief by executing removal before the agency adjudicates the claim. That outcome cannot be squared with the structure or purpose of the governing statute and exceeds the limits of agency authority under the APA.

188. The Supreme Court has now held that courts must independently interpret statutes under the APA and may not defer to agency interpretations simply because a statute is ambiguous. See Loper Bright Enterprises v. Raimondo, 603 U.S. 369, 412 (2024) (overruling Chevron and confirming that courts must "exercise their independent judgment" in interpreting statutes). The APA codifies this role: courts must "decide all relevant questions of law" and "interpret constitutional and statutory provisions" without deference to the agency. 5 U.S.C. § 706.

189. Under this framework, 8 C.F.R. § 214.204(b)(2)(i) must be set aside because it directly contradicts the statute it purports to implement. The T visa statute provides a humanitarian mechanism to protect survivors of trafficking who remain "physically present in the United States" due to trafficking and who assist law enforcement. See 8 U.S.C. § 1101(a)(15)(T)(i)(I), (III). These protections hinge on the applicant's continued presence in the United States and cooperation with law enforcement authorities -- objectives that removal before adjudication categorically defeats.

190. The regulation, by authorizing ICE to remove applicants while a T visa application is pending, renders the benefit illusory. It strips applicants of both their eligibility for relief and their ability to meet statutory criteria rooted in presence and cooperation. That outcome is incompatible with the statutory scheme.

191. This structural contradiction cannot be reconciled by appeal to agency discretion. Congress crafted the T visa as a protection-first mechanism, expressly linking relief to an applicant's physical presence "on account of trafficking" and their ongoing assistance to law enforcement. See § 1101(a)(15)(T)(i). Removal before adjudication cuts off both statutory predicates and places survivors in a Catch-22: deported before they can qualify, and disqualified because they were deported.

192. While 8 U.S.C. § 1231(a)(1)(A) provides that individuals with final removal orders "shall" be removed, "[e]xcept as otherwise provided in this section," nothing in § 1231 addresses -- much less overrides -- the statutory protections Congress enacted for trafficking victims in 8 U.S.C. §§ 1101(a)(15)(T) and 1184(o). Those provisions predicate eligibility on the applicant's physical presence in the United States and their cooperation with law enforcement -- conditions DHS forecloses by removing applicants mid-adjudication. When a general statute mandates removal and a more specific statute confers protections that necessarily entail deferred removal, the specific governs. *See Morton v. Mancari*, 417 U.S. 535, 550–51 (1974) ("Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment."); *In re Lazarus*, 478 F.3d 12, 18-19 (1st Cir. 2007) ("In statutory construction, the more specific treatment prevails over the general.").

Section 1231 cannot be construed to eliminate eligibility for T visa relief that Congress expressly made contingent on continued presence.

193. Even if legislative history does not bind this Court, it provides persuasive confirmation of congressional understanding. The House Appropriations Committee has expressly condemned DHS's removal of trafficking applicants before adjudication. H.R. Rep. No. 116-458, at 54 (2020). While not controlling, this report confirms the statutory scheme's protective purpose and highlights the irrationality of DHS's contrary reading.

194. Because 8 C.F.R. § 214.204(b)(2)(i) strips away statutory protections by authorizing pre-adjudication removal, it exceeds DHS's authority and is contrary to law. Under *Loper Bright* and the APA, the Court must interpret the statute independently -- and invalidate agency rules that subvert its operation. This regulation does just that. It must be set aside.

Count X

Administrative Procedure Act, 5 U.S.C. § 706(2)(A)
Defendants' Failure to Deconflict T Visa Investigation Prior to Removal

195. The allegations in the above paragraphs are realleged and incorporated herein.

196. Plaintiff challenges Defendants' decision to detain and presumably remove Plaintiff without conducting deconfliction -- a procedural safeguard ICE policy issued in January 2025, ICE Policy No. 11005.4, to ensure that trafficking victims like Plaintiff are not deported before confirming whether their presence is needed for law enforcement purposes.[13]

197. Defendants' anticipated disregard of its own protocol, particularly in the trafficking context, is unlawful under the APA.

198. Specifically, when an agency ignores its own stated practices -- particularly where those practices are aimed at addressing a core statutory concern – and then fails to consider important aspects of the problem or offers an explanation that contradicts the evidence, it acts arbitrarily. *See Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983). Here, Defendants' unexplained disregard of a protocol designed to prevent interference with law

[13] ICE Memo, *Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits, available at* https://www.ice.gov/doclib/foia/policy/11005.4.pdf, last accessed Aug. 3, 2025.

enforcement investigations -- an interest the T visa statute plainly prioritizes -- undermines both the agency's own policy rationale and the statutory scheme. See 8 U.S.C. § 1101(a)(15)(T)(i)(III).

199. Here, law enforcement has been notified of the trafficking report, but no inquiry has been made as to whether an investigation was pending before Plaintiff's imminent removal. Defendants' failure to take even minimal steps to coordinate contradicts its internal protocol and raises precisely the concern the policy is meant to avoid.

200. The Court should declare Defendants' failure to conduct deconfliction unlawful under the APA, enjoin Plaintiff's removal, and compel Defendants' to comply with its deconfliction policy before taking further action.

Count XI
Equal Access to Justice Act, 28 U.S.C. § 2412
Attorney Fees

201. The allegations in the above paragraphs are realleged and incorporated herein.

202. Plaintiff is eligible for fees under the Equal Access to Justice Act ("EAJA"), as amended, pursuant to 28 U.S.C. § 2412 based on Counts I-X.

203. No special circumstances preclude an award of fees.

204. Accordingly, Plaintiff requests attorney's fees and costs under the Equal Access to Justic Act ("EAJA"), as amended, pursuant to 28 U.S.C. § 2412.

PRAYER FOR RELIEF

WHEREFORE, the Petitioner prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Declare that ICE's July 25, 2025, apprehension and detention of Plaintiff was an unlawful exercise of authority Defendant ICE provided no reason that Plaintiff presents a danger to the community or is flight risk;

(3) Declare that Plaintiff cannot be re-arrested unless and until he is afforded a hearing on the question of whether his re-incarceration would be lawful—i.e., whether the

government has demonstrated to a neutral adjudicator that he is a danger or a flight risk by clear and convincing evidence;

(4) Declare Plaintiff is a class member of *D.V.D. v. DHS*, --- F. Supp. 3d ---, 2025 WL 1142968, at *11 (D. Mass. Apr. 18, 2025);

(5) Declare that Defendants have violated Plaintiff's statutory, regulatory, and constitutional rights by depriving him of meaningful notice and opportunity to present a fear-based claim to an immigration judge prior to deportation to a third country and by re-detaining him pursuant to the February 18, 2025 directive;

(6) Declare that Defendants have a mandatory duty to provide Plaintiff with meaningful notice and opportunity to present a fear-based claim to an immigration judge prior to deportation to a third country;

(7) Declare that Defendants' February 18, 2025 directive is unlawful because re-detention is not tied to a lawful removal process;

(8) Declare that ICE's failure to conduct deconfliction prior to seeking Plaintiff's removal is arbitrary, capricious, and unlawful under the APA and T Visa statute;

(9) Stay, set aside, and/or declare unlawful 8 C.F.R. § 214.204(b)(2)(i) as inconsistent with the T Visa statute;

(10) Set aside Defendants' current policy of failing to provide Plaintiff with written notice and a meaningful opportunity to present a fear-based claim to an immigration judge prior to deportation to a third country;

(11) Stay and set aside Defendants' February 18, 2025 directive to re-detain those in Plaintiff's position based on potential removal to a third country;

(12) Preliminarily and permanently enjoin Defendants from failing to provide Plaintiff with written notice and a meaningful opportunity to present a fear-based claim under 8 U.S.C. § 1231(b)(3) and/or under the Convention Against Torture to an immigration judge prior to deportation to a third country;

(13) Order Defendants to immediately release Petitioner from Defendants' unlawful detention;

(14) Enjoin re-arresting Petitioner unless and until a hearing can be held before a neutral adjudicator to determine whether his re-incarceration would be lawful because the government has shown that he is a danger or a flight risk by clear and convincing evidence and is tied to a legitimate removal purpose;

(15) Enjoin Respondents from deporting Petitioner to any country without first affording him a full and fair hearing;

(16) Order Defendants to fully comply with its internal deconfliction policy before removing Plaintiff;

(17) Award reasonable costs and attorney fees; and

(18) Grant such further relief as the Court deems just and proper.

Dated: August 22, 2025

Respectfully submitted,

/s/ Hillary Walsh
Hillary Walsh
Attorney for Petitioner

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

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

Executed on this August 22, 2025, in Phoenix, AZ.

/s/ Hillary Walsh
Hillary Walsh
Attorney for Petitioner