UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS ABILENE DIVISION

SAHAND YOUSEFI NASRABADI, Petitioner,	§	
	§	
v.	§	**Civil Action No. 1:25-cv-00129-H**
	§	
MARCELLO VILLEGAS, Warden of the Bluebonnet Detention Facility, JOSH JOHNSON, Acting Director of Immigration and Customs Enforcement, Enforcement and Removal Operations, Dallas Field Office, KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, United States Attorney General, in their official capacities,	§	
	§	
Respondents.	§	

FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Petitioner Sahand Yousefi Nasrabadi ("Petitioner" or "Mr. Yousefi") files this petition seeking a Writ of Habeas Corpus releasing him from detention immediately and also requiring Respondents to provide notice and an opportunity to contest removal to a third country that is not his country of nationality and was not designated for removal by an immigration judge.

2. Petitioner is a citizen and national of the Islamic Republic of Iran (Iran). On October 21, 2013, an immigration judge ordered Respondent removed to Iran. No other country was designated for removal. The Immigration and Customs Enforcement (ICE) subsequently

released Respondent on an Order of Supervision requiring him to report periodically to ICE and abstain from engaging in criminal conduct.

3. Petitioner contends that the revocation of his Order of Supervision and his re-arrest by ICE violates federal regulations and his right to right to due. The United States and Iran do not have diplomatic relations and thus, there is no significant likelihood of removal in the reasonable, foreseeable future. Mr. Yousefi therefore should be released from custody.

4. Further, simple justice requires that Respondents give Petitioner notice of a third country to which he may be removed so that he can contest such removal.

CUSTODY

5. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Bluebonnet Detention Center, an immigration detention facility in Anson, Jones County, Texas. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION AND VENUE

6. This Court has jurisdiction to entertain this habeas petition under 28 U.S.C. § 1331; 28 U.S.C. § 2241; the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V; and the Suspension Clause, U.S. Const. art. I, § 2.

7. The proper venue for a habeas petition under § 2241 is the petitioner's district of confinement. Venue in this case lies in the Northern District of Texas because Petitioner is detained in Jones County, Texas.

PARTIES

8. Mr. Yousefi is a citizen and national of Iran. Although, he was previously a refugee who later adjusted to lawful permanent resident (LPR) status, he currently has no legal

status. He is the father of two U.S. citizen children and stepfather to another U.S. citizen. Petitioner is married to a United States citizen.

9. Respondent Marcello Villegas is the warden of the Bluebonnet Detention Facility ("BDF"). He is an employee of the Management and Training Corporation ("MTC"), which operates the BDF pursuant to an Intergovernmental Services Agreement with ICE. As the warden, Mr. Villegas is the immediate custodian of Mr. Yousefi. Respondent Villegas is sued in his official capacity.

10. Respondent Josh Johnson is the Acting Director for the Dallas Field Office of the ICE Enforcement & Removal Operations ("ERO"). In this capacity, he is responsible for, among other things, the administration of immigration laws, the institution of removal proceedings in North Texas, detention of noncitizens who are in removal proceedings or who have final orders of removal. Respondent Johnson is therefore a custodian of Mr. Yousefi and is authorized to release him. He is sued in his official capacity, and his address is 8101 North Stemmons Freeway, Dallas, Texas 75247.

11. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. Under the Homeland Security Act of 2002 (Pub. L. 107-296), the Department of Homeland Security assumed all of the functions of the former Immigration and Naturalization Service (INS). Section 441 of the Homeland Security Act created ICE and authorizes ICE to enforce the immigration laws. As a result, in her official capacity, Secretary Noem has responsibility for the administration of the immigration laws under 8 U.S.C. § 1103. She is empowered to initiate removal proceedings against Mr. Yousefi and to detain him. She is his legal custodian and is sued in her official capacity.

12. Respondent Pamela Bondi is the Attorney General of the United States. The Attorney General has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103 and oversees the Executive Office of Immigration Review ("EOIR"). She is Mr. Yousefi's legal custodian and is sued in her official capacity.

STATUTORY AND REGULATORY FRAMEWORK

Removal Proceedings

13. 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).

14. 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 immigration judge (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).

15. 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]").

16. 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.

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

18. 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).

19. An IJ may only terminate a grant of CAT protection based on evidence that the person will no longer face torture. DHS must move for a new hearing and provide evidence "relevant to the possibility that the [noncitizen] would be tortured in the country to which removal has been deferred and that was not presented at the previous hearing." 8 C.F.R. §§ 208.17(d)(1), 1208.17(d)(1). If a new hearing is granted, the IJ must provide notice "of the time, place, and date of the termination hearing," and must inform the noncitizen of the right to "supplement the information in his or her initial [withholding or CAT] application" "within 10 calendar days of service of such notice (or 13 calendar days if service of such notice was by mail)." 8 C.F.R. §§ 208.17(d)(2), 1208.17(d)(2).

20. 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.

Statutory Scheme for Removal to a Third Country

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

22. 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).

23. 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).

24. 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).

25. 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).

26. 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)).

27. 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).

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

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

DHS' Obligation to Provide Notice and Opportunity to Presenta Fear-Based Claim Before Removal to a Third Country

29. 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[.]").

30. 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").

31. 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.").

32. 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.

33. The federal government has acknowledged these obligations. In 2005, in jointly promulgating regulations implementing 8 U.S.C. § 1231(b), the Departments of Justice and Homeland Security asserted that "[a noncitizen] will have the opportunity to apply for protection as appropriate from any of the countries that are identified as potential countries of removal under [8 U.S.C. § 1231(b)(1) or (b)(2)]." Execution of Removal Orders; Countries to Which Aliens May Be Removed, 70 Fed. Reg. 661, 671 (Jan. 5, 2005) (codified at 8 C.F.R. 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.*

34. 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 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?
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> MR. SURI: We could after we provide the [noncitizen] notice that we were going to do that.

> JUSTICE KAGAN: Right.
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> MR. SURI: But, without notice –
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> 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?
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> MR. SURI: Yes, that's right.
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> 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.
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> 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).

35. 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.").

36. 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 determine whether designation is appropriate).

DHS Will Not Provide Notice and Opportunity to Present a Fear-Based Claim Before Deportation to a Third Country

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

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

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

40. 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.

41. In a limited number of cases over the years, DHS did file 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.

42. 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.

43. Respondents 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.

44. The current Administration has expressed its intention to continue to deny meaningful notice of and an opportunity to contest removal to a third country. On January 20, 2025, President Trump signed an Executive Order, entitled Securing our Borders, in which he instructed the Secretary of State, Attorney General, and DHS Secretary to "take all appropriate action to facilitate additional international cooperation and agreements, . . ., including [safe third country agreements] or any other applicable provision of law." *See* Exec. Order No. 14165, 90 Fed. Reg. 8467, 8468 (Jan. 20, 2025).

45. 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.[1]

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[1] 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).

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

47. 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."[2]

48. On March 6, 2025, Reuters published a copy of the February 18, 2025, directive.[3] 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."

49. On March 15, 2025, the DHS removed 238 Venezuelans to El Salvador without providing them any notice of their removal to El Salvador and without an opportunity to contest the removal to a country where they may face persecution or torture.

50. On or about July 5, 2025, the DHS removed 8 persons to South Sudan even though that county was not designated for removal and the persons hold no prior ties of citizenship, nationality, residence or prior travel to South Sudan. Only one of the 8 individual is from South Sudan; the others are from Vietnam, Mexico, Laos, Cuba and Myanmar.

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

[3] 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, https://fingfx.thomsonreuters.com/gfx/legaldocs/gkpljxxoqpb/ICE_email_Reuters.pdf (last visited July 6, 2025).

51. Secretary of Homeland Security Kristi Noem's March 30, 2025 Memorandum to ICE, Customs and Border Protection (CBP), and the U.S. Citizenship and Immigration Services (USCIS) dispels any doubts that Respondents will not provide any notice of third country removals to noncitizens with final orders. If third countries willing to accept removed aliens from the United States provide assurances that the removed aliens will not be persecuted or torture, "the alien may be removed without the need for further procedures." Thus, noncitizens will never have the opportunity to contest whether they fear persecution or torture from the third country or whether the third country may deliver the noncitizen to the noncitizen's country of nationality where they fear persecution and torture.

Detention Procedures for Noncitizens with Final Orders

52. According to 8 U.S.C. § 1231(a)(1)(A), "[W]hen an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the 'removal period')." The removal period begins on the latest of the following i) the date the order of removal becomes administratively final; ii) if the removal order is judicially reviewed and a stay of removal is granted, the date of the court's final order; or iii) if the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement. *See* 8 U.S.C. §§ 1231(a)(1)(B)(i) – (iii).

53. The 90-day removal period is tolled and extended only if the noncitizen fails to or refuses to make timely application in good faith for travel or other documents necessary for the their departure, or conspires or acts to prevent their removal. 8 U.S.C. § 1231(a)(1)(C). Notably, the statute contains no provisions for pausing, re-initiating, or refreshing the removal period after the 90-day clock runs to zero.

54. Subject to *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Clark v. Martinez*, 543 U.S. 371 (2005), ICE may continue to detain beyond the removal period the following three classes of noncitizens: 1) those inadmissible to the U.S. pursuant to 8 U.S.C. § 1182; 2) those subject to certain grounds of removability from the U.S. pursuant to 8 U.S.C. §§ 1227(a)(1)(C), 1227(a)(2) or 1227(a)(4); and 3) those who immigration authorities have determined to be a risk to the community or unlikely to comply with the order of removal. 8 U.S.C. § 1231(a)(6). The release of noncitizens that fall within these three classes of noncitizens with removal orders is governed by 8 C.F.R. § 241.4.

55. Pursuant to § 241.4, an alien may be released from custody "if the alien demonstrates to the satisfaction of the [Secretary of Homeland Security] or her designee that [the alien's] release will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending such alien's removal from the United States." 8 C.F.R. § 241.4(d)(1). ICE weighs the following factors when considering whether to recommend further detention or release of a detained noncitizen with final order of removal:

> **(1)** The nature and number of disciplinary infractions or incident reports received when incarcerated or while in Service custody;
> **(2)** The detainee's criminal conduct and criminal convictions, including consideration of the nature and severity of the alien's convictions, sentences imposed and time actually served, probation and criminal parole history, evidence of recidivism, and other criminal history;
> **(3)** Any available psychiatric and psychological reports pertaining to the detainee's mental health;
> **(4)** Evidence of rehabilitation including institutional progress relating to participation in work, educational, and vocational programs, where available;
> **(5)** Favorable factors, including ties to the United States such as the number of close relatives residing here lawfully;
> **(6)** Prior immigration violations and history;
> **(7)** The likelihood that the alien is a significant flight risk or may abscond to avoid removal, including history of escapes, failures to appear for immigration or other proceedings, absence without leave from any halfway house or sponsorship program, and other defaults; and
> **(8)** Any other information that is probative of whether the alien is likely to —

> **(i)** Adjust to life in a community,
> **(ii)** Engage in future acts of violence,
> **(iii)** Engage in future criminal activity,
> **(iv)** Pose a danger to the safety of himself or herself or to other persons or to property, or
> **(v)** Violate the conditions of his or her release from immigration custody pending removal from the United States.

8 C.F.R. § 241.4(f)(1)-(8).

56. If released, "[r]elease documentation (including employment authorization if appropriate) shall be issued by the district office having jurisdiction over the alien in accordance with the custody determination made by the district director or by the Executive Associate Commissioner. 8 C.F.R. § 241.4(d)(2).

57. An alien "who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody. 8 C.F.R. § 241.4(l)(1). "Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.4(l)(1).

58. The authority to revoke release is primarily granted to the Executive Associate Commissioner; however, "[a] district director may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner. 8 C.F.R. § 241.4(l)(2). Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:

> (i) The purposes of release have been served;
> (ii) The alien violates any condition of release;
> (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or

> (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.

8 C.F.R. § 241.4(l)(2)(i)-(iv).

59. If the alien is not released from custody following the informal interview provided for in paragraph (l)(1), the Headquarters Post-Order Detention Unit (HQPDU) Director shall schedule and commence the review process by informing the noncitizen of a records review and scheduling of an interview, which will ordinarily be expected to occur within approximately three months after release is revoked. 8 C.F.R. § 241.4(l)(3). "That custody review will include a final evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release". 8 C.F.R. § 241.4(l)(3).

FACTUAL BACKGROUND

60. Petitioner is a native and citizen of Iran.

61. On December 8, 2010, he entered the U.S. as a refugee and at after one year in refugee status, Petitioner's status was granted lawful permanent resident status (LPR).

62. In 2013, Petitioner was sentenced to deferred adjudication for spanking his child, in violation of Texas Penal Code § 22.04(f).

63. After learning of the conviction, October 11, 2013, the DHS served Petitioner with a Notice to Appear initiating removal proceedings.

64. The NTA charged Petitioner as removable under § 1227(a)(2)(A)(i) of the INA, as a noncitizen convicted of a CIMT within five years of admission, and also deportable under § 1227(a)(2)(E)(i), as a noncitizen convicted of a crime of child abuse, neglect, or abandonment.

65. Petitioner did not have legal counsel in his removal proceedings. At his only master calendar hearing on October 21, 2013, Petitioner appeared *pro se* without a Farsi interpreter. The immigration judge found Petitioner removable but did not explain to Petitioner

that although barred from applying for asylum. he could apply for deferral of removal under the Convention Against Torture ("CAT"). The judge did not describe the protections afforded by deferral of removal under CAT and did not allow Petitioner to contest whether his conviction barred him from applying for withholding. The immigration ordered Petitioner removed to Iran.

66. Approximately 6 months after Petitioner was ordered removed, ICE released Petitioner and issued him an Order of Supervision (OSUP). As a condition for his release, Petitioner was required to, among other things, check in annually with ICE.

67. ICE never requested that Petitioner take any specific steps to facilitate third-party removal. Regardless, the United States and Iran do not have any diplomatic relations so Petitioner could not have complied with such request.

68. On June 23, 2025, ICE detained Petitioner even though he had not violated any conditions of his release and his removal to Iran is still impossible. ICE informed Petitioner that it would attempt to remove him to a third country.

69. Petitioner is currently detained at the Bluebonnet Detention Facility in Anson, Texas.

70. Petitioner is afraid of being removed to a country where he may faced persecution or torture, or to a country that cannot give written assurances that it will not send Petitioner to Iran.

71. Petitioner has no other remedy at law but to seek habeas relief from this Court.

72. No Article III court has addressed the merits of Petitioner's claim for release.

GROUNDS FOR RELIEF
FIRST GROUND FOR RELIEF:
FIFTH AMENDMENT DUE PROCESS CLAUSE

73. The allegations in the above paragraphs are re-alleged and incorporated herein.

74. 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.

75. Petitioner has a due process right to meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports him to a third country. Petitioner also has a due process right to implementation of a process or procedure to afford these protections. Petitioner also has a due process right to not be re-detained pursuant to the February 18, 2025 directive and the March 30, 2025 Memorandum because Respondents have no procedural protections to ensure meaningful notice and an opportunity to present a fear-based claim prior to removal to a third country.

76. By failing to implement a process to afford Petitioner meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports him to a third country and by re-detaining him pursuant to the February 18, 2025 directive and the March 30, 2025 Memorandum, Respondents have violated Petitioner's substantive and procedure due process rights and are not implementing procedures required by the INA, FARRA and the implementing regulations.

77. The Court should declare that Respondent's have violated Petitioner's constitutional right to due process and that the Due Process Clause affords Petitioner the right to a process and procedure that ensures that DHS provides meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports Petitioner to a third country.

SECOND GROUND FOR RELIEF
FIFTH AMENDMENT DUE PROCESS CLAUSE

78. The allegations in the above paragraphs are re-alleged and incorporated herein.

79. DHS's authority to re-detain noncitizens with removal orders whom DHS released from custody is not unfettered. Pursuant to its own regulations, DHS can revoke an alien's release when certain conditions are met. See 8 C.F.R. § 241.4(l)(2). None of the conditions listed in the regulations are present in Petitioner's case.

80. DHS violated its own regulations by revoking Petitioner's OSUP and re-detaining him without any forewarning. To date, Petitioner has not been notified of the reasons for the revocation of his release and DHS also has not granted him a prompt informal interview to respond to the reasons for the revocation. 8 C.F.R. § 241.4(l)(1); *Sering Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 U.S. Dist. LEXIS 84258 *45 (W.D.N.Y. May 2, 2025) ("Courts likewise have interpreted section 241.4(l) as requiring an informal interview upon revocation of release regardless of the reason for the revocation.").

81. Petitioner urges the Court to declare that the revocation of his release and re-detention are in violation of the regulations and Petitioner's rights.

THIRD GROUND FOR RELIEF
ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A), (C)

82. The allegations in the above paragraphs are re-alleged and incorporated herein.

83. 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.

84. 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 "in excess of...limitations...." *id.* § 706(2)(C).

85. DHS's authority to re-detain noncitizens with removal orders whom DHS released from custody is not unfettered. Pursuant to its own regulations, DHS can revoke an alien's release when certain conditions are met. *See* 8 C.F.R. § 241.4(l)(2). None of the conditions listed in the regulations are present in Petitioner's case.

86. DHS violated its own regulations by revoking Petitioner's OSUP and re-detaining him without any forewarning and in violation of federal regulations. The DHS had no reason to revoke the OSUP. Further, to date, Petitioner has not been notified of the reasons for the revocation of his release and DHS also has not granted him a prompt informal interview to respond to the reasons for the revocation. 8 C.F.R. § 241.4(l)(1); *Sering Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 U.S. Dist. LEXIS 84258 *45 (W.D.N.Y. May 2, 2025) ("Courts likewise have interpreted section 241.4(l) as requiring an informal interview upon revocation of release regardless of the reason for the revocation.")

PRAYER FOR RELIEF

WHEREFORE, Mr. Yousefi Nasrabadi respectfully requests that the Court:

a. Assume jurisdiction over this matter;

b. Issue an order directing Respondents to show cause why the writ should not be granted;

c. Issue an order declaring that Respondent's termination of Petitioner's Order of Supervision was arbitrary, capricious, not in accordance with law or in excess of limitations;

d. Order Respondents to reinstate Petitioner's Order of Supervision;

e. Issue a Writ of Habeas Corpus ordering Respondents to reinstate Petitioner's order of supervision;

f. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately on his own recognizance or under parole, a low bond or reasonable conditions of supervision;

g. Grant reasonable attorneys' fees, costs, and other disbursements pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

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

Dated: July 30, 2025

Respectfully Submitted,

By: */s/ Javier N. Maldonado*
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ATTORNEYS FOR SAHAND YOUSEFI NASRABADI

VERIFICATION OF COUNSEL

I, Javier N. Maldonado, hereby certify that I am familiar with the case of Sahand Yousefi Nasrabadi and that the facts as stated above are true and correct to the best of my knowledge and belief.

/s/ Javier N. Maldonado
Javier N. Maldonado