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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION

BAOLOC TRAN NGUYEN

Petitioner-Plaintiff,

v.

John CANTU, 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. _____

**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 Baoloc Tran Nguyen, by and through 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 returning him to an immigration jail without first providing him a due process hearing where the government bears the burden to demonstrate to a neutral adjudicator that his custody is justified by clear and convincing evidence. As a refugee from Vietnam who has lived in the United States since the 1981, and who has been reporting to ICE on a regular basis since his release from custody in 2001, his removal from the United States is not reasonably foreseeable, because there is no repatriation agreement between the United States and Vietnam with regard to Vietnamese nationals who arrived in the US prior to 1995. Vietnam will not issue Petitioner a travel document, and thus any re-detention by ICE is unlawful, as it would be limitless in duration. Moreover, Mr. Nguyen's re-arrest is unconstitutional because it is indefinite and illegal absent any pre-deprivation hearing before a neutral arbiter.

2. Mr. Nguyen has also never been ordered removed to any third country or notified of such potential removal. Given the Supreme Court of the United States' decision on June 23, 2025, in *U.S. Department of Homeland Security, et al. v. D.V.D., et al.*, No. 24A1153, 2025 WL 1732103 (June 23, 2025), which stayed the nationwide injunction that had precluded Respondents from removing noncitizens to third countries without notice and an opportunity to seek fear-based relief, ICE appears emboldened and intent to implement its campaign to send noncitizens to far corners of the planet—places they have absolutely no connection to whatsoever¹—in violation of clear statutory obligations set forth in the Immigration and Nationality Act (INA), binding treaty, and due process. In the absence of the nation-wide injunction, individual lawsuits like the instant case are the only method to challenge the illegal third-country removals.

¹ CBS News, "Politics Supreme Court lets Trump administration resume deportations to third countries without notice for now" (June 24, 2025), available at: <https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-to-third-countries-without-notice/>.

1 3. In August of 1981 Baoloc Nguyen fled Vietnam for the United States. The legacy U.S.
2 Citizenship and Immigration Services (USCIS) granted him refugee status, and he later adjusted
3 his status to that of a lawful permanent resident (i.e., a green card holder).

4 4. In 1994 Petitioner was charged in California with burglary, and he was convicted.
5 Because it was a second strike under California law, Petitioner was sentenced to 7 years in
6 prison, which made his conviction an aggravated felony under immigration law. He was
7 released from prison in 2001, and was immediately detained by legacy ICE. Ultimately a
8 removal order was entered, but because there was no reasonable likelihood of his removal to
9 Vietnam, Petitioner was released under an Order of Supervision ("OSUP") in 2001.

10 5. Since 2001, Mr. Nguyen has exercised his right to liberty. He continues to live and
11 work in the United States, having started several businesses with his wife, and supporting his
12 US citizen children.

13 6. The OSUP issued to Mr. Nguyen in 2001 permitted him to remain free from custody
14 following his removal proceedings because his removal is not reasonably foreseeable, and he is
15 neither a flight risk nor a danger to the community. The OSUP also required him to attend
16 regular check-in appointments at the ICE Phoenix Field Office and permitted him to apply for
17 work authorization. 8 C.F.R. § 241.5. For the past twenty-four years, Mr. Nguyen has complied
18 with the terms of his OSUP, attending his appointments as instructed. Mr. Ngueyn applied for
19 and received a work authorization document, and he started and operated three successful nail
20 salons and an AirBnB business in Arizona, while raising four US citizen children with his US
21 citizen wife.

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

1 *re-arrest*, at which he would be afforded the opportunity to advance his arguments as to why
2 he should not be re-detained.

3 8. Here, Respondents created a reasonable expectation that Mr. Nguyen would be
4 permitted to live and work in the United States without being subject to arbitrary arrest and
5 removal.

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

16 10. Further, the Supreme Court has limited the potentially indefinite post-removal order
17 detention to a maximum of six months when removal is not reasonably foreseeable. *Zadvydas*
18 *v. Davis*, 533 U.S. 678, 701 (2001). But that case does not control here. This case is not about
19 ICE’s authority to detain in the first place upon an issuance of a final order of removal as in
20 *Zadvydas*. This case is about ICE’s authority to *re-detain* Mr. Nguyen after he was issued a
21 final order of removal, detained, and subsequently released on an OSUP. The DHS regulation,
22 8 C.F.R. § 241.13(i), applies to non-citizens in Petitioner’s situation. Because ICE does not
23 have a travel document for Mr. Nguyen, his removal is not reasonably foreseeable in this case,
24 and the government has not provided him with notice, evidence, or an opportunity to be heard
25 on this issue either before arbitrarily re-detaining him. His re-incarceration without any
26 reasonably foreseeable end point would therefore be unconstitutionally prolonged in violation
27 of clear Supreme Court precedent.

28 11. The basic principle that individuals placed at liberty are entitled to process before the

1 government imprisons them has particular force here, where Mr. Nguyen was *already*
 2 previously released from ICE detention twenty-four years ago, after which he began to rebuild
 3 his life, including by securing employment and raising a family. Under these circumstances,
 4 ICE is required to afford him the opportunity to advance arguments in favor of his freedom
 5 before robbing him of his liberty. He must therefore be released from detention unless and until
 6 ICE proves to a neutral arbiter that his removal has become reasonably foreseeable and his
 7 detention is necessary because there has been a material change in circumstances establishing
 8 that he is a flight risk or a danger to the community. Numerous federal district courts have
 9 already ordered similar relief. *See, e.g., Nguyen v. Hyde*, 2025 WL1725791(D. Massachusetts
 10 June 20, 2025); *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *4; *Hoac*, No. 2:25-
 11 CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL
 12 1993735, at *7; *Guillermo M. R. v. Kaiser*, --- F.Supp.3d ----, 2025 WL 1983677, at *10 (N.D.
 13 Cal. July 17, 2025); *Pinchi v. Noem*, --- F.Supp.3d ----, 2025 WL 2084921, at *7 (N.D. Cal.
 14 July 24, 2025). During any custody redetermination hearing that occurs, the neutral arbiter
 15 must further consider whether, in lieu of detention, alternatives to detention exist to mitigate
 16 any risk that ICE may establish.

17 12. Moreover, under the INA, Respondents have a statutory obligation to remove Mr.
 18 Nguyen *only* to the designated country—in this case, Vietnam. 8 U.S.C. § 1231(b)(2)(A)(ii). If
 19 Mr. Nguyen is to be removed to a third country, Respondents *must* first assert a basis under 8
 20 U.S.C. § 1231(b)(2)(C) and ICE *must* provide him with sufficient notice and an opportunity to
 21 respond and apply for fear-based relief as to that country, in compliance with the INA, due
 22 process, and the binding international treaty: The Convention Against Torture and Other Cruel,
 23 Inhuman or Degrading Treatment or Punishment.² Currently, DHS has a policy of removing or
 24 seeking to remove individuals to third countries without first providing constitutionally
 25 adequate notice of third country removal, or any meaningful opportunity to contest that
 26 removal if the individual has a fear of persecution or torture in that country. The U.S. District

27 _____
 28 ² United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
 (Dec. 10, 1984), available at: [https://www.ohchr.org/en/instruments-](https://www.ohchr.org/en/instruments-measures/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading)
[measures/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading](https://www.ohchr.org/en/instruments-measures/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading).

1 Court for the District of Massachusetts previously issued a nationwide preliminary injunction
 2 blocking such third country removals without notice and a meaningful opportunity to apply for
 3 relief under the Convention Against Torture, in recognition that the government's policy
 4 violates due process and the United States' obligations under the Convention Against Torture.
 5 *D.V.D., et al. v. U.S. Department of Homeland Security, et al. v.*, No. 25-10676-BEM (D.
 6 Mass. Apr. 18, 2025). The U.S. Supreme Court has since granted the government's motion to
 7 stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa*, 606 U.S. -
 8 -- (June 27, 2025), limiting nationwide injunctions. Thus, the Supreme Court's order, which is
 9 not accompanied by an opinion, signals only disagreement with the nature, and not the
 10 substance, of the nationwide preliminary injunction. Thus, in this individual habeas petition,
 11 Mr. Nguyen submits that he cannot be removed to any third country unless he is first provided
 12 with adequate notice and a meaningful opportunity to apply for protection under the
 13 Convention Against Torture. Other federal district courts have already issued similar relief.
 14 *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-
 15 JDP, 2025 WL 1993735, at *7; *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210,
 16 at *4 (W.D. Wash. June 30, 2025); *Delkash v. Noem*, No. 5:25-cv-01675-HDV-AGR (C.D.
 17 Cal. Jul. 14, 2025); *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208,
 18 at *9 (C.D. Cal. June 25, 2025); *Ortega v. Kaiser*, No. 25-cv-5259 (N.D. Cal. Jun. 26, 2025).

19 CUSTODY

20 13. Mr. Nguyen is currently being held in custody by ICE at the Florence Immigration
 21 Detention Facility in Florence, Arizona.

23 JURISDICTION

24 14. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general
 25 federal question jurisdiction; 5 U.S.C. § 701, *et seq.*, All Writs Act; 28 U.S.C. § 2241, *et seq.*,
 26 habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United
 27 States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the
 28 common law.

1 15. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act,
2 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651 to protect Petitioner's rights
3 under the Due Process Clause of the Fifth Amendment to the United States Constitution, the
4 Excessive Bail Clause of the Eighth Amendment, and under applicable Federal law, and to issue
5 a writ of habeas corpus for his immediate release. *See generally INS v. St. Cyr*, 533 U.S. 289
6 (2001); *Zadvydas*, 533 U.S. 678.

7 **REQUIREMENTS OF 28 U.S.C. § 2243**

8 16. The Court must grant the petition for writ of habeas corpus or issue an order to show
9 cause (OSC) to Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C.
10 § 2243. If an OSC is issued, the Court must require Respondents to file a return "within *three*
11 *days* unless for good cause additional time, *not exceeding twenty days*, is allowed." *Id.* (emphasis
12 added).

13 17. Courts have long recognized the significance of the habeas statute in protecting
14 individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most
15 important writ known to the constitutional law of England, affording as it does a *swift* and
16 imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391,
17 400 (1963) (emphasis added).

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

24 **VENUE**

25 19. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the
26 Respondents are employees or officers of the United States, acting in their official capacity;
27 because a substantial part of the events or omissions giving rise to the claim occurred in the
28 District of Arizona; because Mr. Nguyen is under the jurisdiction of the Phoenix ICE Field

Office, which is in the jurisdiction of the District of Arizona; and because there is no real property involved in this action.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

20. 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.

21. No statutory exhaustion requirements apply to Mr. Nguyen’s claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (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).

PARTIES

22. Mr. Baoloc Tran Nguyen was born in Vietnam and fled to the United States to seek as a refugee in 1981. He subsequently became a lawful permanent resident (i.e., a green card holder). In 1994, Mr. Nguyen pleaded no guilty to burglary under California Penal Code, ultimately resulting in a seven year prison sentence, and being placed into removal proceedings where he was ordered removed. Legacy ICE held Mr. Nguyen in custody for several weeks, until he was released on an OSUP in 2001, because it could not effectuate his removal to Vietnam. Since that time, Mr. Nguyen has complied with all conditions of release, including attending ICE check-ins, and updating his address whenever necessary.

23. Respondent John Cantù 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

1 detaining and removing noncitizens according to immigration law and oversees custody
2 determinations. In her official capacity, he is the legal custodian of Mr. Nguyen.

3 24. Respondent Todd M. Lyons is the Acting Director of ICE and is named in his official
4 capacity. Among other things, ICE is responsible for the administration and enforcement of the
5 immigration laws, including the removal of noncitizens. In his official capacity as head of ICE,
6 he is the legal custodian of Mr. Nguyen.

7 25. Respondent Kristi Noem is the Secretary of DHS and is named in her official capacity.
8 DHS is the federal agency encompassing ICE, which is responsible for the administration and
9 enforcement of the INA and all other laws relating to the immigration of noncitizens. In her
10 capacity as Secretary, Respondent Noem has responsibility for the administration and
11 enforcement of the immigration and naturalization laws pursuant to section 402 of the
12 Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also*
13 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Mr. Nguyen.

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

19 **STATEMENT OF FACTS**

20 27. Mr. Baoloc Tran Nguyen is citizen and national of Vietnam who is the father of four U.S.
21 citizen sons, all of whom are minors. He currently lives in the Phoenix, Arizona area, and owns
22 and operates a nail salon, and an Air BnB property.

23 28. In 1981, Mr. Nguyen lawfully entered the United States as a refugee. He thereafter
24 obtained lawful permanent residence in the United States.

25 29. In 1994 Petitioner was charged in California with burglary, and he was convicted.
26 Because it was a second strike under California law, Petitioner was sentenced to 7 years in prison,
27 which made his conviction an aggravated felony under immigration law. He was released from
28 prison in 2001 and was immediately detained by legacy ICE. Ultimately a removal order was

entered, but because there was no reasonable likelihood of his removal to Vietnam, Petitioner was released under an Order of Supervision (“OSUP”) in 2001. Since 2001, Mr. Nguyen has exercised his right to liberty. He continues to live and work in the United States, having started several businesses with his wife, and supporting his US citizen children. He is not at all the type of person for whom re-incarceration is required.

30. On information and belief, on January 25, 2025, officials in the new Trump administration directed senior ICE officials to increase arrests to meet daily quotas. Specifically, each field office was instructed to make seventy-five arrests per day.³

31. In recent months, ICE has engaged in highly publicized arrests of individuals who presented no flight risk or danger, often with no prior notice that anything regarding their status was amiss or problematic, whisking them away to faraway detention centers without warning.⁴

32. Decisions issued by other courts in California District Courts further corroborate that ICE is re-arresting and re-incarcerating individuals who are not flight risks or dangers to the community, including when their removals from the United States are not reasonably foreseeable. *See, e.g., Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *2 (“Although Petitioner-Plaintiff informed the ICE officer that he has no right to return to either country because he is stateless, the officer told Petitioner-Plaintiff that ‘things are different now.’”); *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7; *Guillermo M. R.*, --- F.Supp.3d ----, 2025 WL 1983677, at *10; *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at *7; *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *1 (N.D. Cal. June 14, 2025); *Doe v. Becerra*, -- F. Supp. 3d --, 2025 WL 691664, *8 (E.D. Cal. Mar. 3, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL

³ See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (Jan. 26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

⁴ See, e.g., McKinnon de Kuyper, *Mahmoud Khalil’s Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15, 2025), available at <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html> (Mahmoud Khalil, arrested in New York and transferred to Louisiana); “What we know about the Tufts University PhD student detained by federal agents,” CNN (Mar. 28, 2025), <https://www.cnn.com/2025/03/27/us/rumeyssa-ozturk-detained-what-we-know/index.html> (Rumeyssa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney & Josh Gerstein, *Trump is seeking to deport another academic who is legally in the country, lawsuit says*, Politico (Mar. 19, 2025), available at <https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754> (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).

1 1771438 (N.D. Cal. June 26, 2025); *Singh v. Andrews*, No. 1:25-cv-801-KES-SKO, 2025 WL
2 1918679 (E.D. Cal. July 11, 2025); *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025
3 WL 1927596, at *6 (E.D. Cal. July 14, 2025).

4 33. Intervention from this Court is therefore required to ensure that Mr. Nguyen is not (1)
5 held in unjustified, prolonged, and indefinite custody, (2) removed to a third country, and (3)
6 subjected to irreparable harm as a result.

7 LEGAL BACKGROUND

8 **Right to a Hearing Prior to Re-incarceration**

9 34. Following a final order of removal, ICE is directed by statute to detain an individual for
10 ninety days in order to effectuate removal. 8 U.S.C. § 1231(a)(2). This ninety (90) day period,
11 also known as “the removal period,” generally commences as soon as a removal order becomes
12 administratively final. *Id.* at § 1231(a)(1)(A); § 1231(a)(1)(B).

13 35. If ICE fails to remove an individual during the ninety (90) day removal period, the law
14 requires ICE to release the individual under conditions of supervision, including periodic
15 reporting. 8 U.S.C. § 1231(a)(3) (“If the alien . . . is not removed within the removal period,
16 the alien, pending removal, shall be subject to supervision.”). Limited exceptions to this rule
17 exist. Specifically, ICE “may” detain an individual beyond ninety days if the individual was
18 ordered removed on criminal grounds or is determined to pose a danger or flight risk. 8 U.S.C.
19 § 1231(a)(6). However, ICE’s authority to detain an individual beyond the removal period
20 under such circumstances is not boundless. Rather, it is constrained by the constitutional
21 requirement that detention “bear a reasonable relationship to the purpose for which the
22 individual [was] committed.” *Zadvydas*, 533 U.S. at 690. Because the principal purpose of the
23 post-final-order detention statute is to effectuate removal, detention bears no reasonable
24 relation to its purpose if removal cannot be effectuated. *Id.* at 697.

25 36. Post-final order detention is only authorized for a “period reasonably necessary to
26 secure removal,” a period that the Court determined to be presumptively six months. *Id.* at 699-
27 701. After this six (6) month period, if a detainee provides “good reason” to believe that their
28 removal is not significantly likely in the reasonably foreseeable future, “the Government must

1 respond with evidence sufficient to rebut that showing.” *Id.* at 701. If the government cannot
2 do so, the individual must be released.

3 37. That said, detainees are entitled to release even before six months of detention, as long
4 as removal is not reasonably foreseeable. *See* 8 C.F.R. § 241.13(b)(1) (authorizing release after
5 ninety days where removal not reasonably foreseeable). Moreover, as the period of post-final-
6 order detention grows, what counts as “reasonably foreseeable” must conversely shrink.
7 *Zadvydas* at 701. This is especially true in this case. This case is not about ICE’s authority to
8 detain in the first place upon an issuance of a final order of removal as in *Zadvydas*. This case
9 is about ICE’s authority to *re-detain* Mr. Nguyen after he was issued a final order of removal,
10 detained, and subsequently released on an OSUP. The DHS regulation, 8 C.F.R. § 241.13(i),
11 applies to non-citizens in Mr. Nguyen’s situation.

12 38. Even where detention meets the *Zadvydas* standard for reasonable foreseeability,
13 detention violates the Due Process Clause unless it is “reasonably related” to the government’s
14 purpose, which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at 700 (“[I]f removal
15 is reasonably foreseeable, the habeas court should consider the risk of the alien’s committing
16 further crimes as a factor potentially justifying confinement within that reasonable removal
17 period”) (emphasis added); *Id.* at 699 (purpose of detention is “assuring the alien’s presence at
18 the moment of removal”); *Id.* at 690-91 (discussing twin justifications of detention as
19 preventing flight and protecting the community). Thus, Mr. Nguyen should not remain in
20 custody because he does not pose a danger or flight risk that warrants post-final-order
21 detention, regardless of whether his removal can be effectuated within a reasonable period of
22 time. This is especially so because ICE has *already* released Mr. Nguyen from detention
23 because he is neither a flight risk nor a danger to the community. *See Singh*, No. 1:25-CV-
24 00801-KES-SKO (HC), 2025 WL 1918679, at *2 (“DHS, at least implicitly, made a finding
25 that petitioner was not a flight risk when it released him”) (citing *Valdez v. Joyce*, 25 Civ. 4627
26 (GBD), 2025 WL 1707737, at *3 & n.6 (S.D.N.Y. June 18, 2025)).

27 39. The government’s own regulations contemplate this requirement. They dictate that even
28 after ICE determines that removal is reasonably foreseeable—and that detention therefore does

1 not per se exceed statutory authority—the government must still determine whether continued
2 detention is warranted based on flight risk or danger. *See* 8 C.F.R. § 241.13(g)(2) (providing
3 that where removal is reasonably foreseeable, “detention will continue to be governed under
4 the established standards” in 8 C.F.R. § 241.4).

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

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

20 **Mr. Ngyen’s Protected Liberty Interest in His Release**

21 42. Mr. Nguyen’s liberty from immigration custody is protected by the Due Process
22 Clause: “Freedom from imprisonment—from government custody, detention, or other forms of
23 physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”
24 *Zadvydas*, 533 U.S. at 690 (2001).

25 43. Since 2001, Mr. Nguyen exercised that freedom pursuant to his prior release from
26 custody by ICE and placement on an OSUP. Sinodis Decl. at Exs. E-F (OSUP). He thus retains
27 a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-
28 incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411

1 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Pinchi*, ---
2 F.Supp.3d ----, 2025 WL 2084921, at *3 (“even when ICE has the initial discretion to detain or
3 release a noncitizen pending removal proceedings, after that individual is released from
4 custody she has a protected liberty interest in remaining out of custody”).

5 44. Moreover, the Supreme Court has recognized that post-removal order detention is
6 potentially indefinite and thus unconstitutional without some limitation. *Zadvydas*, 533 U.S. at
7 701. In this case, in the absence of a travel document from Vietnam that actually permits Mr.
8 Nguyen’s removal to Vietnam, his removal is not foreseeable at all, let alone reasonably.
9 Therefore, his re-detention would be unconstitutional.

10 45. Just as importantly, Mr. Nguyen continued presenting himself before ICE for his
11 regular check-in appointments for the past seven years, where ICE did not seek to re-arrest him
12 during this time. ICE instead gave him a future date and time to appear again.

13 46. In *Morrissey*, the Supreme Court examined the “nature of the interest” that a parolee
14 has in “his continued liberty.” 408 U.S. at 481-82. The Court noted that, “subject to the
15 conditions of his parole, [a parolee] can be gainfully employed and is free to be with family
16 and friends and to form the other enduring attachments of normal life.” *Id.* at 482. The Court
17 further noted that “the parolee has relied on at least an implicit promise that parole will be
18 revoked only if he fails to live up to the parole conditions.” *Id.* The Court explained that “the
19 liberty of a parolee, although indeterminate, includes many of the core values of unqualified
20 liberty and its termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn,
21 “[b]y whatever name, the liberty is valuable and must be seen within the protection of the
22 [Fifth] Amendment.” *Morrissey*, 408 U.S. at 482.

23 47. This basic principle—that individuals have a liberty interest in their conditional
24 release—has been reinforced by both the Supreme Court and the circuit courts on numerous
25 occasions. *See, e.g., Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole
26 program created to reduce prison overcrowding have a protected liberty interest requiring pre-
27 deprivation process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony
28 probation have a protected liberty interest requiring pre-deprivation process). As the First

1 Circuit has explained, when analyzing the issue of whether a specific conditional release rises
2 to the level of a protected liberty interest, “[c]ourts have resolved the issue by comparing the
3 specific conditional release in the case before them with the liberty interest in parole as
4 characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010)
5 (internal quotation marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*,
6 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—
7 even if that freedom is lawfully revocable—has a liberty interest that entitles him to
8 constitutional due process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152,
9 *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

10 48. In fact, it is well-established that an individual maintains a protectable liberty interest
11 even where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-*
12 *Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that
13 due process considerations support the notion that an inmate released on parole by mistake,
14 because he was serving a sentence that did not carry a possibility of parole, could not be re-
15 incarcerated because the mistaken release was not his fault, and he had appropriately adjusted
16 to society, so it “would be inconsistent with fundamental principles of liberty and justice” to
17 return him to prison) (internal quotation marks and citation omitted).

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

24 50. Mr. Nguyen has complied with all conditions of release *for over twenty three years*. He
25 has a possible claim for post-conviction relief due to his criminal defense attorney’s ineffective
26 assistance of counsel. If his California felony conviction is vacated, he will be able to reopen
27 his removal proceedings and restore his lawful permanent residency.⁵

28 ⁵ Under California Penal Code § 1473.7, people like Mr. Nguyen who are no longer in criminal custody can vacate
legally defective convictions. Subsection (a)(1) provides people the opportunity to vacate convictions like Mr.

Mr. Nguyen's Liberty Interest Mandates a Hearing Before any Re-Arrest

51. Mr. Nguyen asserts that, here, (1) where his detention would be civil, (2) where he has been at liberty for twenty-four years, during which time he has complied with all conditions of release, (3) where he has a substantial claim for post-conviction relief and possible reopening and restoration of his green card status, (4) where no change in circumstances exist that would justify his detention, and (5) where the only circumstance that has changed is ICE's move to arrest as many people as possible because of the new administration, due process mandates that should have received notice and a hearing before a neutral adjudicator *prior* to any re-arrest.

52. "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 [Mr. Nguyen'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)).

53. 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

Nguyen's that were legally defective due to "prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere." Cal. P.C. § 1473.7(a)(1). Under immigration law, an offense vacated under § 1473.7(a)(1) is therefore no longer a "conviction" for immigration purposes and may not form the basis for removability or a denial of immigration relief. *See* INA § 101(a)(48)(A); *Matter of Pickering*, 23 I&N Dec. 621 (2003); *Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378 (BIA 2011).

1 remedies are “the only remedies the State could be expected to provide” can post-deprivation
2 process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only
3 where “one of the variables in the *Mathews* equation—the value of predeprivation
4 safeguards—is negligible in preventing the kind of deprivation at issue” such that “the State
5 cannot be required constitutionally to do the impossible by providing predeprivation process,”
6 can the government avoid providing pre-deprivation process. *Id.*

7 54. Because, in this case, the provision of a pre-deprivation hearing is both possible and
8 valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Mr.
9 Nguyen with notice and a hearing *prior* to any re-incarceration and revocation of his release.
10 See *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932;
11 *Zinermon*, 494 U.S. at 985; see also *Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch*
12 *v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil
13 commitment proceedings may not constitutionally be held in jail pending the determination as
14 to whether they can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily
15 in favor of [Mr. Nguyen’s] liberty” and requires a pre-deprivation hearing before a neutral
16 adjudicator.

17 **Mr. Nguyen’s Private Interest in His Liberty is Profound**

18 55. Under *Morrissey* and its progeny, individuals conditionally released from serving a
19 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In
20 addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of
21 physical confinement, even if that freedom is lawfully revocable, has a liberty interest that
22 entitles him to constitutional due process before he is re-incarcerated—apply with even greater
23 force to individuals like Mr. Nguyen, who have been released pending civil removal
24 proceedings, rather than parolees or probationers who are subject to incarceration as part of a
25 sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest
26 given their underlying convictions. See, e.g., *U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin*
27 *v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the
28 courts have held that the parolee cannot be re-arrested without a due process hearing in which

1 they can raise any claims they may have regarding why their re-incarceration would be
 2 unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr.
 3 Nguen retains a truly weighty liberty interest even though he was under conditional release.

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

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

16 **The Government’s Interest in Re-Incarcerating Mr. Nguyen Without a Hearing is Low**
 17 **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

18 58. The government’s interest in detaining Mr. Nguyen without a due process hearing is
 19 low, and when weighed against his significant private interest in his liberty, the scale tips
 20 sharply in favor of enjoining Respondents from continuing Mr. Nguyen’s detention unless and
 21 until the government demonstrates by clear and convincing evidence that he is a flight risk or
 22 danger to the community. It becomes abundantly clear that the *Mathews* test favors Mr.
 23 Nguyen when the Court considers that the process he seeks—notice and a hearing regarding
 24 whether his OSUP should be revoked given that ICE lacks a travel document for him and he is
 25 neither a flight risk nor a danger—is a standard course of action for the government. Providing
 26 Mr. Nguyen with a hearing before this Court (or a neutral decisionmaker) to determine whether
 27 there is clear and convincing evidence that he is a flight risk or danger to the community would
 28 impose only a *de minimis* burden on the government, because the government routinely

1 provides this sort of review to individuals in Mr. Nguyen's same circumstances. 8 C.F.R. §
2 241.4(e)-(f).

3 59. Because immigration detention is civil, it can have no punitive purpose. The
4 government's only interests in holding an individual in immigration detention can be to prevent
5 danger to the community or to ensure a noncitizen's appearance at immigration proceedings.
6 *See Zadvydas*, 533 U.S. at 690. Moreover, the Supreme Court has made clear that indefinite
7 detention of noncitizens who cannot be removed to the country of the removal order is
8 unconstitutional. In this case, the government cannot plausibly assert that it has a sudden
9 interest in detaining Mr. Nguyen due to alleged dangerousness, or due to a change in the
10 foreseeability of his removal to Vietnam, as his circumstances have not changed since his
11 release from ICE custody in 2001.

12 60. Mr. Nguyen has continued to appear before ICE on a regular basis for each and every
13 appointment hat has been scheduled. *See Morrissey*, 408 U.S. at 482 ("It is not sophistic to
14 attach greater importance to a person's justifiable reliance in maintaining his conditional
15 freedom so long as he abides by the conditions on his release, than to his mere anticipation or
16 hope of freedom") (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443
17 F.3d 1079, 1086 (2d Cir. 1971); *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at *3 ("the
18 government's decision to release an individual from custody creates 'an implicit promise,'
19 upon which that individual may rely, that their liberty 'will be revoked only if [they] fail[] to
20 live up to the ... conditions [of release].'" (quoting *Morrissey*, 408 U.S. at 482).

21 61. As to flight risk, ICE determined that reporting requirements were sufficient to guard
22 against any possible flight risk, to "assure [his] presence at the moment of removal." *Zadvydas*,
23 533 U.S. at 699. Mr. Nguyen's post-release conduct in the form of full compliance with his
24 check-in requirements further confirms that he is not a flight risk and that he is likely to present
25 himself at any future ICE appearances, as he always has done. The government's interest in
26 detaining him at this time is therefore low. That ICE has a new policy to make a minimum
27 number of arrests each day under the new administration does not constitute a material change
28

1 in circumstances or increase the government's interest in detaining him.⁶ *See Singh*, No. 1:25-
 2 CV-00801-KES-SKO (HC), 2025 WL 1918679, at *2 ("The law requires a change in relevant
 3 facts, not just a change in [the government's] attitude") (internal quotations omitted).

4 Moreover, nothing has changed regarding the lack of foreseeability of his removal to Vietnam.

5 62. Freedom from confinement until ICE assesses and demonstrated that Mr. Nguyen is a
 6 flight risk or danger to the community, or that his detention is not going to be indefinite, is far
 7 less costly and burdensome for the government than keeping him detained. As the Ninth
 8 Circuit noted in 2017, which remains true, if not more extreme, today, "[t]he costs to the public
 9 of immigration detention are 'staggering': \$158 each day per detainee, amounting to a total
 10 daily cost of \$6.5 million." *Hernandez*, 872 F.3d at 996.

11 63. Providing Mr. Nguyen with a hearing before this Court (or a neutral decisionmaker)
 12 regarding any re-arrest is a routine procedure that the government provides to those in
 13 immigration jails on a daily basis. At that hearing, the Court would have the opportunity to
 14 determine whether circumstances have changed sufficiently to require some amount of bond—
 15 or if his release should be revoked. But there is no justifiable reason to re-incarcerate Petitioner
 16 prior to such a hearing taking place. As the Supreme Court noted in *Morrissey*, even where the
 17 State has an "overwhelming interest in being able to return [a parolee] to imprisonment without
 18 the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of
 19 his parole . . . the State has no interest in revoking parole without some informal procedural
 20 guarantees." 408 U.S. at 483. Moreover, the "fiscal and administrative burdens" that a pre-
 21 deprivation bond hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at
 22 334-35. Mr. Nguyen does not seek a unique or expensive form of process, but rather a routine
 23 hearing regarding whether his release should be revoked and whether he should be re-
 24 incarcerated.

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

28 64. Providing Mr. Nguyen a pre-deprivation hearing would decrease the risk of him being

1 erroneously deprived of his liberty. Before he can be lawfully detained, he must be provided with
2 a hearing before a neutral adjudicator at which the government is held to show that there has
3 been sufficiently changed circumstances such that he should be detained because clear and
4 convincing evidence exists to establish that Petitioner is a danger to the community or a flight
5 risk.

6 65. Under the process that ICE maintains is lawful—which affords Mr. Nguyen no process
7 whatsoever—ICE can simply re-detain him at any point if the agency desires to do so. The risk
8 that Mr. Nguyen will be erroneously deprived of his liberty is high if ICE is permitted to re-
9 incarcerate him after making a unilateral decision to re-arrest him. Pursuant to 8 C.F.R. §
10 241.4(l), revocation of release on an OSUP is at the discretion of the Executive Associate
11 Commissioner. Thus, the regulations permit ICE to unilaterally re-detain individuals, even for
12 an oversight of any kind. After re-arrest, ICE makes its own, one-sided custody determination
13 and can decide whether the agency wants to hold Mr. Nguyen. 8 C.F.R. § 241.4(e)-(f).

14 66. By contrast, the procedure Mr. Nguyen seeks—a hearing in front of a neutral
15 adjudicator at which the government must prove by clear and convincing evidence that
16 circumstances have changed to justify his detention *before* any re-arrest that would be effected
17 because it possesses a travel document that would enable the agency to remove Mr. Nguyen—
18 is much more likely to produce accurate determinations regarding factual disputes, such as
19 whether a certain occurrence constitutes a “changed circumstance.” *See Chalkboard, Inc. v.*
20 *Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989) (when “delicate judgments depending on
21 credibility of witnesses and assessment of conditions not subject to measurement” are at issue,
22 the “risk of error is considerable when just determinations are made after hearing only one
23 side”). “A neutral judge is one of the most basic due process protections.” *Castro-Cortez v.*
24 *INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v.*
25 *Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous
26 deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather
27 than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf IF*”), 634 F.3d
28 1081, 1091-92 (9th Cir. 2011).

67. Due process also requires consideration of alternatives to detention at any 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.

The Right to Constitutionally Adequate Procedures Prior to Third Country Removal

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

69. As the Supreme Court has explained, such language "generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive," *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661 (2007) (quoting *Ass'n of Civilian Technicians v. Fed. Labor Relations Auth.*, 22 F.3d 1150, 1153 (D.C. Cir. 1994)); *see also Black's Law Dictionary* (11th ed. 2019) ("Shall" means "[h]as a duty to; more broadly, is required to This is the mandatory sense that drafters typically intend and that courts typically uphold."); *United States v. Monsanto*, 491 U.S. 600, 607 (1989) (finding that "shall" language in a statute was unambiguously mandatory). Accordingly, any imminent third country removal fails to comport with the statutory obligations set forth by Congress in the INA and is unlawful. Several district courts have already found as much. *See Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7; *J.R.*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *4.

70. Moreover, prior to any third country removal, ICE must provide Mr. Nguyen with sufficient notice and an opportunity to respond and apply for fear-based relief as to that

country, in compliance with the INA, due process, and the binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁷ Currently, DHS has a policy of removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country. This policy clearly violates due process and the United States' obligations under the Convention Against Torture.

71. The U.S. District Court for the District of Massachusetts previously issued a nationwide preliminary injunction blocking such third country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture, in recognition that the government's policy violates due process and the United States' obligations under the Convention Against Torture. *D.V.D., et al. v. U.S. Department of Homeland Security, et al. v.*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The U.S. Supreme Court has since granted the government's motion to stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa*, 606 U.S. --- (June 27, 2025), limiting nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals only disagreement with nature, and not the substance, of the nationwide preliminary injunction.

72. Thus, it is clear that if Mr. Nguyen were to be removed to any third country it would violate his due process rights unless he is first provided with constitutionally adequate notice and a meaningful opportunity to apply for protection under the Convention Against Torture. In the absence of any other injunction, intervention by this Court is necessary to protect those rights.

FIRST CAUSE OF ACTION

Procedural Due Process

U.S. Const. amend. V

73. Mr. Nguyen re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

⁷ See *supra* n.3.

1 74. The Due Process Clause of the Fifth Amendment forbids the government from
2 depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

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

6 76. The Court must therefore order that the government must provide him with a hearing
7 before a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia*,
8 whether clear and convincing evidence demonstrates that his removal is reasonably foreseeable
9 and that, taking into consideration alternatives to detention, Mr. Nguyen is a danger to the
10 community or a flight risk, such that his incarceration is warranted.

11 **SECOND CAUSE OF ACTION**

12 **Substantive Due Process**

13 **U.S. Const. amend. V**

14 77. Mr. Nguyen re-alleges and incorporates herein by reference, as is set forth fully herein,
15 the allegations in all the preceding paragraphs.

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

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

23 80. Since 2001, Mr. Nguyen has complied with the conditions of release imposed on him
24 by ICE, thus demonstrating that he is neither a flight risk nor a danger. Detaining him now is
25 be punitive and violates his constitutional right to be free from the unjustified deprivation of
26 his liberty.

27 81. For these reasons, Mr. Nguyen’s detention without first being provided a hearing
28 violates the Constitution.

82. The Court must therefore order that, 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 that his removal is reasonably foreseeable and that, taking into consideration alternatives to detention, Mr. Nguyen is a danger to the community or a flight risk, such that his re-incarceration is warranted.

THIRD CAUSE OF ACTION

Unlawful Re-Detention

83. Mr. Nguyen re-alleges and incorporates herein by reference, as if set forth fully herein, the allegations in all the preceding paragraphs.

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

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

FOURTH CAUSE OF ACTION

Violation of the INA and Applicable Regulations

86. Mr. Nguyen re-alleges and incorporates herein by reference, as if set forth fully herein, the allegations in all the preceding paragraphs.

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

7 88. Respondents are not permitted to detain Mr. Nguyen on the basis of his prior order of
 8 removal and without establishing to a neutral adjudicator, by clear and convincing evidence,
 9 that his removal is reasonably foreseeable and that he is a danger to the community or a flight
 10 risk. This is especially true where, as here, Mr. Nguyen received a determination from the
 11 agency in January 2001 when it issued him a Form I-220B and permitted him to remain out of
 12 custody in the first place. 8 C.F.R. § 241.13(i)(2)-(3).

13 **FIFTH CAUSE OF ACTION**

14 **Procedural Due Process – Unconstitutionally Inadequate Procedures Regarding Third** 15 **Country Removal**

16 **U.S. Const. amend. V**

17 89. Mr. Nguyen re-alleges and incorporates herein by reference, as if set forth fully herein,
 18 the allegations in all the preceding paragraphs.

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

24 91. Mr. Nguyen has a protected interest in his life. Thus, prior to any third country removal,
 25 he must be provided with constitutionally compliant notice and an opportunity to respond and
 26 contest that removal if he has a fear of persecution or torture in that country.

27 92. For these reasons, Mr. Nguyen’s removal to any third country without adequate notice
 28 and an opportunity to apply for relief under the Convention Against Torture would violate his

1 due process rights. The only remedy of this violation is for this Court to order that he not be
2 summarily removed to any third country unless and until he is provided constitutionally
3 adequate procedures.

4 **PRAYER FOR RELIEF**

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

6 (1) Assume jurisdiction over this matter;

7 (2) Order Mr. Baoloc Tran Nguyen's immediate release from custody, and enjoin
8 ICE from detaining Mr. Nguyen unless and until a hearing can be held before
9 a neutral adjudicator to determine whether his re-incarceration would be
10 lawful because the government has shown that his removal is reasonably
11 foreseeable and that he is a danger or a flight risk by clear and convincing
12 evidence;

13 a. At any such hearing, the neutral arbiter must consider whether, in lieu
14 of incarceration, alternatives to detention exist to mitigate any risk
15 established by the government;

16 (3) Declare that Petitioner cannot be re-arrested unless and until he is afforded a
17 hearing on the question of whether his re-incarceration would be lawful—i.e.,
18 whether the government has demonstrated to a neutral adjudicator that his
19 removal is reasonably foreseeable and that he is a danger or a flight risk by
20 clear and convincing evidence;

21 a. At any such hearing, the neutral arbiter must consider whether, in lieu
22 of incarceration, alternatives to detention exist to mitigate any risk
23 established by the government;

24 (4) Order that Mr. Baoloc Tran Nguyen cannot be removed to any third country
25 without first being provided constitutionally compliant procedures, including:

26 a. Written notice to Mr. Nguyen and counsel of the third country to which
27 he may be removed, in a language that Mr. Nguyen can understand,
28 provided at least twenty-one (21) days before any such removal;

- 1 b. A meaningful opportunity for Mr. Nguyen to raise a fear of return for
2 eligibility for protection under the Convention Against Torture,
3 including a reasonable fear interview before a DHS officer;
4 c. If Mr. Nguyen demonstrates a reasonable fear during the interview,
5 DHS must move to reopen his underlying removal proceedings so that
6 he may apply for relief under the Convention Against Torture;
7 d. If it is found that Mr. Nguyen does not demonstrate a reasonable fear
8 during the interview, a meaningful opportunity, and a minimum of
9 fifteen (15) days, for Mr. Nguyen to seek to move to reopen his
10 underlying removal proceedings to challenge potential third country
11 removal;

12 (5) Award reasonable costs and attorney fees; and

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

14 (7)

15 Dated: August 12, 2025

Respectfully submitted,

16 /s/ Clifford Levenson

17 Clifford Levenson

18 Attorney for Petitioner
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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of Mr. Baoloc T. Nguyen because I am one of his attorneys. I have discussed with Mr. Baoloc T. Nguyen the events described in the Petition and Complaint. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge.

Executed on this August 12, 2025, in Phoenix, Arizona

/s/ Clifford Levenson

Clifford Levenson

Attorney for Mr. Baoloc T. Nguyen