

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

My Anh NGUYEN,

Petitioner,

v.

Polly KAISER, Acting Field Office Director
of San Francisco 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.

Case No. _____

**PETITION FOR WRIT OF HABEAS
CORPUS AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

INTRODUCTION

1. Petitioner My Anh NGUYEN ("Mr. Nguyen" or "Petitioner"), 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 federal immigration detention--fourteen years after previously releasing him--without first demonstrating to this Court that his removal is reasonably foreseeable, and that detention is necessary to effectuate said removal.

2. ICE has ordered Mr. Nguyen to report for a check-in appointment at the ICE San
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1 Francisco Field Office tomorrow August 22, 2025 at 9:00am. (ICE Check-In Paperwork). Mr.
2 Nguyen will present himself as ordered. On information and belief, and in light of credible
3 recent reports regarding similarly situated individuals,[1] ICE plans to summarily arrest and
4 unlawfully re-detain Mr. Nguyen tomorrow morning without notice or evidence that his removal
5 is reasonably foreseeable.

6 3. To meet the requirements of due process, DHS must first establish that execution
7 of Mr. Nguyen's removal order to Vietnam has now become reasonably foreseeable. Second,
8 DHS must also demonstrate that Mr. Nguyen is presently a danger to the community or a flight
9 risk such that detention is necessary to effectuate such removal.

10 4. Absent this Court's intervention, DHS will summarily re-detain Mr. Nguyen
11 tomorrow in a manner that is plainly erroneous, egregiously unconstitutional, and manifestly
12 inhumane and unjust. Understanding why this is so requires a basic understanding of Mr.
13 Nguyen's family, his personal history, the circumstances surrounding a single non-felony
14 conviction he incurred in Minnesota over two decades ago (leading to his removal order), and
15 DHS's subsequent decisions both to readmit him into the United States and to release him from
16 custody with minimal supervision over fourteen years ago. To be clear, Mr. Nguyen does not ask
17 this Court to assess the validity of his criminal conviction or removal order in any respect here.
18 But these undisputed facts about his life are relevant to understanding why a constitutionally
sufficient pre-deprivation hearing is so necessary to him and his family.

19 5. Mr. Nguyen is a 51-year-old Amerasian, the son of John Francis Hendricks Jr a
20 former U.S. Serviceman, and Cuc Nguyen, a Vietnamese native. *See Declaration of My Anh*

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1 Nguyen ("M.Nguyen Decl."). After the United States passed the Amerasian Homecoming Act in
2 1987, Mr. Nguyen immigrated to the United States as a lawful permanent resident and brought
3 with him his mother, his two younger half-brothers and his two younger half-sisters. *Id.* Mr.
4 Nguyen and his family arrived in the United States on January 19, 1996 in New York, before
5 they settled in Florida. *Id.*; Declaration of R.Linus Chan ("Chan Decl.") Exh. H. Mr. Nguyen
6 would later get married and move to Minneapolis, Minnesota. All of his relatives would later
7 naturalize and become U.S. citizens. M.Nguyen Decl.

8 6. On December 10, 2002 Mr. Nguyen plead guilty to a Minnesota Gross
9 misdemeanor under then 609.3451 Subd.1(2),¹ Fifth Degree Criminal Sexual Conduct. He
10 received a stay of imposition, was given two years of probation and not required to serve any
11 time in jail or pay a fine. Chan Decl. Exhs. Z, BB. After completing his probation, under
12 Minnesota law, his conviction was deemed a misdemeanor. *Id.*

13 7. When the Minnesota Court of Appeals ruled that his crime neither required a
14 sexual component or a *mens rea* higher than negligence as to the presences of children, it
15 accurately described his factual basis for this plea as "[w]hen appellant pleaded guilty, he
16 provided a factual basis to support his plea. Appellant stated that he was driving and felt the urge
17 to urinate. He pulled over, opened his door, and partially urinated. When he saw a car
18 approaching, appellant stopped urinating and drove away. Just prior to stopping a second time,
19 appellant saw young girls on the side of the road. He drove past the girls, pulled over, opened his
20 door, and finished urinating. At that point, two girls stood nearby and were able to see appellant

21 ¹ The statute has since been amended, but the exact same language still exists, but was just
22 moved to a different subdivision, which is now in the current Minn. Stat. 609.3451 sub.1a(2).
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1 urinating. Appellant admitted that the girls were under 16 years of age and that he knew that by
2 exposing his genitals and urinating in their presence he was violating the law.” Chan Decl. Exh.
3 BB, Z.

4 8. Four years after pleading guilty, and more than two years after completing his
5 probation, Mr. Nguyen was stopped by CBP in Chicago after returning from a trip to Vietnam
6 and was placed in Deferred Inspection. Chan Decl. Exh.K. While a decision was made to allow
7 Mr. Nguyen entry as his crime was determined to fall into a “petty offense” exception for
8 purposes of inadmissibility, he was served with a Notice to Appear and charged with an
9 aggravated felony ground of removal. *Id.* Chan Decl. Exh. G.

10 9. Mr. Nguyen endured a nearly four-year removal process that only ended after he
11 was re-detained in August of 2009 after his application for certificate of citizenship- the N-600
12 was denied and his Motion To Terminate was denied by the Immigration Judge. He was ordered
13 removed on March 10, 2010. Chan Decl. Exh. E.

14 10. After believing that Vietnam had no desire to accept an Amerasian, he decided to
15 not appeal the Immigration Judge’s decision as he believed he would be released from detention
16 eventually. Decl. M.Nguyen. His belief that he would not be welcomed back to Vietnam was
17 well supported. When Congress eventually passed the Amerasian Homecoming Act, it had heard
18 testimony that Asian countries relied almost exclusively on a *jus sanguinis* view of nationality
19 that was centered exclusively on descent from fathers.² Amerasians were not allowed to receive
20 food rations,³ could not complete an education beyond the sixth grade, and like Mr. Nguyen

20 ² Amerasian Immigration Proposals: Hearing on S. 1698 Before the Subcomm. on Immigration and Refugee Policy
of the Senate Comm. on the Judiciary, 97th Cong., 2d Sess., 64 (1982) (comments of Rev. Alfred Keane).

21 ³ Indochinese Refugee Resettlement and Protection Act of 1987, Pub. L. No. 100-202, 101 Stat. 1329-42 (1987)
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1 could not obtain passports and only received a laissez-paire document that allowed exit. *Id.*

2 11. After spending a year in immigration detention post the issuance of his removal
3 order and receiving a denial of the Vietnamese embassy regarding any issuance of a travel
4 document, Mr. Nguyen was finally released and given an Order of Supervision or Form I-220B.
5 Chan Decl. Ex.E, I, L. He would be allowed to file for work authorization and needed to comply
6 with certain requirements. Chan Decl. Ex. E.

7 12. After his release Mr. Nguyen moved back to Florida to be with family and
8 eventually met his current wife Linh Nguyen a naturalized U.S. citizen since 2007. M.Nguyen
9 Decl., Declaration of Linh Nguyen ("Decl. L.Nguyen"). Their daughter Olivia Nguyen was born
10 on August 5, 2013. Chan Decl. Exhs. M, N, V.

11 13. After obtaining permission from ICE, the entire family eventually moved to San
12 Jose California where Mr. Nguyen would marry his wife, Linh Nguyen on March 10, 2017.
13 Chan Decl. Ex.F, M. The family, consisting of Mr. Nguyen, his wife Linh, Alexander Nguyen,
14 Mr. Nguyen's stepson, and their daughter Olivia moved in with Linh's parents in San Jose
15 settling at 1143 Royal Crest Drive, San Jose where he continues to live. M.Nguyen Decl.
16 L.Nguyen Decl.

17 14. On February 21, 2025 after having only to do yearly check-ins since February of
18 2019, he was ordered to report for a check-in on August 22, 2025 at 9:00am, the first time during
19 his check-in requirements that listed a specific time for his check-in. Chan Decl. Ex.F.

20 15. Mr. Nguyen is scheduled to attend a check-in at the ICE San Francisco Field
21 Office on August 22, 2025 at 9:00am. *Id.* Given Respondent's refusal to acknowledge much less

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1 respond to Petitioner's reasonable request to delay his check-in so he could be available for a
 2 witness subpoena the risk of his re-detention is high. Chan Decl. para 5. Additionally, in light of
 3 credible and recent reports of ICE re-incarcerating individuals at their ICE check-ins⁴— it is
 4 highly likely that Mr. Nguyen will be arrested and detained at this appointment, despite the fact
 5 that his removal is not reasonably foreseeable as he cannot be repatriated to Vietnam, and he is
 6 neither a flight risk nor a danger to the community. Chan Decl. Ex. CC , Hoac v. Becerra, et al.,
 7 2:25-cv-01740- DC-JDP (E.D.C.A. July 16, 2025) (ordering the immediate release of
 8 petitioner—a Vietnamese individual who arrived to the United States as a refugee prior to 1995,
 9 who also has a final removal order and was released from ICE detention and had been
 10 complying with an OSUP for years— after he was unlawfully re-detained at a routine check
 11 (despite no changed circumstances) in the ICE office in San Francisco); Chan Decl. Exh.DD,
 12 Phan v. Becerra, et al., 2:25-CV-01757-DC-JDP (E.D.C.A. July 16, 2025) (same). This is
 13 particularly true given that ICE has received multiple directives to meet untenable daily arrest
 14 quotas that leave the agency no other option but to arrest noncitizens whose incarceration is not
 15 necessary.⁵ If Mr. Nguyen were to be arrested, he would face likely face transfer out of
 16 California with no notice and be sent far from his U.S. citizen wife, his twelve-year old daughter
 17 and his nineteen year old step-son.

18 ⁴ See, e.g., “Immigrants at ICE check-ins detained, held in basement of federal building in
 19 Los Angeles, some overnight,” CBS News (June 7, 2025),
 20 <https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/>; “They followed the government’s rules. ICE held
 21 them anyway,” LAist (June 11, 2025),
 22 <https://laist.com/news/politics/ice-raids-los-angeles-family-detained>.

⁵ <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>
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16. During the entirety of his fourteen plus years of release, ICE and DHS has never sought to detain Mr. Nguyen, or indicated that they would be able to get a travel document to effectuate his removal. Chan Decl. Ex.F. During this same period, Mr. Nguyen has in his words, finally found the type of love and acceptance that he never received in his life before. M.Nguyen Decl.

17. While ICE has statutory and regulatory authority to revoke an OSUP and redetain individuals, it must do so only in certain specific situations, none of which apply here. First, there has not been any violation of the conditions of his release as outlined in his release notification, there are no changed circumstances that show that removal is reasonably foreseeable, but also importantly, nothing that shows that Mr. Nguyen's conduct demonstrates that release is no longer appropriate. 8 U.S.C. 1231; 8 C.F.R. 1341.4(1)(1)-(2).

18. This statutory and regulatory authority is bounded by the Due Process Clause, as it directly impacts the most profound liberty interest there is-: freedom. Given the substantial nature of this interest, due process requires that the Government provide clear evidence of the foreseeability for removal to Vietnam and that re-detention would be necessary to mitigate flight risk or danger to the community.

19. After more than 14 years of freedom, Mr. Nguyen has a reasonable expectation that he would be able to live in the United States, raise his daughter and step-son and be a husband to his wife so long as he continues to abide by the requirements that were provided upon his release and that his removal to a country that degraded, rejected and humiliated him would remain unforeseeable. *Perry v. Sindermann*, 408 U.S. 593, 601-03 (1972) (reliance on

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1 policies and practices may establish a legitimate claim of entitlement to a constitutionally
2 protected interest); *see also Texas v. United States*, 809 F.3d 134, 174 (2015), affirmed by an
3 equally divided court, 136 S. Ct. 2271 (2016).

4 20. Given that detention for post-removal order is presumptive for only six months
5 under *Zadvydas v. Davis*, 533 U.S. 678, 201 (2001) and Mr. Nguyen has already spent over a
6 year in immigration detention awaiting a travel document that was never issued, any detention at
7 this point would be presumptively unreasonable. Chan Decl. Exhs.E, L.

8 21. At a minimum, Respondents must establish before this Court that his removal to
9 Vietnam is reasonably foreseeable and otherwise whether circumstances have changed such that
10 his re-detention is necessary to prevent flight or danger to the community.

11 22. Mr. Nguyen has dutifully complied with the requirements of his release for more
12 than 14 years and is entitled to protections of his reasonable liberty interest, including that the
13 Government furnish actual proof of his removability to Vietnam and provide reasons to this
14 Court why such removal would require detention. .

15 JURISDICTION

16 23. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, as
17 Petitioner is seeking habeas corpus relief to prevent violations of the U.S. Constitution, federal
18 statutes, and applicable regulations. Jurisdiction is also proper under 28 U.S.C. § 1331, as this
19 action arises under the laws and Constitution of the United States. Additional jurisdiction exists
20 under the Suspension Clause, U.S. Const. art. I, § 9, cl. 2, which guarantees the right to petition

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1 for habeas corpus to challenge unlawful executive detention. This Court also has jurisdiction
2 under the Administrative Procedure Act, 5 U.S.C. § 701 et seq., because Petitioner challenges
3 final agency actions that are arbitrary, capricious, and contrary to law. Declaratory and injunctive
4 relief are authorized by 28 U.S.C. §§ 2201 and 2202, and the Court has supplemental remedial
5 authority under the All Writs Act, 28 U.S.C. § 1651, to issue such writs as may be necessary to
6 preserve its jurisdiction and protect Petitioner's rights.

7 24. An actual, justiciable controversy exists between the parties regarding the legality
8 of Mr. Nguyen's planned detention. This Court is empowered to issue declaratory relief under 28
9 U.S.C. § 2201 and injunctive relief under 28 U.S.C. § 2202. In light of the ongoing constitutional
10 violations and risk of irreparable harm, the Court may also invoke its authority under the All
11 Writs Act to issue temporary or emergency relief to preserve the status quo and prevent
12 mootness.

13 25. Mr. Nguyen is only out of custody while on an OSUP issued by ICE. The terms
14 of his OSUP require not only check-ins but compliance with certain terms of his release,
15 including keeping his address updated. Such requirements "impose[] conditions which
16 significantly confine and restrain his freedom; this is enough to keep him in the 'custody' of [the
17 DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243
18 (1963). *See also Rodriguez v. Hayes*, 591 F.3d 1105, 1118 ("*Rodriguez I*") (holding that
19 comparable supervision requirements constitute "custody" sufficient to support habeas
20 jurisdiction).

21 26. Venue is proper in this District pursuant to 28 U.S.C. § 2241(a), because

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Petitioner a substantial part of the events or omissions giving rise to the claim occurred or will occur in the Northern District of California; because one of the Respondents-Defendants resides in this District; and because there is no real property involved in this action.. Venue further lies under 28 U.S.C. § 1391(e)(1), because Respondents are officers or employees of the United States acting in their official capacities and reside or may be found in this District. The San Francisco Field Office of Immigration and Customs Enforcement (ICE), located in San Francisco, is the agency responsible for initiating and directing the enforcement actions at issue.

INTRADISTRICT ASSIGNMENT

27. Assignment to the San Francisco or San Jose Division of this Court is proper under N.D. Local Rule 3-2(d) because Mr. Nguyen will be re-detained by the San Francisco ICE Field Office. Moreover, Mr. Nguyen may be subject to an ICE monitoring program operating out of San Francisco, California.

PARTIES

28. Petitioner My Anh Nguyen, an Amerasian born in Vietnam, whose father John Hendricks was injured three months prior to his birth and was forced to evacuate out of the country. He entered the United States under the Amerasian Homecoming Act as a lawful permanent resident. He was convicted of Fifth Degree Criminal Sexual Conduct after urinating in public in front of minor girls and was given a “Stay of Imposition” sentenced to probation in 2002. After a four year process of removal, he was given an order of removal to Vietnam on March 10, 2010 and eventually released from immigration detention on March 8, 2011.

29. Respondent Polly Kaiser is named in her official capacity as the Acting Field

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Office Director for ICE Enforcement and Removal Operations (ERO) in the San Francisco Field Office. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. She has direct and immediate custody over Mr. Nguyen and is responsible for decisions concerning his arrest, detention, and removal.

30. Respondent Pamela Bondi is named in her official capacity as Attorney General of the United States. As the head of the U.S. Department of Justice, she exercises oversight over immigration adjudications and prosecutions through delegated authority.

31. Respondent Todd Lyons is named in his official capacity as Acting Director of ICE. He exercises nationwide authority over the administration and enforcement of U.S. immigration laws and is responsible for all ICE custody decisions.

32. Respondent Kristi Noem is named in her official capacity as Secretary of Homeland Security. Under 8 U.S.C. § 1103(a), she is charged with the overall administration of the Immigration and Nationality Act, including implementation of immigration enforcement policies and detention protocols. Kristi Noem is the ultimate legal custodian of Mr. Nguyen.

FACTUAL ALLEGATIONS

33. Mr. Nguyen's experiences as an Amerasian when growing up in Vietnam were unfortunately neither unusual or even unknown to the United States. Testifiers before a subcommittee on Immigration and Refugee Policy on June 21, 1982 in support of "Amerasian Immigration Proposals" described many of the hardships that Mr. Nguyen endured, from near

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1 starvation, to discrimination and lack of education.

2 34. The subcommittee on that day heard how Amerasians in Vietnam were not
3 eligible for food rations, a lived experience by Mr. Nguyen when described how close he was to
4 dying of starvation as a child. Mr. Nguyen describes being abandoned by his mother, only to
5 have her return when the Amerasian Homecoming Act became news and a possibility to bring
6 people to the United States. As Professor Sabrina Thomas writes in her letter supporting Mr.
7 Nguyen's pardon application, numerous Vietnamese mothers were forced to abandon their
8 children as the mothers of Amerasians themselves were ostracized and persecuted. Chan Decl.
9 Exh. D..

10 35. Mr. Nguyen wasn't allowed to continue his education and was forced to work in
11 construction after not finishing sixth grade. Despite suffering serious physical injuries while
12 doing such work, that was the only means by which he could support himself as an adult. Decl.
13 M.Nguyen.

14 36. Before Mr. Nguyen came to the United States, he would sponsor not only his
15 mother but four younger half siblings, who were between the ages of ten to sixteen years old at
16 the time. *See Id.*

17 37. After arriving in the United States, he would reunite with a Vietnamese girlfriend,
18 Kimberly Nguyen who had immigrated to the United States earlier and they would get married in
19 Florida. M.Nguyen Decl. Chan Decl. Exh A.They would later move to Minnesota where Mr.
20 Nguyen got a carpentry certification and with help from his wife started a construction business
21 in Minnesota. *See Id.*

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1 38. On August 18, 2002, after two juvenile girls reported seeing a man pulling his
2 pants down and exposing himself, police arrested Mr. Nguyen for Fifth Degree Sexual
3 Misconduct for “masturbation or lewd exhibition of the genitals in the presence of a minor under
4 the age of 16, knowing or having reason to know the minor was present.” Chan Decl. Ex.Z.

5 39. Mr. Nguyen plead guilty to the crime as charged and admitted that he had to
6 urinate and did so, despite being aware or should have been aware that there were minor girls in
7 the area, and that by urinating he had exposed his genitals. *Id.*

8 40. He was given a Stay of Imposition which resulted in two years of probation, with
9 electronic home monitoring for 90 days, an order to not contact any of the victims and that he
10 complete a class on boundaries. He completed all of the requirements and his conviction would
11 be deemed a misdemeanor in 2005 after he completed the terms of his probation. Chan Decl. Ex.
12 BB.

13 41. In 2006 as Mr. Nguyen was returning from Vietnam on a trip, he was stopped for
14 deferred inspection by CBP. Chan Decl. K. In February 21, 2006 his deferred inspection was
15 completed and he was given a legal entry after a determination was made that his criminal
16 conviction would not render him inadmissible as even if it qualified as a Crime involving Moral
17 Turpitude, it would qualify for the petty offense exception as he received less than a six month
18 sentence. *Id.*

19 42. On October 26, 2006 however, ICE came and arrested Mr. Nguyen and served
20 him with a Notice to Appear that charged him as an aggravated felon for having committed a
21 crime of sexual abuse of a minor. Chan Decl. Ex. G.

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1 43. Mr. Nguyen was released and given bond however as the Immigration Court
2 found that Mr. Nguyen had “an apparent probability that the Respondent is a United States
3 Citizen it does not appear substantially likely at this time that the charge will be sustained.” Chan
4 Decl. Ex. J..

5 44. Despite his release, the proceedings were ongoing as Mr. Nguyen was given the
6 opportunity to file for an N-600 which he did. Despite his father Mr. Hendrick’s letter attesting
7 to his support of his son, the submission of DNA analysis that confirmed their genetic
8 relationship and proof that Mr. Hendricks had sufficient residency in the United States prior to
9 Mr. Nguyen’s birth, the N-600 was denied as Mr. Hendricks did not legitimate Mr. Nguyen prior
10 to his 18th birthday. Chan Decl. Ex. P-S. A requirement that the United States Supreme Court
11 found by a 5-4 vote as not implicating equal protection concerns for treating unwed fathers
12 differently than unwed mothers. *See Nguyen v. INS*, 533 U.S. 53 (2001).

13 45. After the N-600 was denied in 2009, Mr. Nguyen was re-detained when he
14 appeared for his immigration court hearing and was forced to go forward in proceedings while
15 detained.Chan Decl. Ex. E.

16 46. Mr. Nguyen filed a petition for post-conviction relief on November 13, 2009 in an
17 attempt to withdraw his plea. However, the district court refused to withdraw his plea, ruling that
18 his plea was accurate despite not admitting to any intent or desire for sexual gratification and that
19 because he himself had informed INS of his conviction prior to the plea, it was intelligent. Chan
20 Decl. Ex.BB. Notably, this decision was prior to the Supreme Court’s decision in *Padilla v.*
Kentucky, 559 U.S. 356 (2010) which would have required this criminal counsel to ascertain

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1 whether the conviction would have made him deportable, something that did not happen before
2 his plea. The Minnesota Court of Appeals affirmed the denial of the post-conviction motion on
3 the same grounds used by the district court. *Id.*

4 47. After the Immigration court denied his motion to terminate, Mr. Nguyen made the
5 difficult decision to forgo an appeal as he thought that the fact that he was Amerasian meant that
6 he did not have Vietnamese citizenship after arriving in the United States as a permanent
7 resident. Chan Decl Ex.L.

8 48. After spending a year in immigration detention post-removal order, and getting a
9 denial from the Vietnamese embassy on the issuance of a travel document, Chan Decl. Ex. I, Mr.
10 Nguyen was finally given release on March 8, 2011. Chan Decl. Ex. E. His OSUP document
11 provided him with a list of required conditions, including taking medication, participating in
12 consular interviews and sign and complete documentation provide by Vietnam. *Id.*

13 49. Mr. Nguyen would continue to check in as required, sometimes every few
14 months, and sometimes every year without fail. Chan Decl. Ex.F. He never committed a crime
15 again, and instead found new love after meeting Linh Nguyen. Linh and My Nguyen would have
16 a child together, [REDACTED] Nguyen, born in August of 2013 in Florida. Chan Decl.Ex.L. The family,
17 which included [REDACTED] Nguyen, who was Linh's son from a previous marriage, would all
18 move to San Jose California to live with Linh's family. M.Nguyen Decl.

19 50. Mr. Nguyen and his wife would eventually start a cabinet business as Mr. Nguyen
20 was a skilled carpenter. The business was doing well until the Covid pandemic hit. M.Nguyen
21 Decl.

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1 51. Over the past several years Linh Nguyen has been suffering from stomach pains
2 that have made it difficult for her to work, and Mr. Nguyen has been her primary caretaker since.
3 M.Nguyen Decl., L.Nguyen Decl. While the family's economic situation has gotten worse, Mr.
4 Nguyen has still taken care of various family members including their daughter, his step-son and
5 his wife and in-laws. *Id.*

6 52. On February 21, 2025 after making his designated annual check-in, Mr. Nguyen
7 was told to check in on August 22, 2025 at 9:00am. Chan Decl. Ex.F.

8 53. On August 15, 2025, R. Linus Chan, counsel for Mr. Nguyen emailed the the San
9 francisco field office to request that Mr. Nguyen's check in for August 22, 2025 be moved due to
10 Mr. Nguyen being served a witness subpoena by the Santa Clara District Attorney. The Santa
11 Clara District Attorney had explained that the trial for which Mr. Nguyen would be asked to
12 testify regarding a manslaughter charge where he possessed security camera footage has been
13 delayed that the District Attorney asked that Mr. Nguyen needed to be available until potentially
14 September 12, 2025. Mr. Chan did not receive any response from the San Francisco Field office.
15 This request was sent again on August 19, 2025 and again went unanswered. Chan Decl. at
16 para.5.

17 54. In the intervening weeks, the number of people detained at their ICE check-ins
18 without any changes to their chances of removal or concerns over flight risk or dangerousness
19 have skyrocketed in the Bay Area. ⁶

20 ⁶ "ICE confirms arrests made in South San Jose," NBC Bay 12
21 Area (June 4, 2025) [https://www.nbcbayarea.com/news/local/ice-agents-san-jose](https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/)
22 [market/3884432/](https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/) ("The Rapid Response Network, an immigrant watchdog group, said
immigrants are being called for meetings at ISAP – Intensive Supervision Appearance
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55. In February of 2025, the Trump Administration began to deport non-Panamanians to Panama, including some who had Vietnamese nationality. Deportations to Costa Rica included a variety of non-Costa-Ricans including again migrants from Asia.⁷ On May 7, 2025 several detainees, including a Vietnamese national was told that they would be deported to Libya, a country that has no functioning government.⁸

56. On July 5, 2025 after weeks of high- profile legal rulings and reversals, eight men were removed to South Sudan who were not citizens or nationals of that country, including a Mr. Tuan Phan, a Vietnamese national.⁹

57. The press continue to report agreements between the United States and countries such as Uganda and Rwanda that involve taking deportees from the United States that have no

Program

–for what are usually routine appointments to check on their immigration status. But the immigrants who show up are taken from ISAP to a holding area behind Chavez Supermarket for processing and apparently to be taken to a detention center, the Rapid Response Network said.”)

⁷ Castano, Danielle, The U.S.'s Illegal Migrant Deportations to Panama, Huam Rights Research Center, June 5, 2025 found at <https://www.humanrightsresearch.org/post/the-u-s-s-illegal-migrant-deportations-to-panama#:~:text=In%20February%202025%2C%20the%20Trump,U.S.%20to%20deport%20to%20directly.,see%20also,Megan%20Janetsky,Alma%20Solis%20and%20Matias%20Delacroix,Panama%20releases%20dozens%20of%20detained%20deportees%20from%20US%20into%20limbo%20following%20human%20rights%20criticism,AP%20MARCH%209%2C2025%20at%20https%3A%2F%2Fapnews.com%2Farticle%2Ftrump-deportations-migrants-panama-costa-rica-darien-rights-afghanistan-70f79684ac9e0701bc34e3e7144944c5>

⁸ Rachel Uranga, *L.A. Vietnamese man came for annual ICE Check in, then nearly got deported to Libya*. Los Angeles Times, May 15, 2025, <https://www.latimes.com/california/story/2025-05-15/l-a-vietnamese-immigrant-among-those-told-he-would-be-deported-to-libya-lawyer>.

⁹ U.S. completes deporting 8 men from various nations to South Sudan after weeks of legal battles July, 5, 2025 found at <https://www.pbs.org/newshour/politics/u-s-completes-deporting-8-men-from-various-nations-to-south-sudan-after-weeks-of-legal-battles>, Bill Radke, Gustavo Alvarez, Sarah Leibovitz, *Why a Vietnamese Man was deported to South Sudan*, June 4, 2025, <https://www.kuow.org/stories/why-a-vietnamese-man-was-deported-to-south-sudan>.

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nationality or other relationship to those countries.¹⁰ The Countries for which the United States has sought out such agreements have a notorious record and are known for instability and violence.

Legal Background

58. In Mr. Nguyen's particular circumstances, the Due Process clause of the Constitution makes it unlawful for Respondents to re-detain him without first providing clear proof that Vietnam has issued a travel document and would be willing allow Mr. Nguyen to be deported to Vietnam before this Court. That evidentiary showing should happen to this Court, and prior to any re-arrest or alteration in the conditions of his release.

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

60. If ICE fails to remove an individual during the ninety (90) day removal period, the law requires ICE to release the individual under conditions of supervision, including periodic reporting. 8 U.S.C. § 1231(a)(3) ("If the alien . . . is not removed within the removal period, the alien, pending removal, shall be subject to supervision."). Limited exceptions to this rule exist.

¹⁰ Eve Sampson, Rwanda Agrees to Accept 250 Migrants as Part of Trump Deportation Plan, August 5, 2025, New York Times, <https://www.nytimes.com/2025/08/05/world/africa/rwanda-trump-deportees.html#:~:text=Approval%20Ratings-.Rwanda%20Agrees%20to%20Accept%20250%20Migrants%20as%20Part%20of%20Trump.planned%20to%20integrate%20the%20deportees.>, David Willis, Yang Tian, US Strikes deportation deals with Honduras and Uganda, BBC News August 20, 2025 <https://www.bbc.com/news/articles/cn02eezlykdo>.

1 Specifically, ICE “may” detain an individual beyond ninety days if the individual was ordered
2 removed on criminal grounds or is determined to pose a danger or flight risk. 8 U.S.C. §
3 1231(a)(6). However, ICE’s authority to detain an individual beyond the removal period under
4 such circumstances is not boundless. Rather, it is constrained by the constitutional requirement
5 that detention “bear a reasonable relationship to the purpose for which the individual [was]
6 committed.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Because the principal purpose of the
7 post-final-order detention statute is to effectuate removal, detention bears no reasonable relation
8 to its purpose if removal cannot be effectuated. *Id.* at 697.

9 61. Post-final order detention is only authorized for a “period reasonably necessary to
10 secure removal,” a period that the Court determined to be presumptively six months. *Id.* at
11 699-701. After this six (6) month period, if a detainee provides “good reason” to believe that his
12 or her removal is not significantly likely in the reasonably foreseeable future, “the Government
13 must respond with evidence sufficient to rebut that showing.” *Id.* at 701. If the government
14 cannot do so, the individual must be released.

15 62. That said, detainees are entitled to release even before six months of detention, as
16 long as removal is not reasonably foreseeable. *See* 8 C.F.R. § 241.13(b)(1) (authorizing release
17 after ninety days where removal is not reasonably foreseeable). Moreover, as the period of
18 post-final order detention grows, what counts as “reasonably foreseeable” must conversely
19 shrink. *Zadvydas* at 701.

20 63. Even where detention meets the *Zadvydas* standard for reasonable foreseeability,
21 detention violates the Due Process Clause unless it is “reasonably related” to the government’s

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1 purpose, which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at 700 (“[I]f removal
2 is reasonably foreseeable, the habeas court should consider the risk of the alien’s committing
3 further crimes as a factor potentially justifying confinement within that reasonable removal
4 period”) (emphasis added); *Id.* at 699 (purpose of detention is “assuring the alien’s presence at
5 the moment of removal”); *Id.* at 690-91 (discussing twin justifications of detention as preventing
6 light and protecting the community).

7 64. The government’s own regulations contemplate this requirement. They dictate
8 that even after ICE determines that removal is reasonably foreseeable—and that detention
9 therefore does not per se exceed statutory authority—the government must still determine
10 whether continued detention is warranted based on flight risk or danger. *See* 8 C.F.R. §
11 241.13(g)(2) (providing that where removal is reasonably foreseeable, “detention will continue
12 to be governed under the established standards” in 8 C.F.R. § 241.4).

13 65. The regulations at 8 C.F.R. § 241.4 set forth the custody review process that
14 existed even before *Zadvydas*. This mandated process, known as the post-order custody review,
15 requires ICE to conduct “90-day custody reviews” prior to expiration of the ninety-day removal
16 period and to consider release of individuals who pose no danger or flight risk. 8 C.F.R. §
17 241.4(e)-(f). Among the factors to be considered in these custody reviews are “ties to the United
18 States such as the number of close relatives residing here lawfully”; whether the noncitizen “is a
19 significant flight risk”; and “any other information that is probative of whether” the noncitizen is
20 likely to “adjust to life in a community,” “engage in future acts of violence,” “engage in future
21 criminal activity,” pose a danger to themselves or others, or “violate the conditions of his or her

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1 release from immigration custody pending removal from the United States.” *Id.*

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

6 67. Federal district courts in California and throughout the country have repeatedly
7 recognized that the demands of due process and the limitations on DHS’s authority to re-detain a
8 noncitizen both require a pre-deprivation hearing *before* re-detention by ICE. Chan Decl. at Exh
9 EE, *M.R. v. Kaiser*, et al., 25-cv-05436-RFL (N.D. Cal. July 17, 2025) (TRO prohibiting
10 government from re-detaining the petitioner without notice and a hearing before a neutral
11 adjudicator); Exh.FF, *Rodriguez Diaz v. Kaiser*, et al., 3:25-cv-05071 (N.D. Cal. June 14,
12 2025)(same); Exh. GG., *T.P.S. v. Kaiser*, et al., 3:25-cv-05428 (N.D. Cal. June 30, 2025) (same);
13 Exh.HH., *Soto Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR (E.D.C.A. July 14, 2025)
14 (same); Exh. II *Ortega v. Kaiser*, No. 25-cv-5259 (N.D. Cal. Jun. 26, 2025) (same); *see also Doe*
15 *v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025)
16 (holding the Constitution requires a hearing before any re-arrest); *Meza v. Bonnar*, 2018 WL
17 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019);
18 *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020);
19 *Jorge M. F. v. 20 Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1,
20 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6,
21 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing

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before any re 23 detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years); *Garcia v. Bondi*, No. 3:25-cv-05070, 2025 WL 1676855, at *3 (June 14, 2025). Here, given the particular facts of Mr. Nguen's case, that particular pre-deprivation process requires Respondents-Defendants to demonstrate that Mr. Nguyen's removal is reasonably foreseeable, and that detention or some alteration in the conditions of his release are necessary to effectuate that removal.

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

69. Since 2011, Mr. Nguyen has exercised that freedom pursuant to his OSUP. He thus retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding reincarceration, which is not diminished by the supervised nature of his release. *Zadvydas*, 533 U.S. at 679 ("[A] noncitizen's liberty interest is not diminished by their lack of a legal right to live at large, for the choice at issue here is between imprisonment and supervision under release conditions that may not be violated and their liberty interest is strong enough to raise a serious constitutional problem with indefinite detention."); *see also Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 13 471, 482-483 (1972).

70. Moreover, the Supreme Court has recognized that post-removal order detention is

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1 potentially indefinite and thus unconstitutional without some limitation. *Zadvydas*, 533 U.S. at
2 701. Given Mr. Nguyen’s lengthy post-removal detention, his strong ties to the United States,
3 especially through his U.S. citizen father, there is no reason to believe that Vietnam would
4 consent to issuing a travel document to Mr. Nguyen when it would not give him a passport when
5 he left the country in 1996. Mr. Nguyen’s removal has not become any more foreseeable since
6 his release in March of 2011. Given that fourteen years have gone by without Respondents
7 securing a travel document to Vietnam, Mr. Nguyen has “demonstrated there is no significant
8 likelihood of removal.” See *Tadros v. Noem*, 2025 WL 1678501, at *3 (D. N.J. June 13, 2025)

9 71. Mr. Nguyen has continued to present himself at ICE check-ins, complying with
10 his OSUP and over the past 14 years ICE has never sought to detain him or told him that he
11 would need to make any applications for travel documents to Vietnam. Chan Decl. at Ex.E.

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

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1 73. It would seem self-evident that a liberty interest exists to remain free from
2 incarceration, a principle that Court have nonetheless been required to make clear. *See, e.g.,*
3 *Young v. Harper*, 520 U.S. at 152; *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (felony probation
4 creates a protected liberty interest requiring pre-deprivation process). When deciding whether a
5 specific conditional release qualifies as a protected liberty interest comparison that conditional
6 release with the liberty interest of a parolee is required. *Gonzalez-Fuentes v. Molina*, 607 F.3d
7 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also, e.g., Hurd v.*
8 *District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of
9 physical confinement—even if that freedom is lawfully revocable—has a liberty interest that
10 entitles him to constitutional due process before he is re-incarcerated”) (citing *Young*, 520 U.S. at
11 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

12 74. Mr. Nguyen’s liberty interest, which has included the creation of a loving family
13 with a twelve year old daughter, a wife and step-son compares quite favorably to the parolee in
14 *Morrissey* whereby they may “be with family and friends and to form the other enduring
15 attachments of normal life.” *Morrissey*, 408 U.S. at 482.

16 75. Due process requires that the Respondent rebut the 14 year presumption that
17 Vietnam would not issue a travel document to Mr. Nguyen, especially where as here, the
18 detention is civil, Mr. Nguyen has been at liberty for more than 14 years, there have been no
19 change in circumstances and no indication that Vietnam has changed its mind in issuing a travel
20 document.

21 76. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) provides the touchstone for
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1 deciding whether a procedure is required to comport with due process. First, the private interest
2 affected by the official action must be sufficiently weighty, second, the risk of erroneous
3 deprivation without such a safeguard must be sufficiently high, and finally the government's
4 interest in denying such a safeguard must be considered. A pre-deprivation hearing in this case
5 meets all three factors.

6 77. Mr. Nguyen's liberty interest is more than sufficiently high to meet the first factor
7 under the Matthews test. As explained by the Supreme Court, even those released under
8 supervised criminal release have a valuable liberty interest. *Morrissey*, 408 U.S. at 482. This
9 interest is no less high when the threatened incarceration is supposedly civil rather than punitive.
10 Restraint in this situation goes more than simply being locked up, but includes such weighty
11 interests as separation from one's family. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992),
12 *Zadvydas*, 533, U.S. at 690.

13 78. As for the Government interest in denying him the opportunity to examine and be
14 on notice that his removal would be forthcoming *prior* to detention, that interest is low and
15 negligible. Mr. Nguyen's last criminal act occurred more than 23 years ago, was a misdemeanor
16 and he has maintained a steady address. There is no reason that detention could be justified by
17 any reason other than effectuating removal, though detention need not be required for many
18 cases of removal at all. The Respondents themselves have encouraged millions of people eligible
19 for deportation to avoid deportation and self-deport. *See dhs.gov/cbphome* ("The CBP Home
20 program lets eligible aliens return home as regular travelers—without arrest, detention, or
21 restraints. It's a safe, orderly alternative that provides assistance and flexibility, not fear.") In

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other words, no circumstances exist that would allow the Respondents to assume that detention was necessary to protect a government interest.

79. Just as there exists no reason to default to detention to protect a government interest, it is easy to see why detention could easily lead to an erroneous deprivation of Mr. Nguyen's liberty interest. Because the process that Mr. Nguyen seeks does not presume either danger or flight risk, it is much better calibrated to prevent erroneous deprivation. The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("Diouf II"), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

CLAIMS FOR RELIEF

FIRST CLAIM

Violation of the Fifth Amendment to the United States Constitution Substantive Due

Process

80. Mr. Nguyen repeats and re-alleges the foregoing paragraphs as if fully set forth herein. The Fifth Amendment guarantees due process protections to all "persons" in the United States, including noncitizens, regardless of immigration status. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

81. Mr. Nguyen has a protected liberty interest in his continued release from civil detention of the last 14 years. Due Process does not permit the government to strip him of that

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1 liberty without it being tethered to one of the two constitutional bases for civil detention: to
2 mitigate against the risk of flight or to protect the community from danger.

3 82. As Mr. Nguyen's situation shows, a single misdemeanor conviction committed
4 twenty-three years ago cannot be any basis for a finding of dangerousness. Moreover, his
5 fourteen years of compliance with check-ins makes it clear that he is not a flight risk.

6 83. Immigration detention is lawful only if justified by narrow purposes: to ensure
7 court appearance or protect public safety. *See Zadvydas*, 533 U.S. at 690. Neither of these
8 grounds would be satisfied by Mr. Nguyen's detention.

9 84. His detention would bear no reasonable relationship to any legitimate government
10 purpose and is therefore punitive. Detention in this context is not being used to protect the public
11 or facilitate removal, but rather to punish Mr. Nguyen, humiliate him and cause fear for others in
12 his situation..

13 85. For these reasons, Respondents' arbitrary detention at ICE check-ins violate the
14 Due Process Clause of the Fifth Amendment. The Court must therefore order that, prior to any
15 re-arrest or any modification whatsoever to his conditions of release—including an ankle monitor—,
16 the Government provide clear evidence that removal to Vietnam is reasonably foreseeable and
17 that his detention or a change in the conditions of his release would be necessary to effectuate
18 such removal.

19 **PRAYER FOR RELIEF**

20 Accordingly, Mr. Nguyen respectfully requests that this Court:

- 21 1) Assume jurisdiction over this matter;

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- 2) Enjoin Respondents from re-arresting Petitioner unless and until Respondents establish that his removal is reasonably foreseeable and that (2) detention is necessary to effectuate said removal.
- 3) Enjoin Respondents from transferring Mr. Nguyen outside the jurisdiction of this District while these proceedings are pending;
- 4) Award Mr. Nguyen his costs and reasonable attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
- 5) Grant such other and further relief as the Court deems just and proper.

Dated: August 21, 2025

s/ R. Linus Chan

Linus Chan, Reg. No. 0403311
**JAMES H. BINGER CENTER FOR NEW
AMERICANS, UNIVERSITY OF MINNESOTA
LAW SCHOOL**
190 Mondale Hall
229 19th Street South
Minneapolis, MN 55455
rlchan@umn.edu
(612) 301-1156

S/ Judah Lakin
Judah Lakin
LAKIN & WILLE LLP

Attorneys for Petitioner

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ATTESTATION PURSUANT TO CIVIL L.R. 5.1(i)(3)

As the filer of this document, I attest that concurrence in the filing was obtained from the other signatories. Executed on this 21st day of August 2025 in Oakland, California.

s/Judah Lakin

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