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6  
7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF ARIZONA**

9 Ali Hamed Al Bazergan

10 Petitioner,

11 v.

12 Donald J. Trump, in his official capacity  
13 as the President of the United States;  
14 U.S. Immigration and Customs  
15 Enforcement;  
16 Executive Office of Immigration Review;  
17 CoreCivic, Inc.;  
18 Kristi Noem, Secretary of United States  
19 Department of Homeland Security, in her  
20 official capacity;  
21 Todd M. Lyons, Acting Director, U.S.  
22 Immigration and Customs Enforcement, in  
23 his official capacity;  
24 John E. Cantu, Field Office Director of  
25 U.S. Immigration and Customs  
Enforcement and Removal Operations  
(ERO) Phoenix, in his official capacity;  
Fred Figueroa, Warden, Eloy Detention  
Center, in his official capacity;  
and  
Pamela Bondi, Attorney General of the  
United States, in her official capacity,

Case No.:

**PETITIONER ALI HAMED AL  
BAZERGAN'S PETITION FOR  
WRIT OF HABEAS CORPUS AND  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Agency Doc. No.

A 

26 Respondents.

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1 Petitioner Ali Hamed AL BAZERGAN (“Petitioner” or “AL BAZERGAN”), by and  
2 through his attorney, Ginger E. Jacobs, hereby submits his Complaint, and petitions this  
3 Court for a writ of habeas corpus under 28 U.S.C. § 2241, and seeks an order in the form  
4 of a declaratory and injunctive relief to compel his immediate release from the  
5 immigration detention where he has been held by the Department of Homeland Security  
6 (“DHS”) since being unlawfully re-detained on July 23, 2025, without at any point  
7 having been provided a due process hearing to determine whether his detention is  
8 justified. Petitioner states as follows:

9 **INTRODUCTION**

10 1. Petitioner Ali Hamed AL BAZERGAN arrived at this country’s doorstep on March  
11 10, 1990, with a B-2 nonimmigrant visa. *Exhibit A*. He has a lengthy immigration history.  
12 An Immigration Judge (“IJ”) in Tucson, AZ, issued a removal order on April 17, 2013.  
13 *Exhibit A*. He appealed the decision to the Board of Immigration Appeals (“BIA”), and on  
14 April 23, 2015, the BIA dismissed his appeal. *Exhibit A*. On January 12, 2016, AL  
15 BAZERGAN was detained by DHS at Eloy Detention Center (“EDC”), in Eloy, AZ. He  
16 filed a motion to reopen with the BIA, which the BIA granted on March 25, 2016. *Exhibit*  
17 *A*. In granting his motion to reopen, the BIA also vacated its April 23, 2015, decision  
18 affirming the IJ’s denial of his applications. *Exhibit A*. On August 11, 2016, after receiving  
19 new briefs and evidence from AL BAZERGAN, the BIA again dismissed his appeal and  
20 affirmed the IJ’s April 2013 decision. *Exhibit A*. AL BAZERGAN then filed a motion to  
21 reopen based on material new evidence reflecting significant changes in Iraq that post-  
22 dated his merits hearing. *Exhibit A*. The BIA found this evidence pertinent to his denied  
23 application for protection under the Convention Against Torture (“CAT”), and remanded  
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1 his case to the Immigration Court “for the purpose of providing the respondent a further  
2 opportunity to pursue protection” under the CAT and for the issuance of a new decision.  
3

4 *Exhibit A.*

5 2. On October 4, 2017, an IJ granted AL BAZERGAN’S application for deferral of  
6 removal under Article III of the CAT. *Exhibit A.* Respondents appealed the decision of the  
7 Immigration Judge to the BIA. *Exhibit B.* AL BAZERGAN was released from detention  
8 on February 5, 2018. On August 31, 2018, the BIA dismissed Respondents’ appeal and  
9 remanded for security checks. *Exhibit C.* On October 3, 2018, the decision became final.

10 3. On October 4, 2018, DHS initiated an Order of Supervision. *Exhibit D.* AL  
11 BAZERGAN has been reporting to Immigration and Customs Enforcement (“ICE”) on a  
12 regular basis since his release from detention more than seven years ago. *Exhibit D.* Since  
13 that time, AL BAZERGAN has not been convicted of any crimes, nor has he violated the  
14 terms of his Order of Supervision with ICE.

15 4. On Wednesday, July 23, 2025, ICE agents went to AL BAZERGAN’s home and  
16 detained him. *Exhibit E.* AL BAZERGAN was working outside in the front yard when a  
17 group of masked men surrounded him in his driveway, handcuffed him, and took him.  
18 *Exhibit E.* The masked men refused to permit AL BAZERGAN to inform his wife, Saba  
19 Mehdi Abu-Tabikh (“Ms. Tabikh”), that he was being detained. *Exhibit E.* His wife, was  
20 unaware that he had been taken until she received a phone call from him, informing her he  
21 had been taken to the Immigration Field Office in Tucson, Arizona. *Exhibit E.* AL  
22 BAZERGAN informed his wife that the masked men identified themselves as ICE officers,  
23

1 and would not tell him why he was being detained. *Exhibit E*. AL BAZERGAN was  
2 transferred to Florence Detention Center, then to EDC. AL BAZERGAN remains detained  
3 at EDC.  
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5 5. AL BAZERGAN'S removal to Iraq is deferred and the government has made no  
6 indication of intent to reopen the case, nor of any other country willing to accept him. Thus,  
7 his re-detention by ICE must be held unlawful as it is limitless in its duration. AL  
8 BAZERGAN'S detention is both unconstitutional because it is indefinite, and illegal  
9 because he was not provided any notice or hearing prior to his re-detention by ICE or  
10 afforded the opportunity to advance any arguments as to why he should not be re-detained.  
11

12 6. AL BAZERGAN suffers from uncontrolled diabetes, early signs of dementia, and  
13 chronic pain. *Exhibit F*. The stress of incarceration is negatively impacting his health.  
14

15 7. Because AL BAZERGAN's detention has already been prolonged, and considering  
16 his health conditions, Respondents continuing to detain him violates his due process rights  
17 under the United States Constitution's Fifth Amendment.  
18

19 8. Among other things, he seeks this Court's expedited adjudication of this petition,  
20 and ordering the government to show cause within three days, considering his detention  
21 continues to have a negative impact on his health while in detention at EDC in  
22 Respondents' custody.  
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**CUSTODY**

9. AL BAZERGAN is currently in the Respondents' physical and legal custody at EDC in Eloy, Arizona. At the time of this filing, AL BAZERGAN continues to be detained at EDC. He is under Respondents' and their agents' direct control.

## PARTIES

10. Petitioner Ali Hamed AL BAZERGAN is a 65-year-old native and citizen of Iraq. He arrived in the United States on March 10, 1990, as a B-2 visitor. He was detained by Respondents from January 12, 2016, until February 5, 2018, after a grant of his application for deferral of removal under CAT. He was again detained by Respondents on July 23, 2025.

11. AL BAZERGAN is currently in Respondents' legal and physical custody at the EDC in Eloy, Arizona. That facility is operated by CoreCivic, Inc., a Maryland Corporation.

12. Respondent KRISTI NOEM is the Secretary of DHS. DHS is the federal agency that is ultimately responsible for enforcing immigration laws and granting immigration benefits. See 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1. Respondent Noem has ultimate custodial authority over AL BAZERGAN, who names her in her official capacity.

13. Respondent TODD M. LYONS is the Acting Director of ICE. ICE is a component of DHS, 6 U.S.C. § 271, and an “agency” within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701(b)(1). It is the agency responsible for enforcement of immigration laws, and it is detaining AL BAZERGAN. Respondent Lyons has custodial authority over AL BAZERGAN, who names him in his official capacity.

1 14. Respondent JOHN E. CANTU is the Field Office Director for the Phoenix Field  
2 Office of ICE's Enforcement and Removal Operations (ERO) division. This office is  
3 responsible for ICE enforcement and the detention facilities for the whole state of Arizona,  
4 including the EDC. Respondent Cantu has custodial authority over AL BAZERGAN, who  
5 names him in his official capacity.

6  
7 15. Respondent FRED FIGUEROA is the Warden at the EDC, where AL BAZERGAN  
8 is being held. Respondent Figueroa is AL BAZERGAN immediate custodian. AL  
9 BAZERGAN names him in his official capacity.

10  
11 16. Respondent PAMELA BONDI is the Attorney General of the United States. She is  
12 responsible for the Immigration and Nationality Act's implementation and enforcement  
13 (*see* 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the Executive Office for Immigration  
14 Review ("EOIR"), the office which ordered AL BAZERGAN removed. AL BAZERGAN  
15 names her in her official capacity.

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18 **JURISDICTION AND VENUE**

19  
20 17. This action arises under the Constitution of the United States, the Immigration and  
21 Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration  
22 Reform and Immigrant Responsibility Act of 1996 ("IRRIRA"), Pub. L. No. 104-208, 110  
23 Stat. 1570. This Court has subject matter jurisdiction and may grant relief under 28 U.S.C.  
24 § 2241 (habeas corpus), 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. § 1331 (federal  
25 question). This Court also has jurisdiction to hear this case under the Suspension Clause of  
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1 Article I of the United States Constitution. *INS v. St. Cyr*, 533 U.S. 289 (2001). The Court  
2 may also grant relief under 28 U.S.C. §§ 2201 (declaratory relief).

3 18. Because AL BAZERGAN challenges his custody, jurisdiction is proper in this  
4 Court. While courts of appeals have jurisdiction to review removal orders through petitions  
5 for review, *see* 8 U.S.C. §§ 1252(a)(1) and (b), the federal district courts have jurisdiction  
6 under 28 U.S.C. § 2241 to hear habeas corpus petitions by noncitizens challenging the  
7 lawfulness of their detention. *See, e.g.* *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001);  
8 *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075-76 (9<sup>th</sup> Cir. 2006).

9 19. Venue is proper in the District of Arizona under 28 U.S.C. §§ 1391(b)(2) and (e) and  
10 local rules of this court because a substantial part of the events, acts, or omissions giving  
11 rise to the claims occurred in the State of Arizona, including at the time of filing; AL  
12 BAZERGAN is detained in the Respondents' custody at Eloy Detention Center located in  
13 the District of Arizona; and Respondents are officers of the United States sued in their  
14 official capacities.

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

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

1 21. Courts have long recognized the significance of the habeas statute in protecting  
2 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the  
3 most important writ known to the constitutional law of England, affording as it does a *swift*  
4 and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372  
5 U.S. 391, 400 (1963) (emphasis added).  
6  
7

## FACTS

8 22. AL BAZERGAN reserves the right to amend and supplement his factual statement.  
9  
10 23. AL BAZERGAN is a citizen of Iraq and no other country.  
11  
12 24. AL BAZERGAN entered the United States on March 10, 1990. *Exhibit A*. After a  
13 lengthy procedural history, an IJ in Tucson, AZ, issued a removal order on April 17, 2013.  
14 *Exhibit A*. On January 12, 2016, AL BAZERGAN was detained by DHS at the EDC. On  
15 October 4, 2017, an IJ granted AL BAZERGAN’S application for deferral of removal  
16 under Article III of the CAT. *Exhibit A*. Respondents appealed the decision of the  
17 Immigration Judge to the BIA. *Exhibit B*. AL BAZERGAN was released from detention  
18 on February 5, 2018. On August 31, 2018, the BIA dismissed Respondents’ appeal and  
19 remanded for security checks. *Exhibit C*. On October 3, 2018, the decision became final.  
20 Respondents did not pursue further appeal of this decision. To date, Respondents have not  
21 taken any steps to reopen or rescind the grant of relief.  
22  
23 25. On October 4, 2018, DHS initiated an Order of Supervision. *Exhibit D* AL  
24 BAZERGAN has been reporting to ICE on a regular basis since his release from detention  
25 more than seven years ago. *Exhibit D*. Since that time, AL BAZERGAN has not been  
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1 convicted of any crimes, nor has he violated the terms of his Order of Supervision with  
2 ICE.  
3

4 26. On Wednesday, July 23, 2025, ICE agents went to AL BAZERGAN's home and  
5 detained him. *Exhibit E*. AL BAZERGAN was working outside in the front yard when a  
6 group of masked men surrounded him in his driveway, handcuffed him, and took him.  
7 *Exhibit E*. The masked men refused to permit AL BAZERGAN to inform his wife, Saba  
8 Mehdi Abu-Tabikh ("Ms. Tabikh"), that he was being detained. *Exhibit E*. His wife, was  
9 unaware that he had been taken until she received a phone call from him, informing her he  
10 had been taken to the Immigration Field Office in Tucson, Arizona. *Exhibit E*. AL  
11 BAZERGAN informed his wife that the masked men identified themselves as ICE officers  
12 and would not tell him why he was being detained. *Exhibit E*. AL BAZERGAN was then  
13 transferred to Florence Detention Center, then to EDC. AL BAZERGAN remains detained  
14 at EDC.  
15

16 27. That same day, AL BAZERGAN'S Attorney contacted ICE via email and submitted  
17 her G-28, notifying them that AL BAZERGAN was granted deferral of removal by an  
18 Immigration Judge and cannot be removed to Iraq. She also notified them that AL  
19 BAZERGAN has several serious medical issues, including diabetes that is often out of  
20 control and results in hospitalization, dementia, and severe chronic pain, and that his  
21 dementia means that he cannot understand and sign any paper. *Exhibit G*. AL  
22 BAZERGAN'S Attorney also requested that he not be detained under the circumstances.  
23  
24

25 *Exhibit G*.  
26  
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1 28. On Saturday, July 26, 2025, AL BAZERGAN'S Attorney emailed the detention  
2 facility and repeated her concerns about his health, asking why he was detained despite his  
3 deferral of removal under CAT. *Exhibit G.* On Sunday, July 27, 2025, the detention facility  
4 responded, stating that her concerns regarding AL BAZERGAN'S health would be  
5 forwarded to their medical department, and that he was being detained for removal to a  
6 safe third country. *Exhibit G.* The detention facility also named Officer Yanez as AL  
7  
8 BAZERGAN'S Deportation Officer. *Exhibit G.*

9  
10 29. On Friday, August 1, 2025, AL BAZERGAN'S Attorney spoke with an ICE ERO  
11 assistant named Mariah over the phone. *Exhibit G.* Mariah informed AL BAZERGAN'S  
12 Attorney that they were looking for a third country to deport him to, but that they had not  
13 found a third country that was willing to take him. *Exhibit G.*

14  
15 30. Later that day, Ms. Tabikh, informed AL BAZERGAN'S Attorney's office that an  
16 ICE Officer had spoken to AL BAZERGAN, and took him to an office where the ICE  
17 Officer told AL BAZERGAN that Office Yanez was on vacation, but all of AL  
18 BAZERGAN'S previous cases were cancelled, and that his previous immigration status  
19 (deferral of removal under the Convention Against Torture) was not valid, and that if he  
20 wanted to fight his deportation, he would have to hire an attorney and start over. *Exhibit*  
21 *G.* ICE did not reach out to AL BAZERGAN'S Attorney or office before this meeting,  
22 despite being on notice that AL BAZERGAN was represented by Counsel, and that his  
23 health conditions meant that he could not understand or sign any paperwork. *Exhibit G.*

1 31. On Monday, August 4, 2025, AL BAZERGAN'S Attorney's office emailed ICE  
2 describing the conversation that ICE had with AL BAZERGAN on Friday, reiterating his  
3 health conditions and that he cannot understand or sign any paperwork. She also informed  
4 ICE that AL BAZERGAN had shared that his medication was being administered  
5 differently and that his health was suffering, and requested clarification regarding why AL  
6 BAZERGAN was told that he did not have the relief ordered by an immigration judge.  
7  
8 *Exhibit G.*

9 32. AL BAZERGAN'S Attorney's office then called the detention facility, who  
10 confirmed that Officer Yanez was out on vacation, but should return the following day,  
11 and confirmed receipt of the email, but did not have Ginger Jacobs as the Attorney of  
12 Record for AL BAZERGAN. *Exhibit G.*

13 33. Officer Apodaca from the detention facility replied to AL BAZERGAN'S  
14 Attorney's office's email stating that they could not speak to what was said to AL  
15 BAZERGAN regarding the judge's order of deferral, but that "[d]ue to a recent [S]upreme  
16 [C]ourt ruling regarding [deferral of removal under the CAT] and third country removals,  
17 we have been advised by OPLA to seek removal of [AL BAZERGAN] to an alternate  
18 country. We are in the beginning stages of this process." *Exhibit G.* Officer Apodaca also  
19 said that he would request a medical visit to be conducted to check AL BAZERGAN'S  
20 health. *Exhibit G.*

1 34. AL BAZERGAN'S Attorney's office replied to Officer Apodaca's email asking for  
2 an estimate as to how long the process of seeking removal to a third country would take,  
3 and asking if Officer Yanez was still AL BAZERGAN'S Deportation Officer. *Exhibit G.*  
4

5 35. Officer Apodaca replied that Deportation Officer Yanez was still assigned to the  
6 case, and "[a]s far as removal time, there is no estimate to provide. If you would like to  
7 speak to your client, and determine a country that would be willing to accept him, that  
8 would speed up the process." *Exhibit G.*

9 36. In a separate email later that day, Officer Apodaca informed AL BAZERGAN'S  
10 Attorney's office that the Attorney "may want to communicate with [AL BAZERGAN]  
11 when he is called for medical, he should attend" and that according to medical staff, AL  
12 BAZERGAN did not attend sick calls on July 27, July 29, July 30, and July 31. *Exhibit G.*  
13 AL BAZERGAN'S Attorney's office replied and asked for clarification about how he was  
14 called for these appointments, and requested that AL BAZERGAN'S wife be allowed to  
15 bring his glasses, as he was detained without them. *Exhibit G.* Officer Apodaca replied and  
16 notified AL BAZERGAN'S Attorney's office's that the procedure was for AL  
17 BAZERGAN to request a "med call" and on the date of the visit, he would be called up  
18 and sent to medical, and that it appeared that AL BAZERGAN was called for his visit and  
19 did not respond on those dates, and that AL BAZERGAN can request glasses with medical.  
20 *Exhibit G.* AL BAZERGAN'S Attorney's office replied and reiterated AL BAZERGAN'S  
21 health conditions, including signs of dementia, and asked if there was a way to request the  
22 facility assist AL BAZERGAN in responding to the calls for his medical appointments,  
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1 and expressed concern about his health. Officer Apodaca replied that "According to  
2 medical he is stable." *Exhibit G.*

3 37. On Wednesday, August 6, 2025, Ms. Tabikh notified AL BAZERGAN'S Attorney's  
4 office that earlier that morning, two Immigration Officers met with AL BAZERGAN, and  
5 had him sign a document. *Exhibit G.* They told AL BAZERGAN that it would be shared  
6 with his attorney. *Exhibit G.* AL BAZERGAN'S Attorney's office emailed the facility  
7 summarizing this information, again expressing that AL BAZERGAN cannot understand  
8 and sign any paperwork, asking the facility to forward the documents and provide context  
9 about the meeting. *Exhibit G.*

10 38. On August 7, 2025, Officer Ernesto Yanez III emailed AL BAZERGAN'S  
11 Attorney's office, explaining that AL BAZERGAN was served an I-229 "Notice to Alien  
12 of Custody Review" and that he would have a custody review on October 23, 2025, if he  
13 was still detained by DHS. *Exhibit G.* Officer Yanez also stated "[i]t also explains on the  
14 second page for 'Warning for Failure to Depart' and on the third page explains on  
15 'Instruction Sheet to Detainee Regarding Requirement to Assist in Removal'." *Exhibit G.*  
16 Officer Yanez stated "[t]he form was explained to Al BAZERGAN and he understood and  
17 signed the form." *Exhibit G.* This email contained a copy of the form allegedly served on  
18 AL BAZERGAN. *Exhibit G.* Officer Yanez later sent an additional email that same day,  
19 stating that a copy of the I-229 was given to AL BAZERGAN. *Exhibit G.*

20 39. AL BAZERGAN remains detained at EDC. To date, Respondents have not  
21 communicated that they have found a safe third country that would accept AL  
22

1 BAZERGAN. Respondents have not informed AL BAZERGAN, Ms. Tabikh, or AL  
2 BAZERGAN'S Attorney of any countries that they have been in communication with  
3 regarding their willingness to accept AL BAZERGAN since he was granted deferral of  
4 removal under the Convention Against Torture more than seven years ago. In fact,  
5 Respondents have asked AL BAZERGAN'S Attorney to determine a country that would  
6 be willing to accept him.  
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9 40. Respondents currently lack any legal basis to detain AL BAZERGAN, since  
10 Respondents cannot establish that AL BAZERGAN will likely be removed from the United  
11 States in the reasonably foreseeable future.  
12

13 41. Furthermore, AL BAZERGAN is a citizen and national of Iraq, and has no claim to  
14 any form of permanent legal immigration status in any other country, meaning that any  
15 other country he might be sent to could promptly send him back to Iraq, where it has already  
16 been determined that he will face torture. This chain refoulement would violate the treaty  
17 obligations under the CAT and its implementing regulations just as surely as if Respondents  
18 carried out the removal directly to Iraq.  
19  
20

21 42. AL BAZERGAN is also at risk of being unlawfully removed to a third country  
22 without constitutionally adequate notice and a meaningful opportunity to apply for  
23 protection under the Convention Against Torture, in violation of the INA, binding  
24 international treaty, and due process.  
25  
26

27 43. Intervention from this Court is therefore required to ensure that AL BAZERGAN  
28 does not continue to suffer irreparable harm in the form of unjustified, prolonged, and

1 indefinite detention, and further violation of his rights in the form of summary removal to  
2 a third country.

3 **EXHAUSTION OF REMEDIES**

4 44. AL BAZERGAN has exhausted all administrative remedies, and further ones are not  
5 available to him.

6 **LEGAL FRAMEWORK**

7 45. U.S. Immigration and Nationality Act (“INA”) and federal regulations, such as the  
8 Code of Federal Regulations (“C.F.R.”) and Administrative Procedure Act (“APA”),  
9 govern the process of judicial review following unreasonable agency action.

10 **Convention Against Torture**

11 46. Deferral of removal under the CAT, an international treaty obligation, is governed  
12 by implementing regulations. 8 C.F.R. § 1208.17. CAT deferral prohibits the government  
13 from removing a noncitizen to a country where he is more likely than not to be tortured.

14 *See* 8 C.F.R. § 1208.17(a). This form of relief is mandatory if the applicant meets the  
15 standard and is distinct from asylum in that it does not lead to permanent residency.

16 47. To qualify for CAT deferral, the noncitizen bears the burden of proving that it is  
17 more likely than not that they would face torture if returned to their country of origin. The  
18 government may not remove an individual with a valid CAT deferral order to that country  
19 unless the order is formally terminated following the procedures set forth in the regulations.

20 *See* 8 C.F.R. § 1208.17(d).

1 48. Federal regulations provide a procedure by which a grant of CAT deferral issued by  
2 an immigration judge may be terminated: DHS must move to reopen the removal  
3 proceedings before the immigration judge, and must prove, by a preponderance of the  
4 evidence, that the individual would no longer face torture. 8 C.F.R. § 1208.24(f). Only after  
5 termination may removal proceed.

6  
7 49. However, CAT deferral is a country-specific form of relief. Should the government  
8 wish to remove an individual with a grant of CAT deferral to some other country, it must  
9 first provide that individual with notice and an opportunity to apply for CAT deferral as to  
10 that country as well, if appropriate. 8 U.S.C. § 1231(b)(3)(A). *See also Andriasian v. INS*,  
11 180 F.3d 1033, 1041 (9<sup>th</sup> Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7<sup>th</sup> Cir. 1998);  
12 *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9<sup>th</sup> Cir. 2004); *cf. Protsenko v. U.S. Att'y Gen.*,  
13 149 F. App'x 947, 953 (11<sup>th</sup> Cir. 2005) (*per curiam*) (permitting removal to third country  
14 only where individuals received “ample notice and an opportunity to be heard”).

15  
16  
17  
18 **Revocation of Supervised Release and Arrest**

19 50. Federal regulations governing enforcement actions by immigration officers require  
20 that “[a] warrant of arrest shall be obtained except when the designated immigration officer  
21 has a reason to believe that the person is likely to escape before a warrant can be obtained.”  
22 8 C.F.R. § 287.8(c)(2)(ii).

23 51. Where an individual with a final removal order has been released on supervision, 8  
24 C.F.R. § 241.4(l)(2) provides that only the Executive Associate Commissioner or a district  
25 director may revoke release, and the district director may do so only “when, in the district  
26  
27  
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director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of a case to the Executive Associate Commissioner." That regulation also requires that an individual whose supervised release is revoked be informed as to the reason why and be given a prompt post-deprivation opportunity to be heard as to why his supervised release should be restored.

52. By statute and regulation, ICE has the authority to re-detain a noncitizen previously ordered removed only in specific circumstances, including where an individual violates any condition of release or the individual's conduct demonstrates that release is no longer appropriate. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). So long as a noncitizen complies with the conditions of release, ICE only has the authority to revoke that release if circumstances have changed. 8 C.F.R. § 241.13(i)(2); 8 C.F.R. § 1231(a)(6). ICE cannot revoke such an order without cause or adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3).

## Detention Beyond Removal Period

53. Under 8 U.S.C. § 1231(a), the government may detain a noncitizen for removal only during the 90-day “removal period,” which begins when the removal order becomes administratively final. 8 U.S.C. § 1231(a)(1)(A)-(B)(i). This period may be extended only if the noncitizen “fails or refuses to make timely application in good faith for travel or other documents necessary to the [noncitizen’s] departure or conspires or acts to prevent the [noncitizen’s] removal.” 8 U.S.C. § 1231(a)(1)(C).

54. The Supreme Court has also recognized a constitutional limitation on post-removal-period detention; detention is permissible only when there is a “significant likelihood of

1 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. After six months  
2 of detention—the “presumptively reasonable period”—the government bears the burden  
3 of proving this likelihood if the noncitizen provides “good reason to believe” that removal  
4 is not reasonably foreseeable. *Id.*

5 55. Even where detention meets that *Zadvydas* standard for reasonable foreseeability,  
6 detention violates the Due Process Clause unless it is “reasonably related” to the  
7 government’s purpose, which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at  
8 700 (“[I]f removal is reasonable foreseeable, the habeas court should consider the risk of  
9 the [noncitizen]’s committing further crimes as a factor potentially justifying confinement  
10 within that reasonable removal period”) (emphasis added); *Id.* at 699 (purpose of detention  
11 is “assuring the [noncitizen]’s presence at the moment of removal”); *Id.* at 690-91  
12 (discussing twin justifications of detention as preventing flight and protecting the  
13 community).

14 56. Government regulations dictate that even after ICE determines that removal is  
15 reasonably foreseeable—and that detention therefore does not *per se* exceed statutory  
16 authority—the government must still determine whether continued detention is warranted  
17 based on flight risk or danger. *See* 8 C.F.R. § 241.13(g)(2) (providing that where removal  
18 is reasonably foreseeable, “detention will continue to be governed under the established  
19 standards” in 8 C.F.R. § 241.4).

20 57. The regulations at 8 C.F.R. § 241.4 set forth the custody review process that existed  
21 even before *Zadvydas*. This mandated process, known as the post-order custody review,  
22

1 requires ICE to conduct “90-day custody reviews” prior to expiration of the ninety-day  
2 removal period and to consider release of individuals who pose no danger or flight risk. 8  
3 C.F.R. § 241.4(e)-(f). Among the factors to be considered in these custody reviews are “ties  
4 to the United States such as the number of close relatives residing here lawfully”; whether  
5 the noncitizen “is a significant flight risk”; and “any other information that is probative of  
6 whether the noncitizen is likely to adjust to life in a community,” “engage in future acts of  
7 violence,” “engage in future criminal activity,” pose a danger to themselves or others, or  
8 “violate the conditions of his or her release from immigration custody pending removal  
9 from the United States.” *Id.*

10  
11  
12 58. Individuals with final orders who are released after a post-order custody review are  
13 subject to Forms I-220B, Order of Supervision (“OSUP”). 8 C.F.R. § 241.4(j). After an  
14 individual has been released on an order of supervision, ICE cannot revoke such an order  
15 without cause or adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3).

16  
17  
18 **Protected Liberty Interest in Release**

19  
20 59. A Petitioner’s liberty from immigration custody is protected by the Due Process  
21 Clause: “Freedom from imprisonment—from government custody, detention, or other  
22 forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause  
23 protects.” *Zadvydas*, 533 U.S. at 690. Once obtaining and exercising that freedom, a  
24 petitioner retains a weighty liberty interest under the Due Process Clause of the Fifth  
25 Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47  
26 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S.  
27  
28

1 471, 482-483 (1972). Moreover, the Supreme Court has recognized that post-removal order  
2 detention is potentially indefinite and thus unconstitutional without some limitation.  
3 *Zadvydas*, 533 U.S. at 701.  
4

5 **Habeas Corpus**

6 60. Respondents have held AL BAZERGAN since July 23, 2025, without providing him  
7 with an individualized bail hearing before a neutral adjudicator. Previously, Respondents  
8 held AL BAZERGAN for two years and twenty five days. That violates the Fifth  
9 Amendment's Due Process Clause.  
10

11 61. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 et seq. (habeas  
12 corpus), as protected under Art. I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause),  
13 28 U.S.C. § 1346 (United States as Respondent), 28 U.S.C. § 1361 (mandamus), and 28  
14 U.S.C. § 1651 (All Writs Act).  
15

16 62. AL BAZERGAN suffers from several serious medical conditions, specifically,  
17 uncontrolled diabetes, chronic pain, and early signs of dementia.  
18

19 63. These conditions require ongoing medical care and treatment.  
20

21 64. Despite this critical need, the conditions of AL BAZERGAN'S detention at Eloy  
22 Detention Center are inadequate to properly address AL BAZERGAN'S medical needs.  
23

24 65. AL BAZERGAN'S Attorney has attempted to speak with the Eloy Detention  
25 Facility staff regarding the medical care AL BAZERGAN needs, and while the facility has  
26 responded that they would forward Attorney's concerns to the medical department, there  
27 have been no further communications as to whether he has had access to his medication or  
28

other necessary treatment, or why he is considered "medically stable" when he is communicating complaints about pain and his medication not being administered consistent with his treatment plan.

66. The continued detention of AL BAZERGAN under these circumstances constitutes a violation of due process under the Fifth Amendment of the U.S. Constitution.

### **Third Country Removal**

67. CAT deferral is a country-specific form of relief. Should the government wish to remove an individual with a grant of CAT deferral to some other country, it must first provide that individual with notice and an opportunity to apply for CAT deferral as to that country as well, if appropriate. 8 U.S.C. § 1231(b)(3)(A). *See also, Andriasian v. INS*, 180 F.3d 1033, 1041 (9<sup>th</sup> Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7<sup>th</sup> Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9<sup>th</sup> Cir. 2004); *cf. Protsenko v. U.S. Att'y Gen.*, 149 F. App'x 947, 953 (11<sup>th</sup> Cir. 2005) (*per curiam*) (permitting removal to a third country only where individuals received “ample notice and an opportunity to be heard”).

68. The CAT, as implemented in U.S. law through the Foreign Affairs Reform and Restructuring Act of 1998 (“FARRA”), prohibits Respondents from removing an individual to any country where such individual is more likely than not to face torture by or at the acquiescence of the government. *See* Pub. L. No. 105-277, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified at 8 U.S.C. § 1231 note); 8 C.F.R. § 1208.16(c); 8 C.F.R. § 1208.18.

1 69. An individual with an order of CAT deferral to a particular country may not be  
2 removed to another country with the intent or prospect of “chain refoulement”—where an  
3 individual will be sent to a country which will, in turn, send him to another country where  
4 he is more likely than not to be tortured. This chain refoulement would violate the treaty  
5 obligations under the CAT and its implanting regulations just as surely as if Respondents  
6 carried out the removal directly to Iraq.  
7  
8

9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **Violation of the Administrative Procedures Act 5 U.S.C. § 706(2)(A)**  
12 **Unlawful Redetention under 8 C.F.R. § 241.13(i) and 8 C.F.R. § 1231(a)(6)**

13 70. AL BAZERGAN repeats and incorporates by reference each allegation contained in  
14 the preceding paragraphs as if fully set forth herein.

15 71. AL BAZERGAN was previously released by Respondents because he did not pose  
16 a danger or flight risk. As long as he complied with the conditions of release, Respondents  
17 have authority to revoke release only if circumstances have changed. 8 C.F.R. §  
18 241.13(i)(2); 8 C.F.R. § 1231(a)(6). AL BAZERGAN has complied with his conditions of  
19 relief, and circumstances have not changed.

20 72. Respondents’ actions are arbitrary, capricious, an abuse of discretion, and contrary  
21 to law. 5 U.S.C. § 706(a)(2)(A). The fact that a decision-making process involves  
22 discretion does not prevent an individual from having a protectable liberty interest. *Young*  
23 *v. Harper*, 520 U.S. 143, 150 (1997); *Ortega-Rangel v. Sessions*, 313 F.Supp. 3d 993, 1001  
24 (N.D. Cal 2018) (Corley, J.). Just like people on pre-parole, parole, probation status, bail,  
25  
26  
27  
28

1 or bond have a liberty interest, AL BAZERGAN also has a liberty interest in remaining  
2 out of custody under the conditions of his Form I-220B OSUP. *Ortega v. Bonnar*, 415  
3 F.Supp. 3d 963, 969-70 (N.D. Cal. 2019). He should therefore be immediately released. In  
4 the future, he should be provided a full and fair hearing before an Immigration Judge during  
5 which the government will bear the burden of showing that circumstances have changed  
6 such that his removal is reasonably foreseeable, and otherwise provide evidence of his  
7 dangerousness and flight risk.

10 **SECOND CAUSE OF ACTION**  
11 **Unlawful Arrest**  
12 **8 C.F.R. § 241.4(l) and 8 C.F.R. § 287.8(c)(2)(ii)**

13 73. AL BAZERGAN repeats and incorporates by reference each allegation contained in  
14 the preceding paragraphs as if fully set forth herein.

15 74. When ICE arrested AL BAZERGAN on July 23, 2025, they flagrantly violated  
16 federal regulations.

17 75. AL BAZERGAN was under a valid Order of Supervision following his grant of  
18 deferral of removal under CAT. He had fully complied with all requirements, including his  
19 most recent check-in on September 4, 2024, without incident. *See Exhibit D.*

20 76. Respondents violated 8 C.F.R. § 241(l)(1), which requires that upon revocation of  
21 supervise release, “the [noncitizen] will be notified of the reasons for the revocation of his  
22 or her release or parole. The [noncitizen] will be afforded an initial informal interview  
23 promptly after his or her return to Service custody to afford the [noncitizen] an opportunity  
24 to respond to the reasons for revocation stated in the notification.”

1 77. Respondents have not provided AL BAZERGAN with any written notification of  
2 revocation, explanation of the reasons for revocation, or opportunity to contest the  
3 revocation. AL BAZERGAN'S Attorney has notified the detention facility multiple times  
4 that he cannot understand or sign documents due to his medical conditions, and to please  
5 keep Attorney informed of all communications with him.

6 78. Respondents further violated 8 C.F.R. § 241.4(l)(2), which provides that only the  
7 Executive Associate Commissioner or a district director may revoke supervised release,  
8 and the district director may only do so “when, in the district director’s opinion, revocation  
9 is in the public interest and circumstances do not reasonably permit referral of the case to  
10 the Executive Associate Commissioner.” Upon information and belief, no such  
11 determination was made by the Executive Associate Commissioner or district director, and  
12 no exigent circumstances existed that would have prevented referral to the proper authority.

13 79. Additionally, Respondents violated 8 C.F.R. § 287.8(c)(2)(ii), which requires that  
14 “[a] warrant of arrest shall be obtained except when the designated immigration officer has  
15 reason to believe that the person is likely to escape before a warrant can be obtained.”

16 80. Respondents had no reason to believe AL BAZERGAN was likely to escape before  
17 a warrant could be obtained. To the contrary, he was living openly in Arizona, consistently  
18 complying with his supervision requirements, maintaining deep ties to the community, and  
19 with severe health conditions that require frequent hospitalization, limiting his ability to  
20 escape. Yet Respondents bypassed the warrant requirement, ambushing the ailing AL  
21 BAZERGAN in his front yard.

1 81. These regulations were promulgated to safeguard due process rights of noncitizens,  
2 and Respondents' violations severely prejudiced AL BAZERGAN. Had these regulations  
3 been followed, AL BAZERGAN would have had a meaningful opportunity to contest the  
4 revocation of his supervised release, demonstrate his compliance with the Order of  
5 Supervision, and prevent his unlawful detention.  
6

7 82. It is contrary to law for an agency to disregard its own regulations and policies. *See*  
8 *Nat'l Ass'n of Home Builders v. Norton*, 340 F.3d 835, 852 (9th Cir. 2003); *Wallace v.*  
9 *Christensen*, 802 F.2d 1539, 1552 n.8 (9th Cir. 1986) (an agency is "bound by its own  
10 regulations so long as they remain in force.").  
11

12 83. Respondents' unlawful arrest of AL BAZERGAN set in motion the chain of events  
13 that led to his ongoing wrongful detention and suffering. This Court must not permit  
14 Respondents to benefit from these flagrant regulatory violations.  
15

16 84. As relief, AL BAZERGAN asks the Court to immediately order Respondents to  
17 release AL BAZERGAN from custody and restore his Order of Supervision on the same  
18 conditions before his July 2025 arrest.  
19

20

**THIRD CAUSE OF ACTION**  
**Unlawful Detention Beyond Removal Period**  
**8 U.S.C. § 1231(a)(6) and Due Process under *Zadvydas v. Davis***

21 85. AL BAZERGAN repeats and incorporates by reference each allegation contained in  
22 the preceding paragraphs as if fully set forth herein.  
23

24 86. Under 8 U.S.C. § 1231(a), the government may detain a noncitizen for removal only  
25 during the 90-day "removal period," which begins when the removal order becomes  
26

1 administratively final. 8 U.S.C. § 1231(a)(1)(A)-(B)(i). This period may be extended only  
2 if the noncitizen “fails or refuses to make timely application in good faith for travel or other  
3 documents necessary to the [noncitizen’s] departure or conspires or acts to prevent the  
4 [noncitizen’s] removal.” 8 U.S.C. § 1231(a)(1)(C).

5  
6 87. The Supreme Court has recognized a constitutional limitation on post-removal-  
7 period detention: such detention is permissible only when there is a “significant likelihood  
8 of removal in the reasonably foreseeable future.” *Zadvydas, supra*, at 533 U.S. 701. After  
9 six months of detention—the “presumptively reasonable period”—the government bears  
10 the burden of proving this likelihood if the noncitizen provides “good reason to believe”  
11 that removal is not reasonably foreseeable. *Id.*

12  
13 88. AL BAZERGAN was initially released from custody on February 5, 2018, because  
14 Respondents could not remove him from the United States given his CAT grant.

15  
16 89. AL BAZERGAN’s removal order became final on October 3, 2018, and his 90-day  
17 removal period ended on January 1, 2019. His 180-day *Zadvydas* presumptively reasonable  
18 period expired on April 1, 2019.

19  
20 90. Almost seven years later, AL BAZERGAN remains unremovable to Iraq due to his  
21 still-valid deferral of removal order under CAT. As of the filing of this complaint,  
22 Respondents have not designated any other country for his removal.

23  
24 91. Even if Respondents were to designate a third country, AL BAZERGAN would be  
25 entitled to apply for withholding of removal or protection from refoulement under, among

1 other things, the CAT with respect to that country, and those proceedings would further  
2 delay any potential removal.  
3

4 92. AL BAZERGAN has established far more than a “good reason to believe” that there  
5 is no significant likelihood of his removal in the reasonably foreseeable future as (1) he  
6 cannot legally be removed to Iraq; (2) no other country has agreed to accept him; and (3)  
7 even if such a country were identified, AL BAZERGAN would be entitled to protection  
8 from removal to that country, including on the basis that the country could send him to  
9 Iraq, a process that would take many months if not years to complete.  
10

11 93. Under *Zadvydas*, Respondents cannot detain AL BAZERGAN indefinitely while  
12 they search for a country that might accept him or while they pursue lengthy legal  
13 proceedings to try to overcome his CAT protection. Such detention violates both the  
14 statutory limitations of 8 U.S.C. § 1231(a)(6) and his constitutional due process rights.  
15

16 94. As relief, AL BAZERGAN requests an order from this Court immediately releasing  
17 him from Respondents’ custody and placing him back on his order of supervision pursuant  
18 to 8 U.S.C. § 1231(a)(3).  
19

20 **FOURTH CAUSE OF ACTION**

21 **Violation of the Foreign Affairs Reform and Restructuring Act of 1998 (“FARRA”)**  
22 **codified at 8 U.S.C. § 1231, note regarding Convention Against Torture**

23 95. AL BAZERGAN repeats and incorporates by reference each allegation contained in  
24 the preceding paragraphs as if fully set forth herein.  
25

26 96. 8 U.S.C. § 1231 provides for detention during the ninety (90) day “removal period”  
27 that begins immediately after a noncitizen’s order of removal becomes final. 8 U.S.C. §  
28

1 1231(a)(1). After the ninety (90) day removal period, the applicable regulations provide  
2 that detaining noncitizens is generally permissible only upon notice to the noncitizen and  
3 after an individualized determination of dangerousness and flight risk. *See* 8 U.S.C. §  
4 1231(a)(6); 8 C.F.R. § 241.4(d), (f), (h), & (k).

6 97. Respondents are not permitted to detain Petitioner on the basis of his prior order of  
7 removal and without any determination of whether circumstances have changed such that  
8 his removal is reasonably foreseeable, and a determination of his danger and flight risk, by  
10 an immigration judge. This is especially true where, as here, AL BAZERGAN received a  
11 determination from the agency issuing him Form I-220B permitting him to remain out of  
12 custody in 2018. 8 C.F.R. § 241.13(i)(2)-(3).

14 **FIFTH CAUSE OF ACTION**  
15 **Violation of Procedural Due Process under the**  
16 **Fifth Amendment of the U.S. Constitution**

17 98. AL BAZERGAN repeats and incorporates by reference each allegation contained in  
18 the preceding paragraphs as if fully set forth herein.

19 99. AL BAZERGAN has a procedural due process right not to be removed to Iraq, the  
20 country from which he was granted deferral of removal under the CAT, or any other  
21 country, without an immigration judge first carrying out the procedures set forth in statute  
22 and federal regulations.

23 100. As set forth above, Respondents detained AL BAZERGAN and informed his  
24 counsel that he was going to be removed to a third country. It is likely, based on recent  
25 media reports, that a third country would likely then remove AL BAZERGAN to Iraq. It is  
26  
27  
28

1 unlawful for Respondents to do so without formally terminating his grant of deferral of  
2 removal under the CAT, thus violating his procedural due process rights under the Fifth  
3 Amendment to the U.S. Constitution.  
4

5 101. Respondents' violation of law, as set forth herein, caused AL BAZERGAN  
6 irreparable harm for each day he spends detained in the form of lack of access to proper  
7 medical care, and separation from his U.S. citizen wife and family.  
8

9 102. AL BAZERGAN asks the Court to immediately order Respondents to take all steps  
10 reasonably available to them, proportionate to the gravity of the ongoing harm, to place AL  
11 BAZERGAN back in the position he would have been had he not been wrongfully  
12 detained, and not remove AL BAZERGAN to Iraq or to a third country that will or may  
13 send him to Iraq without prior notice and opportunity to be heard, and to order that AL  
14 BAZERGAN is afforded all appropriate procedural due process in connection with any  
15 further removal proceedings.  
16

17

**SIXTH CAUSE OF ACTION**  
**Violation of Substantive Due Process under the**  
**Fifth Amendment of the U.S. Constitution**

18 103. AL BAZERGAN repeats and incorporates by reference each allegation contained in  
19 the preceding paragraphs as if fully set forth herein.  
20

21 104. AL BAZERGAN has a substantive due process right under the Fifth Amendment to  
22 the U.S. Constitution not to be subjected to government conduct that shocks the conscience.  
23 Respondents' conduct as set forth above violates that right.  
24

1 105. AL BAZERGAN'S wife, Ms. Tabikh, is a U.S. Citizen who worked as an interpreter  
2 with the U.S. Department of Defense in Iraq. This means that, after she affirmatively  
3 pursued U.S. Citizenship, Ms. Tabikh subsequently pursued employment as a contractor  
4 for the U.S. Department of Defense as an interpreter, where she was threatened and called  
5 a traitor and a spy in Iraq, in service of a United States wartime mission. Furthermore, the  
6 U.S. government now plans to deport her husband to an undisclosed country where he will  
7 have no right to reside and will likely be sent to Iraq. In Iraq, it is highly probable he will  
8 face torture due to his familial connection to a U.S. interpreter, his 35-year residency in the  
9 United States, and his status as a U.S. deportee. Casting aside the husband of someone who  
10 dutifully served this government and sentencing him to a fate of torture shocks the  
11 conscience.

15 106. AL BAZERGAN asks the Court to immediately order Respondents to take all steps  
16 reasonably available to them, proportionate to the gravity of ongoing harm, to place AL  
17 BAZERGAN back in the position he would have been had he not been improperly  
18 detained, and not remove AL BAZERGAN to Iraq or to a third country that will or may  
19 send him to Iraq, and to order that AL BAZERGAN is afforded all appropriate substantive  
20 due process in connection with any further removal proceedings.

23 **SEVENTH CAUSE OF ACTION**  
24 **Violation of the Administrative Procedure Act**  
25 **5 U.S.C. § 706(2)(A)**

26 107. AL BAZERGAN repeats and incorporates by reference each allegation contained in  
27 the preceding paragraphs as if fully set forth herein.

1 108. The Administrative Procedure Act provides that courts “shall . . . hold unlawful and  
2 set aside agency action” that is “arbitrary, capricious, an abuse of discretion.” 5 U.S.C. §  
3 706(2)(A).  
4

5 109. The Respondents’ actions as set forth herein were arbitrary, capricious, and an abuse  
6 of discretion. AL BAZERGAN was properly following the conditions of his Order of  
7 Supervision and complying with all requirements when he was detained for removal to a  
8 yet-to-be-named third country, more than seven years after his deferral of removal under  
9 CAT was granted. DHS has had more than seven years to find a third country to which to  
10 remove him, and without any substantive changes on the part of AL BAZERGAN, DHS  
11 suddenly felt it was imperative that AL BAZERGAN be detained while they continue their  
12 process of searching for a third country, knowing that he does not have a right to legal  
13 immigration status in any other country, and with clear notice that AL BAZERGAN’S  
14 health is failing and requires close monitoring and support.  
15

16 110. The Respondents’ arbitrary and capricious actions are causing AL BAZERGAN  
17 irreparable harm with each day that he spends in detention at EDC, and is suffering  
18 irreparable harm in the form of separation from his U.S. Citizen wife, Ms. Tabikh.  
19

20 111. AL BAZERGAN asks the Court to immediately order Respondents to take all steps  
21 reasonably available to them, proportionate to the gravity of the ongoing harm, to return  
22 AL BAZERGAN to the position he was in prior to his unlawful arrest, including that  
23 Respondents not remove AL BAZERGAN to Iraq or to a third country that may or will  
24 send him to Iraq without prior notice and opportunity to be heard.  
25  
26  
27  
28

**EIGHTH CAUSE OF ACTION  
Habeas Corpus  
28 U.S.C. § 2241**

112. AL BAZERGAN repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

113. The writ of habeas corpus is available to any individual who is held in custody of the federal government in violation of the Constitution or laws or treaties of the United States.

114. AL BAZERGAN is being held in federal ICE custody, without legal basis and in violation of statutes and regulations, as set forth herein.

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

116. Other than as punishment for a crime, due process permits the government to take away liberty only “in certain special and narrow nonpunitive circumstances … where a special justification … outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690. Such special justification exists only where a restraint on liberty bears a “reasonable relation” to permissible purposes.

*Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also, Foucha v. Louisiana*, 504 U.S. 71, 79 (1992). In the immigration context, those purposes are “ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community.” *Zadvydas*, 533 U.S. at 690 (quotations omitted).

*Zadvydas*, 533 U.S. at 690 (quotations omitted).

1 117. Those substantive limitations on detention are closely intertwined with procedural  
2 due process protections. *Foucha*, 504 U.S. 78-80. Noncitizens have a right to adequate  
3 procedures of ensuring their appearance or protecting the community. *Id.* at 79; *Zadvydas*,  
4 533 U.S. at 692; *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 949 (9<sup>th</sup> Cir.  
5 2008). Where laws and regulations fail to provide such procedures, the habeas court may  
6 assess whether the noncitizen's immigration detention is reasonably related to the purposes  
7 of ensuring his appearance or protecting the community, *Zadvydas*, 533 U.S. at 699, or  
8 require release.

9 118. Under this framework, AL BAZERGAN's release is required because his re-  
10 detention violates his due process rights.

11 119. Further, AL BAZERGAN had a vested liberty interest in his release. Due Process  
12 does not permit the government to strip him of that liberty interest without a future hearing  
13 prior to any re-detention. *See Morrissey*, 408 U.S. at 487-488.

14 120. Because AL BAZERGAN'S detention is unconstitutionally indefinite, it is unlawful.  
15 Moreover, because AL BAZERGAN faces detention without any meaningful  
16 determination of whether circumstances have changed such that his removal is reasonably  
17 foreseeable, and whether he poses a danger or flight risk, his detention violates due process.

18 121. AL BAZERGAN'S re-detention is unconstitutionally indefinite because he cannot  
19 be removed to Iraq, or any country. Thus, his removal is not reasonably foreseeable in this  
20 case, and the government has not provided him with notice, evidence, or an opportunity to  
21 be heard on this issue either before arbitrarily re-detaining him. His continued detention  
22

1 without any reasonably foreseeable end point is thus unconstitutionally prolonged in  
2 violation of clear Supreme Court precedent. *Zadvydas*, 533 U.S. at 701.  
3

4 122. Moreover, because AL BAZERGAN poses no danger or flight risk, his detention  
5 was and is not reasonably related to its purposes and is unlawful.  
6

7 123. Further, because he was not provided with a hearing prior to his re-detention, and  
8 his continuing unlawful and constitutionally indefinite detention without adequate process  
9 is an ongoing violation of his due process rights, the only remedy of this violation is his  
10 immediate release from immigration detention, as well as a future hearing prior to any re-  
11 detention where DHS must prove that his detention is not unlawful.  
12

13 124. This Court should issue a writ of habeas corpus ad testificandum, ordering that AL  
14 BAZERGAN be brought before this court for a habeas corpus hearing.  
15

16 125. At the habeas corpus hearing, this Court should order Respondents to show cause  
17 why continued detention is lawfully permissible; and if they cannot meet their burden of  
18 so showing, issue a writ of habeas corpus and order AL BAZERGAN'S immediate release  
19 from custody.  
20

21 **NINTH CAUSE OF ACTION**  
22 **Third Country Removal Without Opportunity for Protection**  
23 **8 U.S.C. § 1231(b)(3) and the Convention Against Torture**

24 126. AL BAZERGAN repeats and incorporates by reference each allegation contained in  
25 the preceding paragraphs as if fully set forth herein.  
26

27 127. The Convention Against Torture, as implemented in U.S. law, prohibits Respondents  
28 from removing an individual to any country where such individual is more likely than not

1 to face torture by or at the acquiescence of the government. *See* Foreign Affairs Reforma  
2 and Restructuring Act of 1998, Pub. L. No. 105-277, § 2242, 112 Stat. 2681, 2681-822  
3 (1998) (codified at 8 U.S.C. § 1231 note); 8 C.F.R. §§ 1208.16(c), 1208.18. This  
4 prohibition extends to chain refoulement—the practice of deporting someone to a country  
5 which will in turn deport that person to be tortured elsewhere. *See* 8 C.F.R. § 1208.12(a)(1);  
6 *see also* *Murillo Morocho v. Garland*, 80 F.4th 61, 71 (1<sup>st</sup> Cir. 2023) (vacating decision  
7 denying CAT protection where the Board of Immigration Appeals failed to properly  
8 consider risk of torture by non-state actors).

128. For an individual with an order of deferral of removal under CAT to a particular  
12 country, like AL BAZERGAN, Respondents can only remove him to another country if he  
13 first receives notice and an opportunity to apply for protection from removal to that third  
14 country. *See* 8 U.S.C. § 1231(b)(3)(A). The regulations implementing the United States'  
15 CAT obligations state that if an alien "is more likely than not to be tortured in the country  
16 of removal," he or she "shall be granted withholding of removal" or, at the very least,  
17 deferral of removal. 8 C.F.R. § 208.16(c)(4).

129. "CAT prohibits removal of a noncitizen to a country where the noncitizen likely  
22 would be tortured." *Nasrallah v. Barr*, 140 S. Ct. 1683, 1690 (2020). *See Al-Saher v. INS*,  
23 268 F.3d 1143, 1146 (9th Cir. 2001) ("Article 3 [of the United Nations Convention Against  
24 Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment] provides that a  
25 signatory nation will not expel, return ... or extradite a person to another country where  
26 there are substantial grounds for believing that he would be in danger of being subjected to  
27  
28

1 torture.”) (internal quotation marks omitted), amended by 355 F.3d 1140 (9th Cir. 2004)  
2 (order). It is significant that the CAT prohibits return to “another country” where an  
3 individual is in danger of being tortured, not just their country of origin.  
4

5 130. AL BAZERGAN has no claim to citizenship or permanent residence in any other  
6 country than Iraq. Accordingly, any third country to which he might be deported could, in  
7 turn, deport him to Iraq, where it has already been held that he faces a substantial risk of  
8 torture at the hands of or with the acquiescence of the Iraqi government.  
9

10 131. Respondents have repeatedly stated their intent to remove AL BAZERGAN to a  
11 third country. However, they have refused to identify which country they propose to  
12 remove him to, thereby denying him the opportunity to seek protection from removal to  
13 that country as required by law.  
14

15 132. AL BAZERGAN could face persecution or torture if removed directly to various  
16 other countries, including but not limited to countries with notorious human rights abuses  
17 like Libya, South Sudan, and Eritrea. Without knowing which country Respondents intend  
18 to try to remove him to, AL BAZERGAN cannot prepare or file an application for  
19 protection.  
20

21 133. As relief, AL BAZERGAN requests an order from this Court that Respondents may  
22 not remove AL BAZERGAN from the continental United States without first providing  
23 him and his Counsel with written notice of the specific country they intend to remove him  
24 to, and a reasonable period of time, which AL BAZERGAN respectfully suggests is  
25 twenty-one (21) days, to file an application for relief under, among other things, the  
26  
27  
28

1 withholding of removal statute and the Convention Against Torture with respect to such  
2 country.

3 **PRAYER FOR RELIEF**  
4

5 AL BAZERGAN respectfully requests this Court grant the following relief:

- 6 A. Assume jurisdiction over this matter.
- 7 B. Order that AL BAZERGAN'S detention is unlawful in violation of  
8 *Zadvydas* because his detention is not reasonably foreseeable.
- 9 C. Order that AL BAZERGAN'S detention is unlawful in violation of 8 C.F.R.  
10 § 241.4(l)(2) because the proper official did not make a determination  
11 regarding changed circumstances showing that there is a significant  
12 likelihood that he may be removed in the foreseeable future.
- 13 D. Order that AL BAZERGAN'S detention is unlawful in violation of 8 C.F.R.  
14 § 241.13(i)(2) because there are no changed circumstances showing that  
15 there is a significant likelihood that he may be removed in the reasonably  
16 foreseeable future.
- 17 E. Order the immediate release of AL BAZERGAN from custody because his  
18 detention is not reasonably foreseeable in violation of *Zadvydas*.
- 19 F. Order the immediate release of AL BAZERGAN from custody because his  
20 detention is unlawful in violation of 8 C.F.R. § 241.4(l)(2).
- 21 G. Order the immediate release of AL BAZERGAN from custody because his  
22 detention is unlawful in violation of 8 C.F.R. § 241.13(i)(2).
- 23 H. Order the immediate release of AL BAZERGAN from custody on any other  
24 basis that this Court finds proper.
- 25 I. Order that, prior to any future re-detention, AL BAZERGAN is provided a  
26 hearing before an Immigration Judge where DHS bears the burden of  
27 justifying AL BAZERGAN'S re-detention, and that the Immigration Judge

1 must further consider whether, in lieu of detention, alternatives to detention  
2 exist to mitigate any risk that DHS may establish.

3 J. Order that AL BAZERGAN cannot be removed to any third country without  
4 first being provided constitutionally compliant procedures, including:

- 5 i. Written notice to AL BAZERGAN *and* counsel of the third country to  
6 which he may be removed, in a language AL BAZERGAN can  
7 understand, provided at least 21 days before any such removal;
- 8 ii. A meaningful opportunity for AL BAZERGAN to raise fear of return  
9 for eligibility for protection under the Convention Against Torture,  
10 including a reasonable fear interview before a DHS officer;
- 11 iii. If AL BAZERGAN demonstrates a reasonable fear during the  
12 interview, DHS must move to reopen his underlying removal  
13 proceedings so that he may apply for relief under the Convention  
14 Against Torture;
- 15 iv. If it is found that AL BAZERGAN does not demonstrate a reasonable  
16 fear during the interview, a meaningful opportunity, and a minimum  
17 of 15 days, for AL BAZERGAN to seek to move to reopen his  
18 underlying removal proceedings to challenge potential third-country  
19 removal;

20 K. Award AL BAZERGAN attorney's fees and costs to the extent authorized  
21 by law.

22 L. Grant any and all other relief this Court deems proper and just.

23  
24 Dated: August 29, 2025

JACOBS & SCHLESINGER LLP

25  
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27 Ginger E. Jacobs  
28 Attorney for Petitioner  
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