Johnny Sinodis (Arizona Bar# 029058)
Zachary Nightingale (California Bar # 184501)*
Lorena C. Castillo (California Bar # 349604)*
Van Der Hout LLP
360 Post St., Suite 800
San Francisco, CA 94108
Telephone: (415) 981-3000
Facsimile: (415) 981-3003
ndca@vblaw.com

Attorneys for Petitioner-Plaintiff
Vienghkone SIKEO

**pro hac vice application forthcoming*

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Vienghkone SIKEO

Petitioner-Plaintiff,

v.

John E. Cantu, Field Office Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security; Kristi Noem, Secretary of U.S. Department of Homeland Security; and Pam Bondi, Attorney General of the United States, Warden, Florence Detention Center; in their official capacities.

Respondents-Defendants.

Case No.

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

Challenge to Unlawful Incarceration Under Color of Immigration Detention Statutes; Request for Declaratory and Injunctive Relief

INTRODUCTION

1. Petitioner, Mr. Vienghkone SIKEO, by and through undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to (1) prevent the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) from detaining him and potentially removing him to an unknown third country and (2) prevent DHS from deporting him to a third country without advance notice and an opportunity to seek fear-based relief.

2. Mr. Sikeo was born in a refugee camp in Thailand to parents who are from Laos. On information and belief, he is stateless and has never had citizenship in any country. He immigrated as a child with his parents to the United States, first as a refugee and then was granted lawful permanent resident status.

3. He was ordered removed in 2005 by an Immigration Judge in Eloy, Arizona on the basis of a conviction he sustained under California Penal Code Section 261.5(c). Although it was likely charged as an aggravated felony conviction at the time, the Supreme Court has since held that it is not an aggravated felony, and the Ninth Circuit has held it is not a crime involved moral turpitude. Therefore, it never should have been a basis for this removal order.

4. Since being released from ICE custody in June 2005, Mr. Sikeo has exercised his right to liberty and has been on an order of supervision (Form I-220B). He continues to lawfully reside and work in the United States, and she plays an integral role in the life of his U.S. citizen partner, two children and elderly parents, all of whom are U.S. citizens.

5. Mr. Sikeo had been reporting annually to ICE since 2005 and thus was surprised to be taken into ICE custody in July of 2025. He was not told the reason. Because he believes he is stateless, he did not believe he could be properly deported to any country.

6. On information and belief, Mr. Sikeo has never been ordered removed to any third country or notified of such potential removal. Yet, given the Supreme Court of the United States' decision on June 23, 2025, in *U.S. Department of Homeland Security, et al. v. D.V.D., et al.*, No. 24A1153, 2025 WL 1732103 (June 23, 2025), which stayed the nationwide injunction that had precluded the government from removing noncitizens to third countries without notice and an

opportunity to seek fear-based relief, ICE appears emboldened and intent to implement its campaign to send noncitizens to far corners of the planet—places they have absolutely no connection to whatsoever—in violation of clear statutory obligations set forth in the Immigration and Nationality Act (INA), a binding treaty, and due process. In the absence of the nationwide injunction, individual lawsuits like this one are the only method to challenge the illegal third-country removals.

7. In recent weeks, individuals in identical or substantially similar circumstances as Mr. Sikeo have been re-arrested and re-incarcerated absent notice and a hearing and even though ICE could not (and still cannot) physically remove them from the country, resulting in district courts granting them habeas and other relief. *See, e.g.*, *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *7 (N.D. Cal. Aug. 6, 2025) (noncitizen with CAT protection unlikely to be removed to third country in foreseeable future because he first must receive the opportunity to present a fear-based claim as to that country); *Zakzouk v. Becerra*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *2 (N.D. Cal. July 26, 2025) (stateless Palestinian on OSUP likely to be re-arrested despite no likelihood of removal); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *1 (E.D. Cal. July 16, 2025) (Vietnamese national on OSUP rearrested even though government had not obtained travel document); *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *1 (E.D. Cal. July 16, 2025) (same).[1]

8. 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). That authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the particular facts of Mr. Sikeo's case, due process requires notice and a hearing, *prior to any re-arrest*, at which she would be afforded the opportunity to advance his arguments as to why she

[1] *See also* "Immigrants at ICE check-ins detained, held in basement of federal building in Los Angeles, some overnight," CBS News (June 7, 2025), 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 them anyway," LAist (June 11, 2025), https://laist.com/news/politics/ice-raids-los-angeles-family-detained.

should not be re-detained.

9. Here, Respondents created a reasonable expectation that Mr. Sikeo would be permitted to live and work in the United States without being subject to arbitrary arrest and removal. In addition to being granted CAT protection, the OSUP provided to him by ICE enables him to continue lawfully residing and working in the United States. This reasonable expectation creates constitutionally protected liberty and property interests. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972) (reliance on policies and practices may establish a legitimate claim of entitlement to a constitutionally-protected interest); *see also Texas v. United States*, 809 F.3d 134, 174 (2015), affirmed by an equally divided court, 136 S. Ct. 2271 (2016) (explaining that "DACA involve[s] issuing benefits" to certain applicants). These benefits are entitled to constitutional protections no matter how they may be characterized by Respondents. *See, e.g., Newman v. Sathyavaglswaran*, 287 F.3d 786, 797 (9th Cir. 2002) ("[T]he identification of property interests under constitutional law turns on the substance of the interest recognized, not the name given that interest by the state or other independent source.") (internal quotations omitted).

10. Further, the Supreme Court has limited the potentially indefinite post-removal order detention to a maximum of six months when removal is not reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

11. The basic principle that individuals placed at liberty are entitled to process before the government imprisons them has particular force here, where Mr. Sieko was *already* previously released from ICE detention eight years ago, after which he began to rebuild his life, including by securing employment. Under these circumstances, ICE is required to afford him the opportunity to advance arguments in favor of his freedom before robbing him of his liberty. He must therefore not be re-detained unless and until ICE proves to a neutral arbiter that (1) his detention is necessary because there has been a material change in circumstances establishing that he is a flight risk or a danger to the community and (2) that his removal is reasonably foreseeable. Numerous federal district courts in the Northern, Eastern, and Central Districts of California have already ordered similar relief. *See, e.g., J.P. v. Santacruz*, 8:25-cv-01640-FWS-JC, Dkt. 10 (C.D. Cal. July 28, 2025); *Rodriguez-Flores v. F. Semaia*, No. 2:25-cv-06900-JGB-

JC, Dkt. 14 (C.D. Cal. Aug. 14, 2025); *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *4; *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7; *Guillermo M. R. v. Kaiser*, --- F.Supp.3d ----, 2025 WL 1983677, at *10 (N.D. Cal. July 17, 2025); *Pinchi v. Noem*, --- F.Supp.3d ----, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *7 (N.D. Cal. Aug. 6, 2025); *Galindo v. Andrews*, 1:25-cv-00942-KES-SKO, Dkt. 20 (E.D. Cal. Aug. 20, 2025), *Escalante v. Noem*, 9:25-cv-00182-MJT-CLS, Dkt. 43 (E.D.Tex. Aug. 3, 2025).

12. Additionally, under the INA, if ICE intends to attempt to remove Mr. Sikeo to a third country, ICE *must* first assert a basis under 8 U.S.C. § 1231(b)(2)(C) and ICE *must* provide him with sufficient notice and an opportunity to respond and apply for fear-based relief as to that country, in compliance with the INA, due process, and the binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[2] Currently, DHS has a policy of removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country.

13. As stated above, the U.S. District Court for the District of Massachusetts in *D.V.D.* previously issued a nationwide preliminary injunction blocking such third country removals without notice and a meaningful opportunity to apply for relief under the CAT, in recognition that the government's policy violates due process and the United States' obligations under the CAT. The U.S. Supreme Court has since granted the government's motion to stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa*, 606 U.S. --- (June 27, 2025), limiting nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals only disagreement with the nature, and not the substance, of the nationwide preliminary injunction.

[2] United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984), available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading; *see also* Foreign Affairs Reform and Restructuring Act of 1998 (FARRA).

14. On information and belief, Mr. Sikeo is being detained by ICE for the purpose of removal to a country in which he does not hold citizenship. Counsel attempted to communicate with ICE officials regarding which country they intend to remove Mr. Sikeo to, and were informed it is his country of citizenship, which in this case does not resolve the unknown question of which country that is, since he appears to be stateless. Counsel has not been able to review the removal order to understand to which country he was ordered removed, and thus has reason to believe he might be removed to a country other than that contained on his order of removal. Moreover, because he believes he is stateless, it is possible that his life would be in danger if a country agrees to accept him despite his lack of citizenship in that country, and thus he should have the opportunity to raise his claim under the convention against torture, which he could not previously do.

15. In this individual habeas petition and complaint for declaratory and injunctive relief, Mr. Sikeo submits that he cannot be removed to any third country unless he is first provided with adequate notice and a meaningful opportunity to apply for protection under the CAT. Other federal district courts have already issued similar relief. *See Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *9 (C.D. Cal. June 25, 2025); *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7; *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *4 (W.D. Wash. June 30, 2025); *Delkash v. Noem*, No. 5:25-cv-01675-HDV-AGRx (C.D. Cal. Jul. 14, 2025); *Ortega v. Kaiser*, No. 25-cv-5259 (N.D. Cal. Jun. 26, 2025).

CUSTODY

16. Mr. Sikeo is detained by ICE in Florence, Arizona at the time of this filing.

JURISDICTION

17. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq., the regulations implementing the INA, the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 105–277, div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1998) (codified as Note to 8 U.S.C. § 1231), the regulations implementing the FARRA, the Administrative Procedure Act (APA), 5 U.S.C. § 701 et seq.; and 5 U.S.C. § 552 et. seq.

18. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 5 U.S.C. § 701, *et seq.*, the Administrative Procedure Act; 28 U.S.C. § 1651, the All Writs Act; 28 U.S.C. § 2241, *et seq.*, habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United States Constitution (Suspension Clause); Art. 3 of the United States Constitution; and the common law.

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

20. Moreover, the decision about where to remove Mr. Sikeo is not within ICE's discretion as part of ICE's ability to execute the removal order. As such the Ninth Circuit has held that jurisdiction for the instant action is not barred by 18 USC 1252(g). *Ibarra-Perez v. USA*,__ F.4th ____, No. 24-361 (9th Cir, August 27, 2025).

REQUIREMENTS OF 28 U.S.C. § 2243

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

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

23. Habeas corpus must remain a swift remedy. Importantly, "the statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious

hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). The Ninth Circuit warned against any action creating the perception "that courts are more concerned with efficient trial management than with the vindication of constitutional rights." *Id.*

24. All Respondents listed below are sued in their official capacities.

25. Petitioner Mr. Sikeo is a stateless person. On information and belief, Respondents seek to deport him without any legal process whatsoever.

26. Respondent Warden is the Warden at the Florence Detention Center a facility that holds Petitioner and other immigrants awaiting removal in Florence, Arizona. He is the Petitioner's immediate custodian and resides in the judicial district of the United States Court for the District of Arizona.

27. Respondent John A. Cantu is the Field Office Director for the Phoenix Field Office of U.S. Immigration and Customs Enforcement's ("ICE") Enforcement and Removal ("ERO") division. The Phoenix Field Office's area of responsibility includes the entire state of Arizona. Respondent Cantu has the authority to order Petitioner's release or continued detention. As such, Respondent Cantu is a legal custodian of Petitioner.

28. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security ("DHS"). She is responsible for the implementation and enforcement of the immigration laws and oversees ICE. As such, Respondent Noem has ultimate custodial authority over Petitioner.

29. Respondent Pamela Bondi is the Attorney General of the United States. The Immigration Judges who decide removal cases and application for relief from removal do so as her designees.

VENUE

30. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States, acting in their official capacity; because Mr. Sikeo is in Florence, Arizona; and because there is no real property involved in this action.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

31. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional.

Hernandez, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Mr. Sikeo asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) his re-incarceration and removal to a third country would result in irreparable harm.

32. No statutory exhaustion requirements apply to Mr. Sikeo's claim of unlawful custody and unlawful removal to a third country in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

Mr. Sikeo has the right to constitutionally adequate procedures prior to third country removal.

33. Prior to any third country removal, ICE must provide Mr. Sikeo with sufficient notice and an opportunity to respond and apply for fear-based relief as to that country, in compliance with the INA, due process, and the CAT, which is a binding international treaty.[3] Currently, DHS has a policy of removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country. Nightingale Decl. at Ex. J (DHS Policy Regarding Third Country Removal). This policy clearly violates due process and the United States' obligations under the CAT.

a. Removal proceedings pursuant to 8 U.S.C. § 1229a (INA § 240)

34. In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). The Act generally retained prior procedures for removal hearings for all noncitizens—i.e., full immigration court hearings, appellate review before the BIA, and federal

[3] *See supra* n.2.

court review. *See* 8 U.S.C. § 1229a; 8 U.S.C. § 1252(a). In these removal proceedings (commonly referred to as "Section 240" proceedings), the noncitizen is entitled to select a country of removal. 8 U.S.C. § 1231(b)(2)(A); *see also* 8 C.F.R. § 1240.10(f) ("[T]he immigration judge shall notify the respondent that if he or she is finally ordered removed, the country of removal will in the first instance be the country designated by the respondent . . . ."). The IJ will designate the country where the person "is a subject, national, or citizen," if either the noncitizen does not select a country or as an alternative in the event the noncitizen's designated country does not accept the individual. 8 U.S.C. § 1231(b)(2)(D). The IJ also may designate alternative countries, as specifically set out by 8 U.S.C. § 1231(b)(2)(E). For individuals placed in Section 240 proceedings upon arrival, the statute provides designation to the country from which the individual boarded a vessel or aircraft and then can consider alternative countries. *See* 8 U.S.C. § 1231(b)(1); *see also* 8 C.F.R. § 1240.10(f).

35. An IJ must provide sufficient notice and opportunity to apply for protection from a designated country of removal. 8 C.F.R. § 1240.10(f) (providing that the "immigration judge shall notify the respondent" of designated countries of removal) (emphasis added); 8 C.F.R. § 1240.11(c)(1)(i) (providing that the IJ shall "[a]dvise the [noncitizen] that he or she may apply for asylum in the United States or withholding of removal to [the designated countries of removal]").

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

37. Individuals in Section 240 proceedings who are ineligible for withholding of removal,

are still entitled to receive protection under the CAT, in the form of withholding or deferral of removal, upon demonstrating a likelihood of torture if removed to the designated country of removal. *See* FARRA (codified as Note to 8 U.S.C. § 1231); 8 C.F.R. §§ 208.16(c), 208.17(a), 1208.16(c), 1208.17(a); 28 C.F.R. § 200.1. Like withholding of removal under 8 U.S.C. § 1231(b)(3), CAT protection is mandatory. *Id.* With respect to any individual granted deferral of removal under CAT, the IJ "shall also inform the [noncitizen] that removal has been deferred only to the country in which it has been determined that the [noncitizen] is likely to be tortured, and that the [noncitizen] may be removed at any time to another country where he or she is not likely to be tortured." 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2).

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

39. Individuals in Section 240 proceedings are entitled to an administrative appeal to the BIA along with an automatic stay of deportation while the appeal is pending, and to seek judicial review of an adverse administrative decision by filing a petition for review in the court of appeals. *See* 8 U.S.C. §§ 1101(a)(47)(B), 1252(a); 8 C.F.R. §§ 1003.6(a), 1240.15.

b. Statutory scheme for removal to a third country

40. Congress established the statutory process for designating countries to which noncitizens may be removed, 8 U.S.C. § 1231(b)(1)-(3).[4]

41. Subsection (b)(1) applies to noncitizens "[a]rriving at the United States," including from

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

a contiguous territory, but expressly contemplates arrival via a "vessel or aircraft." It designates countries and alternative countries to which the noncitizen may be removed. 8 U.S.C. § 1231(b)(1)(B) (removal to contiguous country from which the noncitizen traveled), § 1231(b)(1)(C) (alternative countries).

42. Subsection (b)(2) applies to all other noncitizens, and like Subsection (b)(1), designates countries and alternative countries to which the noncitizen may be removed. 8 U.S.C. § 1231(b)(2)(A) (noncitizen's designation of a country of removal), 1231(b)(2)(B) (limitation on designation), 1231(b)(2)(C) (disregarding designation), 1231(b)(2)(D) (alternative country), 1231(b)(2)(D) (alternative countries), 1231(b)(2)(E) (additional removal countries).

43. Critically, both Subsections (b)(1) and (b)(2), have a specific carve-out provision prohibiting removal of persons to countries where they face persecution or torture. Specifically, § 1231(b)(3)(A), entitled "Restriction on removal to a country where [noncitizen's] life or freedom would be threatened," reads: Notwithstanding paragraphs [b](1) and [b](2), the Attorney General may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion. *Id.* § 1231(b)(3)(A) (emphasis added).

44. Similarly, with respect to the CAT, the implementing regulations allow for removal to a third country, but only "where he or she is not likely to be tortured." 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2).

45. In *Jama v. Immigr. & Customs Enf't*, the Supreme Court addressed the designation procedure under Subsection (b)(2). 543 U.S. 335 (2005). Critically, the Court stated that noncitizens who "face persecution or other mistreatment in the country designated under § 1231(b)(2), . . . have a number of available remedies: asylum; withholding of removal; relief under an international agreement prohibiting torture . . . ." *Jama*, 543 U.S. at 348 (citing 8 U.S.C. §§1158(b)(1), 1231(b)(3)(A); 8 C.F.R. §§ 208.16(c)(4), 208.17(a)).

46. Although individuals granted CAT protection may be removed to a third country, the regulations provide that they may not be removed to a country where they are likely to be

tortured: "The immigration judge shall also inform the [noncitizen] that removal has been deferred only to the country in which it has been determined that the [noncitizen] is likely to be tortured, and that the [noncitizen] may be removed at any time to another country where he or she is not likely to be tortured." 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2).

47. Notably, the regulations also provide that protection under CAT may be terminated based on evidence that the person will no longer face torture but nevertheless provides certain protections to noncitizens. First, the regulations require DHS to move for a new hearing, requiring that DHS support their motion for the new hearing with evidence "relevant to the possibility that the [noncitizen] would be tortured in the country to which removal has been deferred and that was not presented at the previous hearing. 8 C.F.R. §§ 208.17(d)(1), 1208.17(d)(1). Second, even if a new hearing is granted, the regulations require that the IJ provide the noncitizen with notice "of the time, place, and date of the termination hearing. Such notice shall inform the [noncitizen] that the [noncitizen] may supplement the information in his or his initial application for withholding of removal under the Convention Against Torture and shall provide that the [noncitizen] must submit any such supplemental information within 10 calendar days of service of such notice (or 13 calendar days if service of such notice was by mail)." 8 C.F.R. §§ 208.17(d)(2), 1208.17(d)(2). Thus, not only is the noncitizen provided notice, but also an opportunity to submit documentation in support of their claim for protection.

c. **DHS's obligation to provide notice and an opportunity to present a fear-based claim before removal to a third country.**

48. For individuals in removal proceedings, the designation of a country of removal (or, at times, countries in the alternative that the IJ designates) on the record provides notice and an opportunity to permit a noncitizen who fears persecution or torture in the designated country (or countries) to file an application for protection. *See* 8 C.F.R. § 1240.10(f) (stating that "immigration judge shall notify the [noncitizen]" of proposed countries of removal); 8 C.F.R. § 1240.11(c)(1)(i) ("If the [noncitizen] expresses fear of persecution or harm upon return to any of the countries to which the [noncitizen] might be removed pursuant to § 1240.10(f) . . . the immigration judge shall . . . [a]dvise [the noncitizen] that he or she may apply for asylum in the

United States or withholding of removal to those countries[.]").

49. Pursuant to 8 U.S.C. § 1231(b)(3)(A), courts repeatedly have held that individuals cannot be removed to a country that was not properly designated by an IJ if they have a fear of persecution or torture in that country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf. Protsenko v. U.S. Att'y Gen.*, 149 F. App'x 947, 953 (11th Cir. 2005) (per curiam) (permitting designation of third country where individuals received "ample notice and an opportunity to be heard").

50. Providing such notice and opportunity to present a fear-based claim prior to deportation also implements the United States' obligations under international law. *See* United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8 U.S.C. § 1231(b)(3)); *INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting that the Refugee Act of 1980 "amended the language of [the predecessor statute to § 1231(b)(3)], basically conforming it to the language of Article 33 of the United Nations Protocol"); *see also* United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature Dec. 10, 1984, art. III, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, 114; FARRA at 2681–822 (codified at Note to 8 U.S.C. § 1231) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."); United Nations Committee Against Torture, General Comment No. 4 ¶ 12, 2017, Implementation of Article 3 of the Convention in the Context of Article 22, CAT/C/GC/4 ("Furthermore, the person at risk [of torture] should never be deported to another State where he/she may subsequently face deportation to a third State in which there are substantial grounds for believing that he/she would be in danger of being subjected to torture.").

51. As the Supreme Court has explained, such language "generally indicates a command that

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

52. Meaningful notice and opportunity to present a fear-based claim prior to deportation to a country where a person fears persecution or torture are also fundamental due process protections under the Fifth Amendment. *See Andriasian*, 180 F.3d at 1041; *Protsenko*, 149 F. App'x at 953; *Kossov*, 132 F.3d at 408; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Similarly, a "last minute" IJ designation of a country during removal proceedings that affords no meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process." *Andriasian*, 180 F.3d at 1041.

53. The federal government has repeatedly acknowledged these obligations. In June 2001, the former Immigration and Naturalization Service drafted a document entitled "Notice to Alien of Removal to Other than Designated Country (Form I-913)," which would have provided noncitizens with written notice of deportation to a third country and a 15-day automatic stay of removal to allow the noncitizen to file an unopposed motion to reopen removal proceedings and accompanying Form I-589 (protection application) before an IJ. *See D.V.D. v. U.S. Department of Homeland Security*, 1:25-cv-10676, Dkt. 1-2 (D. Mass. Mar. 23, 2025) Records Produced in Response to Freedom of Information Act (FOIA) Litigation, *Nat.'l Immigr. Litigation Alliance v. ICE*, No. 1:22-cv-11331-IT (D. Mass. filed Aug. 17, 2022), at 2022-ICLI00055* 9-14. Almost twenty years later, in June 2020, DHS again drafted a model "Notice of Removal to Other than

Designated Country," that likewise provided these protections. *See id.* at Dkt. 1-3, Records Produced in Response to FOIA Litigation, *Nat.'l Immigr. Litigation Alliance v. ICE*, No. 1:22-cv-11331-IT (D. Mass. filed Aug. 17, 2022), at 2022-ICLI-00055* 8 (Notice).[5] Although neither form was ever published, both reflect how notice must be provided to be meaningful.[6]

54. Additionally, in 2005, in jointly promulgating regulations implementing 8 U.S.C. § 1231(b), the Departments of Justice and Homeland Security asserted that "[a noncitizen] will have the opportunity to apply for protection as appropriate from any of the countries that are identified as potential countries of removal under [8 U.S.C. § 1231(b)(1) or (b)(2)]." Execution of Removal Orders; Countries to Which Aliens May Be Removed, 70 Fed. Reg. 661, 671 (Jan. 5, 2005) (codified at 8 C.F.R. pts. 241, 1240, 1241) (supplementary information). Furthermore, the Departments contemplated that, in cases where ICE sought removal to a country that was not designated in removal proceedings, namely, "removals pursuant to [8 U.S.C. § 1231(b)(1)(C)(iv) or (b)(2)(E)(vii)]," DHS would join motions to reopen "[i]n appropriate circumstances" to allow the noncitizen to apply for protection. *Id.*

55. Furthermore, consistent with the above-cited authorities, at oral argument in *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), the Assistant to the Solicitor General represented that the government must provide a noncitizen with notice and an opportunity to present a fear-based claim before that noncitizen can be deported to a non-designated third country. Specifically, at oral argument in that case, the following exchange between Justice Kagan and Vivek Suri, Assistant to the Solicitor General, took place:

> JUSTICE KAGAN: . . . [S]uppose you had a third country that, for whatever reason, was willing to accept [a noncitizen]. If -- if -- if that [noncitizen] was currently in withholding proceed -- proceedings, you couldn't put him on a plane to that third country, could you?
>
> MR. SURI: We could after we provide the [noncitizen] notice that we were going to do that.
>
> JUSTICE KAGAN: Right.

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

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

MR. SURI: But, without notice –

JUSTICE KAGAN: So that's what it would depend on, right? That -- that you would have to provide him notice, and if he had a fear of persecution or torture in that country, he would be given an opportunity to contest his removal to that country. Isn't that right?

MR. SURI: Yes, that's right.

JUSTICE KAGAN: So, in this situation, as to these [noncitizens] who are currently in withholding proceedings, you can't put them on a plane to anywhere right now, isn't that right?

MR. SURI: Certainly, I agree with that, yes.

JUSTICE KAGAN: Okay. And that's not as a practical matter. That really is, as -- as you put it, in the eyes of the law. In the eyes of the law, you cannot put one of these [noncitizens] on a plane to any place, either the -- either the country that's referenced in the removal order or any other country, isn't that right?

MR. SURI: Yes, that's right.

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

56. Notice is only meaningful if it is presented sufficiently in advance of the deportation to stop the deportation, is in a language the person understands, and provides for an automatic stay of removal for a time period sufficient to permit the filing of a motion to reopen removal proceedings so that a third country for removal may be designated as required under the regulations and the noncitizen may present a fear-based claim. *Andriasian*, 180 F.3d at 1041; *Aden*, 409 F. Supp. 3d at 1009 ("A noncitizen must be given sufficient notice of a country of deportation [such] that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation.").

57. An opportunity to present a fear-based claim is only meaningful if the noncitizen is not deported before removal proceedings are reopened. *See Aden*, 409 F. Supp. 3d at 1010 (holding that merely giving petitioner an opportunity to file a discretionary motion to reopen "is not an adequate substitute for the process that is due in these circumstances" and ordering reopening); *Dzyuba v. Mukasey*, 540 F.3d 955, 957 (9th Cir. 2008) (remanding to BIA to determinate whether

designation is appropriate).

d. **Other district courts have recently found DHS must provide notice and an opportunity to present fear-based claims before third country removal can occur.**

58. In circumstances nearly identical to Mr. Sikeo's, the Honorable Judge Tigar in the Northern District of California determined that a noncitizen whose removal to El Salvador had been ordered deferred pursuant to CAT was entitled to notice and an opportunity to be heard before removal to any third country. *See Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *5 (N.D. Cal. Aug. 6, 2025) ("Accordingly, there are no countries to which Ortega could currently be removed without his first being afforded notice and opportunity to be heard on a fear-based claim as to that country, as the Fifth Amendment Due Process Clause requires.").

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

60. Thus, it is clear that if Mr. Sikeo were to be removed to any third country where he does not have citizenship, it would violate his due process rights unless he is first provided with constitutionally adequate notice and a meaningful opportunity to apply for protection under the CAT. In the absence of any other injunction, intervention by this Court is necessary to protect those rights.

FIRST CAUSE OF ACTION

Procedural Due Process – Re-Arrest and Re-Incarceration

U.S. Const. amend. V

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

62. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

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

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

SECOND CAUSE OF ACTION

Substantive Due Process – Re-Arrest and Re-Incarceration

U.S. Const. amend. V

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

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

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

68. Since 2005, Mr. Sikeo has complied with the conditions of release imposed on him by ICE, thus demonstrating that he is neither a flight risk nor a danger. Re-arresting him was be punitive and violated his constitutional right to be free from the unjustified deprivation of his liberty.

69. For these reasons, his re-arrest without first being provided a hearing violated the Constitution.

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

THIRD CAUSE OF ACTION

Due Process, U.S. Const. amend. V, and APA, 5 U.S.C. § 706(2)(D)

Constitutionally Inadequate Procedures Regarding Third Country Removal

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

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

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

74. The INA, FARRA, and implementing regulations further mandate meaningful notice and opportunity to present a fear-based claim to an IJ before ICE deports a person to a third country.

75. Mr. Sikeo has a due process right to meaningful notice and opportunity to present a fear-based claim to an IJ before DHS deports him to a third country. *See, e.g., Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). He also has a due process right to implementation of a process or procedure to afford these protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991). Mr. Sikeo further has a due process right to not be re-detained

because Respondents have no procedural protections to ensure meaningful notice and an opportunity to present a fear-based claim prior to removal to a third country. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The APA likewise compels a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

76. By failing to implement a process or procedure to afford Mr. Sikeo meaningful notice and opportunity to present a fear-based claim to an IJ before DHS deports a person to a third country and by re-detaining previously released individuals pursuant to the July 9, 2025 "Guidance," Respondents would violate Mr. Sikeo's substantive and procedural due process rights and are not implementing procedures required by the INA, FARRA, and the implementing regulations.

77. Accordingly, the Court should declare that Respondents would violate Mr. Sikeo's constitutional right to due process and that the Due Process Clause affords him the right to a process and procedure ensuring that DHS provides meaningful notice and opportunity to present a fear-based claim to an IJ before DHS deports her to a third country.

78. The Court should enjoin Respondents from failing to provide Mr. Sikeo with meaningful notice and opportunity to present a claim for protection to an IJ before DHS deports him to a third country.

79. For these reasons, Mr. Sikeo's removal to any third country without adequate notice and an opportunity to apply for relief under the CAT would violate his due process rights, as well as his rights under the INA, FARRA, and the implementing regulations. The only remedy of this violation is for this Court to order that he not be summarily removed to any third country unless and until she is provided constitutionally adequate procedures.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Enjoin ICE from removing Mr. Sikeo unless and until a hearing can be held before a neutral adjudicator to determine whether his re-incarceration is

lawful because the government has shown that he is a danger or a flight risk and that his removal is reasonably foreseeable by clear and convincing evidence;

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

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

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

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

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

b. A meaningful opportunity for Mr. Sikeo to raise a fear of return for eligibility for protection under the CAT, including, at a minimum, a reasonable fear interview before a DHS officer;

c. If Mr. Sikeo demonstrates a reasonable fear during the interview, DHS must move to reopen his underlying removal proceedings so that he may apply for relief under the CAT;

d. If it is found that Mr. Sikeo does not demonstrate a reasonable fear during the interview, he must be provided a meaningful opportunity, and a minimum of fifteen days, to seek to move to reopen his

underlying removal proceedings to challenge potential third country removal;

(5) Award reasonable costs and attorney fees; and

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

Dated: September 2, 2025

Respectfully submitted,

/s/ Johnny Sinodis

Johnny Sinodis
Zachary Nightingale
Lorena Castillo
Van Der Hout LLP
360 Post St., Suite 800
San Francisco, CA 94108

Attorneys for Mr. Sikeo

VERIFICATION PURSUANT TO 28 U.S.C. 2242

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

Executed on this September 2, 2025, in San Francisco, California.

/s/ Johnny Sinodis
Johnny Sinodis
Attorney for Mr. Sikeo