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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

PHOENIX DIVISION

Andre Jerome LESLIE

Petitioner-Plaintiff,

v.

John CANTU, Director of Phoenix Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

Todd M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Kristi NOEM, in her Official Capacity, Secretary, U.S. Department of Homeland Security; and

Pam BONDI, in her Official Capacity, Attorney General of the United States;

Respondents-Defendants.

Case No. _____

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

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

INTRODUCTION

1. Petitioner Andre Jerome Leslie, by and through undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to prevent the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) from returning him to an immigration jail without first providing him a due process hearing where the government bears the burden to demonstrate to a neural adjudicator that his custody is justified by clear and convincing evidence. As a citizen of Jamaica who was forced to flee, has lived in the United States since the 2009, and who has been reporting to ICE on a regular basis under an Order of Supervision ("OSUP") since his release from custody in 2020, his removal from the United States is not reasonably foreseeable, because Mr. Leslie was afforded deferral of removal pursuant to CAT. Moreover, Mr. Leslie is entitled to a hearing before being removed to any third country. Finally, Mr. Leslie's re-arrest is unconstitutional because it is indefinite and illegal absent any pre-deprivation hearing before a neutral arbiter.

2. Mr. Leslie has never been ordered removed to any third country, or notified of any such potential removal. Given the Supreme Court of the United States' decision on June 23, 2025, in *U.S. Department of Homeland Security, et al. v. D.V.D., et al.*, No. 24A1153, 2025 WL 1732103 (June 23, 2025), which stayed the nationwide injunction that had precluded Respondents from removing noncitizens to third countries without notice and an opportunity to seek fear-based relief, ICE appears emboldened and intent to implement its campaign to send noncitizens to far corners of the planet—places they have absolutely no connection to whatsoever[1]—in violation of clear statutory obligations set forth in the Immigration and Nationality Act (INA), binding treaty, and due process. In the absence of the nation-wide injunction, individual lawsuits like the instant case are the only method to challenge the illegal third-country removals.

3. In February of 2009 Andre Leslie fled political persecution in Jamaica for the United States. He was placed in proceedings in the Immigration Court on October 6, 2009. He applied

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

for asylum. The Immigration Court denied his application for asylum but granted him withholding of removal relief pursuant to the Convention Against Torture ("CAT"). Mr. Leslie appealed to the Board of Immigration Appeals. On May 11, 2011, the Board overturned the prior decision regarding asylum and granted Mr. Leslie's application for asylum. The Immigration Judge then granted Mr. Leslie asylum on June 9, 2011.

4. On September 11, 2019, the Department of Homeland Security (the "Department") filed a motion to reopen Mr. Leslie's case, arguing changed circumstances. The Department provided evidence that Mr. Leslie was convicted of the offense of Attempt to Commit Possession of Marijuana for Sale, in violation of Arizona Revised Statutes ("A.R.S.") section 13-3405(A)(2). On October 26, 2020, Immigration Judge Sean Keenan found that Mr. Leslie had been convicted of an aggravated felony, and ordered him removed to Jamaica, but granted him deferral of removal. Mr. Leslie was released from custody under an Order of Supervision ("OSUP") in early 2021.

5. Since 2021, Mr. Leslie has exercised his right to liberty. He continues to live and work in the United States, having started received several certifications in his field of employment, and helping to support his fiancé's U.S. citizen minor children.

6. The OSUP issued to Mr. Leslie in 2022 permitted him to remain free from custody following his removal proceedings. Since he has been granted deferral of removal the Department has determined that removal is not reasonably foreseeable, and that Mr. Leslie is neither a flight risk nor a danger to the community. The OSUP also required him to attend regular check-in appointments at the ICE Phoenix Field Office and permitted him to apply for work authorization. 8 C.F.R. § 241.5. For the past four years, Mr. Leslie has complied with the terms of his OSUP, attending his appointments as instructed.

7. 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. Leslie's case, due process requires notice and a hearing, *prior to any re-arrest*, at which he would be afforded the opportunity to advance his arguments as to why he should not be re-detained.

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

9. 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). But that case does not control here. This case is not about ICE's authority to detain in the first place upon an issuance of a final order of removal as in *Zadvydas*. This case is about ICE's authority to *re-detain* Mr. Leslie after he was issued a final order of removal while detained, and subsequently released on an OSUP. The DHS regulation, 8 C.F.R. § 241.13(i), applies to non-citizens in Petitioner's situation. Because ICE does not have a travel document for Mr. Leslie, his removal is not reasonably foreseeable in this case, and the government has not provided him with notice, evidence, or an opportunity to be heard on this issue either before arbitrarily re-detaining him. His re-incarceration without any reasonably foreseeable end point would therefore be unconstitutionally prolonged in violation of clear Supreme Court precedent.

11. The basic principle that individuals placed at liberty are entitled to process before the government imprisons them has particular force here, where Mr. Leslie was *already* previously released from ICE detention twenty-four years ago, after which he began to rebuild his life, including by securing employment and raising a family. 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 be released from detention unless and until ICE proves to a neutral arbiter that his removal has become reasonably foreseeable and 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. Numerous federal district courts have already ordered similar relief. *See, e.g.*, *Leslie v. Hyde*, 2025 WL1725791(D. Massachusetts June 20, 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). During any custody redetermination hearing that occurs, the neutral arbiter must further consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk that ICE may establish.

12. Moreover, under the INA, Respondents have a statutory obligation to remove Mr. Leslie *only* to the designated country—in this case, Jamaica. 8 U.S.C. § 1231(b)(2)(A)(ii). If Mr. Leslie is to be removed to a third country, Respondents *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

[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.

removal if the individual has a fear of persecution or torture in that country. The U.S. District Court for the District of Massachusetts previously issued a nationwide preliminary injunction blocking such third country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture, in recognition that the government's policy violates due process and the United States' obligations under the Convention Against Torture. *D.V.D., et al.* v. *U.S. Department of Homeland Security, et al. v.*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The U.S. Supreme Court has since granted the government's motion to stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa*, 606 U.S. --- (June 27, 2025), limiting nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals only disagreement with the nature, and not the substance, of the nationwide preliminary injunction. Thus, in this individual habeas petition, Mr. Leslie 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 Convention Against Torture. Other federal district courts have already issued similar relief. *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); *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *9 (C.D. Cal. June 25, 2025); *Ortega v. Kaiser*, No. 25-cv-5259 (N.D. Cal. Jun. 26, 2025).

CUSTODY

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

JURISDICTION

14. 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.*, 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.

15. 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 Petitioner'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 for his immediate release. *See generally INS v. St. Cyr*, 533 U.S. 289 (2001); *Zadvydas*, 533 U.S. 678.

REQUIREMENTS OF 28 U.S.C. § 2243

16. 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).

17. 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).

18. 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.*

VENUE

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

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

EXHAUSTION OF ADMINISTRATIVE REMEDIES

20. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Petitioner asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

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

PARTIES

22. Mr. Andre Jerome Leslie was born and lived in Jamaica, and fled to the United States to escape persecution in 2009, and applied for asylum. He subsequently was granted asylum in 2011 Mr. Leslie was convicted in March of 2018 of the offense of Attempt to Commit Possession of Marijuana for Sale, in violation of Arizona Revised Statutes ("A.R.S.") section 13-3405(A)(2), and was sentenced to prison. Immigration and Customs Enforcement ("ICE") held Mr. Leslie in custody , until he was released on an OSUP in 2021, because of Mr. Lelsie grant of deferral of removal. Since that time, Mr. Leslie has complied with all conditions of release, including attending ICE check-ins, and updating his address whenever necessary.

23. Respondent John Cantù is the Field Office Director of ICE, in Phoenix, Arizona, and is named in his official capacity. ICE is the component of the DHS that is responsible for

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

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

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

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

STATEMENT OF FACTS

27. Mr. Andre Jerome Leslie is citizen and national of Jamaica. He currently lives in the Phoenix, Arizona area, and is employed.

28. In 2011, Mr. Leslie lawfully was granted asylum in the United States.

29. In 2018 Petitioner was of Attempt to Commit Possession of Marijuana an aggravated felony under immigration law. In 2020, he was detained by ICE. Ultimately a removal order was entered, but Mr. Leslie was granted deferral of removal, and released on an OSUP, because there was no reasonable likelihood of his removal to Jamaica. Since 2020, Mr. Leslie has exercised his right to liberty. He continues to live and work in the United States. He is not at all the type of person for whom re-incarceration is required.

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

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

32. Decisions issued by other courts in California District Courts further corroborate that ICE is re-arresting and re-incarcerating individuals who are not flight risks or dangers to the community, including when their removals from the United States are not reasonably foreseeable. *See, e.g.*, *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *2 ("Although Petitioner-Plaintiff informed the ICE officer that he has no right to return to either country because he is stateless, the officer told Petitioner-Plaintiff that 'things are different now.'"); *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7; *Guillermo M. R.*, --- F.Supp.3d ----, 2025 WL 1983677, at *10; *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at *7; *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *1 (N.D. Cal. June 14, 2025); *Doe v. Becerra*, -- F. Supp. 3d --, 2025 WL 691664, *8 (E.D. Cal. Mar. 3, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025); *Singh v. Andrews*, No. 1:25-cv-801-KES-SKO, 2025 WL 1918679 (E.D. Cal. July 11, 2025); *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596, at *6 (E.D. Cal. July 14, 2025).

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

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

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

LEGAL BACKGROUND

Right to a Hearing Prior to Re-incarceration

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

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

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

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

38. Even where detention meets the *Zadvydas* standard for reasonable foreseeability, detention violates the Due Process Clause unless it is "reasonably related" to the government's purpose, which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at 700 ("[I]f removal is reasonably foreseeable, the habeas court should consider the risk of the alien's committing further crimes as a factor potentially justifying confinement within that reasonable removal period") (emphasis added); *Id.* at 699 (purpose of detention is "assuring the alien's presence at the moment of removal"); *Id.* at 690-91 (discussing twin justifications of detention as preventing flight and protecting the community). Thus, Mr. Leslie should not remain in custody because he does not pose a danger or flight risk that warrants post-final-order detention, regardless of whether his removal can be effectuated within a reasonable period of time. This is especially so because ICE has *already* released Mr. Leslie from detention because he has been granted deferral of removal. *See Singh*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *2 ("DHS, at least implicitly, made a finding that petitioner was not a flight risk when it released him") (citing *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at *3 & n.6 (S.D.N.Y. June 18, 2025)).

39. The government's own regulations contemplate this requirement. They dictate that even after ICE determines that removal is reasonably foreseeable—and that detention therefore does not per se exceed statutory authority—the government must still determine whether continued detention is warranted based on flight risk or danger. *See* 8 C.F.R. § 241.13(g)(2) (providing

that where removal is reasonably foreseeable, "detention will continue to be governed under the established standards" in 8 C.F.R. § 241.4).

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

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

Mr. Leslie's Protected Liberty Interest in His Release

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

43. Since 2020, Mr. Leslie exercised that freedom pursuant to his prior release from custody by ICE and placement on an OSUP. He thus retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at *3 ("even when ICE has the initial discretion to detain or release a noncitizen

pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody").

44. Moreover, the Supreme Court has recognized that post-removal order detention is potentially indefinite and thus unconstitutional without some limitation. *Zadvydas*, 533 U.S. at 701. In this case, in light of the Immigration Judge's order that actually prohibits Mr. Leslie's removal to Jamaica, his removal is not foreseeable at all, let alone reasonably. Therefore, his re-detention would be unconstitutional.

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

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

47. This basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g.*, *Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the

specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also, e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

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

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

50. Mr. Leslie has complied with all conditions of release for four years.

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

51. Mr. Leslie asserts that, here, (1) where his detention would be civil, (2) where he has been at liberty for four years, during which time he has complied with all conditions of release, (3) where no change in circumstances exist that would justify his detention, and (5) where the only circumstance that has changed is ICE's move to arrest as many people as possible because of the new administration, due process mandates that should have received notice and a hearing

before a neutral adjudicator *prior* to any re-arrest.

52. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Mr. Leslie's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws in order to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (*citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

53. The Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing predeprivation process," can the government avoid providing pre-deprivation process. *Id.*

54. Because, in this case, the provision of a pre-deprivation hearing is both possible and valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Mr. Leslie with notice and a hearing *prior* to any re-incarceration and revocation of his release. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932;

Zinermon, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, "the balance weighs heavily in favor of [Mr. Leslie's] liberty" and requires a pre-deprivation hearing before a neutral adjudicator.

Mr. Leslie's Private Interest in His Liberty is Profound

55. Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Mr. Leslie, who have been released pending civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes,* 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr. Ngueyn retains a truly weighty liberty interest even though he was under conditional release.

56. What is at stake in this case for Mr. Leslie is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior release decision and be able to take away his physical freedom, i.e., his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government

custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

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

The Government's Interest in Re-Incarcerating Mr. Leslie Without a Hearing is Low and the Burden on the Government to Refrain from Re-Arresting Him Unless and Until He is Provided a Hearing That Comports with Due Process is Minimal

58. The government's interest in detaining Mr. Leslie without a due process hearing is low, and when weighed against his significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents from continuing Mr. Leslie's detention unless and until the government demonstrates by clear and convincing evidence that he is a flight risk or danger to the community. It becomes abundantly clear that the *Mathews* test favors Mr. Leslie when the Court considers that the process he seeks—notice and a hearing regarding whether his OSUP should be revoked given that ICE lacks authorization to remove him—is a standard course of action for the government. Providing Mr. Leslie with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that he is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of review to individuals in Mr. Leslie's same circumstances. 8 C.F.R. § 241.4(e)-(f).

59. Because immigration detention is civil, it can have no punitive purpose. The government's only interests in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. Moreover, the Supreme Court has made clear that indefinite detention of noncitizens who cannot be removed to the country of the removal order is unconstitutional. In this case, the government cannot plausibly assert that it has a sudden interest in detaining Mr. Leslie due to alleged dangerousness, or due to a change in the foreseeability of his removal to Jamaica, as his circumstances have not changed since his release from ICE custody in 2021.

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

61. As to flight risk, ICE determined that reporting requirements were sufficient to guard against any possible flight risk, to "assure [his] presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. Mr. Leslie's post-release conduct in the form of full compliance with his check-in requirements further confirms that he is not a flight risk and that he is likely to present himself at any future ICE appearances, as he always has done. The government's interest in detaining him at this time is therefore low. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the government's interest in detaining him.[5] *See Singh*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *2 ("The law requires a change in relevant facts, not just a change in [the government's] attitude") (internal quotations omitted). Moreover, nothing has changed regarding the lack of foreseeability of his removal to Jamaica.

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

63. Providing Mr. Leslie with a hearing before this Court (or a neutral decisionmaker)

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

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

64. Providing Mr. Leslie a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before he can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the government is held to show that there has been sufficiently changed circumstances such that he should be detained because clear and convincing evidence exists to establish that Petitioner is a danger to the community or a flight risk.

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

and can decide whether the agency wants to hold Mr. Leslie. 8 C.F.R. § 241.4(e)-(f).

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

67. Due process also requires consideration of alternatives to detention at any hearing that may occur. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternatives to detention that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in determining whether Petitioner's re-incarceration is warranted.

The Right to Constitutionally Adequate Procedures Prior to Third Country Removal

68. Under the INA, Respondents have a clear and non-discretionary duty to execute final orders of removal only to the designated country of removal. The statute explicitly states that a noncitizen "*shall* remove the [noncitizen] to the country the [noncitizen] . . . designates." 8 U.S.C. § 1231(b)(2)(A)(ii) (emphasis added). And even where a noncitizen does not designate the country of removal, the statute further mandates that DHS "shall remove the alien to a

country of which the alien is a subject, national, or citizen. *See id.* § 1231(b)(2)(D); *see also generally Jama v. ICE*, 543 U.S. 335, 341 (2005).

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

70. Moreover, prior to any third country removal, ICE must provide Mr. Leslie 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.[6] Currently, DHS has a policy of removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country. This policy clearly violates due process and the United States' obligations under the Convention Against Torture.

71. The U.S. District Court for the District of Massachusetts previously issued a nationwide preliminary injunction blocking such third country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture, in recognition that the government's policy violates due process and the United States' obligations under the

[6] *See supra* n.3.

Convention Against Torture. *D.V.D., et al.* v. *U.S. Department of Homeland Security, et al. v.*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The U.S. Supreme Court has since granted the government's motion to stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa*, 606 U.S. --- (June 27, 2025), limiting nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals only disagreement with nature, and not the substance, of the nationwide preliminary injunction.

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

FIRST CAUSE OF ACTION

Procedural Due Process

U.S. Const. amend. V

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

74. 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.

75. Mr. Leslie 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.

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

SECOND CAUSE OF ACTION

Substantive Due Process

U.S. Const. amend. V

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

78. 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.

79. Mr. Leslie 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.

80. Since 2021, Mr. Leslie has complied with the conditions of release imposed on him by ICE, thus demonstrating that he is neither a flight risk nor a danger. Detaining him now is punitive, and violates his constitutional right to be free from the unjustified deprivation of his liberty.

81. For these reasons, Mr. Leslie's detention without first being provided a hearing violates the Constitution.

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

THIRD CAUSE OF ACTION

Unlawful Re-Detention

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

84. Mr. Leslie was previously released by Respondents because he did not pose a danger or

flight risk. As long as he complies with the conditions of his release, Respondents have authority to revoke release only if circumstances have changed. 8 C.F.R. § 241.13(i)(2); 8 C.F.R. § 1231(a)(6).

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

FOURTH CAUSE OF ACTION

Violation of the INA and Applicable Regulations

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

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

88. Respondents are not permitted to detain Mr. Leslie on the basis of his prior order of removal and without establishing to a neutral adjudicator, by clear and convincing evidence, that his removal is reasonably foreseeable and that he is a danger to the community or a flight risk. This is especially true where, as here, Mr. Leslie received a grant of deferral of removal.

FIFTH CAUSE OF ACTION

Procedural Due Process – Unconstitutionally Inadequate Procedures Regarding Third Country Removal

U.S. Const. amend. V

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

90. 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.").

91. Mr. Leslie 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 he has a fear of persecution or torture in that country.

92. For these reasons, Mr. Leslie's removal to any third country without adequate notice and an opportunity to apply for relief under the Convention Against Torture would violate his due process rights. 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 he 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) Order Mr. Andre Jerome Leslie's immediate release from custody, and enjoin ICE from detaining Mr. Leslie unless and until a hearing can be held before a neutral adjudicator to determine whether his re-incarceration would be lawful because the government has shown that his removal is reasonably foreseeable and that he is a danger or a flight risk 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 Petitioner 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 his removal is reasonably foreseeable and that he is a danger or a flight risk 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. Andre Jerome Leslie cannot be removed to any third country without first being provided constitutionally compliant procedures, including:

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

b. A meaningful opportunity for Mr. Leslie to raise a fear of return for eligibility for protection under the Convention Against Torture, including a reasonable fear interview before a DHS officer;

c. If Mr. Leslie 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 Convention Against Torture;

d. If it is found that Mr. Leslie does not demonstrate a reasonable fear during the interview, a meaningful opportunity, and a minimum of fifteen (15) days, for Mr. Leslie 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 11, 2025

Respectfully submitted,

/s/ Clifford Levenson
Clifford Levenson
Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of Mr. Andre T. Leslie because I am one of his attorneys. I have discussed with Mr. Andre T. Leslie 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 11, 2025, in Phoenix, Arizona

/s/ Clifford Levenson
Clifford Levenson
Attorney for Mr. Andre T. Leslie