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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

Harmeet Singh KHAMBA a.k.a. Gurjit SINGH,

Petitioner-Plaintiff,

v.

Sergio ALBARRAN, Acting Field Office Director of San Francisco Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security; Todd M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security; Kristi NOEM, Secretary, U.S. Department of Homeland Security; and Pamela BONDI, Attorney General of the United States; Minga WOFFORD, Facility Administrator at Mesa Verde Detention Center, Bakersfield, California;

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, Harmeet Singh Khamba a.k.a. Gurjit Singh,[1] by and through his undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to compel his immediate release from the immigration jail where he has been held by the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) since being unlawfully re-arrested on August 29, 2025, without at any point having been provided a due process hearing to determine whether his detention is justified. Petitioner's removal from the United States is not reasonably foreseeable, and since being re-arrested, he has also not received the regulatory interview that is required by binding regulations

2. Petitioner is a respected businessman who owns and operates an automobile mechanic shop in Carmel, California. He and his U.S. citizen wife—to whom he has been married for twenty-two years—reside together in the home that they own. Petitioner's entire family, including his U.S. citizen stepson, his U.S. citizen daughter in law, and their grandchildren, depend on Petitioner's business as their sole source of income. They also reside together in his home.

3. Importantly, Petitioner currently has a motion to reopen removal proceedings pending with the Board of Immigration Appeals (BIA) which is based on his eligibility for adjustment of status (i.e., a green card) via a Form I-130, Petition for Alien Relative (visa petition), filed by his U.S. citizen wife. *See* Declaration of Johnny Sinodis (Sinodis Decl.) at Ex. D (Declaration of Michael Mehr); *id.* at Ex. E (Form I-130 Receipt Notice). He also filed an emergency motion for stay of removal, but the BIA informed his other counsel, Michael Mehr, that it will not rule on the stay motion at this time because ICE advised the BIA that it has no intention to remove Petitioner. *See id.*

4. As background, Petitioner is a citizen and national of India who entered the United States in 1994 on a visitor's visa. *Id.* at Ex. G (Motion to Reopen with Supporting Exhibits). He came to the U.S. because his family had suffered heinous persecution and torture based on their

[1] Petitioner's accurate name is Gurjit Singh, but his order of removal is in the name of Harmeet Singh Khamba. Although Petitioner corrected the immigration record years ago by clarifying his accurate name, many documents still contain the name Harmeet Singh Khamba.

religion, ethnicity, political opinion, and membership in a particular social group. [redacted]

[redacted]

5. Subsequently, through incorrect advice of his prior counsel, Petitioner applied for asylum in 1998 using another name rather than his birth name. An Immigration Judge (IJ) ultimately denied his application and granted voluntary departure on June 22, 1999. The BIA subsequently affirmed the IJ on March 28, 2003. The Ninth Circuit remanded his petition for review, and the BIA again affirmed the IJ on May 16, 2005. Thereafter, because ICE could not effect his physical removal from the United States to India, ICE opted to release Petitioner and issue him a Form I-220B, Order of Supervision (OSUP), with which he has complied since 2007. The OSUP requires him to attend regular check in appointments at the ICE San Francisco Office and permits him to apply for work authorization which was regularly applied for and granted. 8 C.F.R. § 241.5.

6. For the past eighteen years since being issued an OSUP, Petitioner has been living at liberty during which time he has been able to take care of his family—including his U.S. citizen wife and children—while complying with the terms of his OSUP, working with employment authorization granted by DHS, and operating his own business.

7. Unfortunately, Petitioner and his wife lost one of their sons in August 2024 to a tragic motorcycle accident. This incident has profoundly changed Petitioner and his wife. After the death of their son, Petitioner's wife suffered a mental collapse and later received the diagnosis of Major Depressive Disorder, Severe Panic Disorder, Somatic Symptom Disorder, Chronic Pain Syndrome, and Insomnia Disorder. *See* Sinodis Decl. at Ex. H (Psychological Report). She even contemplated suicide. *Id.* The psychologist stated that if she lost her husband she would decompensate and likely re-experience suicidal ideation. *Id.* His wife's physician states that since he was arrested, she "is depressed with severe heart pain." *Id.* at Ex. I (Letter of Dr. [redacted], M.D.)

8. On July 17, 2025, Petitioner attended a check in appointment at the ICE San Francisco Office, pursuant to his Form I-220B, where he was instructed to report to the San Jose sub-office on August 5, 2025. *Id.* at Ex. D (Declaration of Michael Mehr). He did as instructed and, on August 5, 2025, ICE installed an ankle monitor on Petitioner. *Id.* He was told to report in person

again on August 20, 2025, which he did. *Id.* At that time, ICE told him to check-in virtually on September 17 and October 15, 2025, respectively. *Id.*

9. Then, on August 29, 2005, without advance notice or cause, or the opportunity for a due process hearing, ICE appeared at Petitioner's business and took him into custody. *Id.* ICE did not provide Petitioner with an explanation as to why he was being arrested, nor has he been provided with an explanation of his confinement since that time. *Id.* There is no evidence of any other change relevant to his detention status, removability, or criminal record. On information and belief, his OSUP has never been revoked, withdrawn, or otherwise cancelled. *Id.*

10. Furthermore, other than India—a country to which ICE has been unable to remove him for nearly two decades—Petitioner has never been ordered removed to any third country, nor has he been notified of such potential removal. *Id.* He thus seeks to additionally prevent ICE from summarily removing him to a third country without first being provided constitutionally compliant procedures—in this instance, notice of any third country removal and an adequate opportunity to apply for fear-based relief as to that country. 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[2]—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 nationwide injunction, individual lawsuits like Petitioner's are the only method to challenge these illegal third-country removals.

11. In recent weeks, individuals in identical or substantially similar circumstances as Petitioner 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

[2] 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/.

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); *Rodriguez Diaz v. Kaiser*, No. 3:25-cv-05071-TLT, Dkt. 25 (Sept. 16, 2025); *Yang v. Kaiser, et al.*, 2:25-cv-02205-DAD-AC, Dkt. 16 (E.D. Cal. Aug. 21, 2025); *Sun v. Santacruz Jr., et al*, 5:25-cv-02198-JLS-JC, Dkt. 13 (C.D. Cal. Aug. 26, 2025).[3]

12. In recent weeks, individuals in identical or substantially similar circumstances as Petitioner 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); *Doe v. Andrews*, No. 1:25-cv-00506-SAB-HC, 2025 WL 1856591 (E.D. Cal. June 26, 2025); *Alva v. Kaiser*, No. 25-cv-06676-RFL, 2025 WL 2419262 (N.D. Cal. Aug. 21, 2025); *Paz Hernandez v. Wofford*,

[3] *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.

No. 1:25-cv-00986-KES-CDB, 2025 WL (E.D. Cal. Aug. 21, 2025); *Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *R.D.T.M. v. Wofford*, No. 1:25-cv-01141-KES-SKO, 2025 WL 2617255 (E.D. Cal. Sept. 9, 2025); *Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2458865 (N.D. Cal. Aug. 25, 2025).[4]

13. By statute and regulation, ICE has the authority to re-detain a noncitizen on an OSUP previously ordered removed *only in specific circumstances*, including where an individual violates any condition of release, or changed circumstances show that their removal is reasonably foreseeable because the country of removal has issued a travel document 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 unilateral regulatory 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 Petitioner's case, due process required notice and a hearing, *prior to any re-detention*, at which he was afforded the opportunity to advance his arguments as to why he should not be re-detained.

14. Here, during his eighteen years of release on an OSUP, Respondents have created a reasonable expectation that Petitioner is permitted to live and work in the United States without being subject to arbitrary arrest and removal. 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).

[4] *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.

15. Further, the Supreme Court has limited the potentially indefinite post-removal order detention to a maximum of six months, because removal is not reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Because ICE does not have a travel document for Petitioner, and ICE has not provided him with notice, evidence, or an opportunity to be heard as to any fear-based claim that he would present regarding his potential removal to a third country, his removal is not reasonably foreseeable. His continued detention without any reasonably foreseeable end point is thus unconstitutionally prolonged in violation of clear Supreme Court precedent.

16. The basic principle that individuals placed at liberty are entitled to process before the government imprisons them has particular force here, where ICE determined it appropriate to issue Petitioner an OSUP eighteen years ago, after which he continued to lead a productive life, including by securing employment and starting his own business. Under these circumstances, ICE was required to afford him the opportunity to advance arguments in favor of his freedom before it robbed him of his liberty. He must therefore be released from custody and should not be re-detained unless and until ICE proves to a neutral adjudicator that his removal to India is reasonably foreseeable and otherwise whether circumstances have changed such that his re-detention would be justified (whether he poses a danger or a flight risk). Numerous federal district courts in the Northern, Eastern, and Central District of California have already ordered similar relief. *See, e.g.*, *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); *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); *Doe v. Andrews*, No. 1:25-cv-00506-SAB-HC, 2025 WL 1856591 (E.D. Cal. June 26, 2025);

Alva v. Kaiser, No. 25-cv-06676-RFL, 2025 WL 2419262 (N.D. Cal. Aug. 21, 2025); *Paz Hernandez v. Wofford*, No. 1:25-cv-00986-KES-CDB, 2025 WL (E.D. Cal. Aug. 21, 2025); *Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *R.D.T.M. v. Wofford*, No. 1:25-cv-01141-KES-SKO, 2025 WL 2617255 (E.D. Cal. Sept. 9, 2025); *Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2458865 (N.D. Cal. Aug. 25, 2025); *Rodriguez Diaz v. Kaiser*, No. 3:25-cv-05071-TLT, Dkt. 25 (Sept. 16, 2025).

17. During any custody redetermination hearing that occurs, the neutral adjudicator must further consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk that DHS may establish.

18. Additionally, under the INA, if ICE intends to attempt to remove Petitioner 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.[5] 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. *See* Sinodis Decl. at Ex. J (DHS Policy Regarding Third Country Removal). 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

[5] 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).

preliminary injunction.

19. In this individual habeas petition and complaint for declaratory and injunctive relief, Petitioner 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. Several 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-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); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2097979 (W.D. Wash. Aug. 21, 2025) (PI prohibiting removing Mr. Khan to any country where he is likely to face imprisonment upon arrival).

CUSTODY

20. Petitioner is currently detained by ICE at the Mesa Verde ICE Detention Center in Bakersfield, California, where he was transferred after being arrested by ICE officers at his business in Carmel. Prior to and since being arrested by ICE in Carmel, Petitioner has not been provided with a constitutionally compliant hearing to assess whether his re-detention is warranted.

JURISDICTION

21. 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.

22. 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, as Petitioner is detained under color of the authority of the United States, and such custody is in violation of the Constitution, laws, regulations, and, or treaties of the United States.

23. 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 their immediate release. *See generally INS v. St. Cyr*, 533 U.S. 289 (2001); *Zadvydas v. Davis*, 533 U.S. 678 (2001).

REQUIREMENTS OF 28 U.S.C. § 2243

24. 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).

25. 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).

26. 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

27. 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 Eastern District of California; because Petitioner is currently detained in the Eastern District of California; and because there is no real property involved in this action.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

28. 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 Petitioner asserts that exhaustion is satisfied as there is no administrative jurisdiction over this detention status because he already has a final order of removal.

29. No statutory exhaustion requirements apply to Petitioner'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).

PARTIES

30. Petitioner is a citizen and national of India who entered the United States in 1994 on a visitor's visa. He is married to a U.S. citizen and together they have four U.S. citizen children, all of whom rely on Petitioner for financial and emotional support.

31. Respondent Sergio Albarran is the Acting Field Office Director of ICE in San Francisco, California, 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 his official capacity, he is the legal custodian of Petitioner.

32. 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 Petitioner.

33. Respondent Kristi NOEM is the Secretary of the 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 Petitioner.

34. 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.

35. Respondent Minga WOFFORD is the Facility Administrator of Mesa Verde where Petitioner is being held. Respondent Wofford oversees the day-to-day operations of Mesa Verde and acts at the Direction of Respondents Lyons, Noem, and Albarran. She is a custodian of Petitioner and is named in her official capacity.

STATEMENT OF FACTS

36. Petitioner is a citizen and national of India who entered the United States in 1994 on a visitor's visa. *See* Sinodis Decl. at Ex. D (Declaration of Michael Mehr). He came to the U.S. because his family had suffered heinous persecution and torture based on their religion, ethnicity, political opinion, and membership in a particular social group. His brother had been killed for his political activities and he had been arrested twice in India.

37. Subsequently, through incorrect advice of his prior counsel, Petitioner applied for asylum in 1998 using another name rather than his birth name. An Immigration Judge ultimately denied

his application and granted voluntary departure to India on June 22, 1999. *Id.* at Ex. B (Immigration Judge Decision). The BIA subsequently affirmed the IJ on March 28, 2003, and Petitioner filed a petition for review which the Ninth Circuit ultimately remanded. On remand, the BIA then affirmed the Immigration Judge again on May 16, 2005. *Id.* at Ex. D (BIA Decision). Thereafter, because ICE could not effect his physical removal from the United States to India, ICE issued Petitioner an OSUP, with which he has complied since 2007. *Id.* at Ex. A (OSUP). The OSUP requires him to attend regular check in appointments at the ICE San Francisco Office and permits him to apply for work authorization which was regularly applied for and granted. 8 C.F.R. § 241.5.

38. For the past eighteen years since the OSUP was issued, Petitioner has been living at liberty, during which time he has been with his family—including his U.S. citizen wife and children, grieving the loss of his son—while complying with the terms of his OSUP and starting a successful business pursuant to his work authorization document.

39. During his more than three-decade residence in the United States, Petitioner has only been arrested once for disturbing the peace, an infraction.

40. On information and belief, ICE has never been able to obtain a travel document from India enabling the agency to physically remove Petitioner. *Id.* at Ex. D (Declaration of Michael Mehr).

41. On August 5, 2025, Petitioner attended a check in appointment at the ICE San Jose sub-office where he was given an ankle monitor to wear at all times without being given any reason why he needed electronic monitoring. *Id.* He was then told to appear in person for an appointment on August 20, 2025, which he did. *Id.*

42. Nine days later, on August 29, 2025, ICE officers appeared at Petitioner's business in Carmel, California, and arrested him without being offered any reason, with no notice or a hearing and absent any change in circumstances. To date, Petitioner has not been provided any post-deprivation interview, as required by 8 C.F.R. § 241.13, and, on information and belief, his OSUP has not been revoked, withdrawn, or otherwise cancelled.

43. ICE transferred Petitioner to the Mesa Verde Detention Center located at 425 Golden State Avenue Bakersfield, California, 93301, where he remains detained.

44. Petitioner has remained unlawfully detained without having been provided a due process hearing, and his prolonged and potentially indefinite detention is not constitutional, given that his removal to India, the only country to which he has been ordered removed, is not reasonably foreseeable.

45. Petitioner's U.S. citizen wife has suffered for years with mental health challenges. *Id.* at Ex. H (Psychological Evaluation). Last year she and Petitioner lost a twenty-year-old child in a tragic motorcycle accident. *Id.* Since that time Petitioner's wife has had a severe mental health collapse including suicidal ideation. In a psychological evaluation, she was diagnosed with Major Depressive Disorder, Severe, Panic Disorder and other psychiatric disorders. *Id.* The psychologist stated that if lost her husband she would decompensate and likely re-experience suicidal ideation. *Id.* His wife's physician states that since he was arrested, she "is depressed with severe heart pain." *Id.* at Ex. I (Letter of Dr. [redacted] M.D.).

46. Petitioner has filed a motion to reopen removal proceedings with the BIA because he will be eligible for adjustment of status once his U.S. citizen wife's visa petition is approved. *Id.* at Ex. F (Motion to Reopen Receipt Notice); *id.* at Ex. G (Motion to Reopen with Supporting Documents). As of the time of filing, the motion to reopen remains pending.

47. Petitioner also filed a motion for a stay of removal with the BIA. Pursuant to the BIA's policy, the BIA will only adjudicate a motion for stay if ICE confirms that it intends to imminently remove the noncitizen. *See* BIA Practice Manual Ch. 6.3(c)(2)(A)-(B).[6] Here, ICE informed the BIA that it has no plans to remove Petitioner, and the BIA relayed that information to Petitioner's other counsel, Michael Mehr. Sinodis Decl. at Ex. D (Declaration of Michael Mehr).

48. Petitioner also attempted to file a Motion for Stay directly with ICE, but they would not even accept it for filing. When asked when they intended to remove Petitioner they refused to give his other attorney that information and never answered the question. *Id.*

[6] Available at https://www.justice.gov/eoir/reference-materials/bia/chapter-6/3 (accessed Sept. 14, 2025).

49. On information and belief, ICE still does not have a travel document enabling it to remove Petitioner to India.

50. 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.[7]

51. Multiple credible reports demonstrate that, in recent weeks and months, numerous noncitizens in the San Bernardino Area, Los Angeles, and across the country who have appeared as instructed at ICE check-ins have been incarcerated or re-incarcerated by ICE.[8]

52. 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.[9]

53. Decisions issued by other courts in this District and the Northern and Eastern Districts of California 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.*, *Rodriguez-Flores v. F. Semaia*, No. 2:25-cv-06900-JGB-JC, Dkt. 14 (C.D. Cal. Aug. 14, 2025) ("The only changed circumstance the

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[7] *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/.

[8] *See supra* n.2; "ICE arrests at Sacramento immigration courts raises fear among immigrant community," KCRA (June 3, 2025), https://www.kcra.com/article/ice-arrests-sacramento-immigration-courts-lawyers-advocacy-groups/64951405; "ICE confirms arrests made in South San Jose," NBC Bay Area (June 4, 2025), https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/ ("The Rapid Response Network, an immigrant watchdog group, said immigrants are being called for meetings at ISAP – Intensive Supervision Appearance Program – for what are usually routine appointments to check on their immigration status. But the immigrants who show up are taken from ISAP to a holding area behind Chavez Supermarket for processing and apparently to be taken to a detention center, the Rapid Response Network said."); "ICE arrests 15 people, including 3-year-old child, in San Bernardino, advocates say," San Bernardino Chronicle (June 5, 2025), https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php; "Cincinnati high school graduate faces deportation after routine ICE check-in," ABC News (June 9, 2025), https://abcnews.go.com/US/cincinnati-high-school-graduate-faces-deportation-after-routine/story?id=122652262.

[9] *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).

government cites is the reopening of Petitioner's Ninth Circuit case"); *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *2 ("Although Petitioner-Plaintiff informed the ICE officer that she has no right to return to either country because she 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); *Doe v. Andrews*, No. 1:25-cv-00506-SAB-HC, 2025 WL 1856591 (E.D. Cal. June 26, 2025); *Alva v. Kaiser*, No. 25-cv-06676-RFL, 2025 WL 2419262 (N.D. Cal. Aug. 21, 2025); *Paz Hernandez v. Wofford*, No. 1:25-cv-00986-KES-CDB, 2025 WL (E.D. Cal. Aug. 21, 2025); *Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *R.D.T.M. v. Wofford*, No. 1:25-cv-01141-KES-SKO, 2025 WL 2617255 (E.D. Cal. Sept. 9, 2025); *Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2458865 (N.D. Cal. Aug. 25, 2025).

54. Since being detained, Petitioner's wife's mental health conditions have worsened. In 2024, they suffered the tragic loss of their son, and in 2025, she was diagnosed with Major Depressive Disorder, Severe Panic Disorder, Somatic Symptom Disorder, Chronic Pain Disorder, and Insomnia Disorder. She depends on Petitioner for emotional support and he is the rock of their family. She does not know how she will endure the loss of his company and the financial support his business provides the family, including their children and grandchildren. Sinodis Decl. at Ex. G (Motion to Reopen).

55. In addition to being unlawfully detained, Petitioner is at risk of being unlawfully removed to a third country without constitutionally adequate notice and a meaningful opportunity to apply for protection under the Convention Against Torture, in violation of the INA, binding international treaty, and due process. Currently, DHS has a policy of removing or seeking to

remove individuals to third countries *without* first providing 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. *See* Sinodis Decl. at Exh. J (DHS Policy Regarding Third Country Removal).

56. Intervention from this Court is therefore required to ensure that Petitioner does not continue to suffer irreparable harm in the form of unjustified, prolonged, and indefinite detention, and further violation of his rights in the form of summary removal to a third country.

LEGAL BACKGROUND

I. Under the circumstances of this case, the constitution did not permit Petitioner to be re-arrested and re-incarcerated absent notice and a constitutionally compliant hearing before a neutral adjudicator where ICE bears the burden.

a. Right to a Hearing Prior to Re-incarceration

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

58. 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 v. Davis*, 533 U.S. 678, 690 (2001). 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.

59. 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-month period, if a detainee provides "good reason" to believe that his or her 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.

60. 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.

61. 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).

62. 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).

63. 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.*

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

65. Federal district courts in California and throughout the country have repeatedly recognized that the demands of due process and the limitations on ICE's authority to re-detain a noncitizen both require a pre-deprivation hearing *before* any re-arrest by ICE. *See, e.g.*, *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); *M.R. v. Kaiser*, No. 25-cv-05436-RFL, 2025 WL (N.D. Cal. July 17, 2025); *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL (N.D. Cal. June 14, 2025); *Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest); *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at

*3-4 (N.D. Cal. May 6, 2022); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years); *Garcia v. Bondi*, No. 3:25-cv-05070, 2025 WL 1676855, at *3 (June 14, 2025); *see also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest); *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years); *Garcia v. Bondi*, No. 3:25-cv-05070, 2025 WL 1676855, at *3 (June 14, 2025); *Rodriguez Diaz v. Kaiser*, No. 3:25-cv-05071-TLT, Dkt. 25 (Sept. 16, 2025); *Yang v. Kaiser, et al.*, 2:25-cv-02205-DAD-AC, Dkt. 16 (E.D. Cal. Aug. 21, 2025); *Sun v. Santacruz Jr., et al*, 5:25-cv-02198-JLS-JC, Dkt. 13 (C.D. Cal. Aug. 26, 2025).

b. **Petitioner's Protected Liberty Interest in His Release**

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

67. In order for an individual to receive OSUP, ICE must make a determination to assess the person's flight and public safety risk. Along with their OSUP contains additional conditions of release such as electronic monitoring or periodically reporting to an ICE officer. 8 C.F.R. §§ 241.5(a), 241.4(j); *see generally Zadvydas*, 533 U.S. at 679. ICE made the determination for Petitioner in order to provide him OSUP. 8 C.F.R. § 241.4(e)-(f).

68. Since 2007, Petitioner has exercised that freedom pursuant to his OSUP, which ICE issued him after determining that he is neither a danger nor a flight risk and his removal was not reasonably foreseeable. He thus retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration, which is not diminished by the supervised nature of his release. *Zadvydas*, 533 U.S. at 679 ("[A] noncitizen's liberty interest is not diminished by their lack of a legal right to live at large, for the choice at issue here is between imprisonment and supervision under release conditions that may not be violated and their liberty interest is strong enough to raise a serious constitutional problem with indefinite detention."); *see also Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

69. 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 the absence of any travel document that actually permits Petitioner's removal to India, his removal is not foreseeable at all, let alone reasonably. Therefore, his re-detention would be indefinite and thus unconstitutional.

70. Just as importantly, Petitioner has continued presenting himself before ICE for his regular check-in appointments for the past eighteen years, where ICE has not sought to re-arrest him during this time. ICE instead has given him future dates and times to appear again each year. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."); *Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL 1918679, *2 (E.D. Cal. July 11, 2025) ("DHS, at least implicitly, made a finding that petitioner was not a flight risk when it released him.").

71. 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.

72. This basic principle—that individuals have a liberty interest in their release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g.*, *Young v. Harper*, 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 v. Scarpelli*, 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).

73. 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).

74. Here, when this Court "'compar[es] the specific conditional release in [Petitioner'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*, Petitioner'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 with his community, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

75. Petitioner has complied with conditions of his release for over seventeen years. During that time, he has lived with his U.S. citizen wife and their children, obtained employment authorization granted by DHS, and started his own business. He is a well-respected member of the community and by no means the type of individual who should be incarcerated.

c. Petitioner's Liberty Interest Mandated a Due Process Hearing Before any Re-Detention.

76. Petitioner asserts that, here, (1) where his detention is civil, (2) where he has diligently complied with ICE's reporting requirements on a regular basis for the past eighteen years, (3) where his removal is not reasonably foreseeable, (4) where no change in circumstances exist that would justify his detention, and (5) where on information and belief ICE officers arrested him merely to fulfill an arrest quota, due process mandates that he receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest.

77. "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 [Petitioner'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)).

78. 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.*

79. Because, in this case, the provision of a pre-deprivation hearing was both possible and valuable to preventing an erroneous deprivation of liberty, ICE was required to provide Petitioner with notice and a hearing *prior* to any re-detention. *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 [Petitioner's] liberty" and requires a pre-deprivation hearing before a neutral adjudicator such as an Immigration Judge, which ICE failed to provide.

d. Petitioner's private interest in his liberty is profound.

80. 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 incarcerated—apply with even greater force to individuals like Petitioner, who have complied with OSUPs and are not dangers or flight risks, 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, Petitioner retains a truly weighty liberty interest even though he is under supervised release.

81. What is at stake in this case for Petitioner 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).

82. 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.

e. The Government's Interest in Keeping Petitioner Incarcerated is Low and the Burden on the Government to Release Him from Custody is Minimal.

83. The government's interest in keeping Petitioner Petitioner in detention 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 releasing him from custody unless and until the government demonstrates that his removal is reasonably foreseeable or that he is a flight risk or danger to the community. It becomes abundantly clear that the *Mathews* test favors Petitioner when the Court considers that the process he seeks—release from ICE because Petitioner was determined to be eligible for release through an OSUP, all of which occurred *eighteen years ago* and where nothing in the interim has changed to warrant re-detention after—is a standard course of action for the government. In the alternative, providing Petitioner with a hearing before a neutral decisionmaker to determine whether there is evidence that he is a flight risk or danger to the community and whether his removal is reasonably foreseeable would impose only a *de minimis* burden on the government, because the government routinely conducts these reviews for individuals in Petitioner's same circumstances. 8 C.F.R. § 241.4(e)-(f).

84. As 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 in the removal order is unconstitutional. In this case, the government cannot plausibly assert that it had a sudden interest in detaining Petitioner due to alleged dangerousness, or due to a change in the foreseeability of his removal to India, as his circumstances have not changed since he was placed on an OSUP in 2007.

85. Since receiving his OSUP in 2007, Petitioner has continued to appear before ICE on a regular basis for his check ins appointments. *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).

86. As to flight risk, Petitioner's post-release conduct in the form of 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.[10] Moreover, nothing has changed regarding the lack of foreseeability of his removal to India.

87. Likewise, the "fiscal and administrative burdens" that a pre-deprivation hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Petitioner 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.

88. Release from custody until ICE assesses and demonstrates that Petitioner is a flight risk or danger to the community, 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 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. If, in the alternative, the Court chooses to order a hearing for Petitioner at which the government bears the burden of justifying his continued detention, the government would bear no additional cost if the hearing is scheduled within seven days, rather than allowing him to sit in detention for days or weeks awaiting a hearing.

f. Without Release from Custody until the Government Provides a Due Process Hearing, the Risk of an Erroneous Deprivation of Liberty is High.

89. Releasing Petitioner from custody until he is provided 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 his detention will not be indefinite, or that the circumstances have changed since his release in 2007 such that evidence exists to establish that he is a danger to the community or a flight risk.

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[10] *Id.*

90. Under the process that ICE maintains is lawful—which affords Petitioner no process whatsoever—ICE can simply re-detain him at any point if the agency desires to do so, as ICE did on August 29, 2025. Petitioner has already been erroneously deprived of his liberty when he was suddenly re-arrested at his business, and the risk he will continue to be deprived is high if ICE is permitted to keep him detention after making a unilateral decision to re-detain 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 Petitioner. 8 C.F.R. § 241.4(e)-(f).

91. By contrast, the procedure Petitioner seeks—release from custody and no further re-detention until he is provided a hearing in front of a neutral adjudicator at which the government that his detention will not be indefinite, or otherwise that the circumstances have changed since his release in 2007 to justify his detention—is much more likely to produce accurate determinations regarding these factual disputes. *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).

92. Due process also requires consideration of alternatives to detention at any custody redetermination hearing that may occur. The primary purpose of immigration detention is to ensure removal *if* reasonably foreseeable. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if, as here, removal is not actually foreseeable. Accordingly, alternatives to detention must be considered in determining whether Petitioner's re-incarceration is

warranted.

II. Petitioner has the right to constitutionally adequate procedures prior to third country removal.

93. Prior to any third country removal, ICE must provide Petitioner 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.[11] 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. Sinodis 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)

94. 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 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).

95. An IJ must provide sufficient notice and opportunity to apply for protection from a

[11] *See supra* n.2.

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]").

96. 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.

97. 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).

98. 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).

99. 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

100. Congress established the statutory process for designating countries to which noncitizens may be removed, 8 U.S.C. § 1231(b)(1)-(3).[12]

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

102. 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).

103. 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

[12] 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).

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).

104. 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).

105. 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)).

106. 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).

107. 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 her 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**.

108. 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[.]").

109. 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").

110. 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.").

111. 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.

112. 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.

113. 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).[13] Although neither form was ever published, both reflect how notice must be provided to be meaningful.[14]

114. 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

[13] 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.

[14] 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.

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.*

115. 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.
>
> 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).

116. 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.").

117. 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.**

118. In circumstances similar to Petitioner'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."). Other courts throughout the country have also granted preliminary relief requiring notice and an opportunity to be heard before removal to any third country. *See Nguyen v. Scott*, No. 2:25-CV-01398 (W.D. Wash. Aug. 21, 2025) (PI prohibiting removing Nguyen to any country where he

is likely to face imprisonment upon arrival); *Zavvar v. Scott*, No. 25-2104-TDC, 2025 WL 2592543 (D. Maryland September 8, 2025 (Zavvar established that there is no significant likelihood that he will be removed in the reasonably foreseeable future…Court granted his detention not authorized by 8 U.S.C. § 1236(a)(6) and violates due process); *J.R. v. Bostock*, et al., No. 2:25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. June 30, 2025) (TRO prohibiting the government from removing J.R. to "any third country in the world absent prior approval from this Court"); *Vaskanyan v. Janecka*, No. 25-cv-1475, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025) (TRO prohibiting government from removing Vaskanyan "to a third country, i.e., a country other than the countries designated as he countries of removal in their final order of removal…without written notice to both he and his counsel in a language the he can understand).

119. 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 Sta3tes' 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.

120. Thus, it is clear that if Petitioner 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 fear-based protection, including 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

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

122. 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.

123. Petitioner had a vested liberty interest in his conditional release from custody on an OSUP. Due Process did not (and 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.

124. The Court must therefore order his immediate release from custody and further order that, prior to any re-arrest, 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 Petitioner 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

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

126. 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.

127. Petitioner had (and still 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.

128. Since 2007, Petitioner has complied with the conditions of release imposed on him by ICE via his OSUP, thus demonstrating that he is neither a flight risk nor a danger. Re-arresting him now was punitive and violated his constitutional right to be free from the unjustified

deprivation of his liberty.

129. For these reasons, Petitioner's re-arrest without first being provided a hearing violated the Constitution.

130. The Court must therefore order his immediate release from custody and further order that, prior to any re-arrest, 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 Petitioner 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

Violation of 8 U.S.C. § 1231(a) – Re-Arrest and Re-Incarceration

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

132. The INA requires mandatory detention of individuals with final removal orders only during the ninety-day removal period. 8 U.S.C. § 1231(a)(2).

133. A noncitizen who is not removed within that period "shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3).

134. While 8 U.S.C. § 1231(a)(6) permits detention beyond the removal period in certain situations, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Zadvydas*, 533 U.S. at 699.

135. No statute permits Respondents to re-detain an individual who has been released under § 1231(a)(3) without evidence that removal is now reasonably foreseeable or that the individual has violated the conditions of their release.

136. Petitioner was previously released by ICE on an OSUP after an individualized custody determination that considered any danger or unmitigable flight risk. He has an interest in remaining free from physical confinement where removal is not reasonably foreseeable, where he has not violated the conditions of his release, and where re-detention is unlawful because

Respondents have not created a lawful mechanism to ensure that he receives meaningful notice and an opportunity to present a fear-based claim before removal to a third country.

FOURTH CAUSE OF ACTION

Violation of the APA – Unlawful Re-Arrest and Re-Incarceration

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

138. Petitioner was previously released by Respondents on an OSUP 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—i.e., he has violated a condition of release or there is a "significant" likelihood that he will be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(1), (2); 8 C.F.R. § 1231(a)(6).

139. Because Respondents revoked his release absent any material change in circumstnaces, their actions would be 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 Petitioner have a liberty interest in remaining out of custody on her Form I-220B OSUP. *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019). He should therefore be immediately released from custody and, prior to any re-arrest, be provided 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.*

FIFTH CAUSE OF ACTION

Violation of the INA and Applicable Regulations – Re-Arrest and Re-Incarceration

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

141. The INA provides for detention during the ninety-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-day removal period, the INA and its applicable regulations provide that detaining a noncitizen 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).

142. Respondents are not permitted to detain Petitioner 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, Petitioner received a determination from the agency in 2007 when it issued him a Form I-220B and permitted him to remain out of custody in the first place. 8 C.F.R. § 241.13(i)(2)-(3).

SIXTH CAUSE OF ACTION

Violation of Procedures for Revocation of Release

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

144. Respondents must notify Petitioner of the reason for his detention. 8 C.F.R. § 241.13(i)(3). The regulations also require Respondents to afford him an initial interview promptly after their detention at which he can respond to the purported reasons for revocation. *Id.*

145. Respondents have not provided Petitioner adequate and timely notice of the reasons for revocation. Respondents also have not timely provided him with an initial interview or an opportunity to respond.

SEVENTH 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

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

147. 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.").

148. Petitioner 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.

149. 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.

150. Petitioner 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). Petitioner 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).

151. By failing to implement a process or procedure to afford Petitioner 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 Petitioner's substantive and procedural due process rights and are not implementing procedures required by the INA, FARRA, and the implementing regulations.

152. Accordingly, the Court should declare that Respondents would violate Petitioner'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 him to a third country.

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

154. For these reasons, Petitioner's removal to any third country without adequate notice and an opportunity to apply for fear-based relief, including protection 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 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 that Petitioner's detention is unlawful in violation of *Zadvydas* because his removal is not reasonably foreseeable;

(3) Order that Petitioner's detention is unlawful in violation of 8 C.F.R. § 241.13(i)(2) because there are no changed circumstances showing that he is a danger or a flight risk, or that there is a significant likelihood that he may be removed in the reasonably foreseeable future;

(4) Order that Petitioner's detention is unlawful because ICE did not follow its own regulations in arresting him on August 29, 2025;

(5) Order the immediate release of Petitioner from custody because his detention is not reasonably foreseeable in violation of *Zadvydas*;

(6) Order the immediate release of Petitioner from custody because his detention is unlawful in violation of 8 C.F.R. § 241.13(i)(2);

(7) Order that Petitioner detention is unlawful because ICE did not follow its own regulations in arresting him on August 29, 2025, and therefore his detention

is unlawful;

(8) Order the immediate release of Petitioner from custody on any other basis that this Court finds proper;

(9) Order that, prior to any future re-detention, Petitioner must be provided a hearing before a neutral adjudicator to determine whether his re-detention would be lawful because the government has shown that he is now a danger or a flight risk and that his removal is reasonably foreseeable. During such hearing, the neutral adjudicator must further consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk that DHS may establish;

(10) Order that Petitioner cannot be removed to any third country without first being provided constitutionally compliant procedures, including:

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

b. A meaningful opportunity for Petitioner to raise a fear of return for eligibility for asylum, withholding of removal, and protection under the Convention Against Torture, including, at a minimum, a reasonable fear interview before a DHS officer;

c. If Petitioner demonstrates a reasonable fear during the interview, DHS must move to reopen his underlying removal proceedings so that he may apply for asylum, withholding of removal, and relief under the Convention Against Torture;

d. If it is found that Petitioner does not demonstrate a reasonable fear during the interview, a meaningful opportunity, and a minimum of fifteen days, for him to seek to move to reopen his underlying removal proceedings to challenge potential third-country removal;

(11) Award Petitioner reasonable costs and attorney fees; and

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

Dated: September 17, 2025

Respectfully submitted,

/s/ Johnny Sinodis
Johnny Sinodis
Chloe Czabaranek
Attorneys for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of Petitioner because I am one of his attorneys. I have discussed with Petitioner 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 17, 2025, in San Francisco, California.

/s/ Johnny Sinodis
Johnny Sinodis
Attorney for Petitioner