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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Vladimir Kaborda,

Petitioner-Plaintiff,

v.

Luis Rosa, Jr., Warden at Central Arizona Florence Correctional Complex;

John Cantu, Field Office Director, Phoenix Field Office, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

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

Kristi Noem, Secretary, U.S. Department of Homeland Security;

Pamela Bondi, Attorney General of the United States

Respondents-Defendants.

Case No. TBD

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, Vladmir Kaborda ("Mr. Kaborda"), by and through his undersigned counsel, hereby files this petition for habeas corpus and complaint for declaratory and injunctive relief to compel his immediate release from immigration detention, where he has been held by the U.S. Department of Homeland Security ("DHS") since September 17, 2025. At that time, Mr. Kaborda appeared for a regularly scheduled check-in with Immigration and Customs Enforcement ("ICE"), and DHS revoked his order of supervision without providing any indication that circumstances have changed so as to warrant revocation of the OSUP, and without showing that he will be removed in the reasonably foreseeable future.

2. Mr. Kaborda has lived in the United States for over thirty years after entering lawfully on a B2 visitor visa in March 1995. On May 11, 2012, an Immigration Judge ("IJ") ordered Mr. Kaborda removed to his native Belarus. The Board of Immigration Appeals ("BIA" or "Board") affirmed the IJ's order on October 30, 2013. Because Mr. Kaborda did not appeal his order of removal, it became final on November 29, 2013.

3. When Mr. Kaborda reported to ICE for removal in 2013, he was not removed but was given an Order of Supervision ("OSUP"). ICE informed him that he could not be removed because his passport was issued by the Union of Soviet Socialist Republics ("USSR"), and on that basis, Belarus would not accept him for removal. Since 2013, Mr. Kaborda has complied with all the terms of his OSUP, and upon information and belief, ICE has not obtained documents to remove him to Belarus or any other

country. Mr. Kaborda asserted a fear of removal to Belarus to ICE upon his recent detention, but ICE refused to hear his claim.

4. Therefore, there is no substantial likelihood that Mr. Kaborda will be removed from the United States in the reasonably foreseeable future, and his continued detention in immigration custody is unlawful because it is limitless in duration, and because he was not provided with any pre-deprivation hearing.

5. By statute and regulation, ICE has the authority to detain a noncitizen previously ordered removed and subject to an OSUP only in specific circumstances, including where an individual violates any condition of release or the individual's conduct demonstrates that release is no longer appropriate. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). That authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the particular facts of Mr. Kaborda's case, due process required notice and a hearing, *prior to any re-arrest*, at which he was afforded the opportunity to advance his arguments as to why he should not be re-detained.

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

7. 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).

8. Further, the Supreme Court has limited the potentially indefinite post-removal order detention to a maximum of six months after the removal order becomes final, where removal is not reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Because ICE has not indicated that it has secured travel documents for Mr. Kaborda's removal, his removal is not reasonably foreseeable in this case, and the government has not provided him with notice, evidence, or an opportunity to be heard on this issue either before arbitrarily revoking the OSUP and detaining him. His continued detention without any reasonably foreseeable end point is thus unconstitutionally indefinite in violation of clear Supreme Court precedent.

9. The basic principle that individuals placed at liberty are entitled to process before the government imprisons them has particular force here, where Mr. Kaborda was *already* afforded an OSUP nearly twelve years ago, after which he faithfully complied with the OSUP's terms and deepened his ties to numerous family members in the United States. Under these circumstances, DHS was required to afford Mr. Kaborda the opportunity to advance arguments in favor of his freedom before it robbed him of his

liberty. For these reasons, and because Mr. Kaborda's detention has the potential to be indefinite, he must be released from custody and should not be re-detained unless and until DHS proves to an Immigration Judge that his removal to Belarus is reasonably foreseeable. Several federal district courts have already ordered similar relief. *See Quoc Chi Hoac v. Becerra*, 2025 U.S. Dist. LEXIS 136002, 2025 LX 206685 (E.D. Cal. July 16, 2025); *Phong Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 U.S. Dist. LEXIS 136000 (E.D. Cal. July 16, 2025); *Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR, 2025 U.S. Dist. LEXIS 133521 (E.D. Cal. July 14, 2025); *Karem Tadros v. Noem*, No. 25cv4108 (EP), 2025 U.S. Dist. LEXIS 113198 (D.N.J. June 13, 2025). During any custody redetermination hearing that occurs, the Immigration Judge must further consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk that DHS may establish.

10. Additionally, Mr. Kaborda has never been ordered removed to any third country or notified of such potential removal. Given the Supreme Court of the United States' decision on June 23, 2025, in *U.S. Department of Homeland Security, et al. v. D.V.D., et al.*, No. 24A1153, 2025 WL 1732103 (June 23, 2025), which stayed the nationwide injunction that had precluded Respondents from removing noncitizens to third countries without notice and an opportunity to seek fear-based relief, ICE appears emboldened and intent to implement its campaign to send noncitizens to far corners of

the planet—places they have absolutely no connection to whatsoever[1]—in violation of clear statutory obligations set forth in the Immigration and Nationality Act ("INA"), binding treaty, and due process. In the absence of the nation-wide injunction, individual lawsuits like the instant case are the only method to challenge the illegal third-country removals to countries a noncitizen has never been ordered removed.

11. The Supreme Court's order in *D.V.D., et al.*, which is not accompanied by an opinion, signals only disagreement with the nature, and not the substance, of the nationwide preliminary injunction. Thus, in this individual habeas petition, Mr. Kaborda 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 ("CAT").[2] District courts have recently ordered similar relief. *See Quoc Chi Hoac v. Becerra*, 2025 U.S. Dist. LEXIS 136002, 2025 LX 206685 (E.D. Cal. July 16, 2025); *Phong Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 U.S. Dist. LEXIS 136000 (E.D. Cal. July 16, 2025); *Delkash v. Noem*, No. 5:25-cv-01675-HDV-AGRx, 2025 U.S. Dist. LEXIS 133909 (C.D. Cal. July 14, 2025); *J.R. v.*

[1] CBS News, "Politics Supreme Court lets Trump administration resume deportations to third countries without notice for now" (June 24, 2025), available at: https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-to-third-countries-without-notice/; *see also* Catholic Legal Immigration Network, "Updates on Third Country Removals and the D.V.D. Litigation," June 26, 2025, available at: https://www.cliniclegal.org/resources/removal-proceedings/updates-third-country-removals-and-dvd-litigation.

[2] United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984), available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading.

Bostock, No. 2:25-cv-01161-JNW, 2025 U.S. Dist. LEXIS 124229 (W.D. Wash. June 30, 2025).

CUSTODY

12. Petitioner is detained by DHS at the Florence Correctional Complex in Florence, Arizona, where he was transferred after being arrested by ICE at his check-in appointment in Phoenix, Arizona. The Florence Correctional Complex is within the jurisdiction of this Court. Prior to and since being arrested by ICE in Phoenix, Petitioner has not been provided with a constitutionally compliant hearing to assess whether the revocation of his OSUP, and his resulting detention, is warranted.

JURISDICTION

13. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 5 U.S.C. § 701 *et seq.*, the 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.

14. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651 to protect Petitioner's rights under the Due Process Clause of the Fifth Amendment to the United States Constitution, the Excessive Bail Clause of the Eighth Amendment, and

under applicable Federal law, and to issue a writ of habeas corpus for his immediate release. *See generally INS v. St. Cyr*, 533 U.S. 289 (2001); *Zadvydas*, 533 U.S. 678.

REQUIREMENTS OF 28 U.S.C. § 2243

15. Ordinarily, 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).

16. 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).

17. 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

18. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the Respondents are employees or officers of the United States, acting in their

official capacity; because a substantial part of the events or omissions giving rise to the claim occurred in the District of Arizona; because Petitioner is currently detained in the District of Arizona; and because there is no real property involved in this action.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

19. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* (*quoting Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Petitioner asserts that exhaustion is satisfied as there is no administrative jurisdiction over his detention status because he already has a final order of removal.

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

PARTIES

21. Petitioner Vladimir Kaborda was born in the USSR, in the part of that country that is now Belarus. He entered the United States in March 1995 on a B2 visitor visa. On November 16, 1998, Mr. Kaborda adjusted his status to that of a conditional

lawful permanent resident based on his marriage to a United States citizen. He has never entered the United States unlawfully. On October 25, 2000, Mr. Kaborda and his wife jointly filed a Form I-751, Petition to Remove Conditions on Residence, with United States Citizenship and Immigration Services ("USCIS"). USCIS denied the petition on March 27, 2008, and terminated Mr. Kaborda's conditional residence. On May 11, 2012, an IJ ordered Mr. Kaborda removed, and the Board affirmed the IJ's decision on October 30, 2013. Mr. Kaborda did not appeal the Board's decision, and his removal order became final on November 29, 2013. When Mr. Kaborda appeared for removal in 2013, ICE did not remove him, but allowed him to remain at liberty on an OSUP. Mr. Kaborda complied with the terms of the OSUP since that time. On September 17, 2025, without prior notice or a hearing, ICE took Mr. Kaborda into custody during a routine check-in appointment in Phoenix, Arizona. Once he was in custody, Mr. Kaborda never received a custody status review either before or after ICE revoked his OSUP and detained him.

22. Respondent Luis Rosa, Jr., is the warden of the Central Arizona Florence Correctional Complex, where Petitioner is being held. Respondent Rosa oversees the day-to-day operations of the Central Arizona Florence Correctional Complex and acts at the direction of Respondents Lyons, Noem, and Cantu. He is a custodian of Petitioner and is named in his official capacity.

23. Respondent John Cantu is the Acting Field Office Director of ICE, in Phoenix, Arizona, and is named in his official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law

and oversees custody determinations. In his official capacity, he is the legal custodian of Petitioner.

24. Respondent Todd 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.

25. 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.

26. Respondent Pamela 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 immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA.

STATEMENT OF FACTS

27. Mr. Kaborda was born in the USSR, in the region that later became the country of Belarus. *See* Exhibit A (Declaration of Petitioner); Exhibit B (Notice to Appear). Mr. Kaborda entered the United States for the first time in March 1995 on a B2 visitor visa. *See* Exhibit A. He married Sara Gotbeter ("Ms. Gotbeter"), a United States citizen, and on November 16, 1998, he became a conditional lawful permanent resident of the United States. Exhibits A, B.

28. On October 25, 2000, Mr. Kaborda and Ms. Gotbeter jointly filed a Form I-751, Petition to Remove Conditions on Residence, with USCIS. *See* Exhibit C (March 27, 2008 Decision of USCIS). USCIS denied the petition on March 27, 2008, after finding that Mr. Kaborda and Ms. Gotbeter married for the sole purpose of circumventing the immigration laws. *Id.* USCIS therefore terminated Mr. Kaborda's conditional residence. *See* Exhibits B, C.

29. On May 11, 2012, an IJ in Charlotte, North Carolina ordered Mr. Kaborda removed under 8 U.S.C. § 1227(a)(1)(D)(i), as a noncitizen lawfully admitted for permanent residence on a conditional basis whose status was terminated. Exhibit B; *see also* Exhibit D (October 30, 2013 Decision of the Board of Immigration Appeals). Mr. Kaborda appealed to the Board, which affirmed the IJ's order on October 30, 2013. Exhibit D. Mr. Kaborda did not appeal the Board's order, and as such, his order of removal became final on November 29, 2013. *See* Exhibit A.

30. In 2013, Mr. Kaborda presented himself to ICE for removal to Belarus and submitted paperwork through ICE to the Belarus Embassy to seek travel documents. *See*

Exhibit A. To Mr. Kaborda's knowledge, no response was ever received to these requests. *Id.* Indeed, when Mr. Kaborda provided his deportation officer with his USSR passport, the officer explained that ICE could not remove Mr. Kaborda with that passport because USSR no longer exists. *Id.* ICE did not request further paperwork from Mr. Kaborda for removal to Belarus in more recent years. *See id.* ICE then proceeded to place Mr. Kaborda on an OSUP because his removal order to Belarus could not be executed. *Id.*

31. Mr. Kaborda moved from Greenville, South Carolina to Phoenix, Arizona, where he lived until his recent detention. *Id.* Mr. Kaborda attended check-ins regularly since 2013. *Id.* At first, he was required to report to ICE every few months, but following the COVID pandemic he was required to report only once per year. *Id.* Mr. Kaborda has always followed all the terms designated by ICE on his OSUP, and he has never failed to check in. *Id.*

32. Mr. Kaborda has also diligently pursued options for obtaining travel documents. As previously mentioned, after his removal order and in the few years that followed, he submitted paperwork through ICE to the Belarus Embassy for the purpose of obtaining travel documents. *Id.* To his knowledge, no response was ever received to those requests. *Id.* He has not been asked to submit paperwork through ICE again in recent years. *Id.* In 2017, at the request of ICE, Mr. Kaborda and his new wife – a United States citizen named Yulia – began to investigate a way for him to leave the U.S. and immigrate to another country. *Id.* Mr. Kaborda had informed ICE that he feared removal to Belarus, and ICE told him to pursue ways to leave the United States for another country. *Id.* Mr. Kaborda and his wife therefore spoke with immigration attorneys in

Canada and Australia but were advised that Mr. Kaborda had no options to immigrate to either country. *Id.* Mr. Kaborda provided his deportation officer with the communications and appointments he had with these attorneys to show her that he was abiding by ICE's request to make efforts to obtain travel documents. *Id.*

33. On September 17, 2025, ICE, without prior notice or a hearing, took Mr. Kaborda into custody in Phoenix, Arizona, at his yearly check-in with ICE. *Id.* ICE informed him that he was being detained because he had an unexecuted order of removal since 2012. *Id.* He inquired what country he would be removed to but was simply told "That's not our problem." *Id.* Mr. Kaborda was not provided with any documentation at the time of his detention. *Id.*

34. As of the time of this filing, Mr. Kaborda has not been provided with any documentation nor has he had any meetings with ICE while detained. *Id.* He does not have any information regarding what ICE's plan is for obtaining travel documents for him. *Id.*

35. Mr. Kaborda fears removal to Belarus because he does not know if he has citizenship there, because when he left in 1995, he possessed a USSR passport. *Id.* His uncertainty with regard to his citizenship puts him at risk of mistreatment, incarceration, torture, conscription, and death because he does not possess any rights in Belarus. *Id.* Additionally, Mr. Kaborda believes his strong ties to the U.S. are heavily frowned upon because Belarus, an internationally recognized authoritarian republic, views the U.S. as

an enemy who may come to think he has been planted as a spy by American authorities. *Id.*

36. Upon Mr. Kaborda's detention, he expressed his fear of removal to ICE, but the only response he received was, "That's not my problem." *Id.* On September 29, 2025, Mr. Kaborda filed a motion to reopen his removal proceedings before the Board of Immigration Appeals. *See* Exhibit E (Screenshot from Automated Case Information System of Executive Office for Immigration Review). In that motion, Mr. Kaborda expressed his fear of removal to Belarus and filed an application for asylum. *See* Exhibit A. The motion is pending, and proceedings have not been reopened. Exhibit E.

37. Mr. Kaborda has been sick for the majority of his time in detention with a bad cold due to freezing conditions in the detention center. *See* Exhibit A. He is suffering from excessive mucous buildup in his eyes, congestion, and a runny nose. *Id.* He is receiving medical care every day for nasal congestion, cough, and allergies. *Id.* He also has a history of stroke, and he has been receiving stroke medication, which includes aspirin and cholesterol medications. *Id.*

38. In detention, Mr. Kaborda has been separated from his U.S.-citizen wife, their U.S.-citizen daughter, who is only eight years old, and his adult U.S.-citizen daughter. *Id.* He has received no information about why he is detained, nor about when or to where he might be taken. *Id.*

39. Since ICE provided Mr. Kaborda with an OSUP nearly twelve years ago, ICE did not seek to revoke the OSUP or detain Mr. Kaborda. Instead, for the well over a

decade, Mr. Kaborda was attending his routine check-in appointments as required, and developing connections with his family members—including his U.S.-citizen wife and children. *See id.*

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

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

42. Mr. Kaborda is also 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.[4]

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

[4] Clinic Legal, "Updates on Third Country Removals and the D.V.D. Litigation" (June 26, 2025), available at: https://www.cliniclegal.org/resources/removal-proceedings/updates-third-country-removals-and-dvd-litigation.

43. Intervention from this Court is therefore required to ensure that Mr. Kaborda 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

Right to a Hearing Prior to Detention and Revocation of OSUP.

44. Following a final order of removal, ICE is directed by statute to detain an individual for ninety (90) days 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).

45. If ICE fails to remove an individual during the ninety (90) day removal period, the law requires ICE to release the individual under conditions of supervision, including periodic reporting. 8 U.S.C. § 1231(a)(3) ("If the alien . . . is not removed within the removal period, the alien, pending removal, shall be subject to supervision."). Limited exceptions to this rule exist. Specifically, ICE "may" detain an individual beyond ninety days if the individual was ordered removed on criminal grounds or is determined to pose a danger or flight risk. 8 U.S.C. § 1231(a)(6). However, ICE's authority to detain an individual beyond the removal period under such circumstances is not boundless. Rather, it is constrained by the constitutional requirement that detention "bear a reasonable relationship to the purpose for which the individual [was] committed." *Zadvydas*, 533 U.S. at 690. Because the principal purpose of the post-final-order

detention statute is to effectuate removal, detention bears no reasonable relation to its purpose if removal cannot be effectuated. *Id.* at 697.

46. Post-final order detention is only authorized for a "period reasonably necessary to secure removal," a period that the Court determined to be presumptively six months. *Id.* at 699-701. After this six (6) month period, if a detainee provides "good reason" to believe that 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.

47. That said, detainees are entitled to release even before six months of detention if 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*, 533 U.S. at 701.

48. Even where detention meets the *Zadvydas* standard for reasonable foreseeability, detention violates the Due Process Clause unless it is "reasonably related" to the government's purpose, which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at 700 ("[I]f removal is reasonably foreseeable, the habeas court should consider the risk of the alien's committing further crimes as a factor potentially justifying confinement within that reasonable removal period") (emphasis added); *Id.* at 699 (purpose of detention is "assuring the alien's presence at the moment of removal"); *Id.* at 690-91 (discussing twin justifications of detention as preventing flight and protecting the community). Thus, Mr. Kaborda must be released from custody because he does not pose

a danger or flight risk that warrants post-final-order detention, regardless of whether his removal can be effectuated within a reasonable period. This is especially so because ICE *has already* allowed Mr. Kaborda to remain at liberty pursuant to an OSUP for a period of nearly twelve years.

49. 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).

50. 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.*

51. Individuals with final orders who are released after a post-order custody review 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 Mr. Kaborda was, ICE cannot revoke such an order without cause or adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3).

Petitioner's Protected Liberty Interest in His Release

52. 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*, 533 U.S. at 690.

53. For nearly twelve years preceding his detention on September 17, 2025, Petitioner exercised that freedom under his prior OSUP, issued in 2013. *See* Exhibit A. He thus retained a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972). 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 a change in policy that permits Petitioner's removal to Belarus, his removal is not foreseeable at all, let alone reasonably. Indeed, Mr. Kaborda's only passport is from the USSR; he may not be a citizen of Belarus; and ICE has provided no indication that anything has changed since it

tried, but failed, to obtain travel documents for Petitioner from Belarus after he was ordered removed. Therefore, Petitioner's continued detention is unconstitutional.

54. Just as importantly, Petitioner continued presenting himself before ICE for his regular check-in appointments for nearly twelve years, where ICE did not seek to revoke his OSUP or arrest him during this time. *See* Exhibit A. ICE instead gave him a future date and time to appear again. *See id.*

55. 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.

56. 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).

57. 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).

58. 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. Like the terms of parole in *Morrissey*, the conditions of Mr. Kaborda's OSUP "enable[d] 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. Indeed, unlike in *Morrissey*, Petitioner has never been in criminal custody; ICE never previously found it necessary to detain him; and the terms of his OSUP in recent years required only annual reporting for check-ins. *See* Exhibit A.

59. Since Petitioner first received his OSUP in 2013, he has continued to build his life in the United States. He married a United States citizen, with whom he is raising a young daughter who is a United States citizen, and he maintains relationships with his adult, U.S.-citizen daughter. *See id.*

Petitioner's Liberty Interest Mandated a Due Process Hearing Before any Revocation of His OSUP or Detention

60. 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, and (3) where on information and belief ICE officers arrested Petitioner merely to fulfill an arrest quota because his removal is not reasonably foreseeable and potentially indefinite, due process mandates that he was required to receive notice and a hearing before an Immigration Judge prior to any re-detention.

61. "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 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)).

62. 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.*

63. Because, in this case, the provision of a pre-deprivation hearing both was possible and would have been valuable to preventing an erroneous deprivation of liberty, ICE was required to provide Petitioner with notice and a hearing *prior* to any incarceration and revocation of his OSUP. *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 required a pre-deprivation hearing before an Immigration Judge, which ICE failed to provide.[5]

Petitioner's Private Interest in His Liberty is Profound, and the Government's Interest in His Continued Detention Is Low.

64. Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Petitioner, who was

[5] *Johnson v. Arteaga v. Martinez*, 596 U.S. __, 142 S. Ct. 1827 (2022), is not to the contrary. The Supreme Court in that case did not address the requirements for revocation of an OSUP, and it specifically indicated that its prior decision in *Zadvydas* was still good law. 142 S. Ct. at 1832.

permitted to remain at liberty, subject to an OSUP, without ever being detained. 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. Petitioner has never been subject to criminal parole, and he has been reporting regularly for ICE check-ins while living in the community for nearly twelve years. *See* Exhibit A. Thus, Petitioner retains a truly weighty liberty interest.

65. 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 determination that he is entitled to remain at liberty on an OSUP, 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).

66. Thus, there is a profound private interest at stake in this case, which must

be weighed heavily when determining what process Mr. Kaborda is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35.

67. The government's interest in keeping Petitioner in detention without a due process hearing is low, and when weighed against Petitioner's significant private interest in his liberty, the scale tips sharply in favor of releasing Petitioner from custody unless and until the government demonstrates 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 Petitioner seeks—release from custody after ICE *already* determined, *nearly twelve years ago*, that he should remain at liberty subject to an OSUP, and where nothing in the interim has changed to warrant detention —is a standard course of action for the government. In the alternative, providing Petitioner with a hearing before an Immigration Judge to determine whether there is evidence that Petitioner is a flight risk or danger to the community 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).

68. As immigration detention is civil, it can have no punitive purpose. The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. Moreover, the Supreme Court has made clear that indefinite detention of noncitizens who cannot be removed to the country of the removal order is unconstitutional. In this case, the government cannot plausibly assert that it had a sudden interest in detaining Petitioner due to alleged dangerousness, or due

to a change in the foreseeability of his removal to Belarus as his circumstances have not changed since his first OSUP was issued in 2013.

69. Petitioner has continued to appear before ICE on a regular basis for every appointment that has been scheduled, first every few months and later once per year. *See* Exhibit A; *see also 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).

70. As to flight risk, Petitioner's post-release conduct in the form of full compliance with his check-in requirements further confirms that he is not a flight risk and that he is likely to present himself at any future ICE appearances, as he always has done. Petitioner has also complied with all of ICE's requests to submit documents to facilitate his removal to Belarus, and to inquire independently about obtaining documents for departure to another country where he does not fear persecution or torture. *See* Exhibit A. The government's interest in detaining Petitioner at this time is therefore low. That ICE has a new policy to make a minimum number of arrests each day under the current administration does not constitute a material change in circumstances or increase the government's interest in detaining him.[6] Moreover, nothing has changed regarding the lack of foreseeability of his removal to Belarus.

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[6] *Supra*, n. 3.

71. 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 Petitioner to sit in detention for days or weeks awaiting a hearing.

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

72. Releasing Petitioner from custody until he is provided with a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Petitioner can be lawfully detained, he must be provided with a hearing before an Immigration Judge at which the government is held to show that his detention will not be indefinite, or that the circumstances have changed since his OSUP was issued in 2013, such that evidence exists to establish that Petitioner is a danger to the community or a flight risk.

73. 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 September 17, 2025. Petitioner has already been erroneously

deprived of his liberty when he was detained at his check-in appointment, and the risk he will continue to be deprived is high if ICE is permitted to keep him in detention after making a unilateral decision to revoke his OSUP and 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. 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). Thus, the regulations permit ICE to unilaterally re-detain individuals, even for an oversight of any kind.[7]

74. By contrast, the procedure Petitioner seeks—release from custody until he is provided a hearing in front of an Immigration Judge at which the government must show that his detention will not be indefinite, or otherwise that the circumstances have changed since his release in 2013 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

[7] It is unknown in this case who made the determination to revoke Mr. Kaborda's OSUP and detain him. To the extent this remains unresolved, or if the Executive Associate Commissioner was not the signatory, that error on its own warrants Mr. Kaborda's immediate release. *See Ceesay v. Kurzdorfer*, No. 25-CV-0267-LJV, 2025 WL 1284720, *17 (W.D.N.Y. May 2, 2025) (holding that a petitioner detained based on notice of revocation signed by Assistant Field Office Director was entitled to release "on that basis alone"); *M.S.L. v. Bostock*, No. 25-CV-01204-AA, 2025 WL 2430267, *9-10 (D. Or. Aug. 21, 2025) (same where signatory was Deputy Field Office Director); *see also Umanzor-Chavez v. Noem*, No. SAG-25-01634, 2025 WL 2467640, *7 (D. Md. Aug. 27, 2025) (explaining that although "high-ranking" ICE employees "can execute the powers and duties of an immigration officer," that does not "indicate the reverse: that every immigration officer can execute the powers and duties of the higher-ranking supervisory officials").

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).

75. 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 revocation of the OSUP and incarceration are warranted.

Petitioner's Right to Immediate Release From Custody

76. In *Zadvydas*, the Supreme Court held that "the statute, read in light of the Constitution's demands, limits [a noncitizen's] post-removal-period detention to a period reasonably necessary to bring about that [noncitizen's] removal from the United States." 533 U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

77. There is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," and as such, "the Government must respond with evidence sufficient to rebut that showing." *Id.* Specifically, ICE has affirmatively forsworn its own responsibility for taking steps to effectuate Petitioner's removal to Belarus by stating that securing travel documents is "not [their] problem,"

despite Petitioner's extensive efforts throughout the years to obtain travel documents, both to Belarus and to other countries. Exhibit A; *see also Muhti v. Ashcroft*, 314 F. Supp. 418 (M.D. Pa. 2004) (holding, inter alia, that petitioner did not "hold[] the keys to his freedom" where he refused to sign Form I-229a, where petitioner did not refuse to comply with any "specific directive" from ICE).

78. Because ICE has not indicated that Belarus is willing to accept Petitioner, who holds only a USSR passport, there is no significant likelihood of removal to that country in the reasonably foreseeable future. *See* Exhibit A. Nor has ICE identified an alternative country for removal or provided Petitioner with an opportunity to express a fear of removal to any such country. *See id.* Indeed, ICE has proven alarmingly dismissive of Petitioner's fear claims, declaring that his fear of removal to Belarus is "not [ICE's] problem." *Id.* This response does not bode well for ICE's willingness to consider a claim of fear to any third country of removal. Accordingly, Petitioner's continued detention is unconstitutional.

79. Absent a substantial likelihood of removal in the reasonably foreseeable future – and absent any indication of danger or flight risk, as explained above – there is no proper justification for Petitioner's continued detention. *See Zadvydas*, 533 U.S. at 690-91 (concluding that the justification of preventing flight is "by definition . . . weak or nonexistent where removal seems a remote possibility," and "preventive detention based on dangerousness" is permitted "only when limited to specially dangerous individuals and subject to strong procedural protections").

80. Thus, under *Zadvydas*, "the court should hold continued detention unreasonable and no longer authorized by statute," and should order Petitioner's immediate release from custody. *Id.* at 699–700; *see also Zavvar v. Scott*, No. 25-2104-TDC, 2025 WL 2592543 (D. Md., Sep. 8, 2025) (granting petition and ordering release because petitioner's opportunity to seek fear-based relief from removal to third countries, and associated timeframes for adjudication of fear claims, demonstrated that there was no substantial likelihood of removal in the reasonably foreseeable future); *Chebib v. DHS*, 2020 WL 2561958 (N.D. Fla. Apr. 1, 2020) (ordering immediate release with order of supervision where removal not foreseeable) (R&R adopted in 2020 WL 25621277 (May 1, 2020)); *Manson v. Barr*, No. 3:20-CV-133, 2020 WL 3962235 (M.D. Fla. Jul. 13, 2020) (same); *Muhti*, 314 F. Supp. 2d at 430–31 (ordering release of the noncitizen where he showed, and the government failed to rebut, "substantial evidence that removal is unlikely in the reasonably foreseeable future"); *accord Cabrera Galdamez v. Mayorkas*, No. 22-CV-9847, 2023 WL 1777310 (S.D.N.Y. Feb. 6, 2023) (ordering bond hearing in lieu of immediate release despite detention beyond six-months following removal order, because Petitioner's appeal of withholding of removal denial was only impediment to removal); *Shahbaz H. v. Green*, No. 19-8052, 2019 WL 2723880 at *5 (D. N.J. July 1, 2019) (denying petition due to issuance of travel documents by country to which petitioner was ordered removed, but reasoning that "the Government can establish its continued authority to detain only if the Government can rebut [the] evidence and show that the alien's removal remains likely in the reasonably foreseeable future").

81. ICE's failure to comply with its own procedures by providing Petitioner with a pre-deprivation hearing also warrants his immediate release from custody. *See Cifuentes Rivera v. Arnott*, No. 4:25-CV-00570-RK (W.D. Mo. Oct. 7, 2025) (collecting cases and ordering immediate release upon a finding that ICE's failure to comply with its own pre-deprivation procedures for revocation of OSUP and re-detention violated petitioner's due process rights).

Right to Constitutionally Adequate Procedures Prior to Third Country Removal

82. Under the INA, Respondents have a clear and non-discretionary duty to execute final orders of removal only to the designated country or countries of removal. The statute explicitly states that a noncitizen "*shall* remove the [noncitizen] to the country the [noncitizen] . . . designates." 8 U.S.C. § 1231(b)(2)(A)(ii) (emphasis added). And even where a noncitizen does not designate the country of removal, the statute further mandates that DHS "shall remove the alien to a country of which the alien is a subject, national, or citizen." *See id.* § 1231(b)(2)(D); *see also generally Jama v. ICE*, 543 U.S. 335, 341 (2005).

83. As the Supreme Court has explained, such language "generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive," *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661 (2007) (quoting *Ass'n of Civilian Technicians v. Fed. Labor Relations Auth.*, 22 F.3d 1150, 1153 (D.C. Cir. 1994)); *see also Black's Law Dictionary* (11th ed. 2019) ("Shall" means "[h]as a duty to; more broadly, is required to . . . . This is the mandatory sense that drafters typically intend and that courts typically uphold."); *United States v. Monsanto*,

491 U.S. 600, 607 (1989) (finding that "shall" language in a statute was unambiguously mandatory). Accordingly, any imminent third country removal fails to comport with the statutory obligations set forth by Congress in the INA and is unlawful.

84. Moreover, 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 binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[8] 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.[9] This policy clearly violates due process and the United States' obligations under the Convention Against Torture. *See Sagastizado Sanchez v. Noem*, 5:25-CV-00104 (S.D. TX, Oct. 2, 2025) (finding due process right to review by immigration judge of USCIS reasonable fear determination as to third country of removal for noncitizen in removal proceedings under 8 U.S.C. § 1229a).

85. The U.S. District Court for the District of Massachusetts previously issued a nationwide preliminary injunction blocking such third country removals without notice

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[8] *See supra* n.2.

[9] Catholic Legal Immigration Network, "Updates on Third Country Removals and the D.V.D. Litigation," June 26, 2025, available at: https://www.cliniclegal.org/resources/removal-proceedings/updates-third-country-removals-and-dvd-litigation.

and a meaningful opportunity to apply for relief under the Convention Against Torture, in recognition that the government's policy violates due process and the United States' obligations under the Convention Against Torture. *D.V.D., et al.* v. *U.S. Department of Homeland Security, et al. v.*, 778 F. Supp. 3d 355, 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*, No. 24A884 (June 27, 2025), limiting nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals only disagreement with nature, and not the substance, of the nationwide preliminary injunction. *See Nguyen v. Scott*, -- F. Supp. 3d --, No. 25-CV-01398, 2025 WL 2419288, *22 (W.D. Wash. Aug. 21, 2025) (noting that the "Supreme Court did not decide *D.V.D.* on the merits, nor did it even necessarily rule on the class's likelihood of success on its due process and APA claims," and concluding that absent any "explanation of its reasoning," the court could not "ascertain from the Supreme Court's emergency order whether it found the government likely to succeed on its jurisdictional or substantive claims").

86. Thus, if Mr. Kaborda were to be removed to any third country it would violate his due process rights unless he is first provided with constitutionally adequate notice and a meaningful opportunity to apply for protection under the Convention Against Torture. In the absence of any other injunction, intervention by this Court is necessary to protect those rights. *See, e.g., Cruz-Medina v. Noem*, Case No. 25-CV-1768-ABA (D. Md. Oct. 7, 2025) (preliminarily enjoining removal of petitioner to third country pending

opportunity for IJ to review DHS adjudication of fear claim, after petitioner was re-detained after release on OSUP).

FIRST CAUSE OF ACTION

5 U.S.C. § 706(a)(2)(A) | Unlawful Revocation of OSUP and Detention

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

88. Petitioner was previously permitted to remain at liberty, subject to an OSUP, by Respondents because removal was not foreseeable, and he did not pose a danger or flight risk. Respondents have authority to revoke the OSUP and detain Petitioner only if circumstances have changed as to reasonable foreseeability, danger, or flight risk. 8 C.F.R. § 241.13(i)(2); 8 C.F.R. § 1231(a)(6). Respondents have made no allegation of changed circumstances, no less provided Petitioner with a pre-deprivation opportunity for rebuttal.

89. Respondents' actions are 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 v. Harper*, 520 U.S. 143, 150 (1997); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1001 (N.D. Cal 2018) (Corley, J.). 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 his OSUP. *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 2019 WL 6251231 (N.D. Cal. 2019). He should therefore be immediately released and in the future provided a full and fair hearing before an Immigration Judge 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. *Id.*

SECOND CAUSE OF ACTION

Violation of Procedures for Revocation of OSUP and Detention

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

91. Respondents must notify Petitioner of the reason for revocation of the OSUP and detention. 8 C.F.R. § 241.13(i)(3). The regulations also require Respondents to afford Petitioner an initial interview promptly after his detention at which he can respond to the purported reasons for revocation. *Id.* The regulations further provide that revocation of release on an OSUP must be determined by the Executive Associate Commissioner. 8 C.F.R. § 241.4(l).

92. Respondents have not provided Petitioner with adequate and timely notice of the reasons for revocation. Respondents also have not timely provided Petitioner with an initial interview or an opportunity to respond. Nor have Respondents identified which ICE official made the determination to revoke Petitioner's OSUP.

THIRD CAUSE OF ACTION

Accardi Doctrine | Violation of the INA and Applicable Regulations

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

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

95. Respondents are not permitted to detain Petitioner based on his prior order of removal and without any determination of whether circumstances have changed such that his removal is reasonably foreseeable, and a determination of his danger and flight risk, by an Immigration Judge. This is especially true where, as here, Petitioner received a determination from the agency issuing him Form I-220B that permitted him to remain out of custody in the first place. 8 C.F.R. § 241.13(i)(2)-(3).

FOURTH CAUSE OF ACTION

Procedural Due Process – Unconstitutionally Indefinite Detention

U.S. Const. amend. V

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

97. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law."

98. Other than as punishment for a crime, due process permits the government to take away liberty only "in certain special and narrow nonpunitive circumstances ... where a special justification ... outweighs the individual's constitutionally protected

interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690. Such special justification exists only where a restraint on liberty bears a "reasonable relation" to permissible purposes. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992). In the immigration context, those purposes are "ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community." *Zadvydas*, 533 U.S. at 690 (quotations omitted).

99. Those substantive limitations on detention are closely intertwined with procedural due process protections. *Foucha*, 504 U.S. 78-80. Noncitizens have a right to adequate procedures to determine whether their detention in fact serves the purpose of ensuring their appearance or protecting the community. *Id.* at 79; *Zadvydas*, 533 U.S. 692. Where laws and regulations fail to provide such procedures, the habeas court may assess whether the noncitizen's immigration detention is reasonably related to the purposes of ensuring his appearance or protecting the community, *Zadvydas*, 533 U.S. at 699, or require release.

100. Under this framework, Petitioner's release is required because the revocation of his OSUP and his subsequent detention violate his due process rights.

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

102. Because Petitioner's detention is unconstitutionally indefinite, it violates due process and is unlawful. Moreover, because Petitioner faces detention without any meaningful determination of whether circumstances have changed such that his removal

is reasonably foreseeable, and whether he poses a danger or flight risk, his detention violates due process.

103. The revocation of Petitioner's OSUP and his detention are unconstitutionally indefinite because he cannot be removed to Belarus. Thus, his removal is not reasonably foreseeable in this case, and the government has not provided him with notice, evidence, or an opportunity to be heard on this issue either before arbitrarily re-detaining him. His continued detention without any reasonably foreseeable end point is thus unconstitutionally prolonged in violation of clear Supreme Court precedent. *Zadvydas v. Davis*, 533 U.S. at 701.

104. Moreover, because Petitioner poses no danger or flight risk, his detention was and is not reasonably related to its purposes and is unlawful.

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

FIFTH CAUSE OF ACTION

Procedural Due Process – Unconstitutionally Inadequate Procedures Regarding Third Country Removal and Transfer Outside This Judicial District

U.S. Const. amend. V

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

107. 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.").

108. Petitioner has a protected interest in his life. Thus, prior to removal to any third country, Petitioner 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.

109. For these reasons, Petitioner's removal to any third country without adequate notice and an opportunity to apply for relief under the Convention Against Torture would violate his due process rights. The only remedy for this violation is for this Court to order that he not be summarily removed to any country other than Belarus unless and until he is provided with constitutionally adequate procedures.

110. To prevent ouster of this Court's habeas jurisdiction, the Court should, pursuant to 28 U.S.C. §§ 1651(a) (All Writs Act), 2241, issue a limited order prohibiting Respondents from transferring Petitioner outside the Court's District or otherwise changing his immediate custodian without prior leave of Court while this action is pending.

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 there is a significant likelihood that he may be removed in the reasonably foreseeable future;

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

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

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

(7) Order that, prior to any future re-detention, Petitioner must be provided a hearing before an Immigration Judge where DHS bears the burden of justifying Petitioner's re-detention, and that the Immigration Judge must further consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk that DHS may establish;

(8) 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 country to which he may be removed, in a language that Petitioner can understand, provided at least 21 days before any such removal;

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

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

d. If it is found that Petitioner does not demonstrate a reasonable fear during the interview, a meaningful opportunity, and a minimum of 15 days, for Petitioner to seek to move to reopen his underlying removal proceedings to challenge potential third-country removal;

(9) Order that Respondents be prohibited from transferring Petitioner outside the Court's District or otherwise changing his immediate custodian without prior leave of Court while this action is pending;

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

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

Dated: October 14, 2025

Respectfully submitted,

s/Jesse Evans-Schroeder
Jesse Evans-Schroeder, Esq.
Counsel for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Amended Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this 14th day of October, 2025 in Tucson, Arizona.

/s/Jesse Evans-Schroeder
Jesse Evans-Schroeder
Attorney for Petitioner