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UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

Trung Dang Mai

Petitioner,
v.

Mark Bowen, Warden, Adelanto Detention Facility,

Thomas P. Giles, Director of Los Angeles Field Office,

Todd Lyons, Acting Director,
U.S. Immigration and Customs Enforcement,

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

Pamela Bondi,
Attorney General of the United States,

in their official capacities ,
Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

A No. [redacted]

INTRODUCTION

Petitioner Trung Dang Mai's [redacted] parents are originally from Vietnam, but he was born in a refugee camp in the Philippines. Despite this, he is not a citizen of the Philippines nor is it clear whether he is a citizen of Vietnam. Petitioner has lived in the United States since he was 17 days old. He entered the U.S. on [redacted] 1985, as a lawful permanent resident and grew up entirely in this country. He is the son of U.S. citizens, including his father, a Vietnam War veteran, and is the primary caregiver for his U.S. citizen son with severe autism. His child relies on him for day-to-day activities. The child is now suffering severe hardships in the absence of his father, who is his primary caretaker.

Petitioner was convicted of attempted murder around 2004. As a result of this conviction, Petitioner was ordered removed from the United States on July 29, 2004. At that time, Petitioner was in Immigration and Customs Enforcement (ICE) custody for about four months. After ICE was unable to effectuate his removal, he was released approximately the same year. He was then detained again by ICE a second time in 2006, as the result of new conviction related to drug transportation. Petitioner was held for about four months during this period, then subsequently released because again, ICE could not remove him.

On September 24, 2025, he was again detained by ICE – now, his *third* immigration detention since he was ordered removed – and is being held at the Adelanto Detention Facility in Adelanto, CA. Petitioner has an open criminal case, filed in 2024 in Orange County. As a result of his immigration detention, he is unable to appear for the matter and properly defend against it.

To date, the U.S. government has been unable to effectuate his removal. Vietnam does not accept deportees who arrived in the U.S. before July 12, 1995, a policy established in the 2008 repatriation agreement between the U.S. and Vietnam. Mr. Mai entered the U.S. on [redacted] 1985, and therefore falls within the group protected from removal.

Despite these facts, the government continues to detain him, even though his legal custody has now extended well beyond the 90-day statutory removal period authorized by 8 U.S.C. § 1231(a). His current detention, in light of the government's failure to effectuate removal and the absence of any foreseeable prospect of removal, is unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and violates the Due Process Clause of the Fifth Amendment. Petitioner was also given no notice of his detention and ICE failed to follow procedural requirements in making the decision to detain him, including a realistic assessment of whether removal was actually possible or probable. In detaining him without any likelihood of actual removal, Respondent violated Petitioner's Procedural Due Process rights.

Despite these legal and diplomatic barriers to removal, ICE continues to detain him without providing evidence that his removal is likely in the reasonably foreseeable future. His continued detention constitutes custody for habeas purposes under *Jones v. Cunningham*, 371 U.S. 236 (1963), and *Rumsfeld v. Padilla*, 542 U.S. 426 (2004).

Petitioner's detention has exceeded the 90-day statutory removal period authorized by 8 U.S.C. § 1231(a) and is unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001). Under *Zadvydas*, detention becomes presumptively unreasonable after six months unless the government can show a significant likelihood of removal in the reasonably foreseeable future. It cannot do so here. Accordingly, Mr. Mai respectfully petitions this Court for a writ of habeas corpus ordering his immediate release under appropriate conditions of supervision. However, the presumption of reasonable detention can be rebutted if Petitioner can show his deportation is unlikely.

To vindicate Petitioner's statutory and constitutional rights, this Court should grant the instant petition for a writ of habeas corpus. Absent an order from this Court, Petitioner will continue to suffer indefinite detention in violation of the

Constitution and federal immigration law while facing no viable prospect of removal elsewhere.

Petitioner asks this Court to find that his continued detention beyond the statutory removal period, in the absence of a realistic prospect of removal, violates the Fifth Amendment and 8 U.S.C. § 1231(a), and to order his immediate release under appropriate conditions of supervision.

JURISDICTION

This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Jurisdiction is proper because Petitioner challenges the legality of his continued civil immigration detention under 8 U.S.C. § 1231(a) and the Constitution, and no statute strips this Court of jurisdiction to review such claims.

This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 16.

VENUE

Venue is proper in the United States District Court for the Central District of California pursuant to 28 U.S.C. § 1391(e) and 28 U.S.C. § 2241 because Petitioner is currently detained at the Adelanto Detention Facility, located in Adelanto, California, which lies within the jurisdiction of this District.

In addition, venue is proper because a substantial part of the events and omissions giving rise to the claims occurred in this District, including Petitioner's current and ongoing detention. *See Doe v. Garland*, 109 F.4th 1188, 1197-99 (9th Cir. 2024). Respondents are officers and agencies of the United States, and no real property is involved in this action.

REQUIREMENTS OF 28 U.S.C. § 2243

The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause 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).

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). Given that Mr. Mai is currently physically detained, an expedited timeline for briefing and adjudication is appropriate under the statute.

PARTIES

Petitioner Trung Dang Mai is a noncitizen from Vietnam who is currently detained at Adelanto Detention Facility in Adelanto, California. He is in custody and under the direct control of Respondents and their agents.

Respondent Mark Bowen is the Warden of Adelanto Detention Facility in Adelanto, CA, has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens. Respondent, Warden of Adelanto Detention Facility, is a legal custodian of Petitioner.

Respondent Thomas P. Giles is sued in his official capacity as the Director of the Los Angeles Field Office of U.S. Immigration and Customs Enforcement. Respondent Giles is a legal custodian of Petitioner and has the authority to release him.

Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, Respondent Bondi has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

Petitioner was born on [redacted] 1985, in a refugee camp in the Philippines, to Vietnamese parents. He entered the United States as a lawful permanent resident on [redacted] 1985, at just 17 days old. He has lived in the United States his entire life and considers this country his home. His parents and siblings are all naturalized U.S. citizens. His father, Tre Mai, served in the U.S. military during the Vietnam War. Mr. Mai is the father of two U.S. citizen children, including Jacob Mai, who suffers from severe autism. Prior to detention, Mr. Mai was Jacob's primary caretaker and responsible for his daily care and medical needs.

Petitioner was convicted of attempted murder around 2004. As a result of this conviction, Petitioner was ordered removed from the United States on July 29, 2004. *See* Exhibit A- Final Order of Removal 2004. At that time, Petitioner was in Immigration and Customs Enforcement (ICE) custody for about four months. After ICE was unable to effectuate his removal, he was released approximately the same year. He was then detained again by ICE a second time in 2006, as the result of new conviction related to drug transportation. Petitioner was held for about four months, then subsequently released because again, ICE could not remove him.

The long history of this case shows that there is zero possibility that Petitioner can be removed from the United States, and therefore, his detention is unlawful.

Petitioner's liberty has been restrained since he was ordered removed and placed on an Order of Supervision in 2004

Apart from the two immigration detentions in 2004 and 2006, Petitioner has been under an Order of Supervision (OSUP). That supervision included regular check-ins, movement restrictions, and ongoing compliance obligations that significantly restrained his liberty. As such, he was in "custody" for purposes of habeas jurisdiction and constitutional review. The Supreme Court has long recognized that habeas "custody" includes legal restraints short of incarceration. In

Jones v. Cunningham, 371 U.S. 236, 240 (1963), the Court held that a person on parole was "in custody" for purposes of § 2241 because he remained subject to "restraints not shared by the public generally." Similarly, in *Rumsfeld v. Padilla*, 542 U.S. 426, 437 (2004), the Court reiterated that "[o]ur understanding of custody has broadened to include restraints short of physical confinement."

Multiple federal courts have found that individuals released under an ICE Order of Supervision (OSUP) remain "in custody" for habeas purposes where ICE retains the authority to re-detain them at any time and imposes ongoing restraints on their liberty. See *Ali v. DHS*, 571 F. Supp. 2d 1246, 1249 (N.D. Cal. 2008). The Ninth Circuit has likewise held that significant restrictions on liberty—such as monitoring, travel limitations, and mandatory check-ins—implicate constitutional protections. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

Accordingly, Petitioner's time under OSUP from 2004 until his current detention must be understood as a period of continuous civil custody. The government's sustained legal authority over his movement and freedom placed him firmly within the scope of "custody" as defined in habeas jurisprudence. His transition from constructive custody to physical detention does not reset or sever that custody—it represents a continuation, and indeed an intensification, of ICE's unbroken control. As such, Petitioner remains entitled to the constitutional protections articulated in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and its progeny.

In this case, the government has had over two decades to effectuate his removal. Despite that time, it has failed to obtain travel documents, identify a receiving country, or present any evidence that removal is likely. This failure, especially in light of the government's continued exercise of civil custody, constitutes not merely a practical obstacle but a violation of the constitutional limits set forth in *Zadvydas*. *See also Bah v. Cangemi*, 489 F. Supp. 2d 905, 922 (D. Minn. 2007) ("The government cannot benefit from its own inaction and simultaneously detain the petitioner indefinitely.").

Petitioner's prolonged and repeated detentions with no end in sight and no flight risk, represents an excessive use of civil confinement. Courts have recognized that civil immigration detention that lacks a removal-related purpose, and is not accompanied by robust procedural safeguards, constitutes a deprivation of liberty without due process. See *Rodriguez v. Robbins*, 715 F.3d 1127, 1136 (9th Cir. 2013). The continued exercise of detention authority in such circumstances ceases to be regulatory and becomes punitive and unconstitutional.

Petitioner has shown good reason to believe that removal is not significantly likely in the reasonably foreseeable future.

<u>Removal is not Foreseeable because Petitioner arrived before 1995, was born in a Philippines Refugee Camp and has no passport or travel document</u>

The government has now had over two decades and multiple prior attempts to carry out Petitioner's removal but has been repeatedly unsuccessful. ICE has been unable to obtain travel documents from Vietnam or identify a third country willing to accept him. Vietnam has historically not accepted deportees from the United States who arrived in the US prior to July 12, 1995. *See* Exhibit B-Agreement Between the UNITED STATES OF AMERICA and VIETNAM, January 22, 2008. Petitioner arrived in the United States in 1985, and therefore, cannot be repatriated under the agreement.

In 2020, a Memorandum of Understanding (MOU) between the United States and Vietnam was signed. The MOU created general procedures for accepting certain pre-1995 arrivals for repatriation to Vietnam. The MOU, however, is limited, nonbinding and the Petitioner here has no prospect of being removed to Vietnam for the following reasons:

1. The MOU is an "*understanding only* between the Participants and does not give rise to any rights or obligations." *See* Exhibit C- MOU, Section 3 (emphasis added).

2. The MOU requires residency in Vietnam prior to arrival in the United States. *Id.* The Petitioner never lived in Vietnam, and does not satisfy this requirement.
3. The MOU requires that those ordered deported be given time to arrange their personal affairs before deportation, which cannot be done while someone is detained. *Id.* Section 5.
4. The MOU requires that humanitarian factors and family unity be considered in determining removal. *Id.* Section 5.
5. The MOU requires the United States and Vietnam to consider specific factors prior to deciding to remove a Vietnamese citizen and prior to deciding to accept for repatriation a Vietnamese citizen. *Id.* Section 4. These factors are not publicly known because the U.S. government redacted them in Freedom of Information Act (FOIA) disclosures of the MOU, yet they appear to dictate which categories of people may be deported to Vietnam. Petitioner alleges that he is not in a category that can be deported to Vietnam.

In practice, the 2008 repatriation agreement and the 2020 MOU do not result in the actual removal of most Vietnamese ordered removed who arrived before 1995.

Indeed, data available through the US Immigration and Customs Enforcement show removal is unlikely. *See* Exhibit D. In 2025, 47 arrests involving Vietnamese citizens were made. *Id.* In the same year, 12 were actually removed. Importantly, the data does not distinguish whether those deported are pre-1995 Vietnamese arrivals, or whether any of those arrested in 2025 were the same individuals actually deported within the same year. *Id.*

Petitioner is informed and believes that of those actually deported, far fewer to none were pre-1995 arrivals, and none were individuals like Petitioner, who hold no valid travel document or passport prior to detention. *See* Exhibit E – US Immigration and Customs Enforcement Administrative statistics, *see also* https://www.ice.gov/statistics.

In *Trinh v. Homan*, 466 F. Supp. 3d 1077 (C.D. Cal. 2020) the court found that "pre-1995 Vietnamese immigrants are unlikely to be removed to Vietnam." *Id.* at 1087. The Respondents in *Trinh* "conceded that removal of pre-1995 immigrants is generally unlikely." *Id.* Further, ICE confirmed "that pre-1995 Vietnamese aliens, except ones that currently hold a valid passport or other travel document, generally are not significantly likely to be removed in the foreseeable future." *Id.* Indeed documents released through the *Trinh* litigation show little chance of removal for pre-1995 Vietnamese. *Id.* Exhibit E.

Petitioner has no ties to Vietnam, nor a passport or travel document. Petitioner has no viable path for removal in the foreseeable future, and the government has offered no evidence that removal is likely to occur. Therefore, deportation to Vietnam is not foreseeable.

Despite these facts, the government continues to detain him, even though his legal custody has now extended well beyond the 90-day statutory removal period authorized by 8 U.S.C. § 1231(a). His current detention, in light of the government's failure to effectuate removal and the absence of any foreseeable prospect of removal, is unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and violates the Due Process Clause of the Fifth Amendment.

LEGAL FRAMEWORK

Post-Removal Order and Detention

Under the Immigration and Nationality Act (INA), a noncitizen subject to a final order of removal is generally detained during a 90-day "removal period." *See* 8 U.S.C. § 1231(a)(1)(A). Detention during this period is typically mandatory. *See* § 1231(a)(2). However, if removal is not effectuated during the removal period, continued detention is permissible only while removal remains reasonably foreseeable. See § 1231(a)(6).

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that 8 U.S.C. § 1231(a)(6) does not authorize indefinite detention. Instead, the Court interpreted the statute in light of constitutional due process and established a presumptive six-month limit on post-order detention. After that period, if the noncitizen shows "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to rebut that showing. *Id.* at 701.

The Court later affirmed in *Clark v. Martinez*, 543 U.S. 371 (2005), that this limitation applies universally, regardless of the underlying reasons for the government's inability to remove the noncitizen. Where removal is not reasonably foreseeable—whether due to diplomatic barriers, lack of travel documents, or other practical impossibilities—continued detention violates both the statute and the Constitution.

In some circumstances, federal immigration authorities can continue to detain an alien beyond the initial removal period. Specifically, section 1231(a)(6) allows the government to detain certain enumerated classes of immigrants—including those ordered removed due to criminal convictions—for more than 90 days. *Id.* 8 U.S.C. § 1231(a)(6). In *Zadvydas*, 533 U.S. 678, the Court addressed the question of how long the government can detain an immigrant pursuant to section 1231(a)(6).

The *Zadvydas* Court began by rejecting the government's position that section 1231(a)(6) permitted indefinite detention following the initial removal period. *See id.* It held that "[a] statute [that] permit[ed] indefinite detention of an alien would raise a serious constitutional problem," *id.* at 690, and instead determined that section 1231(a)(6) "implicitly limits an alien's detention to a period reasonably necessary to bring about that alien's removal," *id.* at 679. Thus, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by [section 1231(a)(6)]." Id. at 699.

The Court went on to institute a framework that would govern future challenges to section 1231(a)(6) detention. "[F]or the sake of uniform administration in the federal courts," the Court found that post-removal detention was "presumptively reasonable" for the first six months. *Id.* at 700-01. When that "presumptively reasonable" six-month period ends, aliens seeking release from custody bear the initial burden of providing "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. Once that initial showing is made, the burden shifts to the government to respond with evidence sufficient to rebut it. *See id.*

Upon release from custody, a noncitizen subject to a final order of removal must comply with certain conditions of release. 8 U.S.C. § 1231(a)(3), (6). The revocation of that release is governed by 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen's release for purposes of removal.

ICE may revoke a noncitizen's release and return them to ICE custody due to failure to comply with any of the conditions of release, 8 C.F.R. § 241.13(i)(1), or if, "on account of changed circumstances, the Service determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future," *id.* § 241.13(i)(2).

Upon such a determination by ICE to detain, "the alien will be notified of the reasons for revocation of his or her release. [ICE] will conduct an initial informal interview promptly after his or her return to [ICE] custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The [noncitizen] may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." *Id.* § 241.13(i)(3).

ICE's decision to detain is governed by the factors laid out in 8 C.F.R. § 241.13(f), including "the history of the [noncitizen's] efforts to comply with the order of removal, the history of [ICE's] efforts to remove [noncitizens] to the country in question or to third countries, including the ongoing nature of [ICE's] efforts to remove [the noncitizen] and the [noncitizen's] assistance with those efforts, the reasonably foreseeable results of those efforts, and the views of the Department of State regarding the prospects for removal of [noncitizens] to the country or countries in question." *See also Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025).

A court may not make this determination in the first instance but may review it for compliance with the regulation. *See id.; Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

Third Country Removals

The immigration laws delineate the proper procedures by which a country may be designated for removal. *See* 8 U.S.C. § 1231(b). These procedures move in incremental steps.

First, an individual with a removal order may designate the country to which they want to be removed, and the government shall remove the alien to that country. *Id.* § 1231(b)(2)(A). The government may disregard that designation if (1) the individual fails to designate a country promptly; (2) the government of that country does not inform the U.S. government finally, within 30 days after the date the U.S. government first inquires, whether the government will accept the individual into that country; (3) the government of the country is not willing to accept the alien into the country; or (4) the government decides that removing the individual to that country is prejudicial to the United States. *Id.* § 1231(b)(2)(C).

Second, if the individual is not removed to the country they designated under section 1231(b)(2)(A), the government shall remove the individual to the country of which the individual is a "subject, national, or citizen" unless the government of that country does not inform the U.S. government or the individual within 30 days after first inquiry or within another reasonable period of time whether the government will accept the individual into the country or the country is not willing to accept the individual into the country. *Id.* § 1231(b)(2)(D).

Third, if the individual is not removed to either the country of their designation or the country of which they are a subject, national, or citizen then the government shall remove them to any of the following options: (1) the country from which the individual was admitted to the United States; (2) the country in which is located the foreign port from which the individual left for the United States or for a foreign territory contiguous to the United States; (3) the country in which the individual resided before the individual entered the United States and from which the individual entered the United States; (4) the country in which the individual was born; or (5) the country in which the individual's birthplace is located when the individual was ordered removed. *Id.* § 1231(b)(2)(E). Only "[i]f impracticable, inadvisable, or impossible" to remove the individual to any of these countries may the government remove the individual to "another country whose government will accept [them] into that country." *Id.* § 1231(b)(2)(E)(vii).

Notwithstanding any of these procedures, the statute prohibits removal to a third country where a person may be persecuted or tortured, a form of protection known as withholding of removal. *See id.* § 1231(b)(3)(A). The government "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.;* see also 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

Similarly, Congress codified protections enshrined in the Convention Against Torture prohibiting the government from removing a person to a country where they would be tortured. See FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) ("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."); 28 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

To comport with the requirements of due process, the government must provide notice of the third country removal and an opportunity to respond. Due process requires "written notice of the country being designated" and "the statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2)." *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *see also D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) ("All removals to third countries, i.e., removal to a country other than the country or countries designated during immigration proceedings as the country of removal on the non-citizen's order of removal, must be preceded by written notice to both the non-citizen and the non-citizen's counsel in a language the non-citizen can understand." (citation omitted)); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process requires notice to the noncitizen of the right to apply for asylum and withholding to the country where they will be removed). The government must be able to show evidence that the third country will accept the individual into that country. *See Himri v. Ashcroft*, 378 F.3d 932, 939 (9th Cir. 2004) (when "at the time the government proposes a country of removal pursuant to § 1231(b)(2)(E)(vii), the government must be able to show that the proposed country will accept the [individual]").

Due process also demands that the government "ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with section 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said]." *Aden*, 409 F. Supp. 3d at 1019; *cf. D.V.D.*, 2025 WL 1453640, at *1 ("Following notice, the individual must be given a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal." (emphasis omitted)).

If the noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek asylum, withholding, and relief under CAT before an immigration judge in reopened removal proceedings. *Cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the government to move to reopen the noncitizen's immigration proceedings if the individual demonstrates "reasonable fear" and to provide "a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings" if the noncitizen is found to not have demonstrated "reasonable fear"); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a respondent to file a motion to reopen and seek relief).

Finally, notice of the country to which the noncitizen will be removed must not be "last minute" because that would deprive an individual of a meaningful opportunity to apply for fear-based protection from removal. *Andriasian*, 180 F.3d at 1041. They must have time to prepare and present relevant arguments and evidence and to seek reopening of their removal case.

Punitive Removal Practices

It is bedrock law that the U.S. government may not impose or inflict an infamous punishment for violations of civil immigration law. In 1896, the U.S. Supreme Court ruled that while deportation itself was not a punishment, the government could not attach punitive conditions to deportation—in that case, imprisonment at hard labor—absent a criminal charge, trial in a court of law, and the protections of the Fifth, Sixth, and Eighth Amendments. *Wong Wing v. United States*, 163 U.S. 228, 237 (1896).

Importantly, the Court drew a distinction between deportation, which the Court reasoned is "not a 'banishment,' in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment," and government actions aimed at punishment, such as imprisonment at hard labor in addition to deportation. *Id.* at 236. The Court explained that deportation "is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the government of the nation, acting within its constitutional authority and through the proper departments, has determined that his continuing to reside here shall depend." *Id.* (quoting *Fong Yue Ting v. United States*, 149 U.S. 730 (1893)). But the Court admonished that the government may not "declare unlawful residence within the country to be an infamous crime, punishable by deprivation of liberty and property . . .unless provision were made that the fact of guilt should first be established by a judicial trial." *Id.* at 237.

Deportation of individuals to third countries to be imprisoned or harmed is unquestionably punishment.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

The allegations in the above paragraphs are re-alleged and incorporated herein by reference.

1. Petitioner has been subject to a final order of removal since 2004. He has remained under ICE's legal custody and control for two decades with two separate actual detention periods, while also under an Order of Supervision. He is now again in physical detention at the Adelanto Detention Facility. The government has had ample time to effectuate removal but has failed to do so.
2. Respondent has failed to identify a third country willing to accept Petitioner, and there is no significant likelihood of removal in the reasonably foreseeable future.
3. Petitioner's continued detention, both constructive and physical, beyond the presumptively reasonable six-month period, and particularly beyond the 90-day removal period authorized by 8 U.S.C. § 1231(a), violates the Due Process Clause of the Fifth Amendment. The government's failure to justify continued detention with concrete evidence of likely removal renders this ongoing deprivation of liberty unconstitutional under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

4. Accordingly, Petitioner's continued detention violates his substantive due process rights under the Fifth Amendment to the United States Constitution.

COUNT TWO

Third Country Removal in Violation of 8 U.S.C. § 1231, Convention Against Torture, Implementing Regulations and the Administrative Procedures Act

The allegations in the above paragraphs are re-alleged and incorporated herein by reference.

1. The Fifth Amendment, the INA, the CAT, and implementing regulations mandate meaningful notice and opportunity to respond to any attempt to remove Petitioner to a third country in reopened removal proceedings. They also require an opportunity for Petitioner to make a fear-based claim against removal to a third country in reopened removal proceedings. Respondents' policy for third country removals violates all of these laws because it directs ICE agents to remove individuals to third countries without any notice or process at all where diplomatic assurances are received and, where no diplomatic assurances are received, to provide flagrantly insufficient notice (6-24 hours) and opportunity to respond, in violation of the statute, regulations, and Fifth Amendment.

2. Prior to any third country removal, Petitioner must be provided with constitutionally and statutorily compliant notice and an opportunity to respond and contest that removal if he has a fear of persecution or torture in that country in reopened removal proceedings.

COUNT THREE

Unlawful Detention in Violation of the Fifth Amendment Due Process Clause, Immigration and Nationality Act 8 CFR § 241.13 and 241.4, and the Administrative Procedure Act (APA)

1. The allegations in the above paragraphs are re-alleged and incorporated herein by reference.

2. Respondent's detention of Petitioner violates his rights guaranteed by the Due Process Clause of the Fifth Amendment of the U.S. Constitution; the INA, 8 U.S.C. § 1231(a); implementing regulations, 8 C.F.R. §§ 241.13 and 241.4; and the APA.

3. Petitioner should be released. "If removal is not reasonably foreseeable"—as is the case here—detention is "unreasonable and no longer authorized by statute." *Zadvydas*, 533 U.S. at 699-700 (citing 8 U.S.C. § 1231(a)(6)).

4. Neither the statute nor the Constitution authorizes Petitioner's continued detention.

5. Respondents violated governing regulations for revoking Petitioner's Order of Supervision. Petitioner has duly complied with the conditions of his supervised release, including attending check-ins and providing the information and documentation requested of him. His release may be revoked only if changed circumstances make his removal reasonably foreseeable, and no such changed circumstances exist. 8 C.F.R. § 241.13(i)(2). Upon such a determination, several procedural steps are required to revoke release, *id.* § 241.13(i)(3), none of which were followed here. Respondents are required to follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Petitioner's removal to Vietnam is not significantly likely to occur in the reasonably foreseeable future. Petitioner was ordered remove in 2004, and since then, the government has been unable to remove him. Upon information and belief, Respondents do not have agreement from Vietnam to repatriate Petitioner and have not secured his travel documents. There is no evidence that Vietnam has or will issue travel documents for Petitioner or that he is even eligible to be removed to Vietnam under the 2020 MOU. Accordingly, Respondents cannot meet their burden to show that removal is reasonably foreseeable, and this Court should order his immediate release.

COUNT FOUR

Punitive Third Country Banishment

Violation of Fifth and Eighth Amendments

1. The allegations in the above paragraphs are re-alleged and incorporated herein by reference.

2. Under the Fifth Amendment of the U.S. Constitution, no person shall "be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury;" "be subject for the same offence to be twice put in jeopardy of life or limb;" or "be deprived of life, liberty, or property, without due process of law."

3. The Eighth Amendment provides that no "cruel and unusual punishments" may be inflicted.

4. The U.S. Supreme Court long ago held that the government may not inflict upon individuals an "infamous punishment" in addition to deportation, as a penalty for an immigration violation, absent criminal charges, a judicial trial, and attendant constitutional protections. *Wong Wing*, 163 U.S. at 236-38.

5. Petitioner was convicted and completed any sentence for his criminal conviction. His convictions made him removable from the United States, but

his convictions do not authorize the government to inflict, as a matter of executive policy and discretion, additional punishment on him. Respondents' third country removal program is punitive in nature and execution. The government has arranged for third countries to receive deportees and imprison them on arrival, possibly indefinitely and often in abhorrent conditions. It has selected countries notorious for human rights abuses and instability for third country removal arrangements. It has targeted individuals with criminal convictions for third country removals where they will be imprisoned and harmed and publicly broadcast those removals to demonize and dehumanize the individuals subjected to these practices and strike fear in the immigrant community to send a message of retribution and deterrence. Respondent's third country removal program is more than a publicity stunt. The hundreds of individuals who have already been subjected to it, have been banished in foreign prisons upon arrival without charge and often without communication with the outside world, including their families and lawyers. Respondents may not subject Petitioner to its third country removal program designed to impose a severe punishment on its subjects. *See id.* Such conduct "shocks the conscience" under Fifth Amendment substantive due process, is cruel and unusual punishment, and may not be imposed without charge and a judicial trial.

6. Respondents may not seek to remove Petitioner to a third country under their punitive banishment policy and practices.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;

2. Order Respondents to immediately release Petitioner from custody;

3. Order that Respondents may not re-detain Petitioner without first following the statutory and regulatory procedures for revocation of release and without first obtaining agreement from the country of removal and obtaining travel documents.

4. Order that Respondents may not remove or seek to remove Petitioner to a third country without notice and meaningful opportunity to respond in compliance with the statute and due process in reopened removal proceedings;

5. Order that Respondents may not remove Petitioner to any third country because Respondent's third country removal program seeks to impose

unconstitutional punishment on its subjects, including imprisonment and other forms of harm;

6. Award costs and reasonable attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412; and

7. Order any and all other relief that the Court deems just and proper.

Respectfully submitted, Dated: **October 14, 2025**

Ashkan Yekrangi, Esq.
Counsel for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Trung Dang Mai, [redacted] and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this _14th_ day of _October_, 2025.

s/Ashkan Yekrangi
Ashkan Yekrangi

Counsel for Petitioner