

1 Clifford Levenson (AZ Bar # 014523)
2 5119 North 19th Avenue, Suite K
3 Phoenix, AZ 85015
4 Telephone: 602.258.8989
5 Facsimile: 602.544.1900
6 Email: cliff449@hotmail.com
7 Attorney for Petitioner-Plaintiff

8 UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ARIZONA
10 PHOENIX DIVISION

11 Sarkis Shaltapour

12 Petitioner-Plaintiff,

13 v.

14 John Cantu, Director of Phoenix Office of Detention
15 and Removal, U.S. Immigrations and Customs
16 Enforcement; U.S. Department of Homeland
17 Security;

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

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

23 Pam Bondi, in her Official Capacity, Attorney
24 General of the United States;

25 Respondents-Defendants.

Case No. _____

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

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


INTRODUCTION

1
2 1. Petitioner Sarkis Shaltapour, by and through undersigned counsel, hereby files this
3 petition for writ of habeas corpus and complaint for declaratory and injunctive relief to prevent
4 the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs
5 Enforcement (ICE) from returning him to an immigration jail without first providing him a due
6 process hearing where the government bears the burden to demonstrate to a neutral adjudicator
7 that his custody is justified by clear and convincing evidence. As a person born in Iraq who
8 came to the United States as a refugee, has been a lawful permanent resident of the United
9 States since 1983, and was granted deferral of removal in 2019, his removal from the United
10 States is not reasonably foreseeable, because there has been no change in circumstances since
11 Mr. Shaltapour was afforded deferral of removal pursuant to CAT, and the Immigration Court
12 has not terminated his deferral of removal. Moreover, Mr. Shaltapour is entitled to a hearing
13 before being removed to any third country. Finally, Mr. Shaltapour’s arrest is unconstitutional
14 because it is indefinite and illegal absent any pre-deprivation hearing before a neutral arbiter.

15 2. Mr. Shaltapour has never been ordered removed to any third country or notified of any
16 such potential removal. Given the Supreme Court of the United States’ decision on June 23,
17 2025, in *U.S. Department of Homeland Security, et al. v. D.V.D., et al.*, No. 24A1153, 2025
18 WL 1732103 (June 23, 2025), which stayed the nationwide injunction that had precluded
19 Respondents from removing noncitizens to third countries without notice and an opportunity to
20 seek fear-based relief, ICE appears emboldened and intent to implement its campaign to send
21 noncitizens to far corners of the planet—places they have absolutely no connection to
22 whatsoever¹—in violation of clear statutory obligations set forth in the Immigration and
23 Nationality Act (INA), binding treaty, and due process. In the absence of the nation-wide
24 injunction, individual lawsuits like the instant case are the only method to challenge the illegal
25 third-country removals.

26 3. In 1983 Mr. Shaltapour obtained Lawful Permamnent Residence as a refugee. He was

27 _____
28 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/>.

1 ordered removed *in absentia* in proceedings in the Immigration Court on October 11, 2011. In
2 2013, the Board of Immigration Appeals granted Petitioner's Motion to Reopen Proceedings
3 based on materially changed conditions  Petitioner then applied for
4 asylum. On October 16, 2019, the Immigration Court denied his application for asylum, and
5 ordered him removed to Iran, but granted him deferral of removal pursuant to the Convention
6 Against Torture ("CAT").

7 4. Since 2019, Mr. Shaltapour has exercised his right to liberty. He continues to live and
8 work in the United States, having started received several certifications in his field of
9 employment, and helping to support his fiancé's U.S. citizen minor children.

10 5. Since Mr. Shaltapour has been granted deferral of removal his removal is not
11 reasonably foreseeable, and Mr. Shaltapour is neither a flight risk nor a danger to the
12 community. Mr. Shaltapour has obtained work authorization. 8 C.F.R. § 241.5.

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

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

25 8. This reasonable expectation creates constitutionally protected liberty and property
26 interests. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972) (reliance on policies and practices
27 may establish a legitimate claim of entitlement to a constitutionally-protected interest); *see also*
28 *Texas v. United States*, 809 F.3d 134, 174 (2015), affirmed by an equally divided court, 136 S.

1 Ct. 2271 (2016) (explaining that “DACA involve[s] issuing benefits” to certain applicants).
2 These benefits are entitled to constitutional protections no matter how they may be
3 characterized by Respondents. *See, e.g., Newman v. Sathyavaglswaran*, 287 F.3d 786, 797 (9th
4 Cir. 2002) (“[T]he identification of property interests under constitutional law turns on the
5 substance of the interest recognized, not the name given that interest by the state or other
6 independent source.”) (internal quotations omitted).

7 9. Further, the Supreme Court has limited the potentially indefinite post-removal order
8 detention to a maximum of six months when removal is not reasonably foreseeable. *Zadvydas*
9 *v. Davis*, 533 U.S. 678, 701 (2001). But that case does not control here. This case is not about
10 ICE’s authority to detain in the first place upon an issuance of a final order of removal as in
11 *Zadvydas*. This case is about ICE’s authority to *re-detain* Mr. Shaltapour after he was issued a
12 order of removal while detained, and subsequently released. The DHS regulation, 8 C.F.R. §
13 241.13(i), applies to non-citizens in Petitioner’s situation. Because ICE does not have a travel
14 document for Mr. Shaltapour, his removal is not reasonably foreseeable in this case, and the
15 government has not provided him with notice, evidence, or an opportunity to be heard on this
16 issue either before arbitrarily re-detaining him. His re-incarceration without any reasonably
17 foreseeable end point would therefore be unconstitutionally prolonged in violation of clear
18 Supreme Court precedent.

19 10. The basic principle that individuals placed at liberty are entitled to process before the
20 government imprisons them has particular force here, where Mr. Shaltapour was *already*
21 previously released from ICE detention, after which he began to rebuild his life, including by
22 securing employment and supporting his family. Under these circumstances, ICE is required to
23 afford him the opportunity to advance arguments in favor of his freedom before robbing him of
24 his liberty. He must therefore be released from detention unless and until ICE proves to a
25 neutral arbiter that his removal has become reasonably foreseeable, and/or that his detention is
26 necessary because there has been a material change in circumstances establishing that he is a
27 flight risk or a danger to the community. Numerous federal district courts have already ordered
28 similar relief. *See, e.g., Nguyen v. Hyde*, 2025 WL1725791(D. Massachusetts June 20, 2025);

1 *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *4; *Hoac*, No. 2:25-CV-01740-DC-
 2 JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7;
 3 *Guillermo M. R. v. Kaiser*, --- F.Supp.3d ----, 2025 WL 1983677, at *10 (N.D. Cal. July 17,
 4 2025); *Pinchi v. Noem*, --- F.Supp.3d ----, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025).
 5 During any custody redetermination hearing that occurs, the neutral arbiter must further
 6 consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk that
 7 ICE may establish.

8 11. Moreover, under the INA, Respondents have a statutory obligation to remove Mr.
 9 Shaltapour *only* to the designated country—in this case, Iran. 8 U.S.C. § 1231(b)(2)(A)(ii). If
 10 Mr. Shaltapour is to be removed to a third country, Respondents *must* first assert a basis under
 11 8 U.S.C. § 1231(b)(2)(C) and ICE *must* provide him with sufficient notice and an opportunity
 12 to respond and apply for fear-based relief as to that country, in compliance with the INA, due
 13 process, and the binding international treaty: The Convention Against Torture and Other Cruel,
 14 Inhuman or Degrading Treatment or Punishment.² Currently, DHS has a policy of removing or
 15 seeking to remove individuals to third countries without first providing constitutionally
 16 adequate notice of third country removal, or any meaningful opportunity to contest that
 17 removal if the individual has a fear of persecution or torture in that country. The U.S. District
 18 Court for the District of Massachusetts previously issued a nationwide preliminary injunction
 19 blocking such third country removals without notice and a meaningful opportunity to apply for
 20 relief under the Convention Against Torture, in recognition that the government’s policy
 21 violates due process and the United States’ obligations under the Convention Against Torture.
 22 *D.V.D., et al. v. U.S. Department of Homeland Security, et al. v.*, No. 25-10676-BEM (D.
 23 Mass. Apr. 18, 2025). The U.S. Supreme Court has since granted the government’s motion to
 24 stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa*, 606 U.S. -
 25 -- (June 27, 2025), limiting nationwide injunctions. Thus, the Supreme Court’s order, which is
 26 not accompanied by an opinion, signals only disagreement with the nature, and not the

27 _____
 28 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-](https://www.ohchr.org/en/instruments-measures/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading)
[measures/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading](https://www.ohchr.org/en/instruments-measures/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading).

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

10 **CUSTODY**

11 12. Mr. Shaltapour is currently being held in custody by ICE at the Florence Immigration
12 Detention Facility in Florence, Arizona.

13 **JURISDICTION**

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

19 14. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act,
20 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651 to protect Petitioner's rights
21 under the Due Process Clause of the Fifth Amendment to the United States Constitution, the
22 Excessive Bail Clause of the Eighth Amendment, and under applicable Federal law, and to issue
23 a writ of habeas corpus for his immediate release. *See generally INS v. St. Cyr*, 533 U.S. 289
24 (2001); *Zadvydas*, 533 U.S. 678.

25 **REQUIREMENTS OF 28 U.S.C. § 2243**

26 15. The Court must grant the petition for writ of habeas corpus or issue an order to show
27 cause (OSC) to Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C.
28 § 2243. If an OSC is issued, the Court must require Respondents to file a return "within *three*

1 *days unless for good cause additional time, not exceeding twenty days, is allowed.” Id.* (emphasis
2 added).

3 16. Courts have long recognized the significance of the habeas statute in protecting
4 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most
5 important writ known to the constitutional law of England, affording as it does a *swift* and
6 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391,
7 400 (1963) (emphasis added).

8 17. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs courts
9 to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious
10 hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations
11 omitted). The Ninth Circuit warned against any action creating the perception “that courts are
12 more concerned with efficient trial management than with the vindication of constitutional
13 rights.” *Id.*

14 VENUE

15 18. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the
16 Respondents are employees or officers of the United States, acting in their official capacity;
17 because a substantial part of the events or omissions giving rise to the claim occurred in the
18 District of Arizona; because Mr. Shaltapour is under the jurisdiction of the Phoenix ICE Field
19 Office, which is in the jurisdiction of the District of Arizona; and because there is no real property
20 involved in this action.

21 EXHAUSTION OF ADMINISTRATIVE REMEDIES

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

1 20. No statutory exhaustion requirements apply to Mr. Shaltapour's claim of unlawful
2 custody in violation of his due process rights, and there are no administrative remedies that he
3 needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th
4 Cir. 1995) (finding exhaustion to be a "futile exercise because the agency does not have
5 jurisdiction to review" constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098,
6 1099 (C.D. Cal. 2000) (same).

7 **PARTIES**

8 21. Mr. Sarkis Shaltapour was born and lived in Iraq, and fled to the United States as a
9 refugee. He was a lawful permanent resident of the United States from 1983 until 2011.

10 22. Respondent John Cantù is the Field Office Director of ICE, in Phoenix, Arizona, and is
11 named in his official capacity. ICE is the component of the DHS that is responsible for
12 detaining and removing noncitizens according to immigration law and oversees custody
13 determinations. In his official capacity, he is the legal custodian of Mr. Shaltapour.

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

18 24. Respondent Kristi Noem is the Secretary of DHS and is named in her official capacity.
19 DHS is the federal agency encompassing ICE, which is responsible for the administration and
20 enforcement of the INA and all other laws relating to the immigration of noncitizens. In her
21 capacity as Secretary, Respondent Noem has responsibility for the administration and
22 enforcement of the immigration and naturalization laws pursuant to section 402 of the
23 Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also*
24 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Mr. Shaltapour.

25 25. Respondent Pam Bondi is the Attorney General of the United States and the most
26 senior official in the U.S. Department of Justice (DOJ) and is named in her official capacity.
27 She has the authority to interpret the immigration laws and adjudicate removal cases. The
28

1 Attorney General delegates this responsibility to the Executive Office for Immigration Review
2 (EOIR), which administers the immigration courts and the BIA.

3 **STATEMENT OF FACTS**

4 26. Mr. Sarkis Shaltapour was born and raised in Iraq. He currently lives in the Phoenix,
5 Arizona area, and is employed.

6 27. In 1983, Mr. Shaltapour lawfully was granted lawful permanent residence in the United
7 States. He was ordered removed *in absentia* in proceedings in the Immigration Court on
8 October 11, 2011. In 2013, the Board of Immigration Appeals granted Petitioner's Motion to
9 Reopen Proceedings based on materially changed conditions for [REDACTED] Petitioner
10 then applied for asylum. On October 16, 2019, the Immigration Court denied his application
11 for asylum, and ordered him removed to Iran, but granted him deferral of removal pursuant to
12 the Convention Against Torture ("CAT").

13 28. In 1987 Petitioner was convicted of attempted armed robbery. In 2001, he was
14 convicted of cocaine possession. He has remained law abiding ever since. Since 1983, Mr.
15 Shaltapour has exercised his right to liberty. He continues to live and work in the United
16 States. He is not at all the type of person for whom re-incarceration is required.

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

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

23
24 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/>.

25 ⁴ See, e.g., McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15,
26 2025), available at <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html>
27 (Mahmoud Khalil, arrested in New York and transferred to Louisiana); "What we know about the Tufts University
28 PhD student detained by federal agents," CNN (Mar. 28, 2025), <https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html> (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle
Cheney & Josh Gerstein, *Trump is seeking to deport another academic who is legally in the country, lawsuit says*,
Politico (Mar. 19, 2025), available at <https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754> (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).

1 31. Decisions issued by other courts in California District Courts further corroborate that
2 ICE is re-arresting and re-incarcerating individuals who are not flight risks or dangers to the
3 community, including when their removals from the United States are not reasonably
4 foreseeable. *See, e.g., Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *2 (“Although
5 Petitioner-Plaintiff informed the ICE officer that he has no right to return to either country
6 because he is stateless, the officer told Petitioner-Plaintiff that ‘things are different now.’”);
7 *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-
8 JDP, 2025 WL 1993735, at *7; *Guillermo M. R.*, --- F.Supp.3d ----, 2025 WL 1983677, at *10;
9 *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at *7; *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025
10 WL 1676854, at *1 (N.D. Cal. June 14, 2025); *Doe v. Becerra*, -- F. Supp. 3d --, 2025 WL
11 691664, *8 (E.D. Cal. Mar. 3, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL
12 1771438 (N.D. Cal. June 26, 2025); *Singh v. Andrews*, No. 1:25-cv-801-KES-SKO, 2025 WL
13 1918679 (E.D. Cal. July 11, 2025); *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025
14 WL 1927596, at *6 (E.D. Cal. July 14, 2025).

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

18 LEGAL BACKGROUND

19 **Right to a Hearing Prior to Re-incarceration**

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

24 34. If ICE fails to remove an individual during the ninety (90) day removal period, the law
25 requires ICE to release the individual under conditions of supervision, including periodic
26 reporting. 8 U.S.C. § 1231(a)(3) (“If the alien . . . is not removed within the removal period,
27 the alien, pending removal, shall be subject to supervision.”). Limited exceptions to this rule
28 exist. Specifically, ICE “may” detain an individual beyond ninety days if the individual was

1 ordered removed on criminal grounds or is determined to pose a danger or flight risk. 8 U.S.C.
2 § 1231(a)(6). However, ICE’s authority to detain an individual beyond the removal period
3 under such circumstances is not boundless. Rather, it is constrained by the constitutional
4 requirement that detention “bear a reasonable relationship to the purpose for which the
5 individual [was] committed.” *Zadvydas*, 533 U.S. at 690. Because the principal purpose of the
6 post-final-order detention statute is to effectuate removal, detention bears no reasonable
7 relation to its purpose if removal cannot be effectuated. *Id.* at 697.

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

14 36. That said, detainees are entitled to release even before six months of detention, as long
15 as removal is not reasonably foreseeable. *See* 8 C.F.R. § 241.13(b)(1) (authorizing release after
16 ninety days where removal not reasonably foreseeable). Moreover, as the period of post-final-
17 order detention grows, what counts as “reasonably foreseeable” must conversely shrink.
18 *Zadvydas* at 701. This is especially true in this case. This case is not about ICE’s authority to
19 detain in the first place upon an issuance of a final order of removal as in *Zadvydas*. This case
20 is about ICE’s authority to *re-detain* Mr. Shaltapour after he was issued a final order of
21 removal, detained, and subsequently released on an OSUP. The DHS regulation, 8 C.F.R. §
22 241.13(i), applies to non-citizens in Mr. Shaltapour’s situation.

23 37. Even where detention meets the *Zadvydas* standard for reasonable foreseeability,
24 detention violates the Due Process Clause unless it is “reasonably related” to the government’s
25 purpose, which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at 700 (“[I]f removal
26 is reasonably foreseeable, the habeas court should consider the risk of the alien’s committing
27 further crimes as a factor potentially justifying confinement within that reasonable removal
28 period”) (emphasis added); *Id.* at 699 (purpose of detention is “assuring the alien’s presence at

1 the moment of removal”); *Id.* at 690-91 (discussing twin justifications of detention as
2 preventing flight and protecting the community). Thus, Mr. Shaltapour should not remain in
3 custody because he does not pose a danger or flight risk that warrants post-final-order
4 detention, regardless of whether his removal can be effectuated within a reasonable period of
5 time. This is especially so because ICE has *already* released Mr. Shaltapour from detention
6 because he has been granted deferral of removal. *See Singh*, No. 1:25-CV-00801-KES-SKO
7 (HC), 2025 WL 1918679, at *2 (“DHS, at least implicitly, made a finding that petitioner was
8 not a flight risk when it released him”) (citing *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL
9 1707737, at *3 & n.6 (S.D.N.Y. June 18, 2025)).

10 38. The government’s own regulations contemplate this requirement. They dictate that even
11 after ICE determines that removal is reasonably foreseeable—and that detention therefore does
12 not per se exceed statutory authority—the government must still determine whether continued
13 detention is warranted based on flight risk or danger. *See* 8 C.F.R. § 241.13(g)(2) (providing
14 that where removal is reasonably foreseeable, “detention will continue to be governed under
15 the established standards” in 8 C.F.R. § 241.4).

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

27 40. Individuals with final orders who are released after a post-order custody review are
28 subject to Form I-220B, Order of Supervision. 8 C.F.R. § 241.4(j). After an individual has been

1 released on an OSUP, as Mr. Shaltapour was, ICE cannot revoke such an order without cause
2 or adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3).

3 **Mr. Shaltapour's Protected Liberty Interest in His Release**

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

8 42. Since 2020, Mr. Shaltapour exercised that freedom pursuant to his prior release from
9 custody by ICE. He thus retains a weighty liberty interest under the Due Process Clause of the
10 Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47
11 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471,
12 482-483 (1972); *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at *3 ("even when ICE has the
13 initial discretion to detain or release a noncitizen pending removal proceedings, after that
14 individual is released from custody she has a protected liberty interest in remaining out of
15 custody").

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

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

1 “[b]y whatever name, the liberty is valuable and must be seen within the protection of the
2 [Fifth] Amendment.” *Morrissey*, 408 U.S. at 482.

3 45. This basic principle—that individuals have a liberty interest in their conditional
4 release—has been reinforced by both the Supreme Court and the circuit courts on numerous
5 occasions. *See, e.g., Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole
6 program created to reduce prison overcrowding have a protected liberty interest requiring pre-
7 deprivation process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony
8 probation have a protected liberty interest requiring pre-deprivation process). As the First
9 Circuit has explained, when analyzing the issue of whether a specific conditional release rises
10 to the level of a protected liberty interest, “[c]ourts have resolved the issue by comparing the
11 specific conditional release in the case before them with the liberty interest in parole as
12 characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010)
13 (internal quotation marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*,
14 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—
15 even if that freedom is lawfully revocable—has a liberty interest that entitles him to
16 constitutional due process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152,
17 *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

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

26 47. Here, when this Court “compar[es] the specific conditional release in [Mr. Shaltapour’s
27 case], with the liberty interest in parole as characterized by *Morrissey*,” it is clear that they are
28 strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr.

1 Shaltapour’s release “enables him to do a wide range of things open to persons” who have
2 never been in custody or convicted of any crime, including to live at home, work, and “be with
3 family and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408
4 U.S. at 482.

5 48. Mr. Shaltapour has complied with all conditions of release for four years.

6 **Mr. Shaltapour’s Liberty Interest Mandates a Hearing Before any Detention**

7 49. Mr. Shaltapour asserts that, here, (1) where his detention would be civil, (2) where he
8 has been at liberty for since 1987, during which time he has complied with any conditions of
9 release, (3) where no change in circumstances exist that would justify his detention, and (5)
10 where the only circumstance that has changed is ICE’s move to arrest as many people as
11 possible because of the new administration, due process mandates that should have received
12 notice and a hearing before a neutral adjudicator *prior* to any re-arrest.

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

27 51. The Supreme Court “usually has held that the Constitution requires some kind of a
28 hearing *before* the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S.

1 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation
2 remedies are “the only remedies the State could be expected to provide” can post-deprivation
3 process satisfy the requirements of due process. *Zinerman*, 494 U.S. at 985. Moreover, only
4 where “one of the variables in the *Mathews* equation—the value of predeprivation
5 safeguards—is negligible in preventing the kind of deprivation at issue” such that “the State
6 cannot be required constitutionally to do the impossible by providing predeprivation process,”
7 can the government avoid providing pre-deprivation process. *Id.*

8 52. Because, in this case, the provision of a pre-deprivation hearing is both possible and
9 valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Mr.
10 Shaltapour with notice and a hearing *prior* to any re-incarceration and revocation of his release.
11 *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932;
12 *Zinerman*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch*
13 *v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil
14 commitment proceedings may not constitutionally be held in jail pending the determination as
15 to whether they can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily
16 in favor of [Mr. Shaltapour’s] liberty” and requires a pre-deprivation hearing before a neutral
17 adjudicator.

18 **Mr. Shaltapour’s Private Interest in His Liberty is Profound**

19 53. Under *Morrissey* and its progeny, individuals conditionally released from serving a
20 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In
21 addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of
22 physical confinement, even if that freedom is lawfully revocable, has a liberty interest that
23 entitles him to constitutional due process before he is re-incarcerated—apply with even greater
24 force to individuals like Mr. Shaltapour, who have been released pending civil removal
25 proceedings, rather than parolees or probationers who are subject to incarceration as part of a
26 sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest
27 given their underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin*
28 *v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the

1 courts have held that the parolee cannot be re-arrested without a due process hearing in which
2 they can raise any claims they may have regarding why their re-incarceration would be
3 unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr.
4 Nguen retains a truly weighty liberty interest even though he was under conditional release.

5 54. What is at stake in this case for Mr. Shaltapour is one of the most profound individual
6 interests recognized by our legal system: whether ICE may unilaterally nullify a prior release
7 decision and be able to take away his physical freedom, i.e., his “constitutionally protected
8 interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)
9 (internal quotation omitted). “Freedom from bodily restraint has always been at the core of the
10 liberty protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).
11 *See also Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government
12 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the
13 Due Process] Clause protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

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

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

20 56. The government’s interest in detaining Mr. Shaltapour without a due process hearing is
21 low, and when weighed against his significant private interest in his liberty, the scale tips
22 sharply in favor of enjoining Respondents from continuing Mr. Shaltapour’s detention unless
23 and until the government demonstrates by clear and convincing evidence that he is a flight risk
24 or danger to the community. It becomes abundantly clear that the *Mathews* test favors Mr.
25 Shaltapour when the Court considers that the process he seeks—notice and a hearing regarding
26 whether he should be detained given that ICE lacks authorization to remove him—is a standard
27 course of action for the government. Providing Mr. Shaltapour with a hearing before this Court
28 (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that
he is a flight risk or danger to the community would impose only a *de minimis* burden on the

1 government, because the government routinely provides this sort of review to individuals in
2 Mr. Shaltapour's same circumstances. 8 C.F.R. § 241.4(e)-(f).

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

12 58. Mr. Shaltapour has continued to appear before the Immigration Court, and ICE, for
13 each and every appointment that has been scheduled. *See Morrissey*, 408 U.S. at 482 (“It is
14 not sophistic to attach greater importance to a person’s justifiable reliance in maintaining his
15 conditional freedom so long as he abides by the conditions on his release, than to his mere
16 anticipation or hope of freedom”) (quoting *United States ex rel. Bey v. Connecticut Board of*
17 *Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971); *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at
18 *3 (“the government’s decision to release an individual from custody creates ‘an implicit
19 promise,’ upon which that individual may rely, that their liberty ‘will be revoked only if [they]
20 fail[] to live up to the ... conditions [of release].’”) (quoting *Morrissey*, 408 U.S. at 482).

21 59. As to flight risk, ICE determined that reporting requirements were sufficient to guard
22 against any possible flight risk, to “assure [his] presence at the moment of removal.” *Zadvydas*,
23 533 U.S. at 699. Mr. Shaltapour’s post-release conduct in the form of full compliance the law
24 further confirms that he is not a flight risk and that he is likely to present himself at any future
25 appearances, as he always has done. The government’s interest in detaining him at this time is
26 therefore low. That ICE has a new policy to make a minimum number of arrests each day
27 under the new administration does not constitute a material change in circumstances or

1 increase the government’s interest in detaining him.⁵ *See Singh*, No. 1:25-CV-00801-KES-
2 SKO (HC), 2025 WL 1918679, at *2 (“The law requires a change in relevant facts, not just a
3 change in [the government’s] attitude”) (internal quotations omitted). Moreover, nothing has
4 changed regarding the lack of foreseeability of his removal to Jamaica.

5 60. Freedom from confinement until ICE assesses and demonstrates that Mr. Shaltapour is
6 a flight risk, or that his detention is not going to be indefinite, is far *less* costly and burdensome
7 for the government than keeping him detained. As the Ninth Circuit noted in 2017, which
8 remains true, if not more extreme, today, “[t]he costs to the public of immigration detention are
9 ‘staggering’: \$158 each day per detainee, amounting to a total daily cost of \$6.5 million.”

10 *Hernandez*, 872 F.3d at 996.

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

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

28 62. Providing Mr. Shaltapour a pre-deprivation hearing would decrease the risk of him being

1 erroneously deprived of his liberty. Before he can be lawfully detained, he must be provided with
2 a hearing before a neutral adjudicator at which the government is held to show that there has
3 been sufficiently changed circumstances such that he should be detained because clear and
4 convincing evidence exists to establish that Petitioner is a danger to the community or a flight
5 risk.

6 63. Under the process that ICE maintains is lawful—which affords Mr. Shaltapour no
7 process whatsoever—ICE can simply re-detain him at any point if the agency desires to do so.
8 The risk that Mr. Shaltapour will be erroneously deprived of his liberty is high if ICE is
9 permitted to re-incarcerate him after making a unilateral decision to re-arrest him. Pursuant to 8
10 C.F.R. § 241.4(l), revocation of release on an OSUP is at the discretion of the Executive
11 Associate Commissioner. Thus, the regulations permit ICE to unilaterally re-detain individuals,
12 even for an oversight of any kind. After re-arrest, ICE makes its own, one-sided custody
13 determination and can decide whether the agency wants to hold Mr. Shaltapour. 8 C.F.R.
14 § 241.4(e)-(f).

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

1 *Napolitano* (“*Diouf I*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

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

8 **The Right to Constitutionally Adequate Procedures Prior to Third Country Removal**

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

16 67. As the Supreme Court has explained, such language “generally indicates a command
17 that admits of no discretion on the part of the person instructed to carry out the directive,” *Nat’l*
18 *Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661 (2007) (quoting *Ass’n of*
19 *Civilian Technicians v. Fed. Labor Relations Auth.*, 22 F.3d 1150, 1153 (D.C. Cir. 1994)); *see*
20 *also Black’s Law Dictionary* (11th ed. 2019) (“Shall” means “[h]as a duty to; more broadly, is
21 required to This is the mandatory sense that drafters typically intend and that courts
22 typically uphold.”); *United States v. Monsanto*, 491 U.S. 600, 607 (1989) (finding that “shall”
23 language in a statute was unambiguously mandatory). Accordingly, any imminent third country
24 removal fails to comport with the statutory obligations set forth by Congress in the INA and is
25 unlawful. Several district courts have already found as much. *See Hoac*, No. 2:25-CV-01740-
26 DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at
27 *7; *J.R.*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *4.

28 68. Moreover, prior to any third country removal, ICE must provide Mr. Shaltapour with

1 sufficient notice and an opportunity to respond and apply for fear-based relief as to that
 2 country, in compliance with the INA, due process, and the binding international treaty: The
 3 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or
 4 Punishment.⁶ Currently, DHS has a policy of removing or seeking to remove individuals to
 5 third countries without first providing constitutionally adequate notice of third country
 6 removal, or any meaningful opportunity to contest that removal if the individual has a fear of
 7 persecution or torture in that country. This policy clearly violates due process and the United
 8 States' obligations under the Convention Against Torture.

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

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

24 **FIRST CAUSE OF ACTION**

25 **Procedural Due Process**

26 **U.S. Const. amend. V**

27 71. Mr. Shaltapour re-alleges and incorporates herein by reference, as is set forth fully

28 _____
⁶ See *supra* n.3.

1 herein, the allegations in all the preceding paragraphs.

2 72. The Due Process Clause of the Fifth Amendment forbids the government from
3 depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

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

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

12
13
14 **SECOND CAUSE OF ACTION**

15 **Substantive Due Process**

16 **U.S. Const. amend. V**

17 75. Mr. Shaltapour re-alleges and incorporates herein by reference, as is set forth fully
18 herein, the allegations in all the preceding paragraphs.

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

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

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

1 his liberty.

2 79. For these reasons, Mr. Shaltapour's detention without first being provided a hearing
3 violates the Constitution.

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

9 **THIRD CAUSE OF ACTION**

10 **Unlawful Re-Detention**

11 81. Mr. Shaltapour re-alleges and incorporates herein by reference, as if set forth fully
12 herein, the allegations in all the preceding paragraphs.

13 82. Mr. Shaltapour was previously released by Respondents because he did not pose a danger
14 or flight risk. As long as he complies with the conditions of his release, Respondents have
15 authority to revoke release only if circumstances have changed. 8 C.F.R. § 241.13(i)(2); 8 C.F.R.
16 § 1231(a)(6).

17 83. Respondents' decision to revoke his release is arbitrary, capricious, an abuse of
18 discretion, and contrary to law. 5 U.S.C. § 706(a)(2)(A). The fact that a decision-making
19 process involves discretion does not prevent an individual from having a protectable liberty
20 interest. *Young*, 520 U.S. at 150; *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1001 (N.D.
21 Cal 2018). Just like people on pre-parole, parole, probation status, bail, or bond have a liberty
22 interest, so too does Mr. Shaltapour have a liberty interest in remaining out of custody on his
23 Form I-220B OSUP. *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 2019 WL 6251231 (N.D. Cal.
24 2019). He should therefore be provided with a full and fair hearing before a neutral arbiter
25 where the government bears the burden of showing that circumstances have changed such that
26 his removal is reasonably foreseeable, and otherwise evidence of his dangerousness and flight
27 risk is established by clear and convincing evidence. *Id.*

28 84.

FOURTH CAUSE OF ACTION

Violation of the INA and Applicable Regulations

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

86. 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).

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

FIFTH CAUSE OF ACTION

Procedural Due Process – Unconstitutionally Inadequate Procedures Regarding Third

Country Removal

U.S. Const. amend. V

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

89. 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.”).

90. Mr. Shaltapour has a protected interest in his life. Thus, prior to any third country removal, he must be provided with constitutionally compliant notice and an opportunity to

1 respond and contest that removal if he has a fear of persecution or torture in that country.

2 91. For these reasons, Mr. Shaltapour's removal to any third country without adequate
3 notice and an opportunity to apply for relief under the Convention Against Torture would
4 violate his due process rights. The only remedy of this violation is for this Court to order that
5 he not be summarily removed to any third country unless and until he is provided
6 constitutionally adequate procedures.

7 **PRAYER FOR RELIEF**

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

9 (1) Assume jurisdiction over this matter;

10 (2) Order Mr. Sarkis Shaltapour's immediate release from custody, and enjoin
11 ICE from detaining Mr. Shaltapour unless and until a hearing can be held
12 before a neutral adjudicator to determine whether his re-incarceration would
13 be lawful because the government has shown that his removal is reasonably
14 foreseeable and that he is a danger or a flight risk by clear and convincing
15 evidence;

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

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

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

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

- 1 a. Written notice to Mr. Shaltapour and counsel of the third country to
2 which he may be removed, in a language that Mr. Shaltapour can
3 understand, provided at least twenty-one (21) days before any such
4 removal;
- 5 b. A meaningful opportunity for Mr. Shaltapour to raise a fear of return
6 for eligibility for protection under the Convention Against Torture,
7 including a reasonable fear interview before a DHS officer;
- 8 c. If Mr. Shaltapour demonstrates a reasonable fear during the interview,
9 DHS must move to reopen his underlying removal proceedings so that
10 he may apply for relief under the Convention Against Torture;
- 11 d. If it is found that Mr. Shaltapour does not demonstrate a reasonable
12 fear during the interview, a meaningful opportunity, and a minimum of
13 fifteen (15) days, for Mr. Shaltapour to seek to move to reopen his
14 underlying removal proceedings to challenge potential third country
15 removal;

16 (5) Award reasonable costs and attorney fees; and

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

18
19 Dated: October 26, 2025

Respectfully submitted,

20 /s/ Clifford Levenson

21 Clifford Levenson

22 Attorney for Petitioner
23
24
25
26
27
28

VERIFICATION PURSUANT TO 28 U.S.C. 2242

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

Executed on this October 26, 2025, in Phoenix, Arizona

/s/ Clifford Levenson

Clifford Levenson

Attorney for Mr. Andre T. Shaltapour

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28