IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ASLADI MERCHANT,

PETITIONER,

v.

U.S. DEPT. OF HOMELAND SECURITY, KRISTI NOEM, in her capacity as Secretary of Department of Homeland Security; TODD LYONS in his capacity as the Acting Director of ICE, and JOSH JOHNSON in his capacity as U.S. Immigration and Customs Enforcement, Dallas Field Office Director; THOMAS BERGAMI in his capacity as Warden of the Prairieland Detention Center,

RESPONDENTS.

Civil Case No.

PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241, BY A PERSON SUBJECT TO UNLAWFUL DETENTION

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner Asladi Merchant, a devoted husband, loving father, business owner, and respected member of his community, files this petition seeking the Court's urgent intervention. On August 6, 2025, Mr. Merchant was pulled over by ICE while he was taking his son to school. Despite Mr. Merchant having no violations of his order of supervision ("OSUP") for over two decades, ICE took him into custody without explanation, reason, or legal authority to do so. He is currently being indefinitely detained in the Prairieland Detention Center in Alvarado, Texas.

2. ICE may only revoke release and re-detain a person who is compliant with the terms of their OSUP under governing regulations and due process "if, on account of changed

circumstances. [ICE] determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future."[1] Mr. Merchant's removal to Pakistan, or any country, however, is not reasonably foreseeable. Mr. Merchant has been on OSUP for 21 years because the government has failed to achieve its goal of obtaining travel documents for Mr. Merchant. In fact, Mr. Merchant has actively tried to obtain travel documents for himself as recently as a few years ago but he is stateless; therefore, no country recognizes his citizenship. ICE still does not have travel documents for him, nor has Pakistan or the United Arab Emirates agreed to accept Mr. Merchant. Mr. Merchant is extremely concerned that he will be removed to a third country in which he has no connection with.

3. The U.S. government has put into place a new policy and practice of deporting individuals to third countries, including countries where deportees are imprisoned upon arrival, often in abhorrent conditions. The Trump Administration has reportedly negotiated with more than 50 countries to accept deportees from other countries, and it has carried out deportations to El Salvador, South Sudan, Eswatini, Panama, and Costa Rica where deportees have been indefinitely and arbitrarily imprisoned or detained upon arrival, often incommunicado. It has carried out these third country removals without following any of the required statutory, regulatory, and constitutional procedures required before deporting an individual to a third country. As of July 9, 2025, ICE has adopted a policy which permits removals to third countries

[1] *See* 8 C.F.R. § 241.13(i)(3).

with as little as six hours of notice to the individual and without following the statutory procedures and requirements of due process that ensure an individual has a meaningful opportunity to make a fear-based claim against removal to that country.

4. Petitioner Merchant files this habeas petition to seek his release from custody due to ICE's unlawful revocation of his supervised release and because his removal is not reasonably foreseeable. Petitioner also seeks to enjoin Respondents from removing him to a third country without the notice and opportunity to be heard that is required by the Constitution and the immigration statute in reopened removal proceedings. and to enjoin Respondents from removing him to a third country for a punitive purpose and effect.

CUSTODY

5. Petitioner is currently being detained by and in the physical custody of the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement (hereinafter "ICE") at the Prairieland Detention Center located at 1209 Sunflower Lane, Alvarado, Texas 76009. Prairieland is controlled by ICE, and therefore, Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

6. This action arises under the Constitution of the United States, 28 U.S.C. § 2241(c)(1), 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, Art. I § 9, cl. 2 of the United States Constitution ("Suspension Clause"); and 28 U.S.C. §1331, as Petitioner is

presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States.[2]

VENUE

7. Pursuant to 28 U.S.C. § 1391, venue is proper in the Northern District of Texas, Abilene Division, because Petitioner was detained in the territorial jurisdiction of this Court, at the Bluebonnet Detention Center located in Anson, Texas.

PARTIES

8. Petitioner Asladi Merchant was born in Dubai on [redacted]. He came to the United States where he has lived for decades. Although he was born in the United Arab Emirates (UAE), Mr. Merchant filled out an order of removal to Pakistan when he was detained by ICE and ordered removed on February 6, 2004. Although ICE attempted to get travel documents from Pakistan and the UAE, they were not successful, and after months of detention, let Mr. Merchant free on an OSUP. Mr. Merchant has spent the last 21 years on an OSUP order.[3]

9. Respondent Kristi Noem is the Secretary of Department of Homeland Security. She is responsible for the administration of ICE and the implementation and enforcement of the INA. As such Ms. Noem is the legal custodian of Petitioner.

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[2] *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) ("We conclude that § 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention."); *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) ("at its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been strongest.")' *Clark v. Martinez*, 543 U.S. 371 (2005) (holding that *Zadvydas* applies to aliens found inadmissible as well as removable).

[3] Pet'r's App. Ex. 1.

10. Respondent Todd Lyons is the Acting ICE Director in this position he is responsible for the administration of ICE and the implementation and enforcement of the Immigration & Naturalization Act (INA). As such, Mr. Lyons has ultimate custodial authority over Petitioner in his capacity as Acting Director of ICE.

11. Respondent Josh Johnson is the ICE Field Office Director of the Dallas Field Office of ICE and is Petitioner's immediate custodian.[4]

12. Respondent Thomas Bergami is the Warden of the Prairieland Detention Facility where Petitioner is currently detained under the authority of ICE, and thus alternatively may be considered as Petitioner's immediate custodian.

EXHAUSTION OF REMEDIES

13. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action. Furthermore, no statutory exhaustion requirements apply to Petitioner's claim of unlawful detention.

STATEMENT OF FACTS

14. Mr. Merchant's life in the United States began early in his childhood when he and his family immigrated from the UAE to the United States.[5] He is now 43 years old and married to his U.S. citizens spouse and father to two U.S. citizen teenage children. He is employed as a real estate broker and is a small business owner.

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[4] *See Vásqyez v. Reno*, 233 F.3d 688, 690 (1st Cir. 2000), *cert. denied*, 122 S. Ct. 43 (2001).

[5] Pet'r's App. Ex. 1.

15. In 2004, Mr. Merchant was convicted of a felony drug case. As a result of the conviction, he was detained by ICE and placed in removal proceedings. Mr. Merchant indicated that he wished to be removed to Pakistan.

16. On February 6, 2004, Mr. Merchant was given a final removal order. His 90-day removal period ended on May 6, 2004, and his reasonable presumption period ended August 4, 2004. He was then detained for five additional months.

17. While he was detained, ICE attempted to obtain the necessary travel documents from both Pakistan and the United Arab Emirates. Because documents could not be obtained from either country, he was released on an OSUP. He has wholly complied with all terms of the OSUP for 21 years.

18. While on OSUP, Mr. Merchant has attempted to obtain travel documents for himself by contacting the UAE embassy. He received a letter stating that they will not provide the necessary documents because he was not born there. Moreover, Pakistan will not provide him with travel documents, as evidenced by ICE attempting to contact them in 2004.

19. While on OSUP, Mr. Merchant has established deep roots in the United States. He is the primary financial provider for his family of four and assists with all household tasks when his wife is busy working as an elementary school teacher.[6] He pays taxes, owns a house, opened up a business, and volunteers throughout his community. Mr. Merchant's friends and neighbors in his community have indicated the type of person

[6] Pet'r's App. Ex. 1.

that he is: hard-working, caring for his family and others around him, and overall, a good man.[7]

20. On August 6, 2025, Mr. Merchant was driving his 12-year-old son to school when he was pulled over and arrested by ICE agents. He has been detained since that date.

21. As of the date of this filing, Mr. Merchant remains unlawfully detained at the Prairieland Detention Facility. There is no indication that his removal in the reasonably foreseeable future is any more likely now than it has been at any point in the last two decades.[8] His current detention is therefore in direct violation of the principles set forth by the Supreme Court in *Zadvydas v. Davis*, constituting an unlawful restraint on his liberty.

22. The Government's inability to effectuate Mr. Merchant's removal is further evidenced by the fact that in the years leading up to his re-detention, ICE never requested that he complete or sign any documentation to facilitate a request for travel documents from Pakistan or the UAE. Since his current detention began, ICE has made no effort to secure the necessary travel documents nor has mentioned any other changed circumstances.

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[7] Pet'r's App. Ex. 2.

[8] *Cf. Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025)(when pressed on evidence specific to changed circumstances of the pre-95 immigrant petitioner in that case, the government only came up with a declaration which the government itself acknowledged was not specific to the petitioner, stating "No doubt the declaration is general and it just says the United States has been successful in removing individuals to Pakistan.").

23. Mr. Merchant's detention, initiated on August 6, 2025—more than 21 years after ICE finally released him after detaining him for removal in 2004—is in direct violation of the principles set forth by the Supreme Court in *Zadvydas*. More importantly, for the purposes of this action, ICE failed to adhere to its own mandatory regulations when it re-detained Mr. Merchant without the process required by the regulations or the existence of changed circumstances specific to Mr. Merchant of such significance that his removal has suddenly become reasonably foreseeable. This re-detention has been unconstitutional and unlawful since the moment it began on August 6, 2025.

PUNITIVE BANISHMENT TO THIRD COUNTRIES

24. Since January 2025, Respondents have developed and implemented a policy and practice of removing individuals to third countries, without first following the procedures in the INA for designation and removal to a third country and without providing fair notice and an opportunity to contest the removal in immigration court.

25. Respondents reportedly have negotiated with at least 58 countries to accept deportees from other nations. On June 25, 2025, the *New York Times* reported that seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—had agreed to accept deportees who are not their own citizens.[9] Since then,

[9] Edward Wong, et. al., "Inside the Global Deal-Making Behind Trump's Mass Deportations," N.Y. Times (June 25, 2025).

ICE has carried out highly publicized third country deportations to South Sudan and Eswatini.

26. Punishment and deterrence appear to be the point of the Trump Administration's third country removal scheme. The Administration has reportedly negotiated with countries to have deportees imprisoned in prisons, camps, or other facilities. The government paid El Salvador about $5 million to arbitrarily and indefinitely imprison more than 200 deported Venezuelans in a maximum-security prison notorious for gross human rights abuses, known as CECOT. In February, Panama and Costa Rica took in hundreds of deportees from countries in Africa and Central Asia and imprisoned them in hotels, a jungle camp, and a detention center. On July 4, 2025, ICE deported eight men, including one pre-1995 Vietnamese refugee, to South Sudan. The men have been detained incommunicado ever since. On July 15, ICE deported five men to the tiny African nation of Eswatini, including one man from Pakistan, where they are reportedly being held in solitary confinement.

27. The Trump Administration has hand selected countries known for human rights abuses and instability for these third country deportation agreements to frighten people in the United States into self-deporting or to accept removal to their home countries. Indeed, conditions in South Sudan are so extreme that the U.S. State Department website warns Americans not to travel there, and if they do, to prepare their will, make funeral arrangements, and appoint a hostage-taker negotiator first.

28. On July 9, 2025, ICE issued a new memo to staff instructing that when seeking to remove an individual to a country not designated on that person's removal order, ICE

may deport that person without any procedures for notice or an opportunity to be heard if the State Department confirms that it has received diplomatic assurances that individuals will not be persecuted or tortured. If no diplomatic assurances are received, the ICE memo instructs officers to serve on the individual a Notice of Removal that includes the intended country of removal. It instructs officers not to ask whether the individual is afraid of removal to that country. It states that officers should "generally wait at least 24 hours following service of the Notice of Removal before effectuating removal" but that "[i]n exigent circumstances, [ICE] may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the [noncitizen] is provided reasonable means and opportunity to speak with an attorney prior to removal."

29. The memo further instructs that if the noncitizen "does not affirmatively state a fear of persecution or torture if removed to the country of removal listed on the Notice of Removal within 24 hours, [ICE] may proceed with removal to the country identified on the notice." If the noncitizen "does affirmatively state a fear if removed to the country of removal" then ICE will refer the case to U.S. Citizenship and Immigration Services ("USCIS") for a screening for eligibility for withholding of removal and protection under the Convention Against Torture ("CAT"). "USCIS will generally screen within 24 hours." If USCIS determines that the noncitizen does not meet the standard, the individual will be removed. If USCIS determines that the noncitizen has met the standard, then the policy directs ICE to either move to reopen removal

proceedings "for the sole purpose of determining eligibility for [withholding of removal protection] and CAT" or designate another country for removal.

30. The eight men who were ultimately deported to South Sudan all claimed fear for removal South Sudan. None of those men were provided a fear screening by a USCIS officer or otherwise, to despite the fact that they were held by ICE for six weeks on a U.S. military base in Djibouti before their final removal to South Sudan.

LEGAL BASIS FOR RELIEF SOUGHT

Due Process Governs Decisions to Revoke an Order of Supervision

31. "The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."[10] "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects."[11]

32. Under the substantive due process doctrine, a restraint on liberty like revocation of a noncitizen's OSUP is only permissible if it serves a "legitimate nonpunitive objective."[12] The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal.[13]

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[10] *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

[11] *Id.* at 690.

[12] *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997).

[13] *See Zadvydas*, 533 U.S. at 690-92 (discussing constitutional limitations on civil detention).

33. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty," like the decision to revoke a non-citizen's order of supervision.[14] "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner."[15]

Statute and Regulations Govern Procedures for Revoking an Order of Supervision

34. The Immigration & Nationality Act provides that a noncitizen who is "ordered removed" "shall" be removed "from the United States within a period of 90-days.[16] The same subparagraph goes on to state that this 90-day period is "referred to as the 'removal period'" in § 1231.[17]

35. Though the statute, as interpreted by *Zadvydas*, allows for detention beyond the 90-day removal period in limited circumstances, the government should—and previously has—released those non-citizens for whom there is "no reasonable likelihood of . . . removal in the foreseeable future."[18] That being said, when the statute is "read in light of the Constitution's demands, [it] limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal form the United States."[19]

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[14] *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

[15] *Id.* at 333.

[16] 8 U.S.C. § 1231(a)(1)(A).

[17] *Id.*

[18] *Zadvydas*, 533 U.S. at 690.

[19] *Id.* at 689.

36. *Zadvydas* explained that continued detention beyond the initial 90-day removal period may not be indefinite.[20] Rather, *Zadvydas* explained that once 180 days have passed since the removal period began, a noncitizen may bring a habeas petition seeking release from further ICE custody.[21] If the government seeks to continue to detain the noncitizen beyond this "presumptively reasonable period" the government must produce evidence demonstrating there is a "significant likelihood of removal in the reasonably foreseeable future."[22]

37. In determining the length of a reasonable removal period, the Court adopted a "presumptively reasonable period of detention" of six months.[23] After six months, the government bears the burden of disproving an alien's "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future."[24] Moreover, "for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink."[25]

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[20] *Id.*

[21] *Id.*

[22] *Id.* at 701.

[23] *Id.*

[24] *See Zhou v. Farquharson*, 2001 U.S. Dist. LEXIS 18239, *2-*3 (D. Mass. Oct. 19, 2001) (quoting and summarizing *Zadvydas*).

[25] *Zadvydas*, 533 U.S. at 701.

38. An alien who has been detained beyond the presumptive six months should be released where the government is unable to present documented confirmation that the foreign government at issue will agree to accept the particular individual in question.[26]

39. Upon release from custody, a noncitizen subject to a final order of removal must comply with certain conditions of release.[27] 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. Specifically, "ICE's decision to re-detain a noncitizen like [Mr. Merchant] who has been granted supervised release is governed by ICE's own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future."[28]

40. Upon such a determination by ICE to re-detain, "the alien will be notified of the reason 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

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[26] *See Agbada v. John Ashcroft*, 2002 U.S. Dist. LEXIS 15797 (D. Mass. August 22, 2002) (court "will likely grant" habeas petition after fourteen months if ICE is "unable to present document confirmation that the Nigerian government has agreed to [petitioner's] repatriation"); *Zhou*, 2001 U.S. Dist. LEXIS 19050 at *7 (W.D. Wash. February 28, 2002) (government's failure to offer specific information regarding how or when it expected to obtain the necessary documentation or cooperation from the foreign government indicated that there was no significant likelihood of petitioner's removal in the reasonably foreseeable future).

[27] 8 U.S.C. § 1231(a)(3), (6).

[28] *Id.*; *see also Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) (citing 8 C.F.R. § 241.13(i)(2)).

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."[29]

41. ICE's decision to re-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."[30]

42. Because "[r]egulations cannot circumvent the plain text of the statute[,]" courts question whether these regulations are ultra vires of statutory authority.[31]

43. A court may not make this determination in the first instance but may review it for compliance with the regulation.[32]

Third Country Removals

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[29] *Id.* at § 241.13(i)(3).

[30] *See also Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025).

[31] *See, e.g., You v. Nielsen*, 321 F.Supp.3d 451, 463 (S.D.N.Y. 2018) (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal period only if person is a risk to the community, unlikely to comply with the order of removal, or was ordered removed on specified grounds).

[32] *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)).

44. The immigration laws delineate the proper procedures by which a country may be designated for removal.[33] These procedures move in incremental steps.

45. 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.[34] 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.[35]

46. Second, if the individual is not removed to the country they designated under § 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.[36]

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[33] *See* 8 U.S.C. § 1231(b).

[34] *Id.* at § 1231(b)(2)(A).

[35] *Id.* at § 1231(b)(2)(C).

[36] *Id.* at § 1231(b)(2)(D).

47. 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.[37] *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."[38]

48. 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.[39] 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,

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[37] *Id.* at § 1231(b)(2)(E).

[38] *Id.* at § 1231(b)(2)(E)(vii).

[39] *Id.* at § 1231(b)(3)(A).

membership in a particular social group, or political opinion."[40] Withholding of removal is a mandatory prosecution.

49. Similarly, Congress codified protections enshrined in the CAT prohibiting the government from removing a person to a country where they would be tortured.[41] CAT protection is also mandatory.

50. 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)."[42] The government must be able to show evidence that the third country will accept the individual into that country.[43]

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[40] *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16.

[41] *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.

[42] *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2013); *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).

[43] *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]").

51. 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]."[44]

52. If the noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek asylum, withholding, and relief under CAT before an IJ in reopened removal proceedings.[45]

53. 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.[46] They must have time to prepare and present relevant arguments and evidence and to seek reopening of their removal case.

Punitive Removal Practices

54. 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

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[44] *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)).

[45] *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).

[46] *Andriasian*, 180 F.3d at 1041.

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.[47]

55. 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.[48] 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."[49] 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."[50]

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[47] *Wong Wing v. United States*, 163 U.S. 228, 237 (1896).

[48] *Id.* at 236.

[49] *Id.* (quoting *Fong Yue Ting v. United States*, 149 U.S. 730 (1893)).

[50] *Id.* at 237.

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

COUNT ONE:
VIOLATION OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION
PROCEDURAL DUE PROCESS

57. Petitioner re-alleges and incorporates by reference all the paragraphs above.

58. When ICE issued Mr. Merchant an OSUP 21 years ago, it found that he is neither a danger to the community nor a flight risk.

59. When Respondents revoked the OSUP when he was detained, Mr. Merchant had complied with every condition of the order and ICE had not secured necessary travel documents for removal. No change in circumstances warranted the order's revocation.

60. Mr. Merchant's detention therefore does not bear a reasonable relationship to the two regulatory purposes of detention: preventing danger to the community or flight prior to removal.

61. Because Respondents had no legitimate, non-punitive objective in revoking Mr. Merchant's OSUP, Mr. Merchant's continued detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

COUNT TWO:
VIOLATION OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION
PROCEDURAL DUE PROCESS

62. Petitioner re-alleges and incorporates by reference all the paragraphs above.

63. *Mathews v. Eldridge*, 424 U.S. 319, 333, instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and

the probable value, if any, of additional procedural safeguards: and, (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail.

64. The first factor, the private interest at issue, favors Mr. Merchant, who is being indefinitely held in ICE detention. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects."[51]

65. The second *Matthews* factor weighs in Mr. Merchant's favor. To safeguard against erroneous deprivations of liberty, the statute specifies the limited number of reasons that an OSUP can be revoked. Regulations specify who may lawfully revoke the order and the procedures that must be followed when doing so, including giving notice and an opportunity to be heard. Respondents violated those laws here, leaving the risk of erroneous deprivation of liberty not just high, but certain. Requiring Respondents to give notice and an opportunity to respond prior to revoking an order of supervision is of great value because it reduces the probability of needless detention of a person, like Petitioner, who is neither dangerous nor a flight risk.

66. The third *Matthews* factor also favors Mr. Merchant. When the government ignores law that ensures notice and an opportunity to respond to a person at risk of revocation of an order of supervision, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight

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[51] *Zadvydas*, 533 U.S. at 690.

risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas petition in federal court to compel Respondents to comply with law, requiring Respondents to instead provide notice and a meaningful opportunity to respond prior to revoking an order of supervision reduces fiscal and administrative burdens on the government.

67. For these reasons, revoking Mr. Merchant's OSUP without providing notice and a meaningful opportunity to respond violated procedural due process under the Fifth Amendment to the U.S. Constitution.

COUNT THREE:
UNLAWFUL RE-DETENTION

68. Petitioner re-alleges and incorporates by reference all the paragraphs above.

69. Respondents' re-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 the APA.

70. Petitioner was previously released by Respondents 21 years ago because his removal was not foreseeable. "If removal is not reasonably foreseeable"—as is the case here—detention is "unreasonable and no longer authorized by statute."[52]

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

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[52] *Zadvydas*, 533 U.S. at 699-700 (citing 8 U.S.C. § 1231(a)(6)).

72. Petitioner has dutifully complied with the conditions of his supervised release. His release may be revoked only if changed circumstances make his removal reasonably foreseeable.[53] Upon such a determination, several procedural steps are required to revoke release, none of which were followed here. Respondents are required to follow their own regulations.[54]

73. Petitioner's removal to Pakistan or the UAE is not significantly likely to occur in the reasonably foreseeable future. Petitioner has already spent months in immigration custody in 2004 during which time the government was unable to remove him. Indeed, at that time, Pakistan refused to provide travel documents for Petitioner. And since that time, Mr. Merchant's attempts to obtain documents from Pakistan and the UAE have been summarily denied.

74. Mr. Merchant's re-detention is unlawful, and his immediate release is appropriate, given that Respondents cannot meet their burden to show that removal is reasonably foreseeable. This Court should grant relief on this basis.

COUNT FOUR:
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

75. Petitioner re-alleges and incorporates by reference all the paragraphs above.

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[53] 8 C.F.R. § 241.13(i)(2).

[54] *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see also Rombot v. Sousa*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017) (allowing petitioner's motion for release upon a finding that ICE violated its regulations that implicated a fundamental constitutional right).

76. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious."[55]

77. Respondents' revocation of Mr. Merchant's OSUP was arbitrary and capricious because it violated statute, regulation, and the Constitution, as described above.

78. An agency decision that "runs counter to the evidence before the agency" is also arbitrary and capricious.[56]

79. Respondents' decision to revoke Mr. Merchant's OSUP ran counter to the evidence before the agency that he would comply with a demand to appear for removal without detention. Mr. Merchant has never violated his OSUP and no new facts or changed circumstances suggest he would. He has never attempted to prevent his removal to Pakistan nor will he in the future.

80. The revocation also "failed to consider important aspects of the problem" before Respondents, making it arbitrary and capricious for multiple other reasons.[57]

81. First, Respondents failed to consider the serious constitutional concerns raised by revoking Mr. Merchant's OSUP without notice and opportunity to respond.

82. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking the OSUP of Mr. Merchant, who is neither a flight risk nor a danger to the community, and for whom the agency does not have travel

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[55] 5 U.S.C. § 706(2)(A).

[56] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins.*, 463 U.S. 29, 43 (1983).

[57] *Dep't of Homeland Sec. v. Regents of the Univ. of Calif.*, 140 S.Ct. 1891, 1910 (2020).

documents needed to effectuate removal, including financial and administrative costs incurred by the agency due to unnecessary detention.

83. Third, Respondents failed to consider reasonable alternatives to revoking Mr. Merchant's OSUP that were before the agency, like simply continuing release under the OSUP and scheduling a future time and date to appear for removal. This alternative would vindicate the government's interests in effectuating a removal order and save it the expense of detention not needed to guarantee Mr. Merchant's appearance.

84. Fourth, Respondents failed to consider Mr. Merchant's substantial reliance interest, created by its instruction on Mr. Merchant's release notification, the agency would give an opportunity to arrange for an orderly departure once it obtained travel documents.

85. For these and other reasons, Respondents' revocation of Mr. Merchant's OSUP was arbitrary and capricious and should be held unlawful and set aside.

COUNT FIVE:
ULTRA VIRES ACTION

86. Petitioner re-alleges and incorporates by reference all the paragraphs above.

87. There is no statute, constitutional provision, or other source of law that authorizes Respondents to re-detain Mr. Merchant for any amount of time.

88. Mr. Merchant therefore has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

COUNT SIX:
THIRD COUNTRY REMOVAL

89. Petitioner re-alleges and incorporates by reference all the foregoing paragraphs above.

90. 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 re-opened removal proceedings. They also require an opportunity for Petitioner to make a fear-based claim against removal to a third country in re-opened removal proceedings.

91. Respondents' policy for third country removals violates all 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 and opportunity to respond, in violation of the statute, regulations, and Fifth Amendment.

92. Mr. Merchant fears being removed to a third country where he'd likely detained in abhorrent conditions in a place he has never been.

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

COUNT SEVEN:
PUNITIVE THIRD COUNTRY BASNISHMENT

94. Petitioner re-alleges and incorporates by reference all the paragraphs above.

95. 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 offense to be twice put in jeopardy of life or limb;" or "be deprived of life, liberty, or property, without due process of law."

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

97. The 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.[58]

98. Petitioner was convicted and completed any sentences for his criminal conviction decades ago. His conviction 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.

99. 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

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[58] *Wong Wing*, 163 U.S. at 236-38.

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. Respondents' 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.[59] 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.

100. Respondents may not seek to remove Petitioner to a third county, such as El Salvador, under their punitive and banishment policy and practices.

REQUEST FOR RELIEF

WHEREFORE, Petitioner Asladi Merchant respectfully requests that this Court grant the following relief:

1) Assume jurisdiction over this matter;

2) Grant Petitioner a writ of habeas corpus and direct the Respondents to immediately release Petitioner from custody under reasonable conditions of supervision;

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[59] *See id.*

3) Immediately Order Respondents not to transfer the Petitioner out of the jurisdiction of this Court while the Petitioner remains in Respondent's custody during the pendency of these proceedings;

4) Order Respondents not to remove Petitioner to any country other than Pakistan as it was the only country previously designated by the IJ during removal proceedings held under 8 U.S.C. § 1229a;

5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

6) Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED,

/s/ Dan Givіden

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