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**Application for Pro Hac Vice Admission Forthcoming*

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

H.N.[1], Petitioner, v. David R. Rivas, in his official capacity, Warden, San Luis Regional Detention and Support Center; John Cantu, in his official capacity, Acting Field Office Director, Phoenix Field Office, U.S. Immigration and Customs Enforcement; Todd M. Lyons, in his official capacity, Acting Director, U.S. Immigration and Customs Enforcement; Kristi Noem, in her official capacity, Secretary, U.S. Department of Homeland Security, Respondents.	Case No.: **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** Challenge to Unlawful Incarceration Under Color of Immigration Detention Statutes; Request for Declaratory and Injunctive Relief

[1] Petitioner will move this Court for leave to proceed under a pseudonym (using the initials H.N.).

INTRODUCTION

1. This case concerns the indefinite—and potentially permanent—civil detention of an asylum seeker, Mr. H.N. aka S.S. ("Petitioner" or "Mr. H.N."), who has been held for over six months following the issuance of a final removal order by an Immigration Judge ("IJ") at the Otay Mesa Immigration Court, Otay Mesa, California.

2. On or about September 23, 2024, Mr. H.N. reached the United States seeking asylum. Since then, for over *14 months*, and throughout his immigration process, Mr. H.N. has remained in civil immigration detention, including the seven months since the IJ's final order of removal.

3. On May 9, 2025, the IJ entered a final order of removal against Mr. H.N. which denied his application for asylum, withholding of removal, or protection under the Convention Against Torture. **Exhibit 1**, IJ Order dated May 9, 2025. The Order designated Austria or, in the alternative, Afghanistan as the country of removal. *Id.* at p. 3.

4. On information and belief, Respondents have not produced travel documents for Mr. H.N. or assurances from any country willing to accept him in the *seven months* since the IJ's Order.

5. Respondents' failure to identify a viable third country for removal confirms that Mr. H.N.'s continued civil immigration detention no longer serves any legitimate statutory purpose. The Supreme Court in *Zadvydas* made clear that due process is violated where civil detention is no longer related to its purpose. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Far from authorizing indefinite detention, *Zadvydas*

establishes a presumption of release once removal is not reasonably foreseeable. Under this well-established Supreme Court precedent, the government's authority to detain noncitizens is limited in the absence of a significant likelihood of removal in the reasonably foreseeable future. *Id.* Because that likelihood is nonexistent, Mr. H.N.'s continued detention is not only unauthorized, but unconstitutional. This Court should grant habeas relief and order his immediate release.

6. Pursuant to 28 U.S.C. § 2243, Mr. H.N. respectfully requests an order to show cause be issued within three days.

JURISDICTION

7. Mr. H.N. brings this action under Art. I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause); the Fifth Amendment of the U.S. Constitution (Due Process Clause); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 1346 (U.S. as defendant); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1651 (the All Writs Act).

8. District courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their civil immigration detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas*, 533 U.S. at 687.

9. Federal courts also have federal question jurisdiction, through the Administrative Procedure Act ("APA"), to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims are cognizable via habeas. 5 U.S.C. § 703

(providing that judicial review of agency action under the APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus"). The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702. U.S. Immigration and Customs Enforcement's ("ICE") continued detention of Mr. H.N. has adversely and severely affected his liberty.

VENUE AND CUSTODY

10. Venue is proper in the District of Arizona because at least one of the Respondents resides in this District and Respondents imprison Mr. H.N. in this District. Mr. H.N. is a resident of this District while he remains detained by Respondents in Arizona, and a substantial part of the events giving rise to the claims in this action took place within this District, and Respondents are officers of the U.S. acting in their official capacity. 28 U.S.C. §§ 1391(b)(2) and (e)(1), 2241(c)(3); **Exhibit 2**, ICE Detainee Locator dated December 19, 2025. There is no real property involved in this action.

11. Exhaustion of administrative remedies is not required because it would be futile.

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith," unless the petitioner is not entitled to relief. *See* 28 U.S.C. § 2243; *Fay v. Noia*, 372 U.S. 391, 400 (1963) (describing the Great Writ as a "swift and imperative remedy in all cases of illegal

restraint or confinement). If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

PARTIES

13. Mr. H.N. is a 45-year-old man originally from Afghanistan who ICE has jailed for over 14 months since his arrival in the U.S. Respondents seek to deport him to Austria or, in the alternative, Afghanistan. He is currently in Respondents' legal and physical custody at San Luis Regional Detention Center in San Luis, Arizona. **Exhibit 2**, ICE Detainee Locator dated December 19, 2025.

14. Respondent David R. Rivas ("Rivas") is the Warden of the San Luis Regional Detention and Support Center in San Luis, Arizona, where Mr. H.N. is detained. *Id.* Rivas is a custodian of Mr. H.N. and is named in his official capacity.

15. Respondent John Cantu ("Cantu") is the Field Office Director of the ICE's Phoenix Field Office in Arizona. Cantu is a custodian of Mr. H.N. and is named in his official capacity.

16. Respondent Todd M. Lyons ("Lyons") is the Acting Director of ICE. He has the authority to make decisions related to detaining and removing noncitizens. Lyons is a custodian of Mr. H.N. and is named in his official capacity.

17. Respondent Kristi Noem ("Noem") is the Secretary of the U.S. Department of Homeland Security ("DHS"). She is responsible for the implementation and enforcement of the Immigration and Nationality Act. Noem has ultimate custodial

authority over Mr. H.N. because ICE is a sub-agency of DHS. She is sued in her official capacity.

FACTUAL BACKGROUND

18. Mr. H.N.'s family fled Afghanistan when he was a minor. He became a refugee in Austria in approximately 1999, and he lived there with his family until 2024.

19. In 2019, the Vienna Regional Court in Austria sentenced Mr. H.N. to eight months of imprisonment for a criminal charge. He served his jail sentence in Austria from approximately May 2019 to November 2019. Following his release from jail, on information and belief, Mr. H.N. received threats related to his criminal sentencing.

20. Mr. H.N. has spent nearly the entirety of his time in the U.S. in Respondents' custody. Upon entering the U.S., on or about September 23, 2024, he was encountered by U.S. Customs and Border Protection and taken into custody. From detention, he filed an application for asylum, withholding of removal, and protection under the Convention Against Torture.

21. On May 9, 2025, after the detained merits hearing at Otay Mesa Immigration Court, the IJ denied Mr. H.N.'s application for relief. **Exhibit 1**, IJ Order dated May 9, 2025. Neither Mr. H.N. nor Respondents reserved the right to appeal. *Id.* Thus, the IJ's Order became administratively final that day.

22. Today, over seven months after the IJ's Order, and over 14 months since his arrival in the U.S., Petitioner remains detained in Respondents' legal and physical custody. **Exhibit 2**, ICE Detainee Locator dated December 19, 2025.

LEGAL FRAMEWORK

I. Continued Detention Violates *Zadvydas* When Removal Is Not Reasonably Foreseeable.

23. "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." *Zadvydas*, 533 U.S. at 690. Indefinite detention raises a particularly "serious constitutional problem" and directly violates the Due Process Clause. *Id.* at 689-90.

24. Any deprivation of the liberty interests protected by the Due Process Clause must be closely related to a compelling government interest. See *Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"). Accordingly, any period of post-final-order detention must be strictly limited to what is necessary to achieve the goal of removal. Otherwise, if federal law were understood to allow for "indefinite, perhaps permanent, detention," it would pose "a serious constitutional threat." *Zadvydas*, 533 U.S. at 699.

25. 8 U.S.C. § 1231(a) governs the detention of noncitizens who have been ordered removed from the United States. 8 U.S.C. § 1231(a)(1)(A) provides for a removal period of 90 days. In *Zadvydas*, the Supreme Court interpreted § 1231(a)(6) to incorporate implicit limits. *Id.* at 689. Specifically, the Supreme Court held that under 8 U.S.C. § 1231(a)(6), post-final-order detention is presumptively reasonable for a period

of six months. 533 U.S. at 678. After the expiration of six months, if removal is not reasonably foreseeable, continued detention is no longer authorized. *Id.* at 699-700. At this stage, the burden shifts to the government to show that there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* at 701.

26. If the government cannot present documented confirmation that removal is likely to occur in the reasonably foreseeable future, the noncitizen must be released. *See Zadvydas*, 533 U.S. at 701; *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005). Continued detention would violate both §1231(a)(6) and the Due Process Clause of the Fifth Amendment. *See Zadvydas*, 533 U.S. at 701; *Morales-Fernandez v. INS,* 418 F.3d 1118 (10th Cir. 2005).

27. The regulations at 8 C.F.R. § 241.4 provide for reviews of a noncitizen's continuing detention after 90 days and again after 180 days.

28. Using this framework, Mr. H.N. can make all the threshold showings needed to shift the burden to the government to show a significant likelihood of removal in the reasonably foreseeable future.

A. The six-month grace period has expired.

29. As an initial matter, the six-month grace period has long since ended. The *Zadvydas* grace period lasts for "*six months* after a final order of removal—that is, *three months* after the statutory removal period has ended." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. H.N.'s order of removal was entered on May 9, 2025. **Exhibit 1,** IJ Order dated May 9, 2025, at pp. 1, 3. Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus

expired six months after the order of removal was entered on May 9, 2025, which is to say November 9, 2025. Thus, this threshold requirement is met.

B. The irregular diplomatic relationship between the United States and Afghanistan provides very good reason to believe that Mr. H.N. will not likely be removed in the reasonably foreseeable future.

30. Because the six-month grace period has passed, this Court must evaluate Mr. H.N.'s *Zadvydas* claim using the burden-shifting framework. At the first stage of the framework, Mr. H.N. must "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This standard can be broken down into three parts.

31. **"Good reason to believe."** The "good reason to believe" standard is a relatively forgiving one. "A petitioner need not establish that there exists no possibility of removal." *Freeman v. Watkins*, No. CV B:09-160, 2009 WL 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does "'[g]ood reason to believe' . . . place a burden upon the detainee to demonstrate no reasonably foreseeable, significant likelihood of removal or show that his detention is indefinite; it is something less than that." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says: Petitioners need only give a "good reason"—not prove anything to a certainty.

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32. **"Significant likelihood of removal."** This component focuses on whether Mr. H.N. will likely be removed: Continued detention is permissible only if it is "significant[ly] like[ly]" that ICE will be able to remove him. *Zadvydas*, 533 U.S. at 701. This inquiry targets "not only the *existence* of untapped possibilities, but also [the] probability of *success* in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words, even if "there remains *some* possibility of removal," a petitioner can still meet its burden if there is good reason to believe that successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added). That is to say that some possibility of an eventual removal is not the same as a significant likelihood that removal will occur in the reasonably foreseeable future. *See Iakubov v. Figueroa, No. CV-25-03187-PHX-KML (JZB), 2025 WL 2731355, at *1 (D. Ariz. Sept. 25, 2025) (granting no*ncitizen's habeas where the government could not demonstrate a significant likelihood of imminent removal); *Escalante v. Noem, 2025 WL 2206113 at 4. (E.D. Tex. Aug. 2, 2025)*

33. **"In the reasonably foreseeable future."** This component of the test focuses on when Mr. H.N. will likely be removed: Continued detention is permissible only if removal is likely to happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE's removal efforts. If the Court has "no idea of when it might reasonably expect [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future." *Palma v. Gillis*, No. 5:19-CV-112-DCB-

MTP, 2020 WL 4880158, at *3 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. H.N. "would *eventually* receive" a travel document, he can still meet his burden by giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016). Indeed, merely starting the process of requesting travel documents does not suffice to establish that removal is significantly likely to occur. Nguyen v. Archambeault, No. CV-25-04107-PHX-SHD (ASB), 2025 WL 3250922, at *2 (D. Ariz. Nov. 21, 2025) (granting noncitizen's habeas release where merely submitting travel document requests failed to establish that removal was significantly likely to occur).

34. Mr. H.N. readily satisfies this standard. In order to remove a noncitizen to a foreign nation, the government relies on foreign-government consent and travel documents for the removals. In fact, DHS's own rule treats travel-document availability as a key determinant in continued detention as explained in 8 CFR § 241.4.

35. Here, Petitioner has been held for more than six months post-final order and yet despite that ample amount of time, on information and belief, DHS has not provided any evidence that removal to Austria or Afghanistan is imminent—such as an issued travel document, confirmed acceptance by Austrian or Afghan authorities, or a scheduled removal itinerary. Obtaining these documents is especially complex and unreliable because the U.S. has an atypical diplomatic posture toward Afghanistan

specifically, including no normal embassy operations and posture of non-recognition of Afghanistan.

36. Given these constraints, Petitioner has provided "good reason" to believe removal is not significantly likely in the reasonably foreseeable future. Under *Zadvydas*, the Government must therefore rebut Petitioner's showing with **specific, case-particularized evidence**—not general statements that removals to Austria or Afghanistan can occur in some cases. Unless the government can prove a "significant likelihood of removal in the reasonably foreseeable future," Mr. H.N. must be released. *Zadvydas*, 533 U.S. at 701.

C. *Zadvydas* unambiguously prohibits this Court from denying Mr. H.N.'s petition because of his criminal history.

37. Even if the government did try to argue that Mr. H.N. posed a danger or flight risk, however, *Zadvydas* squarely holds that those are not grounds for detaining an immigrant when there is no reasonable likelihood of removal in the reasonably foreseeable future. 533 U.S. at 684–91.

38. The two petitioners in *Zadvydas* both had significant criminal history. Mr. Zadvydas himself had "a long criminal record, involving drug crimes, attempted robbery, attempted burglary, and theft," as well as "a history of flight, from both criminal and deportation proceedings." *Id.* at 684. The other petitioner, Kim Ho Ma, was "involved in a gang-related shooting [and] convicted of manslaughter." *Id.* at 685. The government argued that both men could be detained regardless of their likelihood of removal, because they posed too great a risk of danger or flight. *Id.* at 690–91.

39. The Supreme Court rejected that argument. The Court appreciated the seriousness of the government's concerns. *Id.* at 691. But the Court found that the immigrant's liberty interests were weightier. *Id.* The Court had never countenanced "potentially permanent" "civil confinement," based only on the government's belief that the person would misbehave in the future. *Id.*

40. The Court also noted that the government was free to use the many tools at its disposal to mitigate risk: "[O]f course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions." *Id.* at 700. The Ninth Circuit later elaborated, "All aliens ordered released must comply with the stringent supervision requirements set out in 8 U.S.C. § 1231(a)(3). [They] will have to appear before an immigration officer periodically, answer certain questions, submit to medical or psychiatric testing as necessary, and accept reasonable restrictions on [their] conduct and activities, including severe travel limitations. More important, if [they] engage[ ] in any criminal activity during this time, including violation of [their] supervisory release conditions, [they] can be detained and incarcerated as part of the normal criminal process." *Ma*, 257 F.3d at 1115.

II. ICE may not remove Mr. H.N. to a third country without adequate notice and an opportunity to be heard.

41. In addition to unlawfully detaining him, ICE's policies threaten Mr. H.N.'s removal to a third country without adequate notice and an opportunity to be

heard. These policies violate the Fifth Amendment, the Convention Against Torture, and implementing regulations.

A. Legal background.

42. U.S. law enshrines protections against dangerous and life-threatening removal decisions. By statute, the government is prohibited from removing an immigrant to any third country where they may be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government "may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion." *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

43. Similarly, Congress codified protections enshrined in the CAT prohibiting the government from removing a person to a country where they would be tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."); 28 C.F.R. § 200.1, §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

44. To comport with the requirements of due process, the government must provide notice of the third country removal and an opportunity to respond. Due process

requires "written notice of the country being designated" and "the statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2)." *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord 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); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

45. The government must also "ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with section 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said]." *Aden*, 409 F. Supp. 3d at 1019. "Failing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process." *Andriasian*, 180 F.3d at 1041.

46. If the noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek asylum, withholding, and relief under CAT before an immigration judge in reopened removal proceedings. The amount and type of notice must be "sufficient" to ensure that "given [a noncitizen's] capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation." *Aden*, 409 F. Supp. 3d at 1009 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998)); *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).

47. "[L]ast minute" notice of the country of removal will not suffice, *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App'x 724 (9th Cir. 2016), and for good reason: To have a meaningful opportunity to apply for fear-based protection from removal, immigrants must have time to prepare and present relevant arguments and evidence. Merely telling a person where they may be sent, without giving them a chance to look into country conditions, does not give them a meaningful chance to determine whether and why they have a credible fear.

B. The June 9, 2025, ICE memo's removal policies violate the Fifth Amendment, 8 U.S.C. § 1231, the Convention Against Torture, and Implementing Regulations.

48. The policies in the June 9, 2025 memo do not adhere to these requirements.

49. First, under the policy, ICE need not give immigrants *any* notice or *any* opportunity to be heard before removing them to a third country. By depriving immigrants of any chance to challenge the State Department's view, this policy violates "[t]he essence of due process," "the requirement that a person in jeopardy of serious

loss be given notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

50. Second, even when the government has obtained no credible assurances against persecution and torture, the government can still remove the person with between 6 and 24 hours' notice, depending on the circumstances. Practically speaking, there is not nearly enough time for a detained person to assess their risk in the third country and gather evidence to support any credible fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may know nothing about a third country, like Eswatini or South Sudan, when they are scheduled for removal there. Yet if given the opportunity to investigate conditions, immigrants would find credible reasons to fear persecution or torture—like patterns of keeping deportees indefinitely and without charge in solitary confinement or extreme instability raising a high likelihood of death—in many of the third countries that have agreed to removal thus far. Due process requires an adequate chance to identify and raise these threats to health and life. This Court must prohibit the government from removing Mr. H.N. without these due process safeguards, including to safeguard against the risk of violating the principle of non-refoulement.

III. This Court must hold an evidentiary hearing on any disputed facts.

51. Resolution of a prolonged-detention habeas petition may require an evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Mr. H.N. hereby requests such a hearing on any material, disputed facts.

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CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Unlawful Post-Final Order Detention In Violation of 8 U.S.C. § 1231(a)(6) and *Zadvydas*

52. Mr. H.N. realleges and incorporates by reference the paragraphs above.

53. The government detains Mr. H.N. pursuant to 8 U.S.C. § 1231(a)(6), which governs the detention of noncitizens who have administratively final orders of removal.

54. In *Zadvydas*, the Supreme Court interpreted section 1231(a)(6) to contain an implicit timeframe, authorizing detention only for "a period reasonably necessary to bring about the [noncitizen's] removal from the United States. 533 U.S. at 589. The Court established a six-month period of post-final-order detention, after which the government must provide evidence that removal is likely in the reasonably foreseeable future. *See id.* at 701.

55. In the more than six months since Mr. H.N. removal order became administratively final, the government has failed to identify a single country for removal that has agreed to accept Mr. H.N.

56. Before initiating removal to any third country, the government must first afford Mr. H.N. notice and the opportunity to raise a fear-based protection claim seeking relief from removal to that country. If Mr. H.N. successfully demonstrates reasonable fear, the government must allow him an opportunity to reopen his proceedings. Mr. H.N. is a citizen of Afghanistan, a country with which the United

States does not have regular diplomatic relations, which makes it highly improbable that DHS would succeed in removing him there.

57. Because Mr. H.N. cannot be removed from the U.S. in the "reasonably foreseeable future," his continued detention violates 8 U.S.C. § 1231(1). *See* Zadvydas, 533 U.S. at 701.

58. Accordingly, Mr. H.N. respectfully requests that this Court order Respondents to immediately release him from detention.

SECOND CAUSE OF ACTION

Violation of the Procedural Due Process Clause of the Fifth Amendment of the U.S. Constitution

59. Mr. H.N. realleges and incorporates by reference the paragraphs above.

60. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. To comply with the Due Process Clause, civil detention must "bear[] a reasonable relation to the purpose for which the individual was committed," which for immigration detention pursuant to § 1231 is removal from the U.S. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690).

61. The government's alleged justification for continuing to detain Mr. H.N. absent any indication it has even begun the preliminary research that third country removal requires in the more than six months since the final decision in his case, violates his procedural due process rights and renders his detention indefinite. Moreover, without notice of the government's intent to deport him to a single country, Mr. H.N. cannot have a meaningful opportunity to challenge the viability of his

removal, further depriving him of the due process rights to which he is entitled under the U.S. Constitution.

62. Lastly, on information and belief, Respondents have failed to conduct any of the mandatory custody reviews required by 8 C.F.R. § 241.4 during this prolonged period of detention, further violating his right to due process.

THIRD CAUSE OF ACTION

Violation of the Substantive Due Process Clause of the Fifth Amendment of the U.S. Constitution

63. Mr. H.N. realleges and incorporates by reference the paragraphs above.

64. The Fifth Amendment provides that "No person shall . . . be deprived of life, liberty, or property[] without due process of law." U.S. Const. amend. V. Moreover, "The Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

65. Moreover, the Supreme Court has established that noncitizens in post-final-order detention for more than six months must be released from custody if there is no likelihood that they will be removed in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 699-700.

66. More than seven months have lapsed since the IJ's order of removal, yet Mr. H.N. remains confined, in Respondents' legal and physical custody, without any further court proceedings, appellate process, or indication of any plan for removal. Under these circumstances, Mr. H.N.'s continued detention is completely untethered to any legal basis and no longer bears any reasonable relation to a legitimate government

purpose. *Id.* at 690 ("where detention's goal is no longer practically attainable, detention no longer bears reasonable relation to the purpose for which the individual was committed."). At this stage, DHS's refusal to release Mr. H.N. is "the exercise of power without any reasonable justification" and a violation of due process principles. *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998).

67. The indefinite nature of Mr. H.N. detention under section 1231 violates his substantive due process rights under the Fifth Amendment by depriving him of his "strong liberty interest." *United States v. Salerno*, 481 U.S. 739, 750 (1987).

68. At six months post-final-order and with numerous "good reason[s] to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the government must now carry the burden of justifying Mr. H.N.'s continued imprisonment. *Zadvydas*, 533 U.S. at 701.

69. Moreover, the government interest in "preventing flight [] is weak or nonexistent where removal seems a remote possibility at best." *Id.* at 690.

70. Accordingly, Mr. H.N. respectfully requests this Court order Respondents to immediately release him.

FOURTH CAUSE OF ACTION

Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (D)

71. Mr. H.N. realleges and incorporates by reference the paragraphs above.

72. A "reviewing court shall (1) compel agency action unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside agency action, findings, and conclusions found to be — (A) arbitrary, capricious, an abuse of discretion, or otherwise

not in accordance with law; [or] (D) without observance of procedure required by law." 5 U.S.C. § 706.

73. ICE's actions and omissions, including its failure to timely provide and adequate custody review and failure to follow the custody review process under 8 C.F.R. § 241.4, constitute unlawful agency action.

FIFTH CAUSE OF ACTION

Unconstitutionally Inadequate Procedures Regarding Third Country Removal - Procedural Due Process Under the Fifth Amendment of the U.S. Constitution

74. Mr. H.N. realleges and incorporates by reference the paragraphs above.

75. 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.

76. Petitioner has a protected interest in his life. Thus, prior to any third country removal, Petitioner must be provided with constitutionally compliant notice and an opportunity to respond and contest that removal if he has a fear of persecution or torture in that country.

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

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PRAYER FOR RELIEF

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;

2. Issue an Order prohibiting Respondents from transferring Mr. H.N. outside of the jurisdiction of the District of Arizona pending resolution of this case;

3. Issue an order to show cause or order to answer pursuant to 28 U.S.C. § 2243, ordering Respondents to show cause within three days of why the writ should not be granted;

4. Grant a writ of habeas corpus and order Respondents to immediately release Petitioner from detention;

5. Declare that Petitioner's continued detention violates 8 U.S.C. § 1231, as interpreted by the Supreme Court in *Zadvydas*;

6. Declare that Petitioner's prolonged and indefinite detention violates his rights under the Due Process Clause of the Fifth Amendment;

7. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal and providing at least 14 days' notice;

8. Enjoin Respondents from re-detaining Petitioner without first following all procedures set forth in 8 C.F.R. §§ 241.4(*l*), 241.13(i), and any other applicable statutory and regulatory procedures;

9. Enjoin Respondents from removing Petitioner to any country other than Afghanistan or Austria, unless they provide constitutionally compliant notice and opportunity to respond and contest that removal if he has a fear of persecution or torture in that country, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):

a. written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;

b. a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;

c. if Petitioner is found to have demonstrated "reasonable fear" of removal to the country, Respondents must move to reopen Petitioner's immigration proceedings;

d. if Petitioner is not found to have demonstrated a "reasonable fear" of removal to the country, a meaningful opportunity, and a minimum of fifteen days, for the Petitioner to seek reopening of his immigration proceedings;

10. Award Mr. H.N. costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

11. Grant any further relief as this Court deems just and proper.

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Dated: December 20, 2025

Respectfully Submitted,

/s/Mihret Getabicha

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**Application for Pro Hac Vice Admission Forthcoming*

Attorneys for Petitioner H.N.

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

2 I, Mihret Getabicha, represent Petitioner H.N. and submit this verification on his
3 behalf. I hereby verify that the factual statements made in the foregoing Petition for
4 Writ of Habeas Corpus are true and correct to the best of my knowledge and belief.

5 Dated: December 20, 2025

Respectfully Submitted,

6 */s/Mihret Getabicha*

7 Mihret Getabicha*
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