

1 Anna Darbinian, SBN 200828
2 ASHERSON, KLEIN & DARBINIAN
3 8484 Wilshire Blvd., Ste. 711
4 Beverly Hills, California 90211
5 Phone: (310) 247-6070
6 Fax: (310) 278-8454
7 Email: ad@asherson.net

8 Attorneys for Petitioner

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 ZHILBERT KHACHIKIAN

12 Petitioner,

13 v.

14 JEREMY CASEY, Warden, Imperial
15 Regional Detention Facility; JOSEPH
16 FREDEN, Acting Field Office Director,
17 U.S. Immigration and Customs
18 Enforcement; TODD M. LYONS,
19 Acting Director, U.S. Immigration and
20 Customs Enforcement; KRISTI NOEM,
21 Secretary, U.S. Department of
22 Homeland Security; and PAMELA
23 BONDI, Attorney General of the
24 United States,

25 Respondent(s).

Case No. '25CV3737 GPC JLB

Agency File No. 

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW
CAUSE WITHIN THREE DAYS AND
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

1 Petitioner Zhibert Khachikian (“Petitioner” or “Mr. Khachikian”) hereby
2 respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241
3 ordering his release from custody.

4
5 **I. INTRODUCTION**

6 1. Mr. Khachikian is a 72 year old Iranian man of Armenian ethnicity who is
7 detained at the Imperial Regional Detention Facility in Calexico, California. He submits
8 this petition for writ of habeas corpus under 28 U.S.C. § 2241 for a judicial check upon
9 Respondents’ unlawful revocation of his release on an Order of Supervision and
10 Unsupervised Parole (“OSUP”) and detaining him without reason or belief that his
11 removal from the United States is reasonably foreseeable.

12 2. In October of 1999, an Immigration Judge (“IJ”) entered a removal order
13 against Mr. Khachikian.

14 3. However, the U.S. Department of Homeland Security (“DHS”) and U.S.
15 Immigration and Customs Enforcement (“ICE”) did not effectuate Mr. Khachikian’s
16 removal, and he was allowed to remain in the U.S. notwithstanding the outstanding
17 removal order by the IJ.

18 4. Instead, in October of 2008, Mr. Khachikian was arrested by ICE, placed on
19 an OSUP program by ICE, and released. In 2025, ICE added Intensive Supervision
20 Appearance Program (“ISAP”) requirements for Mr. Khachikian. Mr. Khachikian has
21 complied with every requirement and check-in requested by ICE.

22 5. In November of 2025, 26 years after being ordered removed and 17 years
23 after ICE issued Mr. Khachikian an OSUP, without any notice, much less the process that
24 was due, ISAP officers arrested Mr. Khachikian without a warrant and took him into ICE
25 custody.

26 6. After Mr. Khachikian was detained in November of 2025, the next day ICE
27 officers arbitrarily canceled Mr. Khachikian’s OSUP, and did not give him any due
28

1 process or opportunity to respond and failed to inform him of the reasons for revocation
2 of release.

3 7. On information and belief, only after ICE officers detained Mr. Khachikian
4 did they begin to attempt to procure the necessary travel documentation (that must be
5 issued from the country of Iran) for Mr. Khachikian to be removed to Iran,
6 notwithstanding his expressed genuine fear of persecution and harm based on his Bahai
7 faith.

8 8. ICE's withdrawal of Mr. Khachikian's OSUP and subsequent detention was
9 permissible only if ICE could demonstrate that removal could occur "in the reasonably
10 foreseeable future" or if he had violated release conditions—neither of which occurred
11 here. *See Zadvydas v. Davis*, 533 U.S. 678 (2001); 8 C.F.R. § 241.13(h)(4).

12 9. Under the Supreme Court's holding in *Zadvydas*, ICE may only detain
13 individuals after the removal period if there is a "reasonable foreseeability" of removal
14 within a predictable timeframe. Here, ICE's own actions in beginning to request and
15 attempt to secure necessary travel documentation (from a country with which we have no
16 diplomatic relations with, and have travel bans with), only after taking Petitioner into
17 custody, demonstrate the absence of any such reasonable foreseeability.

18 10. Moreover, even assuming that ICE possessed theoretical authority to revoke
19 release, the agency failed to meet mandatory procedural requirements, including the
20 obligation to establish "a significant likelihood that the [noncitizen] may be removed in
21 the reasonably foreseeable future" under 8 C.F.R. § 241.13(i)(2) and to provide him with
22 notice of the specific reasons for revocation of release, a prompt interview to respond to
23 the alleged reasons of revocation, and opportunity to submit evidence and information to
24 contest custody as per 8 C.F.R. § 241.13(i)(3).

25 11. ICE's actions were even more egregious as they occurred well beyond the
26 90-day removal period established by law (see 8 U.S.C. § 1231(a)(1)(A)), and only after
27 Mr. Khachikian had been living peacefully in the community for over 26 years since the
28 IJ's initial removal order in 1999. Mr. Khachikian's 26 years of living in the U.S. since

1 1999 have been with the prior knowledge and permission of the U.S. Department of
2 Homeland Security, and Mr. Khachikian had been provided with an employment
3 authorization document (“EAD”) allowing him to remain in the U.S. and obtain gainful
4 employment.

5 12. ICE’s arbitrary cancellation of Mr. Khachikian’s OSUP and subsequent
6 detention constitute flagrant violations of due process and regulatory law.

7 13. Absent review in this Court, no other neutral adjudicator will examine Mr.
8 Khachikian’s plight. Respondents will continue, unchecked, their pattern and practice of
9 detaining Mr. Khachikian unless or until they remove him to a country where he faces
10 imminent persecution, potentially indefinitely, despite *Zadvydas’* and the regulatory
11 requirements.

12 14. Furthermore, Mr. Khachikian, an elderly man of 72 years of age, has a
13 number of medical issues, including but not limited to a much needed spine surgery,
14 which cannot be adequately addressed in the subpar facilities in detention, yet ICE
15 refuses to accommodate or release Mr. Khachikian for medical reasons.

16 15. In addition, Mr. Khachikian’s OSUP program achieves the same or similar
17 goals as detention in that ICE knows of Mr. Khachikian’s whereabouts and has access to
18 him at all times, especially when removal is not reasonably foreseeable for Mr.
19 Khachikian as the process for procuring travel documentation necessary for removal has
20 not even started, or has just barely begun, and bearing in mind that the U.S. has no
21 diplomatic relations with Iran.

22 16. As Mr. Khachikian’s continued detention violates his Constitutional rights,
23 he respectfully requests that this Court use its authority to review the lawfulness of his
24 detention, declare that his detention is unlawful, and order either his immediate release or
25 that Respondents provide him a bond hearing complying with the procedural
26 requirements in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011).

27
28 **II. CUSTODY**

1 17. Petitioner is currently in the physical and legal custody of Respondents.
2 Petitioner is detained at the Imperial Regional Detention Facility in Calexico, California.
3 Petitioner is under the direct control of Respondents and their agents.

4
5 **III. JURISDICTION**

6 18. This action arises under the Constitution of the United States and the
7 Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*, and the Administrative
8 Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*

9 19. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241
10 (federal habeas statute), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1361 (action to
11 compel), Art. I § 9, cl. 2 of the United States Constitution (Suspension Clause), and the
12 Fifth and Eighth Amendments of the United States Constitution. The Court may grant
13 relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, 5 U.S.C. § 702 (APA), 28
14 U.S.C. § 2201 *et seq.* (Declaratory Judgment Act), and 28 U.S.C. § 1651 (All Writs Act).
15 Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by
16 noncitizens challenging the lawfulness of their detention by ICE. *Demore v. Kim*, 538 U.S.
17 510, 516-17 (2003); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075-76 (9th Cir. 2006).

18 20. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review
19 Petitioner’s detention and his challenge to the government’s arbitrary cancellation of his
20 OSUP. Federal district courts possess broad authority to issue writs of habeas corpus when
21 a person is held “in custody in violation of the Constitution or laws or treaties of the United
22 States” (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention
23 challenges that survived the REAL ID Act’s jurisdictional restrictions. Because Petitioner
24 seeks the traditional habeas remedy of release from allegedly unlawful detention, his
25 petition presents precisely the type of threshold legality-of-detention question that § 2241
26 was designed to address. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Lopez-*
27 *Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020). Federal courts are not stripped of

1 jurisdiction under 8 U.S.C. § 1252. *See, e.g., Zadvydas*, 533 U.S. at 687. No court has
2 ruled on the legality of Petitioner’s detention.

3
4 **IV. VENUE**

5 21. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 (b) and (e), as
6 a substantial part of the events or omissions giving rise to this claim occurred in this
7 District, Petitioner is detained here, and his custodian resides here. Furthermore,
8 Respondents are sued in their official capacities as warden of the detention facility
9 Petitioner is currently detained at, and as officers and employees of the United States or an
10 agency thereof. Venue is also proper under 28 U.S.C. § 2243 because Petitioner’s
11 immediate custodian resides in this District. *See Rumsfeld v. Padilla*, 542 U.S. 426, 451-
12 52 (2004) (Kennedy, J., concurring).

13
14 **V. PARTIES**

15 22. Petitioner ZHILBERT KHACHIKIAN is a 72 year old citizen of Iran. After
16 completion of his immigration court removal proceedings in October 1999 (and his appeal
17 and motions to reopen / reconsider by October 2003), he and his family were unable to be
18 removed or deported from the U.S., and they were instead placed on OSUP in 2008. He
19 was at liberty, and complying with all check-in obligations, until Respondents re-detained
20 him on November 16, 2025. Mr. Khachikian is currently in Respondents’ legal and
21 physical custody at the Imperial Regional Detention Facility in Calexico, California.

22 23. Respondent JEREMY CASEY (“Respondent Casey”) is the Warden at the
23 Imperial Regional Detention Facility in Calexico, California, where Mr. Khachikian is
24 being held. Respondent Casey is the immediate physical custodian of Mr. Khachikian.
25 Respondent Casey is sued in his official capacity.

26 24. Respondent JOSEPH FREDEN (“Respondent Freden”) is the Acting Director
27 of the San Diego Field Office for Enforcement and Removal Operations (“ERO”) of U.S.
28 Immigration and Customs Enforcement. Respondent Freden is the local ICE official with

1 custodial authority over Mr. Khachikian, and is charged with the responsibility of
2 determining whether Mr. Khachikian will be detained in ICE custody or released.
3 Respondent Freden is sued in his official capacity.

4 25. Respondent TODD M. LYONS (“Respondent Lyons”) is the Acting Director
5 of ICE, the agency within the U.S. Department of Homeland Security responsible for
6 enforcing immigration laws, including detainment and removal. ICE is detaining Mr.
7 Khachikian, and Respondent Lyons has custodial authority over Mr. Khachikian.
8 Respondent Lyons is sued in his official capacity.

9 26. Respondent KRISTI NOEM (“Respondent Noem”) is the Secretary of the
10 DHS. In this capacity, she is responsible for the implementation and enforcement of the
11 Immigration and Nationality Act, and oversees ICE pursuant to 8 U.S.C. § 1103(a).
12 Respondent Noem has ultimate custodial authority over Mr. Khachikian, and she is sued
13 in her official capacity.

14 27. Respondent PAMELA BONDI (“Ms. Bondi”) is the Attorney General of the
15 United States and is sued herein in her official capacity. She is responsible for overseeing
16 the implementation and enforcement of the federal immigration laws (see 8 U.S.C. §
17 1103(a)(1), (g)), and oversees the Executive Office for Immigration Review (“EOIR”), the
18 office that entered an order of removal against Mr. Khachikian.

19
20 **VI. STATEMENT OF FACTS**

21 28. Petitioner Mr. Khachikian is a 72 year old native and citizen of Iran of
22 Armenian descent who entered the United States in February of 1999 and has been residing
23 in the U.S. continuously since that time.

24 29. Mr. Khachikian has worked as a handyman for many years. He is a member
25 of the local religious Bahai community, and an advocate for generosity and volunteering
26 in the community and helping the less fortunate. He has lived peacefully in the U.S. with
27 his spouse, raising his two daughters and supporting them through their pursuit of higher
28 education (one of whom obtained her Master’s Degree), and continuing to support his

1 daughters' families, including but not limited to their in-laws and his U.S. citizen
2 grandchildren. Furthermore, both of his daughters are pregnant with an expected date of
3 delivery in Spring of 2026.

4 30. At 72 years of age, Mr. Khachikian is a medically disabled individual, and is
5 suffering from prostatic hyperplasia, gastritis, hyperlipidemia, microhematuria,
6 nephrolithiasis, tubular adenomas of colon, and spine-related issues requiring surgery,
7 among other issues.

8 31. Mr. Khachikian is a practicing long-time member of the Bahai faith who
9 escaped from religious persecution from his native country of Iran. Due to a well-founded
10 fear of persecution, Mr. Khachikian filed an application for asylum shortly after he entered
11 the United States.

12 32. On October 25, 1999, an Immigration Judge in Los Angeles, California,
13 entered a removal order against Petitioner, in part due to lack of sufficient evidence. As
14 one of the pivotal points in the case, the IJ stated in open court that if Petitioner could
15 procure any additional information about membership in the Bahai faith, he could file a
16 motion to reconsider the decision. The removal order also included a handwritten
17 annotation stating that Petitioner could move to reconsider the decision upon receipt of a
18 Bahai ID.

19 33. Petitioner and his family appealed the IJ's order to the Board of Immigration
20 Appeals ("BIA"). The BIA dismissed the appeal on April 15, 2002.

21 34. Petitioner motioned to reopen and reconsider the BIA decision, which were
22 denied on July 22, 2003 and October 2, 2003, respectively.

23 35. Petitioner also petitioned for review with the Ninth Circuit Court of Appeals,
24 and while the Ninth Circuit issued a stay of removal throughout the duration of
25 proceedings, the petition was denied on February 11, 2005 and a mandate issued on April
26 5, 2005.

27 36. Despite the outstanding removal order, DHS and ICE were unable to remove
28 Petitioner to Iran, and Petitioner was allowed to remain in the U.S. Petitioner relied on the

1 government's actions and release and continued to live a full life over the course of 26
2 years, became a contributing member of society, and raised a family which now includes
3 U.S. citizen grandchildren.

4 37. On or about August 25, 2008, ICE placed Petitioner under an OSUP program.
5 *See* Exhibit A. The OSUP program required periodic check-ins with ICE, but otherwise
6 allowed Petitioner to live freely and move about, engage in gainful employment, and
7 participate as a contributing member to society, as long as he continued to update ICE of
8 any permanent changes in address or phone number.

9 38. In 2025, ICE placed Petitioner under an additional Intensive Supervision
10 Appearance Program ("ISAP"), requiring additional check-ins using apps, phone calls, and
11 more. ISAP initially placed a GPS ankle bracelet on Petitioner, but due to medical reasons
12 ISAP agreed to remove the ankle bracelet. Petitioner was still allowed to live freely and
13 move about, engage in gainful employment, and participate as a contributing member to
14 society, as long as he continued to update ICE of any permanent changes in address or
15 phone number.

16 39. To date (over 17 years), Petitioner complied with all OSUP and ISAP
17 requirements without a single issue, including but not limited to periodic in-person check-
18 ins, phone calls, GPS monitoring, phone app and photo check-ins, keeping ICE updated
19 with all changes in address and contact information, and more. *See* Exhibit A.

20 40. Beginning summer of 2025, Petitioner's in-laws had moved in to a new home
21 in Los Angeles County that had a number of maintenance issues, so Petitioner started going
22 to their home to help do some construction and maintenance.

23 41. After Petitioner did his photo check-in at his in-laws' home, ISAP employees
24 contacted Petitioner to ask if he had moved into a new home, and Petitioner confirmed he
25 still resided at the same address, and was just visiting a relative's home.

26 42. On November 16, 2025, while Petitioner was at the home of his in-laws once
27 again, ISAP employees again contacted Petitioner asking him to come out of the home so
28 they could verify some information. This statement was mere pretext to detain him, as

1 once Petitioner stepped outside the gated community, multiple ISAP employees were
2 waiting for Petitioner, and they arrested Petitioner without any further explanation and took
3 him to an ICE detention facility.

4 43. The following day, November 17, 2025, Petitioner was provided with a
5 document entitled "Notice of Revocation of Release" addressed to Mr. Khachikian in ICE
6 custody at 300 N. Los Angeles Street, print dated November 16 in the top right corner, and
7 print dated November 17 in the bottom right corner. The document stated "You were
8 released on an order of supervision on or about August 25, 2008. ICE has determined the
9 purpose of your release has been served and it is appropriate to enforce the removal order."

10 *See Exhibit B.*

11 44. On information and belief, prior to his detention, Petitioner was given no
12 notice of ICE's or ISAP's intention to detain him, and he was not provided with any
13 reasonable information about why his OSUP was presumably revoked, nor was he provided
14 any notice or documentation.

15 45. On information and belief, Petitioner was arrested and detained without any
16 warrant, and any documentation and notice regarding revocation of his release was only
17 prepared after the fact.

18 46. On information and belief, ICE had no particularized evidence that Petitioner
19 can be repatriated or deported to Iran at the time they detained him, and continue to have
20 no particularized evidence that Petitioner can be removed at this time.

21 47. On information and belief, Petitioner has not received an individualized
22 hearing before a neutral decisionmaker to assess whether his recent detention is warranted
23 due to danger or flight risk.

24 48. On November 17, 2025, Petitioner's counsel apprised ICE of his
25 representation by counsel, and requested to speak with anyone who could speak on the
26 matter, in particular the ICE deportation officer or supervisor assigned to Petitioner's case.
27 Nobody from ICE responded.

28 49. On November 18, 2025, one of Petitioner's counsels visited the detention

1 center at 300 N. Los Angeles Street, Los Angeles, CA 90012 where Petitioner was being
2 detained at the time, and managed to speak with Supervisory Deportation Officer Casillas.
3 Supervisor Casillas advised Petitioner's counsel that they were unaware why Petitioner
4 was detained, that the ISAP team was the one who brought Petitioner to their facility, that
5 the Los Angeles facility was a temporary holding facility, that Petitioner would soon be
6 transferred to a larger detention center, and that counsel would need to follow up with the
7 deportation officer assigned to his case at that time.

8 50. On or about November 20, 2025, Petitioner was transferred by ICE to the
9 Imperial Regional Detention Facility, where he remains to date. *See Exhibit C.*

10 51. Petitioner's counsel repeatedly contacted ICE for an update, and ICE
11 continued to remain nonresponsive until November 24, 2025 when counsel learned that the
12 ICE ERO employee assigned to Petitioner's case was Deportation Officer Salvador Perez
13 ("DO Perez").

14 52. Petitioner's counsel spoke with DO Perez on November 24, who told her by
15 phone that there was an outstanding order of deportation to remove Mr. Khachikian to Iran,
16 and he will be contacting the country of Iran for necessary paperwork.

17 53. The United States does not have any diplomatic relations with Iran. *See U.S.*
18 *Virtual Embassy Iran, "History of U.S.-Iran Policy," available at*
19 *<https://ir.usembassy.gov/policy-history/> (last visited Dec. 22, 2025).*

20 54. Petitioner's counsel advised DO Perez that the U.S. does not have diplomatic
21 relations with Iran, and requested a reconsideration of release as he cannot be removed to
22 Iran. Petitioner's counsel provided additional information about Petitioner's mature age
23 and medical issues, his fear of removal to Iran, and further explained why ICE lacked
24 authority to detain Mr. Khachikian as the removal period had ended long ago and no event
25 had made his removal reasonably foreseeable, and to the contrary, Mr. Khachikian planned
26 to file a new motion to reopen his removal proceedings with current counsel with new
27 evidence of changed circumstances and persecution on account of his Bahai faith, including
28 but not limited to his acquisition of a Bahai ID as referenced on the IJ's removal order in

1 1999.

2 55. Petitioner's counsel requested that ICE reconsider Mr. Khachikian's
3 detention, especially in light of his medical issues, as ICE could continue to process any
4 request for travel authorization without Mr. Khachikian in detention, and the fact that ICE
5 was already constantly aware of Mr. Khachikian's whereabouts under the concurrent
6 OSUP and ISAP programs and GPS monitoring through Mr. Khachikian's phone.

7 56. DO Perez said he would raise this request with his supervisor, but for now his
8 job was to continue procuring documents from Iran, and Mr. Khachikian would remain in
9 custody. DO Perez advised counsel that that he does not know how long the process will
10 take, but Petitioner's removal was not immediate nor imminent as he needed to obtain
11 paperwork and travel documentation for Petitioner, and because he had just returned from
12 escorting another detainee to another country, was just given Petitioner's file, and he still
13 has numerous other cases he is working on.

14 57. Petitioner now seeks relief from this Court for writ of habeas corpus. He
15 remains in DHS and ICE custody, held without bond, detained in violation of regulations,
16 suffering from significant medical issues (in part due to his mature age of 72 years), and
17 continues to have his Constitutional rights violated. He should be released immediately in
18 order to avoid irreparable injury.

19
20 **VII. EXHAUSTION**

21 58. Petitioner has exhausted all administrative remedies, and no further ones are
22 available.

23
24 **VIII. LEGAL FRAMEWORK**

25 59. Section 1231(a) of Title 8 governs the detention of individuals whom
26 immigration courts have ordered removed. The statute commands ICE to detain these
27 individuals for 90 days while it executes the removal order. *See* 8 U.S.C. § 1231(a)(2).
28 The 90-day removal period starts the moment the removal order becomes final. Absent an

1 applicable exception, ICE must release the person under supervision if it cannot complete
2 removal within 90 days. *See* 8 U.S.C. § 1231(a)(3).

3 60. Subsection 1231(a)(6) authorizes ICE to extend detention beyond the 90-day
4 period, yet it bars indefinite custody. *See Zadvydas*, 533 U.S. at 689 (limiting ICE’s
5 authority to a period “reasonably necessary” to carry out removal and prohibiting detention
6 when removal is not “reasonably foreseeable”).

7 61. Regulations allow ICE to release a non-citizen after the 90-day removal period
8 if the agency determines that the non-citizen “would not pose a danger to the public or a
9 risk of flight, without regard to the likelihood of the [noncitizen’s] removal in the
10 reasonably foreseeable future.” 8 C.F.R. § 241.13(b)(1). ICE typically places these
11 individuals on an OSUP, as it has done with Mr. Khachikian for the past 17 years. *See* 8
12 C.F.R. §§ 241.4(j), 241.13(h).

13 62. ICE may withdraw its approval of release of a noncitizen if it can effectuate
14 removal “in the reasonably foreseeable future” or if the noncitizen refuses to comply with
15 the release conditions. 8 C.F.R. § 241.13(h)(4).

16 63. ICE may revoke release only when, on account of changed circumstances,
17 “there is a significant likelihood that the [noncitizen] may be removed in the reasonably
18 foreseeable future” or if the noncitizen violates the release conditions. 8 C.F.R. §
19 241.13(i)(2). Upon revocation, ICE must notify the noncitizen of the reasons for the
20 revocation and conduct a prompt, informal interview to allow the noncitizen an opportunity
21 to respond to the reasons for revocation. 8 C.F.R. § 241.13(i)(3).

22 64. Where ICE fails to follow its own regulations and procedures in revoking
23 release, the detention is unlawful and the Petitioner’s release must be ordered. *See*
24 *generally United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (government
25 agencies are required to follow their own regulations, policies, and procedures; failure to
26 do so renders their actions generally invalid); *see, e.g., Orellana v. Baker*, No. 25-1788-
27 TDC, 2025 WL 2444087, at *25-26 (D. Md. Aug. 25, 2025); *M.S.L. v. Bostock*, No. 6:25-
28 cv-1204-AA, 2025 WL 2430267, at *10 (D. Or. Aug. 21, 2025); *Cesay v. Kurzdorfer*, 781

1 F. Supp. 3d 137, 163 (W.D.N.Y. 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D.
2 Mass. 2017).

3
4 **IX. CAUSES OF ACTION**

5 **COUNT 1**

6 **Unlawful Revocation of Release**

7 65. Petitioner realleges and incorporates by reference all allegations in the
8 preceding paragraphs as if set forth at length herein.

9 66. Petitioner was previously arrested by ICE and released because his removal
10 could not occur. If he complies with the conditions of his OSUP, Respondents have the
11 authority to revoke his release only if there is a significant likelihood that they can remove
12 him in the reasonably foreseeable future. *See* 8 C.F.R. § 241.13(i)(2).

13 67. Respondents revoked Mr. Khachikian's release without evidence that he can
14 be repatriated or immediately removed to Iran in the reasonably foreseeable future.

15 68. Respondents' actions are arbitrary, capricious, an abuse of discretion, and
16 contrary to law. 5 U.S.C. § 706(a)(2)(A). Mr. Khachikian is entitled to immediate release
17 and reinstatement of his OSUP.

18
19 **COUNT 2**

20 **Violation of Procedures for Revocation of Release**

21 69. Petitioner realleges and incorporates by reference all allegations in the
22 preceding paragraphs as if set forth at length herein.

23 70. The governing regulations require Respondents to notify Mr. Khachikian of
24 the reason for his detention, and to conduct an initial interview and afford Mr. Khachikian
25 an opportunity to respond to the reasons for revocation and submit evidence and
26 information to contest custody. 8 C.F.R. § 241.13(i)(3). Respondents have not complied
27 with this obligation.

28 71. Respondents detained Mr. Khachikian without notice on November 16, 2025.

1 Respondents then hastily prepared a “Notice of Revocation of Release” dated November
2 16, but signed on November 17, 2025, and addressed to Mr. Khachikian in ICE custody at
3 300 N. Los Angeles Street, further confirming revocation was only done after the fact of
4 detention.

5 72. Respondents’ stated reason in the “Notice of Revocation of Release” is in fact
6 not a reason at all and provides no information. It merely states “You were released on an
7 order of supervision on or about August 25, 2008. ICE has determined the purpose of your
8 release has been served and it is appropriate to enforce the removal order.”

9 73. Respondents also have not provided Mr. Khachikian with an initial interview
10 at which he can respond to the purported reasons for revocation, nor an opportunity to
11 submit any evidence or information that there is no significant likelihood of removal in the
12 reasonably foreseeable future.

13 74. As a result of Respondents’ failure to properly follow the procedures for
14 revocation of release, Mr. Khachikian is entitled to immediate release on OSUP until ICE
15 can provide the minimal process required by the regulations.

16
17 **COUNT 3**

18 Unlawful Detention Where Removal is Not Reasonably Foreseeable

19 75. Petitioner realleges and incorporates by reference all allegations in the
20 preceding paragraphs as if set forth at length herein.

21 76. Post-removal order detention violates 8 U.S.C. § 1231(a)(6) where removal is
22 not significantly likely to occur in the reasonably foreseeable future. *See also Zadvydas v.*
23 *Davis*, 533 U.S. 678 (2001).

24 77. Detention where removal is not reasonably foreseeable also violates due
25 process through a deprivation of the core liberty interest in freedom from bodily restraint.

26 78. The Due Process Clause of the Fifth Amendment requires that the deprivation
27 of Petitioner’s liberty interest be narrowly tailored to serve a compelling government
28 interest. Any interest Respondents have in detaining Petitioner outside of removal in the

1 reasonably foreseeable future does not justify the indefinite detention of Mr. Khachikian.

2 79. The 90-day removal period ended in 2002 after the final order of removal from
3 the BIA's denial of Petitioner's appeal.

4 80. Petitioner was granted a stay of removal while his Ninth Circuit Court of
5 Appeals proceedings were pending from late 2003 to early 2005.

6 81. ICE could not and did not effectuate Mr. Khachikian's removal.

7 82. In 2008, ICE again determined it could not effectuate Mr. Khachikian's
8 removal, and issued him an OSUP.

9 83. Given that the United States and Iran still do not have any diplomatic relations,
10 further cemented by the fact that Respondents did not then procure—and in the intervening
11 17 years has not since procured—any necessary travel documentation for Mr. Khachikian's
12 removal, Mr. Khachikian has made an initial showing under *Zadvydas* that his removal is
13 not significantly likely. *Zadvydas*, 533 U.S. at 701. Respondents cannot rebut this
14 showing, as they do not have any individualized evidence to believe that Mr. Khachikian's
15 removal is reasonably foreseeable, as demonstrated by DO Perez's statements confirming
16 that ICE had not yet begun to request travel authorization documentation even after ICE
17 officers detained Mr. Khachikian.

18 84. Mr. Khachikian's detention under these circumstances violates 8 U.S.C. §
19 1231 and the Due Process Clause under the United States Constitution.

20 85. Mr. Khachikian is entitled to immediate release and reinstatement of his
21 OSUP.

22 23 **COUNT 4**

24 Unlawful Detention Without Individualized Determination of Danger or Flight Risk

25 86. Petitioner realleges and incorporates by reference all allegations in the
26 preceding paragraphs as if set forth at length herein.

27 87. Detention violates 8 U.S.C. § 1231 and the Due Process Clause of the United
28 States Constitution unless it is reasonably related to the government's purpose of

1 preventing flight and protecting the community. *Zadvydas*, 533 U.S. at 690-91.

2 88. Before being detained, Mr. Khachikian lived in the community for 26 years
3 since his initial 1999 removal order, and 17 years since his OSUP program. Mr.
4 Khachikian has been in full compliance with all terms of his OSUP and ISAP programs.
5 However, he has received no process to determine whether his detention is warranted.

6 89. Furthermore, Mr. Khachikian was on both an OSUP and ISAP program with
7 ICE. The OSUP and ISAP programs are part of ICE's alternatives to detention. ISAP in
8 particular has achieved extraordinary success in ensuring participants appear at all court
9 hearings and other requirements, reaching compliance rates close to 100 percent. *See, e.g.,*
10 *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP "resulted
11 in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings").

12 90. With Mr. Khachikian's 17+ year history of perfect compliance with all ICE
13 requirements under OSUP and ISAP, and the ISAP program's history of near 100%
14 compliance rates, ICE cannot reasonably or logically argue in any way whatsoever that Mr.
15 Khachikian is a clear and convincing flight risk.

16 91. With Mr. Khachikian's 17+ year history of perfect compliance with all ICE
17 requirements under OSUP and ISAP, and no substantive changes in Mr. Khachikian's
18 record nor run-ins with law enforcement and a complete lack of criminal history, ICE
19 cannot reasonably or logically argue in any way whatsoever that Mr. Khachikian is a clear
20 and convincing danger to the community.

21 92. Petitioner is entitled to an individualized determination by impartial
22 adjudicators as to whether detention is justified based on danger or flight. *See also Singh*,
23 638 F.3d 1196.

24
25 **COUNT 5**

26 Unlawful Removal to a Third Country

27 93. Petitioner realleges and incorporates by reference all allegations in the
28 preceding paragraphs as if set forth at length herein.

1 94. Respondents may remove a noncitizen to a third country (i.e., a country in
2 which the noncitizen does not hold citizenship) if removal to their country of citizenship is
3 impractical, inadvisable, or impossible. *See* 8 U.S.C. § 1231(b)(2)(E)(ii). However, DHS
4 is barred from removing a noncitizen to a country where the noncitizens' life or freedom
5 would be threatened because of five protected grounds. 8 U.S.C. § 1231(b)(3)(A). In
6 addition, DHS is barred from deporting a noncitizen to a country where they face a threat
7 of torture. *See* 8 C.F.R. §§ 208.16-208.18.

8 95. Notwithstanding the statutory and regulatory prohibitions on removing
9 noncitizens to countries where they face potential persecution or torture, on March 30,
10 2025, Respondent Noem issued a memo entitled "Guidance Regarding Third Country
11 Removals." *See* Exhibit D. This memo states that if the United States has received
12 "diplomatic assurances" from a third country that noncitizens removed to that country will
13 not be persecuted or tortured, DHS may remove that noncitizen "without the need for
14 further procedures."

15 96. The procedure laid out in this memo violates the statutory and regulatory
16 provisions requiring Respondents to provide a noncitizen with a forum to demonstrate an
17 individualized risk of torture or persecution in a specific country. The memo purports to
18 rely on blanket assurances from third countries that noncitizens generally will not be
19 tortured or persecuted to circumvent the obligation to determine if an individual noncitizen
20 faces a risk of torture or persecution.

21 97. To the extent that Respondents are detaining Petitioner with the intent to
22 remove him to a third country without notice or the opportunity to demonstrate that he is
23 at a particularized risk of torture or persecution in that third country, the detention is
24 unlawful.

25 98. Furthermore, to the extent that Respondents are detaining Petitioner with the
26 intent to remove him to a third country, removal is not reasonably foreseeable and in
27 violation of regulations as Respondents have not provided notice, have never even
28 expressed an intent to do so, have not provided notice, have not made any attempts to

1 contact third countries, nor any other procedural steps involved and required. Removal to
2 any third country is far from imminent, and there is no significant likelihood of removal in
3 the reasonably foreseeable future, especially when at bare minimum Petitioner must be
4 afforded an opportunity to demonstrate he is at a particularized risk of torture or
5 persecution in any third country (once finally selected by Respondents and paperwork
6 obtained), including a full hearing if necessary.

7 99. Mr. Khachikian is entitled to immediate release and reinstatement of his
8 OSUP.

9
10 **COUNT 6**

11 Declaratory Judgment

12 100. Petitioner realleges and incorporates by reference all allegations in the
13 preceding paragraphs as if set forth at length herein.

14 101. Federal District Courts have “broad discretionary power to fashion equitable
15 relief.” *See, e.g., Legalization Assistance Project v. INS*, 976 F.2d 1198, 1210 (9th Cir.
16 1992); *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 558 (9th Cir. 1990); *Haitian*
17 *Refugee Center v. Nelson*, 694 F.Supp. 864, 881 (S.D. Fla. 1988), *aff’d*, 872 F.2d 1555
18 (11th Cir. 1989), *aff’d sub nom, McNary v. HRC, Inc.*, 498 U.S. 479 (1991); *Chau v. U.S.*
19 *Dept. of State*, 891 F.Supp. 650 (D.D.C. 1995).

20 102. This principle is particularly applicable to remedy constitutional violations.
21 *Swann v. Charlotte- Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Legalization*
22 *Assistance Project*, 976 F.2d at 1212.

23 103. Equity relief also contemplates granting complete relief including ancillary
24 relief necessary to accomplish complete justice. *Xiao v. Reno*, 930 F.Supp. 1377 (N.D. Cal.
25 1996) (Ordering INS to provide documents necessary to allow Xiao to remain lawfully and
26 work in U.S.).

27 104. The Declaratory Judgment Act permits federal court litigants to seek a
28 judgment from the federal courts to declare an action unconstitutional or illegal. 28 U.S.C.

1 § 2201 (“In a case of actual controversy within its jurisdiction . . . any court of the United
2 States, upon the filing of an appropriate pleading, may declare the rights and other legal
3 relations of any interested party seeking such declaration, whether or not further relief is
4 or could be sought. Any such declaration shall have the force and effect of a final judgment
5 or decree and shall be reviewable as such.”).

6 105. Petitioner contends that Respondents’ actions are unconstitutional, violate the
7 INA, are arbitrary and capricious, and seek a declaration to that effect.

8
9 **X. PRAYER FOR RELIEF**

10 WHEREFORE, Petitioner respectfully requests that the Court grant the following
11 relief:

- 12 A. Assume jurisdiction over this matter;
- 13 B. Issue the writ of habeas corpus and order Respondents to show cause, within
14 three days of Petitioner’s filing of this petition, why the relief he seeks should
15 not be granted; and set a hearing on this matter within five days of
16 Respondents’ return on the order to show cause (*see* 28 U.S.C. § 2243);
- 17 C. Declare that Respondents have violated Petitioner’s rights;
- 18 D. Order Respondents to notify Petitioner of the reasons for the revocation of his
19 release and provide Petitioner with a prompt interview as required by
20 regulation;
- 21 E. Order Respondents to release Petitioner from detention because they lack any
22 individualized evidence that removal of Petitioner will occur in the reasonably
23 foreseeable future;
- 24 F. Order Respondents to release Petitioner from detention absent an
25 individualized determination by an impartial adjudicator that his detention is
26 justified based on danger or flight risk, which cannot be sufficiently addressed
27 by alternative conditions of release or supervision;
- 28

- 1 G. Enjoin Respondents from revoking Petitioner's release unless they have
2 individualized evidence that his removal is reasonably foreseeable;
- 3 H. Enjoin Respondents from revoking Petitioner's release without providing him
4 a determination by an impartial adjudicator that his detention is justified based
5 on danger or flight risk, which cannot be sufficiently addressed by alternative
6 conditions of release or supervision, at which hearing Respondents will bear
7 the burden of proof of demonstrating that Petitioner is a flight risk or a danger
8 to the community;
- 9 I. Enjoin Respondents from removing Petitioner to a third country without
10 sufficient notice and opportunity to demonstrate that he faces a specific risk
11 of torture or persecution in that third country;
- 12 J. Enjoin Respondents from taking retaliatory or otherwise unlawful adverse
13 action against Petitioner on account of Petitioner' filing or maintaining this
14 action, or for the purpose of circumventing or undermining this Court's
15 orders, including but not limited to the use of unnecessary delay, bad-faith
16 denials or revocations of release, and denying the right to employment
17 authorization documents;
- 18 K. Retain jurisdiction over this matter for the limited purpose of (1) enforcing
19 this Court's orders herein, ensuring Respondents' timely and good-faith
20 compliance with such orders, and (2) adjudicating any issues arising from
21 Respondents' actions in implementing this Court's orders, including any
22 alleged retaliatory or otherwise unlawful adverse actions taken against
23 Petitioner;
- 24 L. Award Petitioner his reasonable attorneys' fees and costs pursuant to the
25 Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412, and on any
26 other applicable provision of law; and
- 27 M. Grant such other and further relief as this Court deems just and proper.
28

1
2 DATED: December 23, 2025

Respectfully submitted,

3
4 /s/ Anna Darbinian

Anna Darbinian, Esq.

Attorney for Petitioner

Email: ad@asherson.net

5
6
7
8
9 **TABLE OF EXHIBITS**

10 Exhibit A: Excerpt of Order of Supervision Documents

11 Exhibit B: Notice of Revocation of Release dated 11/16/2025 and signed 11/17/2025

12 Exhibit C: ICE Detainee Locator (December 22, 2025)

13 Exhibit D: Noem, Kristi, "Guidance Regarding Third Country Removals," (March 30,
14 2025)

1 **VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF**
2 **PURSUANT TO 28 U.S.C. § 2242**

3
4 I, Anna Darbinian, do depose and state:

5 I am submitting this verification on behalf of the Petitioner because I am one of the
6 Petitioner's attorneys. Petitioner is currently being held in detention and is unable to appear
7 at my office to sign this Verification. I have discussed with the Petitioner the events
8 described in this Petition. On the basis of those discussions, I hereby verify that the factual
9 statements made in the attached Petition for Writ of Habeas Corpus are true and correct to
10 the best of my knowledge.

11
12 DATED: December 23, 2025

/s/ Anna Darbinian
 Anna Darbinian, Esq.
 Attorney for Petitioner
 Email: ad@asherson.net

Exhibit A

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

FAMU
7624

ORDER OF SUPERVISION

File No: ~~XXXXXXXXXX~~

Date: 05/21/2012

Name: Khachikian, Zhilbert

On 07/22/2003, you were ordered:
(Date of Final Order)

- Excluded or deported pursuant to proceedings commenced prior to April 1, 1997.
- Removed pursuant to proceedings commenced on or after April 1, 1997.

Because the agency has not effected your deportation or removal during the period prescribed by law, it is ordered that you be placed under supervision and permitted to be at large under the following conditions:

- That you appear in person at the time and place specified, upon each and every request of the agency, for identification and for deportation or removal.
- That upon request of the agency, you appear for medical or psychiatric examination at the expense of the United States Government.
- That you provide information under oath about your nationality, circumstances, habits, associations and activities and such other information as the agency considers appropriate.
- That you do not travel outside California for more than 48 hours without first having notified this agency office of the dates and places, and obtaining approval from this agency office of such proposed travel.
(Specify geographic limits, if any)
- That you furnish written notice to this agency office of any change of residence or employment 48 hours prior to such change.
- That you report in person on AS INSTRUCTED to this agency office at:
(Day/Date/Time)
300 N. LOS ANGELES STREET, ROOM 2204, LOS ANGELES, CA 90012
(Reporting Address)
- That you assist U.S. Immigration and Customs Enforcement in obtaining any necessary travel documents.
- Other: _____
- See attached sheet containing other specified conditions (Continue on separate sheet if required)

(Signature of ICE Official)

TIMOTHY S. ROBBINS, FIELD OFFICE DIRECTOR
(Print Name and Title of ICE Official)

Alien's Acknowledgement of Conditions of Release under an Order of Supervision

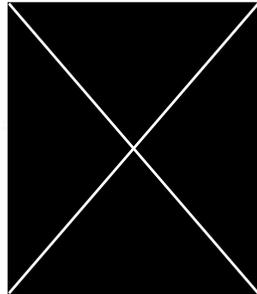
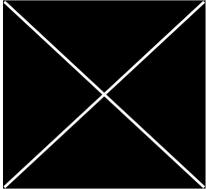
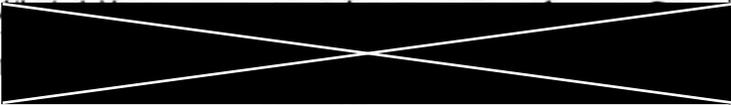
I hereby acknowledge that I have (read) (had interpreted and explained to me in the Spanish language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

[Signature]
(Signature of ICE Official Serving Order)

X [Signature]
(Signature of Alien)

05.21.12
Date

DEPARTMENT OF HOMELAND SECURITY
 U.S. Immigration and Customs Enforcement
 ORDER OF SUPERVISION (Continuation Page)

Alien's Name Khachikian, Zhibert	Picture 	Right Index Print 
File Number 		
Date 05/21/2012		
Alien's Signature 		
Alien's Telephone Number (if applicable) 		
		

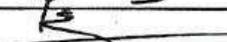
PERSONAL REPORT RECORD		
Date	Officer	Comment/Changes
05/21/2012		SUBJ REPORT IN PERSON (RIP), NEXT RIP DATE 08/21/2012
AUG 21 2012	Officer: Reported in person: Next report date:	NOV 20 2012
NOV 20 2012	Officer: Reported in person: Next report date:	MAY 28 2013
MAY 28 2013	Officer: Reported in person: Next report date:	MAY 01 2014
05-01-14	AD1	Rip. NEXT Rip → 01-26-15
01-26-15	Reported	NEXT: July 7, 2015
7-7-15	Reported in person	NO Changes, Next Rip 7/7/16
07-7-16	P.G.	Next Report Date on 7-6-17
7-6-17	P.G. Reported	Next Report Date on 07-10-18
7-10-18	P.G. Reported	Next Report Date on 07-9-19
07-09-19	Reported (m)	next report date: 07-09-2020
JUL 19 2020	ASC / HLP	Next Report Date 07/24/22 07/19/22
JUL 19 2022	ARC	Next Report Date 07/19/2023
7-19-23	F.S	Report on 07-18-24 @ 9am
07-17-24		NEXT REPORT DATE: JUL 18 2025 @ 8am
7-18-2025		Next Report date 10/21/2025 @ 8am
10/21/25	CM	Next report date - 11/26/2025 @ 8am
Signature		Title

Exhibit B

U.S. Department of Homeland Security
300 N. Los Angeles Street, Room B-18
Los Angeles, California 90012



U.S. Immigration
and Customs
Enforcement

November 16, 2025

KHACHIKIAN, Zhibert A# [REDACTED]
US DHS/ICE Custody
300 N. Los Angeles Street, Room B-18
Los Angeles, CA 90012
(213) 830-4927

Notice of Revocation of Release

This letter is to inform you that your case has been reviewed, and it has been determined that you will be kept in the custody of the U. S. Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your file and/or your personal interview on account of changed circumstances in your case.

ICE has determined that you can be removed from the United States pursuant to the outstanding order of removal against you. On July 22, 2003, you were ordered removed to IRAN by an Immigration Judge and you are subject to an administrative final order of removal. You were released on an order of supervision on or about August 25, 2008. ICE has determined the purpose of your release has been served and it is appropriate to enforce the removal order.

Based on the above and pursuant to 8 CFR 241.13, you are to remain in ICE custody at this time. You will promptly be afforded an informal interview at which you will be given the opportunity to respond to the reasons for the revocation and to provide any evidence to demonstrate that your removal is unlikely. If you are not released following the informal interview, you will receive notification of a new review, which will occur within approximately three months from the date of this notice.

You are advised that you must demonstrate that you are making reasonable efforts to comply with the order of removal and that you are cooperating with ICE efforts to remove you by taking whatever actions ICE requests to affect your removal. You are also advised that any willful failure or refusal on your part to make timely application in good faith for travel or other documents necessary for your departure, or any conspiracy or actions to prevent your removal or obstruct the issuance of a travel document, may subject you to criminal prosecution under 8 USC Section 1253(a).



Signature and Title of Deciding Official

11/17/2025

Date

TO BE SERVED PRIOR TO INFORMAL INTERVIEW PER 8 CFR 241.13(i)
WHEN RELEASE REVOKED DUE TO CHANGED CIRCUMSTANCES

Notice of Revocation of Release
KHACHIKIAN, Zhibert A# 

PROOF OF SERVICE

(I) Personal Service (Officer to complete both (a) and (b) below.)

(a) I Romero, R Deportation Officer
Name of ICE Officer Title
certify that I served KHACHIKIAN, Zhibert with a copy of
Name of detainee
this document at ICE BRO/ Los Angeles on 11/17/2025 at 08:30 hrs
Institution Date Time

(b) I certify that I served the custodian T. Gaeta
Name of Official
Supervisory Detention Deportation Officer, at Los Angeles, on
Title Institution
11/17/2025 with a copy of this document.
Date

- () cc: Attorney of Record or Designated Representative
- () cc: A-File

Exhibit C

Official Website of the Department of Homeland Security



U.S. Immigration and Customs Enforcement

Report Cr



[< BACK TO RESULTS](#)

Facility Page

Detention Information For:

ZHILBERT KHACHIKIAN
 Country of Birth: Iran
 A-Number: 

Current Detention Facility:

IMPERIAL REGIONAL ADULT DET FAC
 Imperial Retional Detention Facility
 1572 Gateway Road
 Calexico, CA 92231
 Visitor Information: (760) 618-7200

[MORE INFORMATION >](#)

ERO Office Information

Family members and legal representatives may be able to obtain additional information about this individual's case by contacting this ERO office:

EL CENTRO, CA, DOCKET CONTROL OFFICE
 Phone Number: (760) 768-6300



Exhibit D

Office of the Secretary
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

March 30, 2025

MEMORANDUM FOR: Kika Scott
Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services

Pete R. Flores
Senior Official Performing the Duties of the Commissioner
U.S. Customs and Border Protection

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

FROM: Kristi Noem
Secretary of Homeland Security

SUBJECT: **Guidance Regarding Third Country Removals**

A handwritten signature in black ink, appearing to read "Kristi Noem", written over the printed name and title.

Purpose

This memorandum clarifies DHS policy regarding the removal of aliens with final orders of removal pursuant to sections 240, 241(a)(5), or 238(b) of the Immigration and Nationality Act (INA) to countries other than those designated for removal in those removal orders (third country removals).¹ DHS has used similar processes before, including with respect to Title 42 expulsions and the Migrant Protection Protocols.

Process Regarding Third Country Removals²

Written Notice to the Alien & Fear Screening

Prior to the alien's removal to a country that had not previously been designated as the country of removal, DHS must determine whether that country has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured. If the United States has received such assurances, and if the Department of State believes those assurances to be credible, the alien

¹ This memorandum does not address expedited removals pursuant to INA § 235(b)(1).

² These procedures only apply to aliens who have no ongoing proceeding in which to raise a claim under INA § 241(b)(3) or the Convention Against Torture. For aliens who have such proceedings, DHS will follow existing procedures.

Page 2

may be removed without the need for further procedures. If the United States has not received those assurances, or if the Department of State does not believe them to be credible, DHS must follow the procedures below.

DHS will first inform the alien of removal to that country. Immigration officers will not affirmatively ask whether the alien is afraid of being removed to that country. DHS is taking this approach in line with its determination in mid-2024 that such questioning may be suggestive and that asking them leads to false claims rendering the immigration system as a whole less efficient. *Securing the Border*, 89 Fed. Reg. 48710, 48743 (June 7, 2024) (noting that aliens are “more likely to respond in the affirmative, even if they do not in fact have a fear of return or intention of seeking asylum” when asked affirmative fear questions); *Securing the Border*, 89 Fed. Reg. 81156, 81235 (Oct. 7, 2024). The allegation that a foreign country’s government will torture an alien or allow an alien to be persecuted, particularly a government with which the United States has a diplomatic relationship, is a serious one. It is not unreasonable for an alien in that circumstance to be expected to affirmatively express a fear of persecution or torture.

Immigration officers will refer any alien who affirmatively states a fear of removal to U.S. Citizenship and Immigration Services (USCIS) for a screening for eligibility for protection under INA § 241(b)(3) and the Convention Against Torture (CAT) for the country of removal.

Where the Alien Affirmatively States a Fear

In cases where the alien affirmatively states a fear, USCIS will generally screen the alien within 24 hours of referral from the immigration officer. This screening may be done remotely. USCIS will determine whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal. If USCIS determines that the alien has not met this standard, the alien will be removed.

If USCIS determines that the alien has met this standard and the alien was not previously in proceedings before the Immigration Court, USCIS will refer the matter to the Immigration Court in the first instance. In cases where the alien was previously in proceedings before the Immigration Court, USCIS will notify the referring immigration officer of its finding, and the immigration officer will inform U.S. Immigration and Customs Enforcement (ICE). ICE OPLA may file a motion to reopen with the Immigration Court or the Board of Immigration Appeals, as appropriate, for further proceedings for the sole purpose of determining eligibility for protection under INA § 241(b)(3) and CAT for the country of removal. Alternatively, ICE may choose to designate another country for removal.