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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF ARIZONA**

10 Mahyar Nazarikiya

11 Petitioner,

12 v.

13 Christopher Howard, Warden, Eloy  
14 Detention Center; Christopher  
15 McGregor, Phoenix Field Office  
16 Director, U.S. Immigration and Customs  
17 Enforcement; Todd Lyons, Acting  
18 Director, U.S. Customs and Immigration  
19 Enforcement; Kristi Noem, Secretary,  
20 Department of Homeland Security; and  
21 Pamela Bondi, Attorney General of the  
22 United States,

23 Respondents.

**Case No.**

**VERIFIED PETITION FOR  
WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2241  
AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

24 **INTRODUCTION**

25 1. On about February 20, 2021 Petitioner, Mahyar Nazarikiya (hereinafter,  
26 “Mr. Nazarikiya” or “Petitioner”), a thirty-nine year-old citizen of Iran, was found to be  
27 inadmissible and was issued an Order of Removal. Exh. 1 (Notice and Order of Expedited  
28 Removal). The order was served on him about a month later. *Id.* Nearly a year later on

1 about February 9, 2022, after being unable to execute the removal order, Mr. Nazarikiya's  
2 parole was approved by U.S. Immigration and Customs Enforcement ("ICE") and he was  
3 released from ICE's custody on an order of supervision ("OSUP"). *See* Exh. 2 (Release  
4 Notification); Exh. 3 (Order of Supervision). About three and a half years later, in July of  
5 2025, when Mr. Nazarikiya reported to ICE for a regular check-in, he was arrested by  
6 ICE without explanation and soon transferred to the Eloy Detention Center ("Eloy"). Exh  
7 8, ¶17–18, 22 (Declaration of Mahyar Nazarikiya). During his lengthy period of  
8 supervised release, ICE certified that Mr. Nazarikiya complied with all legal requirements  
9 of Alternative to Detention ("ATD"), including attending scheduled ICE check-ins and  
10 not committing any crimes. Exh. 4 (ICE Compliance Letter); *see also* Exh. 8, ¶ 15  
11 (Declaration of Mahyar Nazarikiya). Mr. Nazarikiya's re-detention serves no purpose  
12 other than to fulfill ICE's arbitrary arrest quotas.

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16 2. ICE did not previously deem Mr. Nazarikiya's removal to a third country  
17 reasonably foreseeable, as evidenced by its decision to release him on an OSUP. Exh. 3,  
18 (Order of Supervision). He remained on an OSUP from February 9, 2022 until he was re-  
19 detained in July of 2025. When ICE re-detained Mr. Nazarikiya, its agents did not tell  
20 him anything about why he was being taken into custody, nor did they provide him with  
21 an informal interview as required by regulation. Exh. 8, ¶18–21 (Declaration of Mahyar  
22 Nazarikiya). ICE did tell Mr. Nazarikiya that he was going to be deported to a third  
23 county, possibly "Panama" or "African countries." *Id.* They did not specify which African  
24 countries they were considering. *Id.* Now some six months later, it has become clear that  
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1 ICE is holding Petitioner in detention without any real plan to imminently deport him,  
2 leaving him subject to continued prolonged detention with no end in sight, unless this  
3 Court intervenes.

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5 3. Petitioner arrived in the United States on or about February 19, 2021. Exh.  
6 1 (Notice of Expedited Removal Order). His order has been final since it was issued in  
7 February 2021, four and a half years ago, and Mr. Nazarikiya's attempts to seek asylum  
8 in the U.S. were unsuccessful. *Id.*; *see also* Exh. 8, ¶ 5–7. Despite that passage of time,  
9 ICE has failed or chosen not to deport Mr. Nazarikiya to Iran or remove him to a third  
10 country.  
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12 4. Mr. Nazarikiya is currently being detained pursuant to 8 U.S.C. § 1231.  
13 This statute governs the detention of noncitizens with a final order of removal. 8 U.S.C.  
14 § 1231(a)(3). Mr. Nazarikiya's continued detention violates 8 U.S.C. § 1231(a) because  
15 his removal is not reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678 (2001).  
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18 5. To the extent that ICE is pursuing Nazarikiya's removal to Panama, any  
19 unnamed African country, or some other and as yet unnamed third country, it has failed  
20 to demonstrate that such removal is reasonably foreseeable. There has been no  
21 indication that any other country would accept him, and, in any case, Mr. Nazarikiya  
22 would be entitled to notice and the opportunity to seek fear-based relief with respect to  
23 any new possible country of removal. *See generally D.V.D., et al. v. United States*  
24 *Department of Homeland Security, et al.*, No. 1:25-cv-10676 (D. Mass.), --- F. Supp. 3d  
25 ---, 2025 WL 1142968 (D. Mass. Apr. 18, 2025) (preliminary injunction finding due  
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1 process violations in the course of third country removals without notice and an  
2 opportunity to raise a fear claim). Accordingly, Mr. Nazarikiya is entitled to immediate  
3 release from ICE's custody.

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5 6. Mr. Nazarikiya's re-detention further violated ICE's own regulations and  
6 his Fifth Amendment due process rights. ICE re-detained him even though its own  
7 officers agreed that he was compliant with the terms of his OSUP during the more than  
8 three years he was free from detention. *See* Exh. 4 (ICE Letter Regarding Compliance).  
9 ICE has also failed to comply with its own regulations for revocation of release and  
10 review of detention, in violation of the Administrative Procedure Act ("APA") and due  
11 process, pursuant to *Accardi v. Shaughnessy*, 347 U.S. 260 (1954).  
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14 7. Independent of such violations, Mr. Nazarikiya's re-detention without  
15 notice and an opportunity to be heard runs afoul of his Fifth Amendment due process  
16 rights, as those rights were defined in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).  
17 ICE offers no potential end date to Petitioner's detention. Mr. Nazarikiya is being detained  
18 needlessly, at the expense of U.S. taxpayers, and he is unnecessarily being separated from  
19 his friends, family, and the new life he has made for himself. Because of these procedural  
20 and constitutional violations, Mr. Nazarikiya requests that he be released from detention  
21 and placed back on an OSUP identical the one with which he had consistently complied  
22 in the past.  
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#### 26 JURISDICTION AND VENUE

27 8. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331,  
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1 since this Petition arises under the Constitution and laws of the United States, namely  
2 the detention provisions of the Immigration and Nationality Act, 8 U.S.C. § 1231; the  
3 accompanying regulations codified at 8 C.F.R. § 241.4, *et seq*; the habeas corpus statute,  
4 28 U.S.C. at §§ 2241 and 2243; and the Due Process Clause of the Fifth Amendment.  
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6 9. This Court may grant relief pursuant to the Habeas Corpus Act, 28 U.S.C.  
7 § 2241, *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs  
8 Act, 28 U.S.C. § 1651; and the Court’s inherent equitable powers.  
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10 10. Federal district courts have jurisdiction to hear habeas claims by  
11 noncitizens challenging the lawfulness of their detention. *Zadvydas*, 533 U.S. at 687.  
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13 11. Federal courts also have federal-question jurisdiction, through the APA, to  
14 “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of  
15 discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). APA claims  
16 are cognizable via habeas. 5 U.S.C. § 703 (providing that judicial review of agency action  
17 under the APA may proceed by “any applicable form of legal action, including actions for  
18 declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus”).  
19 The APA affords a right of review to a person who is “adversely affected or aggrieved by  
20 agency action.” 5 U.S.C. § 702. ICE’s continued detention of Mr. Nazarikiya has  
21 adversely and severely affected his liberty.  
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24 12. Venue is proper in this district pursuant to 28 U.S.C. § 2241(c)(3) and 28  
25 U.S.C. § 1391(b)(2) and (e)(1) because at the time of filing Petitioner was detained in the  
26 Eloy Detention Center in Eloy, Arizona, which is located within the jurisdiction of this  
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1 Court; a substantial part of the events and omissions giving rise to the claim occurred in  
2 this district; Respondents McGregor and Howard reside in this district; and Respondents  
3 are officers of the United States, acting in their official capacity.  
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5 13. Exhaustion of administrative remedies is not required because it would be  
6 futile.

7 **PARTIES**

8  
9 14. Mr. Nazarikiya is a thirty-nine year-old citizen of Iran who is being detained  
10 by Respondents at the Eloy Detention Center in Eloy, Arizona. Exh. 8, ¶ 1 (Declaration  
11 of Mahyar Nazarikiya). He was granted release via OSUP on February 9, 2022 because  
12 ICE had “not effected” his “deportation or removal during the period prescribed by law.”  
13 Exh. 3, (OSUP Order)  
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15 15. Respondent Chris Howard is the Warden of the Eloy Detention Center,  
16 which detains individuals suspected of civil immigration violations pursuant to a contract  
17 with Immigration and Customs Enforcement (ICE). Respondent Howard is the immediate  
18 physical custodian responsible for the detention of Petitioner. Respondent Howard’s place  
19 of business is in the District of Arizona. He is named in his official capacity.  
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22 16. Respondent Christopher McGregor is the director of ICE’s Phoenix Field  
23 Office, which is responsible for ICE’s activities in Arizona. He is also responsible for the  
24 Eloy Detention Center. Respondent McGregor’s place of business is in the District of  
25 Arizona, and he is an immediate legal custodian responsible for Petitioner’s detention. He  
26 is named in his official capacity.  
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1           23.     The Asylum Officer rendered a negative credible fear finding on March 19,  
2 2021, concluding that Mr. Nazarikiya had not shown a credible fear of persecution or  
3 torture. Exh. 6 (CFI decision).

4           24.     Mr. Nazarikiya requested a review of that determination by an Immigration  
5 Judge. *Id.* The Immigration Judge did not find Petitioner to be eligible for asylum. Exh.  
6 7 (IJ decision pp. 2)

8           25.     Mr. Nazarikiya continued to be detained at the Imperial Regional Detention  
9 Facility in Calexico, California. Exh. 8, ¶ 8 (Declaration of Mahyar Nazarikiya).

10           26.     Because ICE could not effectuate Mr. Nazarikiya's deportation or removal  
11 during the period of supervision, ICE released him on parole on February 9, 2022. Exh.  
12 2 (Notification of Release); Exh. 8, ¶ 9–10 (Declaration of Mahyar Nazarikiya).

13           27.     At the same time ICE issued an Order of Supervision (“OSUP”) requiring  
14 Mr. Nazarikiya to appear at regular ICE check-ins, not to commit any crimes, and keep  
15 ICE informed as to his place of residence and his employment. Exh. 3 (OSUP Order)

16           28.     After his release from detention, Mr. Nazarikiya primarily resided in the  
17 San Jose, California metropolitan area and was employed as a restaurant worker and  
18 driver. Exh. 8, ¶ 12–13 (Declaration of Mahyar Nazarikiya).

19           29.     Mr. Nazarikiya complied with all the terms of the OSUP and attended all  
20 required check-ins. *Id.* at ¶ 14. A letter to that effect, dated October 8, 2024, was prepared  
21 and signed by one of ICE's Deportation Officers at the San Francisco Field Office, San  
22 Jose Sub-office. Exh. 4 (ICE Compliance Letter).

1           30. In July 2025, as Petitioner reported to ICE for a regular check-in, ICE  
2 revoked his OSUP and placed him back into detention, this time at the Eloy Detention  
3 Center in Eloy, Arizona. Exh. 8, ¶ 16–17 (Declaration of Mahyar Nazarikiya).

4           31. ICE told Mr. Nazarikiya only that he was going to be deported and took his  
5 photo, presumably for travel documents. *Id.*

6           32. Nazarikiya was not provided with an informal interview when re-detained,  
7 as required by regulation. ICE never explained to Nazarikiya why his OSUP was revoked.  
8  
9 *Id.* at ¶ 20.

10           33. Mr. Nazarikiya was not notified before being re-detained of ICE’s intention  
11 to revoke his OSUP, nor was he taken before a neutral arbiter for ICE to demonstrate, by  
12 clear and convincing evidence, that he represented a danger to the community and/or a  
13 flight risk. *Id.* In fact, he was clearly neither a flight risk nor a danger to the community,  
14 having been paroled without incident for more than three years, as evidenced by ICE’s  
15 own letter. Exh. 4 (ICE Compliance Letter).

16           34. When Petitioner was first detained in 2021 ICE told him that it was planning  
17 to remove him to Iran, but noted it was difficult to do so because he lacked a passport.  
18 Exh. 8, ¶ 7 (Declaration of Mahyar Nazarikiya).

19           35. When he was re-detained in 2025, ICE told him that it may try to remove  
20 him to a third country, mentioning Panama or unnamed African countries. *Id.* at ¶ 22.

21           36. To his knowledge, ICE has not yet identified any particular country to  
22 which it might send him. *Id.* at ¶ 23. Petitioner’s removal is not significantly likely in the  
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1 reasonably foreseeable future. *Id.* Being detained again for no apparent reason has thrown  
2 Mr. Nazarikiya into a state of depression and made it difficult for him to sleep. *Id.* at ¶ 26.

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4 37. If released, Nazarikiya plans to reside with his U.S. citizen cousin and  
5 sponsor, Fateneh Barandak, *see* Exh. 9 (Sponsor Documents), resume work, and be with  
6 his friends and family members.

## 7 LEGAL BACKGROUND

### 8 **Detention of Noncitizens**

#### 9 **A. Statutory Framework**

10  
11 38. 8 U.S.C. § 1231 governs the detention of noncitizens “during” and  
12 “beyond” the “removal period.” 8 U.S.C. § 1231(a)(2)-(6). The “removal period” begins  
13 once a noncitizen’s removal order “becomes administratively final” 8 U.S.C.  
14 § 1231(a)(1)(B). The removal period lasts for 90 days, during which ICE “shall remove  
15 the [noncitizen] from the United States” and “shall detain the [noncitizen]” as it carries  
16 out the removal. 8 U.S.C. § 1231(a)(1)-(2). Petitioner’s removal order became  
17 administratively final on February 20, 2021 and served on him on March 19, 2021.  
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19  
20 39. If ICE does not remove the noncitizen within the 90-day removal period,  
21 the noncitizen “*may* be detained beyond the removal period” **only** if he meets certain  
22 criteria, such as being inadmissible or deportable under specified statutory categories. 8  
23 U.S.C. § 1231(a)(6) (emphasis added). Further, the 90-day removal period is extended  
24 where the noncitizen interferes with his removal in bad faith. *Id.* § 1231(a)(1)(C).  
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1 the removal period. If the removal period is not extended under § 1231(a)(1)(C) or 8  
2 U.S.C. § 1231(a)(6), the noncitizen is to be released on an OSUP, subject to conditions of  
3 release. 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.5(a)-(b).

4  
5 40. To avoid “indefinite detention” which would raise “serious constitutional  
6 concerns,” the Supreme Court in *Zadvydas* construed § 1231 to contain an implicit time  
7 limit. 533 U.S. at 682. *Zadvydas* dealt with two noncitizens with final removal orders who  
8 could not be removed to their home country or country of citizenship due to bureaucratic  
9 and diplomatic barriers. The Court held that §1231 authorizes detention only for “a period  
10 reasonably necessary to bring about the [noncitizen]’s removal from the United States.”  
11 *Id.* at 689.

12  
13  
14 41. Six months of post-removal order detention is considered “presumptively  
15 reasonable.” *Id.* at 701. After that point, when the noncitizen “provides good reason to  
16 believe that there is no significant likelihood of removal in the reasonably foreseeable  
17 future, the Government must respond with evidence sufficient to rebut that showing.” *Id.*

### 18 19 **B. Regulations on Post-Removal Order Detention**

20  
21 42. DHS regulations provide that, by the end of the 90-day removal period, the  
22 local ICE field office with jurisdiction over the noncitizen’s detention must conduct a  
23 custody review to determine whether the noncitizen should remain detained. See 8 C.F.R.  
24 § 241.4(c)(1), (k)(1)(i) (“Prior to the expiration of the removal period, the district director  
25 . . . shall conduct a custody review”). ICE is required to provide the noncitizen and, if  
26 applicable, their counsel with approximately 30 days’ notice prior to such custody  
27  
28

1 reviews, to allow an opportunity to submit evidence in support of release. *Id.*, §  
2 241.4(d)(3), (h)(2). The regulations further require that custody decisions be provided to  
3 counsel. *Id.* § 241.4(d)(3).

4  
5 43. The Field Office Director, or their delegate, makes the final custody  
6 decision based on recommendations offered by lower-level officers. In making this  
7 custody determination, ICE considers several factors, including the availability of travel  
8 documents for removal. *Id.* § 241.4(e). The removal period can be extended, and the  
9 noncitizen may remain in detention during such extended period, if he fails or refuses to  
10 make timely application in good faith for travel or other documents necessary for  
11 departure. 8 U.S.C. § 1231(a)(1)(C); 8 C.F.R. § 241.5. If the factors in § 241.4 are met,  
12 ICE releases the noncitizen on an OSUP. 8 C.F.R. § 241.4(j)(2).

13  
14  
15 44. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that  
16 established “special review procedures” to determine whether detained noncitizens with  
17 final removal orders are likely to be removed in the reasonably foreseeable future. *See*  
18 *Continued Detention of Aliens Subject to Final Orders of Removal*, 66 Fed. Reg. 56,967  
19 (Nov. 14, 2001). While 8 C.F.R. § 241.4’s custody review process remained largely intact,  
20 subsection (i)(7) was added to include a supplemental review procedure that ICE HQ  
21 must initiate when “the [noncitizen] submits, or the record contains, information  
22 providing a substantial reason to believe that removal of a detained [noncitizen] is not  
23 significantly likely in the reasonably foreseeable future.” *Id.* § 241.4(i)(7).

1           45. Under this procedure, ICE HQ evaluates the foreseeability of removal by  
2 analyzing factors such as the history of ICE’s removal efforts to the countries in question.  
3 8 C.F.R. § 241.13(f). If ICE HQ determines that removal is not reasonably foreseeable  
4 but nonetheless seeks to continue detention based on “special circumstances,” it must  
5 justify the detention based on narrow grounds such as national security or public health  
6 concerns, *id.* § 241.14(b)-(d), or by demonstrating by clear and convincing evidence  
7 before an IJ that the noncitizen is “especially dangerous.” *Id.* § 241.14(f). ICE never even  
8 attempted to demonstrate the required “special circumstances.”  
9  
10

11                   **C. Regulations on Revocation of Release**

12           46. ICE may revoke the release of certain noncitizens released on an OSUP  
13 under two categories of circumstances. First, a noncitizen’s release can be revoked if he  
14 or she violates the conditions of release. 8 C.F.R. § 241.4(l)(1). Alternately, the Executive  
15 Associate Commissioner (or a District Director) can revoke release on conditions and re-  
16 detain a noncitizen when (1) the purposes of release have been served, (2) the noncitizen  
17 violated any condition of release, (3) “it is appropriate to enforce a removal order or to  
18 commence removal proceedings,” or (4) “release would no longer be appropriate” due to  
19 the noncitizen’s conduct. 8 C.F.R. § 241.4(l)(2). None of these conditions were met  
20 herein.  
21

22           47. In either case, the noncitizen is entitled to receive notice of the reasons for  
23 revocation and a “prompt” informal interview to respond to the reasons for revocation.  
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1 Petitioner received neither. If the noncitizen demonstrates that they did not violate the  
2 conditions of release, they can be released following the interview. 8 C.F.R § 241.4(1)(3).

3  
4 **ARGUMENT**

5 48. Mr. Nazarikiya's continued detention violates § 1231(a)(6) as interpreted  
6 by *Zadvydas* because his removal is not reasonably foreseeable given the unlikelihood of  
7 removal to a third country. Under *Zadvydas* and the regulations implementing it, this  
8 Court should order his immediate release under conditions of supervision.  
9

10 49. Alternatively, ICE's failure to comply with its regulations on re-detention  
11 and post-removal-order detention also violated Mr. Nazarikiya's Fifth Amendment due  
12 process rights and the APA, pursuant to *Accardi*. Mr. Nazarikiya's re-detention without  
13 proper procedures violated his due process rights in light of ICE's prior decision to release  
14 him from detention from February 9, 2022 until about July of 2025, his compliance with  
15 his OSUP while on release, and ICE's lack of any compelling reason for his re-detention.  
16  
17

18 **Mr. Nazarikiya's Continued Detention Violates § 1231(a)(6) under *Zadvydas* and He  
19 Is Entitled to Immediate Release.**

20 51. Mr. Nazarikiya's continued detention violates 8 U.S.C. § 1231(a)(6), as  
21 interpreted by the Supreme Court in *Zadvydas*, 533 U.S. 678. His removal order has been  
22 final since February 20, 2021 and his removal is not reasonably foreseeable given the  
23 unlikelihood of any third-country removal or deportation to Iran.  
24

25 52. 8 U.S.C. § 1231(a), as interpreted by the Supreme Court in *Zadvydas*,  
26 authorizes detention only for "a period reasonably necessary to bring about the  
27 [noncitizen's] removal from the United States." 533 U.S. at 689.  
28

1           53. When Petitioner was first detained in 2021, ICE informed him that it was  
2 not likely that he could be deported to Iran because he lacked a passport. Exh. 8 ¶ 7  
3 (Declaration of Mahyar Nazarikiya). Further, given ICE’s inability to deport him to Iran  
4 in the past four and a half years, it is unrealistic to believe he would be deported there in  
5 the near future. When he was re-detained in 2025, ICE named Panama as a possible  
6 country of removal, and also made vague allusions to sending him to unnamed “African  
7 countries,” yet to Petitioner’s knowledge, ICE has produced no travel documents. *Id.* at ¶  
8 22–23. ICE has now had well over four years to remove Petitioner to another country yet  
9 it has failed to do so. Likewise, ICE itself recognized the improbability of removing Mr.  
10 Nazarikiya, given its decision to release him on an OSUP and the lengthy period of time  
11 which has passed without ICE removing Petitioner to another country.  
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15           54. Even should ICE identify such a third country, ICE would be legally  
16 obligated to inform Mr. Nazarikiya and his counsel of the identified country. Mr.  
17 Nazarikiya would then have to be given the opportunity to seek fear-based relief from  
18 removal to that country, further prolonging his proceedings and detention. *See Munoz-*  
19 *Saucedo*, 2025 WL 1750346, at \*7 (noting that third country removals have “been  
20 historically rare” and that petitioner was entitled to further proceedings to seek fear-based  
21 relief, even if a third country for removal were to be found). *See also D.V.D., et al. v.*  
22 *United States Department of Homeland Security, et al.*, No. 1:25-cv-10676 (D. Mass.), -  
23 -- F. Supp. 3d ---, 2025 WL 1142968 (D. Mass. Apr. 18, 2025) (finding due process  
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1 violations where third country removals were executed without notice and opportunity to  
2 raise a fear claim).

3 55. Accordingly, it is reasonable to conclude that Mr. Nazarikiya will not be  
4 removed from the United States in the “reasonably foreseeable future” because to  
5 Petitioner’s knowledge, ICE was not able to secure travel documents to Iran or a third  
6 country currently or during his initial removal period; and removing Mr. Nazarikiya to  
7 any alternative country would require additional, lengthy proceedings and further  
8 unwarranted detention. As such, Mr. Nazarikiya’s continued detention violates 8 U.S.C.  
9 § 1231(a).  
10  
11

12 56. Mr. Nazarikiya has been re-detained for about six months, and it has been  
13 four and a half years since his removal order was issued. Exh. 1 (Notice and Order of  
14 Expedited Removal). ICE has had that entire time frame to find a third country to which  
15 to remove him. Yet, it has failed to do so.  
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18 57. While the time periods differ, courts have analyzed the reasonableness of  
19 post-removal order detention based on the date of the final removal order triggering the  
20 removal period rather than the date of (re)detention. *See S.F. v. Bostock*, 2025 WL  
21 2841022 (D. Or. Oct. 7, 2025), at \*4 (noting that “federal courts have refrained from  
22 applying the presumption of reasonableness under *Zadvydas* in re-detention cases” and  
23 pointing out that “Respondents concede that Petitioner’s detention should be measured  
24 cumulatively; it is ‘past the presumptive 180-day threshold of presumptive  
25 reasonableness.’”); *Nguyen v. Scott*, 2025 WL 2419288 (W.D. Wash. Aug. 21, 2025), at  
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1 \*13 (“[T]he six-month period does not reset when the government detains [a noncitizen]  
2 ..., releases him from detention, and then re-detains him again.”); *Dong Van Nguyen v.*  
3 *Hyde*, 2025 WL 1725791 (D. Mass. June 20, 2025), at \*3; *Escalante v. Noem*, 2025 WL  
4 2206113 (E.D. Tex. Aug. 2, 2025), at \*3; *Zavvar v. Scott*, 2025 WL 2592543 (D. Md.  
5 Sept. 8, 2025), at \*6; *Tadros v. Noem*, 2025 WL 1678501 (D N.J. June 13, 2025), at \*3  
6 (ruling that for petitioner re-detained years after his final removal order, his “final order  
7 of removal [had] triggered the six-month detention period under *Zadyvdas*”).  
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10 58. Accordingly, since Mr. Nazarikiya’s order of removal has been final for four  
11 and a half years, the Government bears the burden of demonstrating that there is a  
12 “significant likelihood of removal in the reasonably foreseeable future,” a showing it  
13 simply cannot make. *See Zadvydas*, 533 U.S. at 701.  
14

15 59. Release is the most common and appropriate remedy for a *Zadvydas*  
16 violation. *See, e.g., Munoz-Saucedo*, 2025 WL 1750346, at \*9 (ordering release under  
17 appropriate conditions where re-detained noncitizen’s removal was not reasonably  
18 foreseeable); *Iakubov v. Figueroa*, 2025 WL 2731355 (D. Ariz. Sept. 25, 2025) (ordering  
19 release where ICE could not show progress in removal to any third country); *Manago v.*  
20 *Carter*, 2025 WL 2841209, at \*3 (same); *Zhuzhiashvili*, 2025 WL 2837716, at \*3  
21 (ordering release of detained Georgian whom ICE had not removed to Georgia); *Ali v.*  
22 *DHS*, 451 F. Supp. 3d 703, 710 (S.D. Tex. 2020) (ordering release under appropriate  
23 conditions pursuant to *Zadvydas*).  
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1           60. To order Mr. Nazarikiya's immediate release pursuant to *Zadvydas*, this  
2 Court need only determine that his removal is not reasonably foreseeable. It need not  
3 analyze whether Nazarikiya is a danger to the community or a flight risk. *Zadvydas*, 533  
4 U.S. at 699-700 (“[I]f removal is not reasonably foreseeable, the court should hold  
5 continued detention unreasonable and no longer authorized by statute.”); *Munoz-*  
6 *Saucedo*, 2025 WL 1750346, at \*8 (“[N]othing supports the argument that danger to the  
7 community is a relevant factor to consider in conducting a *Zadvydas* analysis.”).  
8  
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10           61. To the extent that this Court considers whether Petitioner's release  
11 represents the risk of danger to the community or flight, Mr. Nazarikiya does not pose  
12 risk of either. He has no criminal history and a record of past compliance with ICE check-  
13 ins. Further, Petitioner has a cousin who is a U.S. citizen, residing in California, who is  
14 willing to be his sponsor. Exh. 9 (Sponsor Documents). ICE chose to release him in 2022  
15 for well over three years. *See Munoz-Saucedo*, 2025 WL 1750346, at \*8 (Government's  
16 argument that continued detention was warranted because of petitioner's endangering  
17 welfare of child conviction and dangerousness “lacks credibility considering that ICE  
18 voluntarily released Petitioner in 2023 ... when it had no obligation to do so”); *Ulysse v.*  
19 *DHS*, 291 F. Supp. 2d 1318, 1326, n. 13 (M.D. Fla. 2003) (“Obviously Respondents have  
20 no concern that Ulysse is a flight risk or a danger to society because they made no effort  
21 to remove or detain him sooner.”). In any case, Mr. Nazarikiya's “release may and should  
22 be conditioned on any of the various forms of supervised release that are appropriate in  
23 the circumstances.” *Zadvydas*, 533 U.S. at 700.  
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1 **ICE's Re-Detention and Continued Detention of Mr. Nazarikiya Without Sufficient**  
2 **Process Violates the Due Process Clause and the APA.**

3 62. Further, ICE's failure to afford Petitioner any procedures to challenge his  
4 re-detention after three and a half years of freedom and during which he complied with  
5 the terms of his release, violates the Due Process Clause of the Fifth Amendment and the  
6 Administrative Procedure Act ("APA").  
7

8 **A. ICE's Failure to Comply with Its Own Regulations Violates the Due**  
9 **Process Clause and the APA Pursuant to *Accardi*.**

10 63. First, pursuant to *Accardi v Shaughnessy*, 347 U.S. 260 (1954), ICE's  
11 failure to follow its regulations on revocation of release at 8 C.F.R. § 241.4(l) violates the  
12 APA and the Due Process Clause of the Fifth Amendment.  
13

14 64. Under the *Accardi* doctrine, which originated in the context of an  
15 immigration case and has been developed through subsequent immigration case law,  
16 agencies are bound to follow their own policies that affect the fundamental rights of  
17 individuals, including self-imposed policies and processes that limit otherwise  
18 discretionary decisions. *See Accardi*, 347 U.S. at 267 (holding that the BIA must follow  
19 its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974)  
20 ("Where the rights of individuals are affected, it is incumbent upon agencies to follow  
21 their own procedures ... even where the internal procedures are possibly more rigorous  
22 than otherwise would be required.").

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26 65. When agencies fail to adhere to their own policies as required by *Accardi*,  
27 courts frame the violation as a due process violation or as arbitrary, capricious, and  
28

1 contrary to law under the APA. *See Sameena, Inc. v. United States Air Force*, 147 F.3d  
2 1148, 1153 (9th Cir. 1998) (“An agency’s failure to follow its own regulations tends to  
3 cause unjust discrimination and deny adequate notice and consequently may result in a  
4 violation of an individual’s constitutional right to due process.”) (internal quotations  
5 omitted); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) (“It is clear,  
6 moreover, that [*Accardi*] claims may arise under the APA”).  
7

8  
9 66. Prejudice is generally presumed when an agency violates its own policy.  
10 *Leslie v. Att’y Gen. of U.S.*, 611 F.3d 171, 180 (3d Cir. 2010) (“For the sake of emphasis,  
11 we repeat: we hold that when an agency promulgates a regulation protecting fundamental  
12 statutory or constitutional rights of parties appearing before it, the agency must comply  
13 with that regulation. Failure to comply will merit invalidation of the challenged agency  
14 action.”); *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991) (“We hold that an alien  
15 claiming the INS has failed to adhere to its own regulations . . . is not required to make a  
16 showing of prejudice before he is entitled to relief. All that need be shown is that the  
17 subject regulations were for the alien’s benefit and that the INS failed to adhere to them.”)  
18  
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20  
21 67. To remedy an *Accardi* violation, a court may direct the agency to properly  
22 apply its policy, or a court may apply the policy itself and order relief consistent with the  
23 policy. *Damus v. Nielsen*, 313 F. Supp. 3d 317, 343 (D.D.C. 2018) (“[T]his Court is simply  
24 ordering that Defendants do what they already admit is required.”); *Jimenez v. Cronen*,  
25 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners’  
26 custody under ICE’s standards because “it would be particularly unfair to require that  
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1 petitioners remain detained . . . while ICE attempts to remedy its failure.”).

2 68. Here, ICE has violated the requirements of 8 C.F.R. § 241.4(l) for  
3 revocation of release, in violation of *Accardi*. ICE has not provided Mr. Nazarikiya with  
4 any notice of its revocation of release or any explanation of its basis for revocation. If  
5 ICE were to allege that Petitioner violated the conditions of his release<sup>1</sup>, it was required  
6 to “notif[y] [him] of the reasons for revocation” and “afford[] [him] an initial informal  
7 interview promptly” to allow him to contest these reasons. 8 C.F.R. § 241.4(l)(1).  
8 Nazarikiya has received no such notification or interview.  
9  
10

11 69. Similarly, to the extent that ICE revoked Mr. Nazarikiya’s release pursuant  
12 to 8 C.F.R. § 241.4(l)(2), based on a determination of an “Executive Associate  
13 Commissioner” or “district director,” Nazarikiya has received no notice of such  
14 determination or the required prompt informal interview at which he could have contested  
15 any such determination. Indeed, he has not received any written notice that his release  
16 was in fact revoked, much less one signed by an individual with the authority to do so.  
17  
18 *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 160 (W.D.N.Y. 2025) (noting that the  
19 “Executive Associate Commissioner [of] INS is equivalent to the Executive Associate  
20 Director [of] ICE.”). Failure to provide notice of revocation that is signed by an individual  
21 with authority to do so means that the “release was not lawfully revoked, and . . .  
22 [Petitioner] is entitled to release on that basis alone.” *Id.* at 162.  
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27 <sup>1</sup> Were ICE to make such an assertion, Mr. Nazarikiya would wholeheartedly contest it. Further, ICE’s own  
28 deportation officer stated in writing that Petitioner complied with the terms of his OSUP. (Exh. 4, ICE Compliance  
Letter)

1           70. Accordingly, this Court should order Mr. Nazarikiya's release under the  
2 same conditions with which he was previously complying. *See Jimenez*, 317 F. Supp. 3d  
3 at 657 (ordering petitioners' release because "it would not be appropriate to allow ICE to  
4 decide again whether [petitioners'] detention should continue" and "[i]t would be  
5 particularly unfair to require that petitioners remain detained for another 30 days while  
6 ICE attempts to remedy its failure to follow its regulations and to provide each of them  
7 due process").  
8  
9

10           **B. ICE's Re-Detention of Mr. Nazarikiya Without Sufficient Process After**  
11           **Four and a Half Years, and His Compliance with His Order of Supervision,**  
12           **Independently Violates His Due Process Rights.**

13           71. Regardless of whether ICE complied with its regulations, the lack of  
14 process afforded Mr. Nazarikiya to challenge his re-detention violates his procedural due  
15 process rights under the test enunciated by the Supreme Court in *Mathews v. Eldridge*,  
16 424 U.S. 319, 333 (1976); *see also Morrissey v. Brewer*, 408 U.S. 471, 480-82 (1972)  
17 (holding that revocation of parole involves significant values within the protection of Due  
18 Process and termination of that liberty requires, among other protections, written notice  
19 of the claimed violations and an informal hearing to ensure that revocation is based on  
20 verified facts).  
21  
22

23           72. Here, application of the three-part *Mathews* test shows that Mr.  
24 Nazarikiya's re-detention without any meaningful review is unconstitutional. Mr.  
25 Nazarikiya "satisfies the first prong of the *Mathews* test, that the private interest will be  
26 affected by the government action, "because the Government has restricted [his] liberty  
27  
28

1 by imprisoning [him], and “[f]reedom from imprisonment – from government custody,  
2 detention, or other forms of physical restraint – lies at the heart of the liberty [the Due  
3 Process Clause] protects.” *Ledesma Gonzalez v. Bostock*, 2025 WL 2841574 (W.D.  
4 Wash. Oct. 7, 2025), at \*7 (citing *Zadvydas*, 533 U.S. at 690). “The first factor – the  
5 private interest affected by the official action – is [Nazarikiya’s] liberty interest ... this is  
6 a fundamental interest that must be accorded significant weight.” *Id.* Mr. Nazarikiya’s  
7 interest in physical liberty is “the most sacred and profound right afforded by the United  
8 States Constitution” particularly where, as here, the petitioner had lived at liberty for years  
9 with the government’s acquiescence and had not violated any conditions of release.  
10 *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at \*13 (D.  
11 Ariz. Aug. 11, 2025), report and recommendation adopted, 2025 WL 2349133 (D. Ariz.  
12 Aug. 13, 2025).

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16 73. The second *Mathews* factor, the risk of erroneous deprivation and value of  
17 additional safeguards, also heavily favors Mr. Nazarikiya. As discussed above, ICE  
18 already failed to comply with even its minimal requirements for re-detention under the  
19 regulations. Mr. Nazarikiya did not even receive an explanation of the reasons for the  
20 revocation of his supervised release. Nor did he receive a signed notice of revocation or  
21 any opportunity to present evidence in opposition to his re-detention. Courts applying the  
22 *Mathews* test in analogous cases have found that a hearing is required *before* a person is  
23 deprived of his liberty by revocation of an OSUP. See, e.g., *R v. Kaiser*, 2025 WL 2855193  
24 (E.D. Cal. Oct. 8, 2025), at \*6-7; *Ledesma Gonzalez*, 2025 WL 2841574, at \*8-9; see also  
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1 *Sanchez-Hernandez v. Figueroa*, 2:25-cv-2351, Dkt. 33 (D. Ariz. Aug. 5, 2025) (Lanza,  
2 J.) (petitioner “ordered released from custody, subject to the conditions of release that  
3 applied before the challenged revocation decision”). Likewise, in *Rosado*, this Court held  
4 that where a substantial liberty interest is at stake, “the government should have the  
5 burden of proving, by clear and convincing evidence, that an individual is a danger or  
6 flight risk before depriving the individual of their liberty.” *Rosado v. Figueroa*, No. CV  
7 25-02157 PHX DLR (CDB), 2025 WL 2337099, at \*14 (D. Ariz. Aug. 11, 2025), report  
8 and recommendation adopted, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025).

11 74. The fact that Mr. Nazarikiya was out of detention for three and a half years,  
12 during which time he did not engage in criminal activity and complied with the OSUP’s  
13 requirements, makes his re-detention particularly problematic. Indeed, there had been no  
14 material changes to Mr. Nazarikiya’s situation since ICE previously released him. *See*  
15 *Munoz-Saucedo*, 2025 WL 1750346, at \*8 (Government’s argument that petitioner was  
16 dangerous “lacks credibility considering that ICE voluntarily released Petitioner in 2023  
17 ... when it had no obligation to do so.”).

20 75. Petitioner also satisfies the third prong of the *Mathews* test, i.e. the  
21 Government’s interest and the minimal administrative burden of additional procedures,  
22 also favors Mr. Nazarikiya. The procedures set forth in the relevant regulations regarding  
23 revocation of release impose a negligible burden on the Government. While the  
24 Government may have a legitimate interest in ensuring Mr. Nazarikiya’s appearance for  
25 any additional third-country removal proceedings and protecting the community from  
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1 danger, it “has not articulated an interest in the prolonged detention of noncitizens who  
2 are neither dangerous nor a risk of flight.” *Black v. Decker*, 103 F.4th 133, 154 (2d Cir.  
3 2024). ICE has not articulated any danger or flight risk presented by Petitioner. Nor has  
4 any neutral adjudicator has determined that Mr. Nazarikiya is a danger to the community  
5 or a flight risk. Consequently, any interest the Government may allege for continuing to  
6 detain him is wholly insufficient—especially where “[t]he government's only apparent  
7 interest in taking [Petitioner] into custody, which actually places an additional fiscal and  
8 administrative burden on the government, is to fulfill a quota of arrests . . . set by the  
9 current administration. *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025  
10 WL 2337099, at \*14 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, 2025  
11 WL 2349133 (D. Ariz. Aug. 13, 2025).

### 12 CLAIMS FOR RELIEF

#### 13 **COUNT I – VIOLATION OF 8 U.S.C. § 1231(a)(6)**

14 1. Mr. Nazarikiya realleges and incorporates by reference all of the allegations  
15 in each and every one of the above paragraphs, as though fully set forth herein.

16 2. 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*,  
17 authorizes detention only for “a period reasonably necessary to bring about the alien’s  
18 removal from the United States.” 533 U.S. at 689, 701.

19 3. The 90-day removal period and the six-month presumptively reasonable  
20 period from *Zadvydas* have long since expired. Mr. Nazarikiya’s removal is still not  
21 reasonably foreseeable, given the unlikelihood of returning him to Iran or third-country  
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1 removal. Therefore, his continued detention violates 8 U.S.C. § 1231(a)(6) and requires  
2 his immediate release.

3  
4 **COUNT II – VIOLATION OF THE DUE PROCESS CLAUSE OF THE  
FIFTH AMENDMENT**

5 1. Mr. Nazarikiya realleges and incorporates by reference all of the allegations  
6 in each and every one of the above paragraphs, as though fully set forth herein.  
7

8 2. Respondents have violated their own binding regulations at 8 C.F.R. § 241.4  
9 regarding the procedures for revocation of release by failing to notify him of the reasons  
10 for revocation, provide him with notice of revocation signed by anyone with authority to  
11 revoke him release, and provide him with an interview.  
12

13 3. The Due Process Clause of the Fifth Amendment forbids the Government  
14 from depriving any person of liberty without due process of law. U.S Const. Amend. V.  
15 Respondents were required to provide Mr. Nazarikiya with notice and a meaningful  
16 opportunity to be heard prior to revoking him OSUP or detaining him, which they failed to  
17 do.  
18  
19

20 **COUNT III – ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER  
21 THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)**

22 1. Mr. Nazarikiya realleges and incorporates by reference all of the allegations  
23 in each and every one of the above paragraphs, as though fully set forth herein.  
24

25 2. Courts must “hold unlawful and set aside agency action” that is “arbitrary,  
26 capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §  
27 706(2)(A).  
28

1           3. As discussed above, Respondents have violated their own binding  
2 regulations regarding the procedures for revocation of release. This is arbitrary,  
3 capricious, and contrary to law, in violation of the APA.  
4

5           **ALTERNATIVE COUNT IV – PROCEDURAL DUE PROCESS –**  
6           **UNCONSTITUTIONALLY INADEQUATE PROCEDURES**  
7           **REGARDING THIRD COUNTRY REMOVAL U.S. CONST. AMEND.**  
8           **V**

9           1. Mr. Nazarikiya realleges and incorporates by reference the paragraphs  
10 above as though fully set forth herein.

11           2. The Due Process Clause of the Fifth Amendment requires sufficient notice  
12 and an opportunity to be heard prior to the deprivation of any protected rights. U.S. Const.  
13 amend. V; *see also Louisiana Pacific Corp. v. Beazer Materials & Services, Inc.*, 842  
14 F.Supp. 1243, 1252 (E.D. Cal. 1994) (“[D]ue process requires that government action  
15 falling within the clause's mandate may only be taken where there is notice and an  
16 opportunity for hearing.”).  
17

18           3. Petitioner has a protected interest in his life. Thus, prior to any third country  
19 removal, Petitioner must be provided with constitutionally-compliant notice and an  
20 opportunity to respond and contest that removal if he has a fear of persecution or torture  
21 in that country.  
22

23           4. For these reasons, Petitioner’s removal to any third country without  
24 adequate notice and an opportunity to apply for relief under the Convention Against  
25 Torture would violate his due process rights. The only remedy of this violation is for this  
26  
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28

1 Court to maintain its order not to let Petitioner be summarily removed to any third country  
2 unless and until he is provided constitutionally adequate procedures.

3  
4  
5 **PRAYER FOR RELIEF**

6 WHEREFORE, Petitioner respectfully requests that this Court:

7 (a) Assume jurisdiction over this matter;

8 (b) Grant a writ of habeas corpus pursuant to 28 U.S.C. § 2241;

9 (c) Declare that Petitioner's continued detention to be violative of 8 U.S.C. § 1231,  
10 as interpreted by the Supreme Court in *Zadvydas*;

11 (d) Order his immediate release, subject to the same conditions as before his  
12 detention;

13 (e) Prohibit Respondents from revoking Mr. Nazarikiya's OSUP or re-detaining  
14 him in the future without complying with 8 C.F.R. § 241.4;

15 (f) Order Respondents to return him to the location at which they arrested him at  
16 Respondents' expense;

17 (g) Declare that Respondents' failure to follow the procedural requirements of 8  
18 C.F.R. § 241.4 violates the Administrative Procedure Act, 5 U.S.C. § 706  
19 and/or the Due Process Clause of the Fifth Amendment;

20 (h) In the alternative to an order of release, order that Petitioner cannot be removed  
21 to any third country without first being provided constitutionally-compliant  
22 procedures, including:  
23  
24  
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1 a. Written notice to Petitioner and counsel of the third country to which he  
2 may be removed, in a language that Petitioner can understand, provided  
3 at least 21 days before any such removal;  
4

5 b. A meaningful opportunity for Petitioner to raise a fear of return for  
6 eligibility for protection under the Convention Against Torture,  
7 including a reasonable fear interview before a DHS officer;  
8

9 (i) Award Petitioner his reasonable attorneys' fees and costs pursuant to the Equal  
10 Access to Justice Act or other applicable law;

11 (j) Grant any other relief that this Court deems just and proper.  
12

13  
14 Dated: December 30, 2025

Respectfully submitted,

15 /s/ Laura Belous

16 *Counsel for Petitioner*  
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3 **VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF**  
4 **PURSUANT TO 28 U.S.C. § 2242**

5 I am submitting this verification on behalf of the Petitioner because I am  
6 Petitioner's attorney. I hereby verify that the statements made in the attached Petition for  
7 Writ of Habeas Corpus are true and correct to the best of my knowledge.  
8

9 Dated: December 30, 2025

Respectfully submitted,

10 /s/ Laura Belous

11 Laura Belous, 028132

12 Florence Immigrant & Refugee Rights Project

13 P.O. Box 86299

14 Tucson, AZ 85754

15 lbelous@firrp.org

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**Exh. 1** – Notice and Order of Expedited Removal (February 20, 2021)

**Exh. 2** – ICE Notification of Release (Parole Approval) (February 9, 2022)

**Exh. 3** – Order of Supervision (“OSUP”) (February 9, 2022)

**Exh. 4** – ICE Letter Certifying Compliance with Order of Supervision (October 8, 2024)

**Exh. 5** – Credible Fear Interview Records

**Exh. 6** – Credible Fear Interview Decision (Negative Credible Fear Finding) (March 19, 2021)

**Exh. 7** – Immigration Judge Decision Reviewing Credible Fear Determination

**Exh. 8** – Declaration of M. N.