NICOLE ALICIA GORNEY (CA SBN #340478)
VIDAS
418 B Street, First Floor
Santa Rosa, CA 95401
Telephone: 707-523-1740
Email: ngorney@vidaslegal.org

Pro Bono Attorney for Petitioner

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

OTIS NICHOLAS FRRIEND,

Petitioner,

v.

SERGIO ALBARRAN, in official capacity, Acting Field Office Director of ICE's San Francisco Field Office; TODD M. LYONS, in official capacity, Acting Director of ICE, MARKWAYNE MULLIN, in official capacity, Secretary of the U.S. Department of Homeland Security; TODD BLANCHE, in official capacity, Acting Attorney General of the United States,

Respondents.

Case No. 26-3942

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Immigration Habeas Case

INTRODUCTION

1. Petitioner, Otis Nicholas Ffriend is a native of Jamaica who has resided in Northern California since 2022. He is a husband to a U.S. citizen wife.

2. He was granted CAT Withholding by an immigration judge on November 13, 2024 after it was found that he is more likely than not to suffer persecution in his native Jamaica if forced to return on account of [redacted]

3. He was unlawfully detained this morning by U.S. Immigration and Customs Enforcement ("ICE") after years of living at liberty in the United States and without due process. Petitioner has complied fully and completely with all required ICE check-ins. He brings this petition to obtain his release and to enjoin Respondents from unlawfully redetaining without a meaningful opportunity to be heard on whether his detention is necessary and warranted.

4. Petitioner was previously released by immigration on bond. ICE has not demonstrated changed conditions or non-compliance with his release terms which would now warrant his detention.

5. Mr. Ffriend has not been given the opportunity to express fear of being sent to a third country.

6. On May 1, 2026, U.S. Immigration and Customs Enforcement ("ICE") detained Mr. Frriend—without any prior notice—at his home in Willits, California, in violation of its own regulations and the Constitution. His detention infringes on his constitutionally protected liberty interest in his physical freedom and is unlawful pursuant to the agency's own regulations. The Court should enjoin ICE from continuing this unlawful course of conduct.

CUSTODY

7. Mr. Frriend is currently detained in ICE custody at 630 Sansome Street, San Francisco, California, 94111. Mr. Frriend was arrested by ICE on May 1, 2026.

JURISDICTION

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

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

VENUE

10. Venue is proper in the Northern District of California under 28 U.S.C. § 1391(e) because Respondents are federal officers or employees sued in their official capacities; one or more Respondents reside in this District; Petitioner resides in this District; Petitioner is detained in this District; and a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District.

INTRADISTRICT ASSIGNMENT

11. The decision to arrest and detain Petitioner was made by the San Francisco Field Office of ICE. Therefore, the assignment to the San Francisco Division of this Court is proper under N.D. Local Rule 3-2(d).

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed." *Id.* (emphasis added).

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

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

PARTIES

15. Petitioner OTIS NICHOLAS FFRIEND is a citizen of Jamaica and has resided in the United States since 2022. He lives in Willits, California with his U.S citizen wife and step-children. On November 13, 2024, Petitioner was granted CAT Withholding and has been subject to supervision by the ICE San Francisco Field Office since.

16. Respondent SERGIO ALBARRAN is the Acting Field Office Director responsible for the San Francisco Field Office of ICE Enforcement and Removal Operations, which has immediate physical custody of Petitioner. He is sued in his official capacity.

17. Respondent TODD LYONS is the Acting Director of ICE. As the head of ICE, an agency within the U.S. Department of Homeland Security that detains and removes certain noncitizens, Respondent Lyons is a legal custodian of Petitioner. He is sued in his official capacity.

18. Respondent MARKWAYNE MULLIN is the Secretary of the U.S. Department of Homeland Security. He is responsible for the administration of the federal immigration laws. 8 U.S.C. § 1103(a). Secretary Mullin is a legal custodian of Petitioner. He is sued in his official capacity.

19. Respondent TODD BLANCHE is the Acting Attorney General of the United States. He is responsible for overseeing the implementation and enforcement of the federal immigration laws. He has the authority to interpret immigration law and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals ("BIA"). In his official capacity, Acting Attorney General Blanche is the ultimate legal custodian of Petitioner.

FACTUAL ALLEGATIONS

20. Mr. Friend was born in Jamaica in 1986. He first entered the United States around June 2022.

21. Petitioner was granted CAT withholding on November 13, 2024 and has complied with supervision conditions since.

22. Approximately a few days before May 1, 2026, Petitioner received a call from ICE officials confirming his current address of residence and employment. As always, Petitioner complied with ICE's request.

23. On May 1, 2026, Petitioner received another call from ICE informing him they were outside his home in Willits, California. Petitioner returned to his home from work where he was arrested and brought to 630 Sansome in San Francisco.

24. Petitioner has never had the opportunity to express fear of being sent to a third country on account of [redacted]. Petitioner is bisexual and fears harm and persecution in many countries because of [redacted]

25. Mr. Ffriend has significant family ties in the United States, including a U.S. citizen wife and step-children. He works at a local charter school and also coaches soccer in his community in Willits, California.

26. Mr. Ffriend has not been afforded a pre-deprivation hearing where the government must prove with clear and convincing evidence that he is a flight risk or a danger to the community.

27. He has also not been provided the opportunity to express fear of a proposed third country removal.

Third Country Removals

28. Since early 2025, ICE has escalated efforts to remove noncitizens with final orders of removal to "third countries," *i.e.*, countries that the immigration judge has not designated as potential countries for removal during the noncitizen's removal proceedings. *See Zakzouk v. Becerra*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *2 (N.D. Cal. July 26, 2025) ("Although Petitioner-Plaintiff informed the ICE officer that he has no right to return to either country because he is stateless, the officer told Petitioner-Plaintiff that "things are different now."); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July

16, 2025); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *6 (E.D. Cal. July 16, 2025).

29. Because the "third country" was not at issue during the original removal proceedings, a noncitizen who is threatened with removal to a third country has never had an opportunity to express fear of or seek legal protection from removal to that country.

30. On July 9, 2025, ICE issued a memo to staff that represents the agency's current policy with respect to third country removals. The memo provides that if the United States has received credible "diplomatic assurances" from a third country that deportees will not be persecuted or tortured in that country, ICE may deport a noncitizen to that third country without notice or an opportunity to be heard. *See* Exh. H, DHS Policy Regarding Third Country Removal.

31. The memo provides that if the United States has not received such diplomatic assurances, ICE officers must serve the noncitizen a "Notice of Removal" stating the intended country of removal; it need not, however, ask whether the noncitizen fears removal to that country. *Id.* Although officers should "generally wait at least 24 hours following service of the Notice of Removal before effectuating removal," they may under certain conditions effectuate removal only six hours after service of the Notice of Removal. *Id.*

32. Under the ICE memo, if the noncitizen "does not affirmatively state a fear of persecution or torture if removed" to the third country, ICE may proceed with removal. *Id.* Only if the noncitizen "does affirmatively state a fear" of removal to that country will they be screened for eligibility for withholding of removal and protection under the Convention Against Torture ("CAT"). *Id.*

33. On February 25, 2026, U.S. District Court Judge Brian E. Murphy of the U.S. District Court of Massachusetts declared that DHS's third-country removal policy, as embodied in DHS's March 30, 2025, memorandum and ICE's July 9, 2025, memorandum is unlawful and set aside the policy. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2026 WL 521557, at *44 (D. Mass. Feb. 25, 2026). On March 16, 2026, the U.S. Court of Appeals for the First Circuit granted the government's motion to stay the district court's order pending appeal. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 26-1212 (1st Cir. March 16, 2026).

34. There have been multiple credible reports of persons being subjected to these third country removals.

35. This Court's intervention is needed to ensure that Petitioner's regulatory and due process rights are protected, that his unjust detention does not become prolonged and indefinite, and that he is not unjustly removed to a third country.

LEGAL FRAMEWORK

Post-Removal Order Detention, Release, and Re-Detention

36. The Immigration and Nationality Act directs ICE to remove a noncitizen "within a period of 90 days" following a final order of removal, known as the "removal period." 8 U.S.C. § 1231(a)(1)(A).

37. ICE "shall detain" the noncitizen during the 90-day removal period. 8 U.S.C. § 1231(a)(2)(A).

38. If ICE does not effectuate removal during the removal period, the noncitizen is released "subject to supervision," 8 U.S.C. § 1231(a)(3), except that certain categories of noncitizens "may be detained" beyond the removal period, 8 U.S.C. § 1231(a)(6). In light of the

due process concerns that indefinite detention would raise, the Supreme Court has construed section 1231(a)(6) to limit a noncitizen's "post-removal period detention to a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

39. Two regulations, 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13, govern release and re-detention following a final order of removal.

40. 8 C.F.R. § 241.4 creates a system of custody reviews for noncitizens whom ICE detains beyond the 90-day removal period. ICE may grant release if the noncitizen demonstrates that "his or her release will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending such [noncitizen's] removal from the United States." § 241.4(d)(1).

41. The regulation provides that ICE may re-detain a noncitizen who was released under § 241.4 for specified reasons and following specified procedures. *See* § 241.4(l).

42. 8 C.F.R. § 241.13 creates "special review procedures" where the noncitizen "has provided good reason to believe there is no significant likelihood of removal . . . in the reasonably foreseeable future." § 241.13(a); *see also* § 241.13(b)(1) (providing that § 241.4 governs unless ICE "makes a determination under this section that there is no significant likelihood of removal in the reasonably foreseeable future").

43. The regulation provides that ICE may re-detain a noncitizen who was released under § 241.13 for specified reasons and following specified procedures. *See* § 241.13(i).

44. The Due Process Clause further constrains ICE's ability to re-detain a noncitizen who was previously released on an order of supervision. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the

liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

45. Substantive due process requires that a noncitizen's detention bear a reasonable relationship to the purposes of immigration detention, to prevent flight and to protect the community. *Id.* at 690-91; *see also Cty. of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998) ("[T]he touchstone of due process is protection of the individual against arbitrary action of government.") (citation omitted).

46. In addition, procedural due process requires that a noncitizen's detention be accompanied by strong "procedural protections," *Zadvydas*, 533 U.S. at 691, 692, such as a hearing before a neutral adjudicator. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"). Courts in this Circuit have determined that a noncitizen subject to conditional release has a liberty interest in that release such that a pre-deprivation hearing before a neutral adjudicator is required prior to any redetention. *See e.g. Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL 2791778, at *8 (E.D. Cal. Aug. 20, 2025); *Guillermo M. R.*, 2025 WL 1983677, at *5 ("The fact that Petitioner is subject to discretionary conditions of release likewise does not mean he lacks a protectable liberty interest and can be re-detained without process."). That is because, generally, the Due Process Clause "requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original).

Third Country Removals

47. Congress has established a multi-step process for designating countries to which noncitizens may be removed. 8 U.S.C. § 1231(b).

48. First, ICE shall remove the noncitizen to the country that the noncitizen chooses to designate, with certain limitations on that choice. *Id.* §§ 1231(b)(2)(A)-(B). ICE may disregard the noncitizen's designation only under specified circumstances. *Id.* § 1231(b)(2)(C).

49. Second, if the noncitizen is not removed to the country they designated, ICE shall remove the noncitizen to an "alternative country"—*i.e.,* "a country of which the [noncitizen] is a subject, national, or citizen"—unless that country does not cooperate with ICE's removal efforts. *Id.* § 1231(b)(2)(D).

50. Third, if the noncitizen is not removed to the country they designated or to an alternative country, then ICE may pursue a list of "[a]dditional removal countries," including the country from which the noncitizen was admitted to the United States and the country in which the noncitizen was born. *Id.* § 1231(b)(2)(E). Only if "impracticable, inadvisable, or impossible" to remove the noncitizen to any of the additional removal countries may ICE depart from the list and pursue removal to any country willing to accept the noncitizen. *Id.* § 1231(b)(2)(E)(vii).

51. Importantly, the statute prohibits removal to any country where a person may be persecuted or tortured, a form of protection known as withholding of removal. *Id.* § 1231(b)(3)(A) (providing that ICE "may not remove" a noncitizen to a country if "the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion"). Petitioner here fears persecution in torture in countries outside of the United States due to his sexual orientation.

52. Congress has also codified the protections of the Convention Against Torture ("CAT") prohibiting the government from removing a person to a country where they face torture. *See* Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No.

105-277, div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.").

53. Courts have held repeatedly that ICE may not remove a noncitizen to a country that was not properly designated by an immigration judge if the noncitizen has a fear of persecution or torture in that country. *See, e.g.*, *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999). Due process requires meaningful notice and an opportunity to present a fear-based claim prior to deportation. *See also A.A.M. v. Andrews*, No. 1:25-CV-01514-DC-DMC (HC), 2025 WL 3485219, at *11 (E.D. Cal. Dec. 4, 2025) ("[E]enjoin[ing] Respondents from removing Petitioner to Cameroon until Petitioner has had the opportunity to present his fear-based claim in reopened removal proceedings before an Immigration Judge"); *Y.T.D. v. Andrews,* No. 1:25-CV-01100 JLT SKO, 2025 WL 2675760, at *1 (E.D. Cal. Sept. 18, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *8 (N.D. Cal. Aug. 6, 2025); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). A "last minute" designation of a country for removal, affording no meaningful opportunity to apply for protection, "violate[s] a basic tenet of constitutional due process." *Andriasian*, 180 F.3d at 1041.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Procedural Due Process
U.S. Const. amend. V

54. Petitioner re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

55. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

56. Petitioner has a vested liberty interest in his conditional release. Due Process does not permit the government to strip him of that liberty without a hearing before a neutral adjudicator. *See Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025) ("[E]ven when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody"); *Yang*, 2025 WL 2791778, at *8 (determining that seven years out of custody on "supervised release, as well as petitioner's ties to his community, strengthen petitioner's interest in his continued release").

57. The process afforded to him by the regulations is insufficient to protect his liberty interest, as the lack of access to counsel, notice and a neutral adjudicator creates a heightened risk of erroneous deprivation. *See Yang*, 2025 WL 2791778, at *9 ("The court therefore rejects respondents' contention that the regulatory framework sufficiently mitigates the risk of an erroneous deprivation of petitioner's liberty interest."); *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006) ("A neutral judge is one of the most basic due process protections."). And on the other hand, the cost of having a hearing prior to detention before a neutral adjudicator is low. *See Phouvieng K. v. Andrews*, No. 1:25-CV-01512-KES-SAB (HC), 2025 WL 3265504, at *9 (E.D. Cal. Nov. 24, 2025).

58. For these reasons, Petitioner's re-arrest and detention without notice and a hearing violated the Constitution. The only remedy for this violation is his immediate release from immigration detention until the government provides him with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia,* whether clear and convincing evidence demonstrates that his removal is reasonably foreseeable and that, taking into consideration alternatives to detention, Petitioner is a danger to the community or a flight risk, such that his re-incarceration is warranted.

SECOND CAUSE OF ACTION
Substantive Due Process
U.S. Const. amend. V

59. Petitioner re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

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

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

62. Since approximately 2024, Petitioner has complied with the reporting requirements imposed on him by ICE, thus demonstrating that he is not a flight risk. Moreover, each time that he has been permitted to return for another check-in date, ICE has necessarily determined that he does not pose a danger. Finally, there has been no change in circumstances that now renders his detention necessary. Re-arresting him now is punitive and violates his constitutional right to be free from the unjustified deprivation of his liberty.

63. For these reasons, Petitioner's detention violates the Constitution.

THIRD CAUSE OF ACTION
Violation of the INA and Applicable Regulations; 5 U.S.C. § 706(2)(D)

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

65. The INA provides for detention during the ninety (90) day "removal period" that begins immediately after a noncitizen's order of removal becomes final. 8 U.S.C. § 1231(a)(1). After the ninety (90) day removal period, the INA and its applicable regulations provide that detaining noncitizens is generally permissible only upon notice to the noncitizen and after an individualized determination of dangerousness and flight risk. *See* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(d), (f), (h) & (k).

66. Petitioner was previously released by Respondents on immigration bond and granted CAT Withholding. As long as he complies with the conditions of his release, Respondents have authority to revoke release only if circumstances have changed such that the government "determines there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2); 8 C.F.R. § 1231(a)(6). Pursuant to § 241.13(i)(2), the burden is on ICE to first establish changed circumstances that make removal significantly likely in the reasonably foreseeable future. *Tran v. Noem*, No. 1:25-CV-01523-TLN-CKD, 2025 WL 3268491, at *2 (E.D. Cal. Nov. 24, 2025). The phrase "significant likelihood," as used in the regulation, requires something more than a mere possibility of removal. *Vu v. Noem*, No. 1:25-CV-01366-KES-SKO (HC), 2025 WL 3114341, at *7 (E.D. Cal. Nov. 6, 2025).

67. As such, the revocation of Petitioner's order of supervision was also not in accordance with the INA and implementing regulations governing who may lawfully revoke an

order of supervision and under what circumstances. Government agencies are required to follow their own regulations. *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Nat'l Ass'n of Home Builders v. Norton*, 340 F.3d 835, 852 (9th Cir. 2003). "Numerous district courts, including courts in the Ninth Circuit, have determined that where ICE fails to follow its own regulations in revoking release, the detention is unlawful and the petitioner's release must be ordered." *Constantinovici v. Bondi*, No. 3:25-CV-02405-RBM-AHG, 2025 WL 2898985, at *6 (S.D. Cal. Oct. 10, 2025) (citing cases). *See e.g.*, *Phouvieng K.*, 2025 WL 3265504, at *4; *Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL 2791778, at *6 (E.D. Cal. Aug. 20, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025); *Rombot v. Souza*, 296 F. Supp.3d 383, 387 (D. Mass. 2017).

68. Accordingly, Respondents' revocation of Petitioner's order of supervision violated the regulations and accordingly should be held unlawful and set aside because it was contrary to the agency's authority and not in accordance with the INA and implementing regulations.

FOURTH CAUSE OF ACTION
Procedural Due Process and APA – Unconstitutionally Inadequate Procedures Regarding Third Country Removal
U.S. Const. amend. V; 5 U.S.C. § 706(2)(D)

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

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

71. The INA, FARRA, and implementing regulations further mandate meaningful notice and opportunity to present a fear-based claim to an IJ before ICE deports a person to a third country.

72. Petitioner has a due process right to meaningful notice and opportunity to present a fear-based claim to an IJ before DHS deports him to a third country. *See, e.g., Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). He also has a due process right to implementation of a process or procedure to afford these protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991). Petitioner further has a due process right to not be re-detained because Respondents have no procedural protections to ensure meaningful notice and an opportunity to present a fear-based claim prior to removal to a third country. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The APA likewise compels a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

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

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

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Order the immediate release of Petitioner from DHS custody on the conditions of his prior OSUP;

(3) Enjoin ICE from re-arresting Petitioner unless and until a hearing can be held before a neutral adjudicator to determine whether his re-incarceration would be lawful because the government has shown that his removal is reasonably foreseeable and that he is a danger or a flight risk by clear and convincing evidence;

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

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

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

(5) Order that Petitioner cannot be removed to any third country without first being provided meaningful notice and "the opportunity to present his fear-based claim in reopened removal proceedings before an Immigration Judge," *see A.A.M. v. Andrews*, No. 1:25-CV-01514-DC-DMC (HC), 2025 WL 3485219, at *11 (E.D. Cal. Dec. 4, 2025);

(6) Award reasonable costs and attorney fees; and

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

Dated: May 1, 2026

Respectfully submitted,

/s/Nicole A. Gorney

Nicole A. Gorney

Pro Bono Attorney for Petitioner