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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JUAN G.S.,

Petitioner-Plaintiff,

v.

Sergio ALBARRAN, Field Office Director of San Francisco Office of Detention and Removal, U.S. Immigration and Customs Enforcement; U.S. Department of Homeland Security;

Lance SCHROYER, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Markwayne MULLIN, in his Official Capacity, Secretary, U.S. Department of Homeland Security; and

Todd BLANCHE, in his Official Capacity, Attorney General of the United States;

Respondents-Defendants.

Case No.

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Challenge to Unlawful Detention Under Color of Immigration Detention Statutes; Request for Declaratory and Injunctive Relief

IMMIGRATION HABEAS CASE

INTRODUCTION

1. Petitioner-Plaintiff Juan G.S. ("Juan," or "Petitioner"),[1] by and through his undersigned counsel ("Counsel"), hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief, and accompanying ex parte motion for a temporary restraining order, to prevent Respondents-Defendants, the U.S. Department of Homeland Security ("DHS" or "the Department") and U.S. Immigration and Customs Enforcement ("ICE"), from (1) detaining him without first providing him a due process hearing where the government bears the burden to demonstrate to a neutral adjudicator that his custody is justified by clear and convincing evidence because he is a flight risk or danger to the community and his removal is reasonably foreseeable, and (2) deporting him to a third country without advance notice and an opportunity to seek fear-based relief.

2. Juan G.S. is an LGBTQ Honduran man with HIV. He has lived in the United States for nearly 30 years, since 1998. Nearly all of his family lives in the United States. Five of his siblings live in San Francisco, with his nieces and nephews. Juan's mother and his partner lived here before both tragically passed away last year. His nieces and nephews are U.S. citizens; his oldest brother is a U.S. citizen; and one of his sisters is a lawful permanent resident whose citizenship application is pending. His mother was a lawful permanent resident before she passed away in September 2025. On May 23, 2022, an Immigration Judge ("IJ") granted Juan withholding of removal under 8 U.S.C. § 1231(b) due to the extreme physical and [redacted] he suffered in Honduras on account of his sexual orientation, and his fear of future persecution. He has regularly checked in with ICE on an Order of Supervision (OSUP) since December 2013.

3. For over a decade, Juan checked in with ICE without incident. He has had no arrests or other contacts with the criminal system since 2014. He is very close with his family, and used to

[1] Juan G.S. respectfully requests that the Court use his initials, rather than his full name, in any opinion in his case, as suggested by the Committee on Court Administration and Case Management of the Judicial Conference of the United States. *See* Memorandum Re: Privacy Concern Regarding Social Security & Immigration Opinions, May 1, 2018, *available at*: https://www.uscourts.gov/sites/default/files/18-cv-l-suggestion_cacm_0.pdf. *See also Walter A.T. v. Facility Administrator*, No. 1:24-CV-01513-EPG-HC, 2025 WL 1744133, at *10 (E.D. Cal. June 24, 2025). Juan G.S.'s full legal name and A-number will be provided to the assigned attorney within the U.S. Department of Justice.

live with his mother before she passed away. He has been lawfully employed, and recently started a new job as a server at a restaurant in the Ferry Building in San Francisco. He has worked as a server in restaurants around the city of San Francisco for decades, and has paid taxes for years. He has been receiving support from the community organization Shanti, to connect him to others with HIV and provide him with referrals and other emotional support. In June 2026, he began a new treatment course for his HIV.

4. In the past year, ICE has arrested scores of individuals at routine check-ins, without notice or process. ICE has also begun detaining individuals like Juan who have been granted fear-based protection and attempting to remove them to countries to which they have no ties, without adherence to the law. Absent relief from this Court, Juan faces immediate re-detention on July 8 and possible removal to a "third country" where he could also face torture.

5. Juan has been ordered to report in person at the San Francisco ICE Field Office on July 7, 2026. At his last check-in with ICE on June 16, 2026, his Deportation Officer ("DO") told him that he planned to remove him to a third country—that is, a country not designated for removal by an Immigration Judge ("IJ"). He told Juan that he was empowered to remove him to Africa if he wanted, but that Juan should instead buy a plane ticket to Guatemala, El Salvador, or Mexico and bring it to his July 7 check-in. When Juan expressed his fear of removal, he was told that if he didn't bring a plane ticket showing he was leaving the United States, he would be re-detained at his check-in. Juan fears that the DHS will re-detain him at this check-in, or at another time, while they attempt to find a third country to which they can remove him.

6. It is well established that Juan has a liberty interest in his years-long freedom from physical constraint under supervised release, and that the Fifth Amendment's Due Process Clause mandates that immigration detention serve a legitimate purpose—to mitigate flight risk or prevent danger to the community. Neither of these purposes are served by re-detention. At a minimum, due process entitles Juan to a hearing before a neutral adjudicator prior to the revocation of his supervised release and deprivation of his liberty.

7. Further, the Immigration and Nationality Act and due process require that Juan must not be re-detained unless and until ICE proves to a neutral arbiter that (1) his detention is necessary

because there has been a material change in circumstances establishing that he is a flight risk or a danger to the community and (2) that his removal is reasonably foreseeable. Because Respondents have not demonstrated that a third country will accept Juan for removal, nor afforded him constitutionally and statutorily-compliant process before that removal, his removal to a third country is not reasonably foreseeable.

8. Finally, Juan G.S. cannot be removed to a third country unless and until ICE provides him with a sufficient opportunity to seek fear-based relief as to that country before an Immigration Judge, in compliance with the INA, due process, and the Convention Against Torture.[2]

CUSTODY

9. Juan G.S. is on conditional, supervised release by ICE through a Form I-220B, Order of Supervision ("OSUP"). *See* Exh. B (2013 OSUP); Exh. C (2026 OSUP). Juan's OSUP was first issued in December 2013, and was reissued as recently as June 16, 2026. *Id.* Under the terms of his OSUP, Juan must regularly report in-person to ICE, update ICE within 48 hours if he changes residence or employment, and cannot travel outside the state of California for longer than 48 hours without notifying ICE. *Id.* These are restraints not shared by the public generally, and are thus custodial within the meaning of habeas relief. *Jones v. Cunningham*, 371 U.S. 236, 242-43 (1963) (a parolee is "in custody" within the meaning of 28 U.S.C. § 2241).

JURISDICTION

10. This case arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*, the regulations implementing the INA, the 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), the regulations implementing the FARRA, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*

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[2] United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984), https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading; *see also* Foreign Affairs Reform and Restructuring Act of 1998 (FARRA).

11. 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.*, the Administrative Procedure Act; 28 U.S.C. § 1651, the 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.

12. 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 Juan G.S.'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. *See generally INS v. St. Cyr*, 533 U.S. 289 (2001); *Zadvydas v. Davis*, 533 U.S. 678 (2001). This Court also has broad equitable powers to grant relief to remedy a constitutional violation. *See Roman v. Wolf*, 977 F.3d 935, 941 (9th Cir. 2020).

REQUIREMENTS OF 28 U.S.C. § 2243

13. 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).

14. 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).

15. 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.*

VENUE

16. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the Respondents are employees or officers of the United States, acting in their official capacities; Juan G.S. is under custodial supervision in this District; Juan G.S. resides in this District; a substantial part of the events or omissions giving rise to the claim occurred in this District; and no real property is involved in this action.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)).

18. Here, exhaustion should be waived because administrative remedies are (1) futile, inadequate, and not efficacious, and (2) his detention and/or removal to a third country would result in irreparable harm. No statutory exhaustion requirements apply to Juan G.S.'s claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. Further, exhausting constitutional claims would be futile because the immigration courts and the BIA lack jurisdiction to rule on constitutional claims. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims); *see also Wang v. Reno*, 81 F.3d 808, 815–16 (9th Cir. 1996) (per curiam) ("[T]he inability of the INS to adjudicate the constitutional claim completely undermines most, if not all, of the purposes underlying exhaustion."); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

PARTIES

19. Petitioner-Plaintiff Juan G.S. has lived in the United States for 28 years, since he was about 22 years old. Respondents placed Juan on an Order of Supervision ("OSUP") and to date,

he has complied with all terms of his supervision. An immigration judge granted Juan withholding of removal on May 23, 2022. ICE has ordered Juan to appear at a check-in on July 7, 2026. Juan's Deportation Officer told him he would be arrested if he did not accept removal to a third country. Juan now faces imminent re-detention and removal to a third country (i.e. not Honduras, the country designated for his removal).

20. Respondent Sergio ALBARRAN is the Field Office Director of ICE in San Francisco, California, and is named in his official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Juan G.S.

21. Respondent Lance SCHROYER is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the detention and removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Juan G.S.

22. Respondent Markwayne MULLIN is the Secretary of DHS and is named in his official capacity. DHS is the federal agency encompassing ICE and is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Juan G.S.

23. Respondent Todd BLANCHE is the Attorney General of the United States and the most senior official in the U.S. Department of Justice ("DOJ"), and he is named in his official capacity. He has the authority to interpret the immigration laws and adjudicate removal cases and bond hearings. The Attorney General delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA.

STATEMENT OF FACTS

Juan G.S.'s background, grant of withholding relief, and procedural history

24. Juan G.S. is a fifty-year-old LGBTQ Honduran man with HIV. Exh. A (Declaration of Juan G.S.) ¶¶ 1, 16. He is one of eight siblings. *Id.* ¶ 1. Currently, he has no immediate family in Honduras—five of his siblings live in San Francisco, and two others live in Europe. *Id.* His 26 nieces and nephews are all U.S. citizens, and his siblings are mostly U.S. citizens and permanent residents. *Id.* ¶ 25.

25. Growing up in Honduras, others identified Juan as gay since he was a child. Exh. A ¶ 2. [redacted]. *Id.* He first entered the United States in 1998, when he was 22 years old. *Id.* ¶ 3. He was granted Temporary Protected Status ("TPS"), and allowed to live and work legally in the United States. *Id.*

26. In 2006, Juan sustained two misdemeanor convictions, for Cal. P.C. 245(a)(1) and V.C. 23152(a) (DUI). *See* McMahon Decl. ¶¶ 10-11. He regrets his actions of two decades ago and strives to be better each day. Exh. A ¶ 4. As a result of his convictions, he lost his TPS status in 2008. McMahon Decl. ¶ 7; Exh. A ¶¶ 5-6. In 2009, Juan was ordered removed *in absentia* by an immigration judge. *Id.* He did not realize he was called to an immigration hearing until ICE detained and deported him in June 2009. *Id.* ¶ 4.

27. In July 2009 in Honduras, [redacted]. *Id.* ¶¶ 8-10. When Juan's brother—who now lives in Europe, but lived in Honduras at the time—went looking for him at a police station, the police released Juan to his brother. *Id.* ¶ 11. On the advice of his brother and a doctor, Juan tried to report what happened to him. *Id.* ¶ 12. After

making a complaint, men in uniform visited Juan and his brother at their home late at night, [redacted]. *Id.* ¶¶ 13-14. Juan fled Honduras for the United States. *Id.* ¶ 15.

28. In September 2009, Juan attempted to enter the U.S. without inspection at the southern border, and was apprehended by Border Patrol. McMahon Decl. ¶ 7. He was not asked whether he feared removal to Honduras, and was instead remanded to criminal custody for prosecution for illegal entry under 8 U.S.C. § 1325. *Id.* ¶¶ 7, 13. Juan spent 60 days in custody for violation of § 1325, and was then removed to Honduras in December 2009. *Id.*

29. Fearing for his life, Juan immediately fled Honduras again, and reentered the United States successfully in about January 2010. Exh. A ¶ 17.

30. Juan attempted to find safety and rebuild his life. In December 2013, while driving on the freeway in Nebraska, Juan was pulled over in a traffic stop. Exh. A ¶ 18; McMahon Decl. ¶ 8. Police in Nebraska then handed Juan over to ICE. Exh. A ¶ 18. ICE reinstated Juan's prior order of removal, and for the first time, asked whether he was afraid of returning to Honduras. *Id.* ICE then released Juan on a Form I-220B Order of Supervision ("OSUP"). *Id.*; Exh. B.

31. The OSUP sets forth numerous restrictions on Juan's liberty, including that he appear for any and all in-person appointments when instructed by ICE, not travel outside of San Francisco, CA for more than 48 hours without receiving approval from ICE, update his address and employment status within 48 hours of any change, and that he assist ICE with obtaining any necessary travel documents. Exh. B. Since January 2014—for 12 years—Juan has had to appear for an in-person check-in appointment at ICE's San Francisco Field Office location at least once per year. *Id.* Later, his OSUP terms would be modified to state that he should not leave the state of California without informing ICE. Exh. C.

32. In 2014, Juan was arrested following an argument and was remanded on a parole violation. McMahon Decl. ¶ 14. ICE did not re-detain Juan after this incident. Exh. A ¶ 19; McMahon Decl. ¶ 15. In the subsequent 12 years, Juan has had no arrests or other contact with the criminal system. *Id.*

33. In November 2016, Juan appeared *pro se* for a Reasonable Fear Interview ("RFI") with U.S. Citizenship and Immigration Services ("USCIS"), a sub-agency of Respondent Department of Homeland Security ("DHS"). McMahon Decl. ¶ 16. The USCIS officer found that Juan had a reasonable fear of persecution if removed to Honduras, and referred him to further proceedings before an Immigration Judge ("IJ"). *Id.*

34. On May 23, 2022, an IJ granted Juan withholding of removal under 8 U.S.C. § 1231(b), finding he was more likely than not to suffer persecution on account of his sexual orientation if he was returned to Honduras. Exh. D (IJ Order Granting Withholding of Removal); McMahon Decl. ¶ 17. He continued to check-in with ICE each year under the terms of his OSUP. Exh. A ¶ 30; McMahon Decl. ¶ 18.

35. Juan has established deep roots in the San Francisco community in his nearly three decades here. Almost all of his family now lives here. Exh. A ¶ 25. He has no immediate family in Honduras. *Id.* He has worked as a server at restaurants around the city for decades, most recently starting a new job at a restaurant in the Ferry Building in San Francisco. *Id.* ¶ 23. He has paid taxes for many years. *Id.* He receives HIV treatment at San Francisco General Hospital, and just began a new course of HIV treatment in June 2026. *Id.* ¶ 26. His treatment program is for a one year term, and cannot be discontinued prior to completion of the course. *Id.* He also receives psychiatric treatment for his depression and recurring nightmares. *Id.* Juan continues to live with the memory of the abuse he suffered every day, and often has involuntary thoughts and nightmares about what happened. *Id.* ¶¶ 16, 26. He has close connections with the nonprofit organization Shanti in San Francisco, which provides a peer community of LGBTQ individuals and people with HIV, who have become like a family to Juan. *Id.* ¶ 27. They also provide him with a social worker, and referrals to other services. *Id.* He lives with his two dogs. *Id.* ¶ 28.

36. Juan has had an extremely challenging year. He was in a loving same-sex relationship with the same partner for twelve years, until his partner passed away last year. Exh. A ¶ 24. Also last fall, his mother, with whom he lived, passed away. *Id.* ¶ 28. Approximately four months ago, there was a fire in Juan's apartment, where he had lived since 2005. *Id.* He is currently living in a hotel temporarily until his apartment is repaired. *Id.* Meanwhile, he continues to deal every day

with the reality of his HIV diagnosis, and his recurrent depression and nightmares from the [redacted]. *Id.* ¶¶ 16, 26.

37. Against this tragic backdrop, ICE has threatened to upend Juan's life once again. At a routine ICE check-in on June 16, 2026, Juan's Deportation Officer ("DO") informed him that he planned to remove him to a third country, and that he should return with a plane ticket for El Salvador, Guatemala, or Mexico. Exh. A ¶¶ 33-34. When Juan stated that he was afraid to go to those countries, the DO ignored him and stated that he was empowered to send him to Africa if he didn't cooperate. *Id.* ¶ 34. He stated that if Juan did not return with a plane ticket himself, he would be arrested on his July 7 check-in date. *Id.* Juan's OSUP has a note stating "NRD with removal plans / alternate country," for the date July 7, 2026. Exh. C.

The Trump administration's unprecedented campaign to detain and deport noncitizens without due process, including those who have been granted fear-based protection.

38. Beginning in the early days of the Trump administration, the federal government launched a campaign to detain and deport large numbers of noncitizens at any cost. On January 25, 2025, Trump administration directed senior ICE officials to increase arrests to meet daily quotas of seventy-five arrests per day.[3]

39. In the past year, numerous noncitizens in the San Francisco area and across the country who have appeared as instructed at ICE check-ins have been detained or re-detained by ICE without process.[4] ICE has engaged in highly publicized arrests of individuals who presented no

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[3] Nick Miroff and Maria Sacchetti, "Trump officials issue quotas to ICE officers to ramp up arrests," Washington Post (Jan. 26, 2025), https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/.

[4] Julia Ainsley, Didi Martinez and Laura Strickler, "ICE arrests record number of immigrants in single day, including hundreds at scheduled appointments," NBC News (June 4, 2025), https://www.nbcnews.com/politics/national-security/ice-arrests-record-number-immigrants-single-day-rcna210817; Nidia Cavazos, "Immigrants at ICE check-ins detained, held in basement of federal building in Los Angeles, some overnight," CBS News (June 7, 2025), https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles; Sarah Whites-Koditschek, "ICE detains immigrants during scheduled meetings in Birmingham: 'False hope,'" AL.com (June 5, 2025), https://www.al.com/news/2025/06/ice-detains-immigrants-during-scheduled-meetings-in-birmingham.html; Billal Rahman, "ICE Arrests Multiple People in Chicago After Tricking Them to Turn Up," Newsweek (June 5, 2025), https://www.newsweek.com/ice-arrests-multiple-

flight risk or danger, often with no prior notice that anything regarding their status was amiss or problematic, whisking them away to faraway detention centers without warning.[5]

40. As a result, there has been an avalanche of decisions in this District and in courts across the country, granting habeas relief to individuals re-detained or facing re-detention by ICE at check-ins though they are not flight risks or dangers to the community, including when their removals from the United States are not reasonably foreseeable. *See, e.g.*, *Enamorado v. Kaiser*, 2025 WL 4019736 (N.D. Cal. Nov. 3, 2025) (granting PI for Honduran man with withholding of removal, released on OSUP, enjoining re-detention by Respondents without a pre-deprivation hearing and requiring notice and opportunity to seek relief prior to third country removal); *Lam v. Albarran*, No. 25-CV-09980-NW, 2025 WL 4479437 (N.D. Cal. Dec. 23, 2025); *Zakzouk v. Becerra*, No. 25-CV-06254-KAW, 2025 WL 2899220 (N.D. Cal. Oct. 10, 2025) (granting PI for stateless petitioner with final order of removal since 2000 and who was released from ICE custody twice on an OSUP, last in 2008; enjoining Respondents from re-detaining petitioner unless he is provided "notice and a hearing" before a neutral decisionmaker; and prohibiting Respondents from removing petitioner to a third country "without first providing him with constitutionally compliant notice and an opportunity to apply for fear-based relief"); *Hashemi v. Noem*, No. 2:25-cv-10335-HDV-SP, Dkt. 15 (C.D. Cal. Nov. 19, 2025) (granting PI ordering immediate release of petitioner from Iran with final order of removal since 2017, released on OSUP, and free for

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people-chicago-after-tricking-them-turn-2081246; Armando Garcia, "'Have mercy': Families plead as migrants arrested at routine DHS check-ins," ABC News (June 6, 2025), https://abcnews.go.com/US/mercy-families-plead-migrants-arrested-routine-dhs-check/story?id=122528525; Jessica Flores, "ICE arrests 15 people, including 3-year-old child, in San Francisco, advocates say," San Francisco Chronicle (June 5, 2025), https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php.

[5] McKinnon de Kuyper, "Mahmoud Khalil's Lawyers Release Video of His Arrest," N.Y. Times (Mar. 15, 2025), https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html; Gloria Pazmino, "What we know about the Tufts University PhD student detained by federal agents," CNN (Mar. 28, 2025), https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html; Kyle Cheney & Josh Gerstein, "Trump is seeking to deport another academic who is legally in the country, lawsuit says," Politico (Mar. 19, 2025), https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754.

eight years; finding that Respondents violated their own regulations when they revoked petitioner's OSUP and detained him at his regularly scheduled ICE check-in; and enjoining Respondents from re-detaining petitioner unless they comply with their regulations and due process); *Sarah Bruno Reyes v. Christopher LaRose et al.*, No. 25-cv-2969-JLS-JLB, 2025 WL 3204733 (S.D. Cal. Nov. 17, 2025) (ordering immediate release of petitioner granted withholding of removal in 2013, released on an OSUP, free for more than 12 years, and in compliance with all terms of supervision; finding there was not a significant likelihood that petitioner would be removed "in the reasonably foreseeable future"); *J.L.R.P. v. Wofford*, No. 1:25-CV-01464-KES-SKO, 2025 WL 3190589, at *4 (E.D. Cal. Nov. 14, 2025) (finding "[t]his case is not about ICE's authority to detain in the first place upon an issuance of a final order of removal as in *Zadvydas*[;] [t]his case is about ICE's authority to re-detain [petitioner] after he was issued a final order of removal, detained, and subsequently released on an [order of supervision]"; ordering immediate release of petitioner; and enjoining Respondents from re-detaining petitioner "unless there are material changed circumstances and a neutral decisionmaker determines that there is a significant likelihood of petitioner's removal in the reasonably foreseeable future, or respondents demonstrate by clear and convincing evidence at a pre-deprivation bond hearing before a neutral decisionmaker that petitioner is a flight risk or danger to the community such that his physical custody is legally justified"); *Yan-Ling v. Todd Lyons et al.*, No. 1:25-CV-01412-KES-CDB, 2025 WL 3123793, at *3 (E.D. Cal. Nov. 7, 2025) (ordering immediate release of petitioner with a final order of removal, finding Respondents could not show petitioner's removal to be reasonably foreseeable, and finding Respondents' re-detention of petitioner to be in violation of DHS's own regulations); *Khan v. Noem*, No. 1:25-CV-01411-EPG-HC, 2025 WL 3089352, at *10 (E.D. Cal. Nov. 5, 2025) (ordering immediate release of petitioner with final order of removal since 1999, release on an OSUP since 2020, and pending adjustment of status application; enjoining Respondents from re-detaining petitioner until the government proves by clear and convincing evidence at a hearing before a neutral decisionmaker that petitioner is a danger or flight risk; and enjoining Respondents from removing petitioner to any country "as to which she has not had an opportunity to seek protectionary relief under the immigration laws"); *Hoang v. Santa Cruz*, No.

25-2766-JGB-JCX, 2025 WL 3141857, at *4 (C.D. Cal. Oct. 28, 2025) (granting PI where petitioner from Vietnam had a final order of removal since 2000 and was released on an OSUP in 2001; finding that "the government has not established that it is any more likely to acquire [] travel documents than it has since it issued Petitioner's removal order in 2000; ordering immediate release of petitioner; and enjoining Respondents from removing petitioner to a third country without proper notice); *Esmail v. Noem* ("*Esmail I*"), No. 2:25-cv-08325-WLH-RAO, 2025 WL 3030590 (C.D. Cal. Sept. 12, 2025) (granting the TRO; ordering immediate release of petitioner who was granted CAT in 2008, released on an OSUP, free for nearly 14 years, and re-arrested at his routine ICE check-in; and enjoining Respondents from re-detaining petitioner until he is provided "proper due process necessary for the revocation of an OSUP"); *Esmail v. Noem* ("*Esmail II*"), No. 2:25-cv-08325-WLH-RAO, 2025 WL 3030589 (C.D. Cal. Sept. 26, 2025) (granting the PI, and further enjoining petitioner's "removal to a third country without notice or the opportunity to challenge removal through a reasonable fear interview"); *Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL 2791778, at *9 (E.D. Cal. Aug. 20, 2025) (granting TRO, ordering immediate release to petitioner with final order of removal since 2017 and release on an OSUP since 2018, and enjoining Respondents from re-detaining petitioner "for any purpose . . . without providing petitioner notice and a pre-detention hearing"); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025) (ordering immediate release of petitioner with final order of removal, finding Respondents could not show petitioner's removal to be reasonably foreseeable, and enjoining Respondents from re-detaining or removing petitioner to a third country without notice and opportunity to be heard); *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal. July 16, 2025) (same); *Nguyen v. Scott*, --- F.Supp.3d ----, 2025 WL 2419288 (W.D. Wash. Aug. 21, 2025); *Nguyen v. Hyde*, 788 F. Supp. 3d 144 (D. Mass. 2025); *Abubaka v. Bondi*, No. C25-1889RSL, 2025 WL 3204369, at *4 (W.D. Wash. Nov. 17, 2025) (ordering immediate release of petitioner with final order of removal since 2016; finding "there is no significant likelihood of removal in the reasonably foreseeable future"; and enjoining Respondents from removing or seeking to remove petitioner to a third country without notice and meaningful opportunity to respond in compliance with the

statute and due process in reopened removal proceedings"); *Yee S. v. Bondi*, No. 25-CV-02782 (JMB/DLM), 2025 WL 2879479 (D. Minn. Oct. 9, 2025) (ordering immediate release for petitioner who had CAT grant and was released on an OSUP in for nearly four years; finding that "Respondents fail[ed] to identify changed circumstances to justify the conclusion that Petitioner is significantly likely to be removed in the reasonably foreseeable future"; and finding that Respondents violated DHS's own regulations) (internal quotation marks omitted); *Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113 (E.D. Tex. Aug. 2, 2025).

41. ICE has also escalated efforts to remove noncitizens with final orders of removals to "third countries," i.e., countries that the IJ never designated as potential countries for removal during the noncitizen's removal proceedings. *See, e.g.*, *Bruno Reyes v. LaRose*, 2025 WL 3204733, at *2 ("Petitioner was not provided any notice of the reasons for her revocation [of release] beyond the agent stating, 'the laws have changed.'"); *Zakzouk v. Becerra*, 2025 WL 2097470, at *2 ("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."); *see also* "Banished By Bargain: Third Country Deportation Watch," Refugees International (last visited Jul. 1, 2026), available at https://www.refugeesinternational.org/statements-and-news/human-rights-first-and-refugees-international-third-country-deportation-watch-details-scope-secrecy-and-human-toll-of-third-country-transfer-agreements/ (documenting third country removal incidents in a spreadsheet and case stories report).

42. On March 23, 2025, a putative nationwide class challenged this government practice in *D.V.D. v. DHS* and obtained a temporary restraining order and later a preliminary injunction for a certified class, blocking third-country removals without notice and a meaningful opportunity to seek withholding of removal and protection under the CAT. *D.V.D. v. DHS*, 778 F. Supp. 3d 355, 392–93 (D. Mass. Apr.18, 2025).

43. On March 30, 2025, DHS issued "Guidance Regarding Third Country Removals" that "clarified DHS policy regarding the removal of [non-citizens] with final orders of removal . . . to

countries other than those designated for removal in . . . removal orders (third country removals)." If DHS secures acceptance of a non-citizen's deportation to a third country by that country, DHS will inform the detainee of removal to that country, but "[i]mmigration officers will not affirmatively ask whether the [non-citizen] is afraid of being removed to that country." *Id.* If the "[non-citizen] affirmatively states a fear, USCIS will . . . screen the [non-citizen] within 24 hours of referral." *Id.* In that scenario, "USCIS will determine whether the [non-citizen] would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal." *Id.* "If USCIS determines that the [non-citizen] has not met this standard, the [non-citizen] will be removed." *Id.*

44. Thereafter, the Government failed to comply with the *D.V.D.* district court's orders at multiple points while the TRO and preliminary injunction were in place. On March 31, 2025, at least six *D.V.D.* class members were removed from Guantanamo to El Salvador on a DOD plane, in violation of the TRO. *See D.V.D. v. DHS*, No. 1:25-cv-10676- BEM (D. Mass. Apr. 30, 2025), ECF No. 86. On May 7, 2025, the government attempted to deport a flight of class members to Libya without compliance with the preliminary injunction, leading to an emergency TRO motion. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. May 7, 2025), ECF No. 91. On May 20, 2025, while the government was again in the process of removing class members in violation of the preliminary injunction (this time to South Sudan), the plaintiffs moved for another emergency TRO, leading the district court to order that the government retain custody of the class members and provide the preliminary injunction's protections. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. May 20, 2025), ECF No. 116. On or around June 1, 2025, the Government deported a group of six individuals to third-country South Sudan without affording mandatory protections. *See Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (Sotomayor, J., dissenting) ("In matters of life and death, it is best to proceed with caution. In this case, the Government took the opposite approach. … in clear violation of a court order, it deported six more to South Sudan, a nation the State Department considers too unsafe for all but its most critical personnel.") On June 23, 2025, the Supreme Court issued a summary order that did not

provide reasoning, but granted the Government's request to stay the district court's preliminary injunction in *D.V.D. See DHS v. D.V.D.*, No. 24A1153, 2025 WL 1732103 (U.S. June 23, 2025).

45. On May 16, 2025, in another case, the Supreme Court considered the Government's attempt to remove two Venezuelan nationals who are members of a designated foreign terrorist organization on a day's notice. *See A. A. R. P.*, 145 S. Ct. at 1368. There, the Supreme Court held: "notice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster." *Id.*

46. Nevertheless, DHS felt emboldened by the Supreme Court's stay of the injunction in *D.V.D.* and adopted a third-country removal policy that clearly runs afoul of mandatory statutory and constitutional protections and the Supreme Court's views in *A. A. R. P.*

47. On July 9, 2025, ICE's Acting Director Todd Lyons issued a policy memo that states some non-citizens will deported to third countries with *no* notice or opportunity to respond *whatsoever*: "If the United States has received diplomatic assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured, and if the Department of State believes those assurances to be credible, the alien may be removed without the need for further procedures." Exhibit 6.

48. If ICE does not receive diplomatic assurances, ICE's new standard procedure is:

- Serve a notice of removal on the detainee—not their counsel if they have any;
- Not affirmatively ask whether the non-citizen is afraid of being removed to the third country;
- If the non-citizen was "provided reasonable means and opportunity to speak with an attorney," then remove them to the third country in as few as 6 hours after serving the notice of removal;
- If the non-citizen does not affirmatively state a fear of persecution or torture, regardless of whether they had the opportunity to speak to counsel, then remove them in as few as 24 hours after serving the notice of removal;
- If the non-citizen does affirmatively state a fear if removed to the third country, USCIS

will screen the non-citizen within 24 hours and unless the non-citizen—again without any mention of counsel—establishes they "would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal," remove them as soon as possible;

- Only if a non-citizen affirmatively states a fear of removal to a third country and they, on less than 24 hours' notice, establish they are more likely than not to be persecuted or tortured upon removal will USCIS refer the matter to immigration court for further proceeding . . . or "Alternatively, ICE may choose to designate another country for removal."

Id.

49. Applying this policy, the U.S. has deported noncitizens to countries across the globe to which they have no connection, with no notice or process. Advocates and news outlets report that people who were previously granted fear-based relief were deported to third countries, then subjected to chain refoulment and sent to the very places that U.S. courts determined they would likely face torture.[6] *See, e.g.*, *D.A. vs. Noem*, No. 1:25-cv-03135, ECF No. 2-1 at 1–3 (D.D.C. Sep. 12, 2025) (explaining that DHS deported at least five non-citizens with withholding or deferral relief to third country Ghana despite knowing Ghana would repatriate them); *id.*, ECF No. 32-3 at 7 (D.D.C. Sep. 14, 2025) ("One plaintiff was told by an officer while en route to Ghana that he would arrive in Ghana and then Ghana would send him to his country of origin, and then I believe another officer told a Ghanaian official in the presence of one of the plaintiffs something to the same effect"); *Misirbekov,* 2025 WL 2201470, at *1 ("Petitioner is likely to be

[6] "Immigrants deported from U.S. to Ghana are sent home, where lawyers say some could face torture," PBS News (Sept. 15, 2025), https://www.pbs.org/newshour/world/immigrants-deported-from-u-s-to-ghana-are-sent-home-where-lawyers-say-some-could-face-torture; "Eswatini Says It Will Repatriate Migrants Deported By U.S.," New York Times (Jul. 16, 2025), https://www.nytimes.com/2025/07/16/world/africa/eswatini-trump-migrants-deportation.html; "Trump Wants to Make Deportation Deals. Autocrats Are Ready to Listen," New York Times (Apr. 4, 2026) ("The United States has already cut deals with the strongman leaders of Cameroon and Rwanda. Migrants are being detained under an arrangement with Equatorial Guinea, an autocracy where torture is systemic. Others are being held in Eswatini, a monarchy with a history of human rights abuses, and South Sudan, which is teetering on civil war.").

successful on the merits of his [*Zadvydas*] habeas corpus petition . . . [in part because] attempts to remove Petitioner to third countries are likely to fail since such action would likely result in him being extradited to Kyrgyzstan and facing political persecution").

50. NGOs have specifically identified cases of Hondurans—like Juan—being chain refouled to Honduras from El Salvador and Guatemala, and other Latin Americans being chain refouled from Mexico. *See* "Banished By Bargain: Third Country Deportation Watch," Refugees International (last visited Jul. 1, 2026), available at https://www.refugeesinternational.org/statements-and-news/human-rights-first-and-refugees-international-third-country-deportation-watch-details-scope-secrecy-and-human-toll-of-third-country-transfer-agreements/ (documenting incidents in a spreadsheet and case stories report, describing chain refoulement of third country deportees from the United States in Costa Rica, El Salvador, Ghana, Guatemala, Honduras, Mexico, Panama, Poland, and Uzbekistan). In other words, current evidence suggests the countries identified by Juan's Deportation Officer as likely third countries for his removal have prior document incidents of refouling people like Juan to their countries of origin, contrary to U.S. statute and treaty obligations.

51. Independent of the now-stayed *D.V.D.* injunction, an increasing number of courts across the country have enjoined the Government from effectuating unlawful third-country removals without adhering to mandatory statutory and constitutional protections. *M.T.M. v. Andrews* (*M.T.M. I*), 2025 WL 4058220 at *3 ((C.D. Cal. Sep. 11, 2025) (granting additional third country removal process and finding "[d]ecisions from the Ninth Circuit spanning decades are indicative of Petitioner's likelihood of success" in demonstrating DHS's third country removal process is unlawful); *M.T.M. v. Andrews* ("*M.T.M. II*"), No. 2:25-cv-08208-SRM-DSR, 2026 WL 1195758, at *7 (C.D. Cal. Mar. 7, 2026); *A.A.M. v. Andrews (A.A.M. II)*, No. 25-cv-1514-DC-DMC, 2026 WL 1266280 at *2 (E.D. Cal. May 8, 2026) ("Respondents do not cite, and the court is not aware of, any authority finding that USCIS's third country removal policy meets constitutional muster."); *Enamorado v. Kaiser*, 2025 WL 4019736 (N.D. Cal. Nov. 3, 2025); *Zakzouk v. Becerra*, No. 25-CV-06254-KAW, 2025 WL 2899220 (N.D. Cal. Oct. 10, 2025); *Vaskanyan*, 2025 WL 2014208, at *6–9 (holding "Petitioner's removal to a third country without due process

. . . *is* likely to result in irreparable harm" and enjoining Petitioner's removal to a third country without the same protections mandated in the D.V.D. injunction); *Nadari v. Bondi*, No. 2:25-CV-07893-JLS-BFM, ECF No. 9 (C.D. Cal Sep. 3, 2025) (same); *id.*, ECF No. 12 (C.D. Cal. Sep. 10, 2025) (same); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *4 (W.D. Wash. June 30, 2025) (granting TRO enjoining Government from removing petitioner to "any third country in the world absent prior approval from this Court"); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2097979, at *3 (W.D. Wash. July 25, 2025) (same); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal. July 16, 2025) (granting TRO and preliminary injunction enjoining removal of "Petitioner to a third country without notice and an opportunity to be heard"); *Misirbekov v. Venegas,* No. 1:25-CV-00168, 2025 WL 2201470, at *2 (S.D. Tex. Aug. 1, 2025); *Hoac*, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025);

* * *

52. Against this backdrop of escalating lawlessness by Respondents-Defendants, Juan is now at risk of imminent re-detention, even though he is neither a flight risk nor a danger to the community and despite his removal not being reasonably foreseeable. He is also at risk of being unlawfully removed to a third country without constitutionally adequate notice and a meaningful opportunity to apply for withholding of removal and protection under the CAT, in violation of the INA, a binding international treaty, and due process.

ARGUMENT

I. JUAN G.S. MUST NOT BE RE-DETAINED UNLESS AND UNTIL HE IS PROVIDED A CONSTITUTIONALLY COMPLIANT HEARING BEFORE A NEUTRAL ARBITER

A. Juan G.S.'s Re-Arrest Without a Pre-Deprivation Hearing Would Violate His Substantive Due Process Rights

53. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez*, 872 F.3d at 990 (quoting *Zadvydas*, 533 U.S. at 693). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at

the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. In "our society, liberty is the norm," and detention is the "carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

1. Juan's Removal Is Not Reasonably Foreseeable and Thus His Detention Is Unwarranted

54. The INA authorizes the detention of noncitizens who have been issued a final order of removal, as in this case. 8 U.S.C. § 1231. The 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). If ICE fails to remove an individual during the ninety-day removal period, the law directs ICE to release the individual under conditions of supervision, including periodic reporting. 8 U.S.C. § 1231(a)(3) ("If the [noncitizen]. . . is not removed within the removal period, the [noncitizen] pending removal, shall be subject to supervision.").

55. ICE's authority to detain an individual beyond the "removal period" is constrained by the constitutional requirement that detention "bear a reasonable relationship to the purpose for which the individual [was] committed." *Zadvydas*, 533 U.S. at 690. Because the principal purpose of the post-final-order detention statute is to effectuate removal, detention bears no reasonable relation to its purpose if removal cannot be effectuated. *Id.* at 697.

56. Due process therefore requires that noncitizens detained beyond the "removal period" may only be detained for "a period reasonably necessary to secure removal." *Zadvydas*, 533 U.S. at 699. "Thus, if removal is not reasonably foreseeable . . . continued detention [is] unreasonable and no longer authorized by statute." *Id.* at 699-700. Moreover, as the period of post-final-order detention grows, what counts as "reasonably foreseeable" must conversely shrink. *Id.* at 701.

57. Here, given the due process clause, the INA, FARRA, and its implementing regulations, Juan's removal is not reasonably foreseeable. Juan's removal proceedings concluded in May 2022, when he was granted withholding of removal under 8 U.S.C. § 1231(b). To date, the government has not proven that a third country will accept Juan, nor has the government provided Juan an opportunity to present a claim for withholding of removal under 8 U.S.C. § 1231(b) or under the CAT as to any third country of removal, a process which cannot begin until an additional

removal country is properly designated—and which is required by law. *See* Section II, *infra.* These multi-step processes—which include administrative and judicial appellate review—could take years. *See* 8 U.S.C. §§ 1101(a)(47)(B), 1252(a); 8 C.F.R. §§ 1003.6(a), 1240.15.

58. In the past year, in instances where the federal government has re-detained individuals granted fear-based protection—purportedly to remove them to a third country—the government has not made a showing that those individuals *can* be removed to a third country. *See, e.g.*, *Esmail I*, 2025 WL 3030590, at *3; *Yee S.*, 2025 WL 2879479, at *1; *Tadros v. Noem*s, Case No. 25CV4108 (EP), 2025 WL 1678501 (D.N.J., June 13, 2025). These individuals have languished in detention in the meantime. *See id.*

59. Where detainees held for third-country removal have challenged their detention, courts have regularly found that ICE's mere desire to remove a noncitizen to a third country was insufficient to show that removal was reasonably foreseeable—and ordered release from detention. *See, e.g.*, *M.T.M. v. Andrews* ("*M.T.M. II*"), No. 2:25-cv-08208-SRM-DSR, 2026 WL 1195758, at *7 (C.D. Cal. Mar. 7, 2026) (finding that Respondent affirmations that they had been "actively pursuing" and were "attempting to remove" petitioner to a third country were insufficient because they could not "obtain a declaration regarding the willingness of the noticed third countries to accept Petitioner's removal and any specified time frame for removal"); *Nguyen*, 2025 WL 2419288, at *3 ("Courts in [the Ninth] Circuit have regularly refused to find Respondents' burden [of showing reasonable foreseeability of removal] met where Respondents have offered little more than generalizations regarding the likelihood that removal will occur"); *Vaskanyan*, 2025 WL 2014208, at *5 ("at best, the government has shown that 'good faith efforts to effectuate . . . deportation continue,'" thus removal was not reasonably foreseeable); *Dao v. Bondi*, No. 2:25-CV-02340-LK, 2026 WL 18626, at *4-5 (W.D. Wash. Jan. 2, 2026) (removal not reasonably foreseeable where ICE prepared travel document to be forwarded to Vietnam); *Nguyen v. Andrews*, No. 1:26-cv-00015-DAD SCR, 2026 WL 263058, at *5-6 (E.D. Cal. Feb. 2, 2026) (removal not reasonably foreseeable despite ICE declaration that Vietnam was "likely" to issue travel documents within the next 3 months); *Huan v. Noem*, No. 26-CV-512 JLS (DEB), 2026 WL 412609, at *3 (S.D. Cal. Feb. 13, 2026) (removal not reasonably foreseeable where ICE

sent a request for removal to the Chinese government); *Pham v. Warden*, No. 1:25-CV-1873 DC AC, 2026 WL 673404, at *5 (E.D. Cal. Mar. 10, 2026) (removal not reasonably foreseeable where ICE averred that it "completed a travel document request and will submit it to the Government of Vietnam soon"); *Vu v. Dosanj*, No. 26-cv-00013 MWJS-RT, 2026 WL 594740, at *3 (D. Haw. Mar. 3, 2026; (removal not reasonably foreseeable where ICE was "actively engaging the Government of Vietnam in pursuit of a travel document").

60. Like these similarly situated petitioners, Juan faces imminent re-detention because ICE seeks to remove him to a third country; but ICE has not demonstrated that any third country is willing to accept him, allowed an IJ to designate that country for removal, and afforded him the opportunity to seek withholding of removal and CAT relief as to a designated third country, as required by law. *C.f.* Section II, *infra*. Thus, they cannot show his removal is reasonably foreseeable as required to justify his re-detention.

2. Juan's Re-Detention Is Also Unwarranted Because He Is Not a Danger or Flight Risk

61. Moreover, because immigration detention is civil and non-punitive, due process requires that detention must be justified by permissible purpose and must be "reasonably related" to that purpose. *Zadvydas*, 533 U.S. at 690-91; *See, e.g.*, *Youngberg v. Romeo*, 457 U.S. 307, 320-21 (1982) ("[W]e upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment [in *Bell*]. We have taken a similar approach in deciding procedural due process challenges to civil commitment proceedings." (regarding civil mental health commitment); *Bell v. Wolfish*, 441 U.S. 520, 539 (1979) ("[I]f a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees.") (regarding pre-trial detainees).

62. The two permissible regulatory goals for immigration detention are "ensuring the appearance of [noncitizens] at future immigration proceedings" and "preventing danger to the community." *Zadvydas*, 533 U.S. at 690-91. Where civil detention is not related to a permissible

regulatory goal, is "excessive in relation to" a permissible regulatory goal, or is "employed to achieve objectives that could be accomplished" with "alternative and less harsh methods," the detention amounts to punishment in violation of the individual's substantive due process rights. *Jones v. Blanas*, 393 F.3d 918, 931-32 (9th Cir. 2004).

63. The government's own regulations contemplate this requirement. They dictate that even after ICE determines that removal is reasonably foreseeable—and that custody therefore does not per se exceed statutory authority—the government must still determine whether detention is warranted based on flight risk or danger. *See* 8 C.F.R. § 241.13(g)(2) (providing that where removal is reasonably foreseeable, "detention will continue to be governed under the established standards" in 8 C.F.R. § 241.4).

64. The regulations at 8 C.F.R. § 241.4 require ICE to conduct "90-day custody reviews" prior to expiration of the ninety-day removal period and to consider release of individuals who pose no danger or flight risk. 8 C.F.R. § 241.4(e)-(f). Among the factors to be considered in these custody reviews are "ties to the United States such as the number of close relatives residing here lawfully"; whether the noncitizen "is a significant flight risk"; and "any other information that is probative of whether" the noncitizen is likely to "adjust to life in a community," "engage in future acts of violence," "engage in future criminal activity," pose a danger to themselves or others, or "violate the conditions of his release from immigration custody pending removal from the United States." *Id.*

65. Individuals with final orders who are released after a post-order custody review are subject to Forms I-220B, Order of Supervision. 8 C.F.R. § 241.4(j). After an individual has been released on an OSUP, as Juan G.S. was, ICE cannot revoke such an order without cause or adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3).

66. Here, Juan does not pose a danger or flight risk that warrants post-final-order custody, regardless of whether his removal can be effectuated within a reasonable period of time. In December 2013—twelve and a half years ago—DHS released Juan on an OSUP before the end of the ninety day "removal period," necessarily determining that he did not pose a flight risk or danger—a finding that has been reaffirmed each time he appeared for his check-ins and was not

taken into custody. *See Singh*, 2025 WL 1918679, at *2 ("DHS, at least implicitly, made a finding that petitioner was not a flight risk when it released him") (citing *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at *3 & n.6 (S.D.N.Y. June 18, 2025)).

67. Nor could ICE possibly find that he was now a flight risk or danger, as no aggravating circumstances have changed in his case in over a decade. Juan has not had any encounter with police since 2014, twelve years ago. Exh. A ¶ 19. He has checked in with ICE over ten times since then, without incident. Exh. A ¶¶ 19, 30; McMahon Decl ¶ 18. He pays taxes regularly. Exh. A ¶ 23. He has been gainfully employed for decades. *Id.* He maintains a close network of family and friends, as well as community through his peer support program at Shanti. *Id.* ¶¶ 24-28. He was granted withholding of removal by an IJ in 2022, due to the extreme risk of persecution he faces as a gay and HIV positive Honduran man. Exh. D; McMahon Decl. ¶ 17. Respondents cannot reasonably argue that there has been "a change in relevant facts, not just a change in [the government's] attitude," that warrants re-detention. *See Singh v. Andrews*, --- F.Supp.3d ----, 2025 WL 1918679, at *2 (E.D. Cal. July 11, 2025) (internal quotations omitted).

B. Juan Has a Procedural Due Process Right to a Hearing Before Deprivation of his Liberty on Supervised Release

1. Juan Has a Protected Liberty Interest in His Conditional Release

68. Due process also protects Juan's ongoing liberty interest and constrains ICE's power to re-detain a noncitizen on supervised release. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

69. Juan has exercised that freedom for over twelve years since ICE placed him on an OSUP in 2013. Exh. B. He thus retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-detention. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Pinchi v. Noem*, 792 F.Supp.3d 1025, 1032 (N.D. Cal. 2025) ("even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that

individual is released from custody he has a protected liberty interest in remaining out of custody").

70. In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. The Court further noted that "the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* In turn, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 482.

71. This basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g.*, *Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also, e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

72. Here, when this Court "'compar[es] the specific conditional release in [Juan's case], with the liberty interest in parole as characterized by *Morrissey*,'" it is clear that they are strikingly

similar. *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Juan G.S.'s release "enables him to do a wide range of things open to persons" who have never been in custody or convicted of any crime, including to live at home, work, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

73. Many courts have agreed, applying the *Morrissey* analysis to noncitizens on conditional release and finding they possessed a protected liberty interest in their release. *See, e.g.*, *Pinchi v. Noem*, 792 F.Supp.3d 1025, 1032 (N.D. Cal. 2025) ("even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody he has a protected liberty interest in remaining out of custody"); *Paternina v. Albarran*, No. 4:25-CV-10378-YGR, 2025 WL 4479435 (N.D. Cal. Dec. 16, 2025); *Larios v. Albarran*, No. 25-CV-08799-AMO, 2025 WL 3043391 (N.D. Cal. Oct. 31, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025); *Castellanos v. Kaiser*, No. 25-CV-07962, 2025 WL 2689853 (N.D. Cal. Sept. 18, 2025).

74. Juan has complied with all conditions of release for over a decade. Exh. A ¶¶ 19, 30. Since Juan was released from ICE detention on an OSUP, he has rebuilt his life, been granted withholding of removal, maintained full-time employment, and connected with friends and community. *Id.* ¶¶ 23-28. Overwhelming precedent makes clear that he has a strong liberty interest in his continued release from detention.

2. Juan's Liberty Interest Mandates a Hearing Before a Neutral Adjudicator Prior to Any Re-Arrest

75. If a petitioner identifies a protected liberty interest, the Court must then determine what process is due. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Juan's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357.

76. Under the due process test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

77. Importantly, the Supreme Court "usually has held that the Constitution 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). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing predeprivation process," can the government avoid providing pre-deprivation process. *Id.*

78. Here, the *Mathews* factors establish that Juan is entitled to a hearing before a neutral adjudicator *prior* to any re-detention. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *see also, e.g.*, *Larios v. Albarran*, No. 25-CV-08799-AMO, 2025 WL 3043391 (N.D. Cal. Oct. 31, 2025) ("the *Mathews* factors show that [petitioner] is entitled to a pre-deprivation hearing, which should have been provided before he was detained"); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025) (same).

79. First, Juan G.S.'s private interest in his liberty is profound. Under *Morrissey* and its progeny, individuals on supervised release have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-detained—apply with even

greater force to individuals like Juan, who have been released pending *civil* removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g.*, *U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes,* 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Juan retains a truly weighty liberty interest even though he is under conditional release.

80. At stake for Juan is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior release decision and take away his physical freedom, i.e., his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

81. Thus, there is a profound private interest at stake in this case, which must be weighed heavily when determining what process Juan is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35.

82. Second, Respondents' interest in detaining Juan without a due process hearing is low, and the burden on Respondents to refrain from re-detaining him unless and until he is provided with a hearing that comports with due process is minimal. When weighed against Juan's significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents from detaining him unless and until ICE demonstrates by clear and convincing evidence that he is a flight risk or danger to the community and his removal is reasonably foreseeable.

83. The process that Juan seeks—notice and a hearing regarding whether his order of release should be revoked because DHS can demonstrate not only that his removal is reasonably foreseeable but that he is also a danger or a flight risk—is a standard course of action for the government. Providing Juan with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that he is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of review to individuals in Juan's same circumstances, as required by its own regulations. 8 C.F.R. § 241.4(e)-(f).

84. The government's only interests in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. Moreover, the Supreme Court has made clear that indefinite detention of noncitizens who cannot be removed to the country in their removal order is unconstitutional. In this case, ICE cannot plausibly assert that it has a sudden interest in detaining Juan due to alleged dangerousness or flight risk, or due to a change in the foreseeability of his removal, as his circumstances have not changed since he was granted withholding of removal in May 2022.

85. ICE determined that Juan did not present a danger or flight risk when it released him on an OSUP in December 2013, and has implicitly affirmed this determination at each subsequent check in the more than twelve years since his release. Juan has lived and worked lawfully for the past twelve years and has only deepened his ties to his family and community. He has fully complied with the terms of his supervision, and has had no contact with the criminal system since 2014. *See* Exh. A ¶ 19; McMahon Decl. ¶ 15.

86. To date, ICE has not demonstrated that a third country will accept Juan for removal, nor allowed an Immigration Judge to designate a new country of removal and allowed Juan to present testimony and evidence in support of a fear claim as to that country, as required by statute, regulations, and due process. Rather, ICE simply informed Juan they intended to remove him to a third country and would likely detain him for that purpose. Exh. A ¶¶ 33-34. This is an insufficient basis for detention and removal. *See* Section II, *infra*.

87. ICE's interest in detaining Juan at this time is therefore low. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the government's interest in detaining him.[7] *See Singh v. Andrews*, --- F.Supp.3d ----, 2025 WL 1918679, at *2 (E.D. Cal. July 11, 2025) ("The law requires a change in relevant facts, not just a change in [the government's] attitude") (internal quotations omitted).

88. Continued freedom from confinement until and unless ICE assesses and demonstrates that Juan is a flight risk or danger to the community, and that his detention is reasonably foreseeable, is far less costly and burdensome for the government than keeping him detained. As the Ninth Circuit noted, "[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996.

89. Providing Juan with a hearing before this Court (or a neutral decisionmaker) regarding any re-arrest is a routine procedure. At that hearing, the Court would have the opportunity to determine whether circumstances have changed sufficiently to require some amount of bond—or if his release should be revoked. But there is no justifiable reason to detain Juan prior to such a hearing taking place. As the Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in revoking parole without some informal procedural guarantees." 408 U.S. at 483.

90. Third, the risk of an erroneous deprivation of liberty is high if ICE can unilaterally re-detain Juan without a hearing before a neutral adjudicator. "A neutral judge is one of the most basic due process protections." *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). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be

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[7] *See supra* Footnote 6.

decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

Due process also requires consideration of alternatives to detention at any hearing that may occur. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternatives to detention that could mitigate risk of flight. *See Hernandez*, 872 F.3d at 990-91 (finding that alternatives to detention must be considered in immigration custody hearings).

91. Further, due process requires that at any hearing, Respondents must bear the burden of proof by clear and convincing evidence to show the necessity of a noncitizen's re-detention. In similar cases, district courts have found that the Due Process Clause requires the government to bear the burden, both in the pre- and post-deprivation habeas context. *See Khan v. Noem*, 2025 WL 3089352, at *10 ("Respondents may not re-detain Petitioner unless the government proves by clear and convincing evidence at a custody hearing before a neutral decisionmaker that Petitioner is a flight risk or danger to the community"); *Arzate v. Andrews*, No. 1:25-cv-00942-KES-SKO, 2025 WL 2230521, at *7 (E.D. Cal. Aug. 4, 2025) ("[Respondents] may not re-detain petitioner unless the government proves by clear and convincing evidence at a bond hearing . . . that petitioner is a flight risk or danger to the community."); *Singh v. Andrews*, 2025 WL 1918679, at *8 ("Considering the substantial private interest at stake, the risk of erroneous deprivation through the procedures used, and the government's relatively lesser interest in this case, the Court finds that the Due Process Clause requires a pre-deprivation bond hearing where the government bears the burden of proving by clear and convincing evidence that petitioner is a flight risk or danger to the community."); *Perera v. Jennings*, 598 F.Supp.3d 736, 746-47 (N.D. Cal. 2022) ("It would be improper to ask [petitioner] to share equally with society the risk of error when the possible injury to the individual—deprivation of liberty—is so significant.") (internal citations and quotation marks omitted); *Pham v. Becerra*, 717 F.Supp.3d 877 (N.D. Cal 2024) (same).

II. JUAN MAY NOT BE REMOVED TO A THIRD COUNTRY WITHOUT ADEQUATE NOTICE AND OPPORTUNITY TO APPLY FOR FEAR-BASED RELIEF

92. The Department may not remove Juan to Honduras, the country to which he was ordered removed, because, as an IJ found, he is more likely than not to be persecuted there on account of his sexual orientation. Exh. B; McMahon Decl. ¶ 17.

93. If ICE seeks to deport Juan to a country other than Honduras, ICE must provide him with a sufficient opportunity to apply for fear-based relief as to that country, in compliance with the INA, due process, and the CAT, which is a binding international treaty. Currently, DHS has a policy of removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice and opportunity to contest that removal if the individual has a fear of persecution or torture in that country. *See* Exh. E (Third Country Removal Policy). This policy clearly violates due process, the Immigration and Nationality Act, and the United States' obligations under the CAT.

A. The INA and Implementing Regulations Mandate a Process for Designating a Country of Removal and Prohibit Removal to a Country where a Person Would Face Persecution and/or Torture

94. In removal proceedings, an IJ is authorized to issue an order of removal against the noncitizen who is the subject of the proceeding. "After determining that a noncitizen is removable, an IJ must assign a country of removal." *Hadera v. Gonzales*, 494 F.3d 1154, 1156 (9th Cir. 2007). "The method by which [an IJ] may designate a country as the country for removal for any given [noncitizen] is established in 8 U.S.C. § 1231(b)." *Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004). The multi-stage country designation process is set forth in 8 U.S.C. § 1231(b)(2).[8]

95. First, the noncitizen is entitled to select a country of removal. 8 U.S.C. § 1231(b)(2)(A); *see also* 8 C.F.R. § 1240.10(f). If either the noncitizen does not select a country, or as an

[8] References to the Attorney General in Section 1231(b) refer to the Secretary of DHS for functions related to carrying out a removal order and to the Attorney General for functions related to selection of designations and decisions about fear-based claims. 6 U.S.C. § 557. The Attorney General has delegated the latter functions to the immigration courts and Board of Immigration Appeals. *See* 8 C.F.R. §§ 1208.16, 1208.17, 1208.31,1240.10(f), 1240.12(d).

alternative in the event the noncitizen's designated country does not accept the individual, the IJ will designate the country where the person "is a subject, national, or citizen." 8 U.S.C. § 1231(b)(2)(D). The IJ also may designate alternative countries, as specifically set out by 8 U.S.C. § 1231(b)(2)(E).

96. Removal to *any* country designated under 8 U.S.C. § 1231(b)(2) is "subject to" restrictions on removal set forth in 8 U.S.C. § 1231(b)(3)(A), a form of protection of removal known as withholding of removal. *See* 8 U.S.C. § 1231(b)(2). The government "may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A). *See also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a *mandatory* protection, meaning it cannot be denied to eligible individuals in the exercise of discretion.

97. Individuals who are ineligible for withholding of removal, for example, because of certain criminal convictions, are still entitled to receive protection under the CAT upon demonstrating a likelihood of torture if removed to the designated country of removal. *See* FARRA (codified as Note to 8 U.S.C. § 1231); 8 C.F.R. §§ 208.16(c), 208.17(a), 1208.16(c), 1208.17(a); 28 C.F.R. § 200.1.

98. Like withholding of removal under 8 U.S.C. § 1231(b)(3), CAT protection is mandatory. *Id.* With respect to any individual granted deferral of removal under CAT, the IJ "shall also inform the [noncitizen] that removal has been deferred only to the country in which it has been determined that the [noncitizen] is likely to be tortured, and that the [noncitizen] may be removed at any time to another country where he or he is not likely to be tortured." 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2).

99. An IJ may not make a "last minute" designation of an additional country of removal, because that would deprive the individual of a meaningful opportunity to apply for fear-based protection from removal. *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999). Such an action would "violate[s] a basic tenet of constitutional due process." *Id.* "[I]ndividuals whose rights are

being determined are entitled to notice of the issues to be adjudicated, so that they will have the opportunity to prepare and present relevant arguments and evidence." *Id.*

100. Because withholding of removal and CAT protections are country-specific, a noncitizen must be given notice of the designated country of removal *before* he can present a fear-based claim as to that country. *See id.*; *Hadera*, 494 F.3d at 1159; 8 C.F.R. §§ 1208.16, 1208.17. A noncitizen "is not entitled to adjudication of an application for withholding of removal to a country that nobody is trying to send them to." *She v. Holder*, 629 F.3d 958, 965 (9th Cir. 2010), *superseded by statute on other grounds*.

101. Noncitizens applying for withholding of removal and CAT protection are entitled to an administrative appeal to the BIA along with an automatic stay of deportation while the appeal is pending, and to seek judicial review of an adverse administrative decision by filing a petition for review in the court of appeals. *See* 8 U.S.C. §§ 1101(a)(47)(B), 1252(a); 8 C.F.R. §§ 1003.6(a), 1240.15.

B. DHS Is Required to Provide Notice and an Opportunity to Present a Fear-Based Claim Before Removal to a Third Country

102. For individuals in removal proceedings, the designation of a country of removal (or, at times, countries in the alternative that the IJ designates) on the record provides notice and an opportunity to permit a noncitizen who fears persecution or torture in the designated country (or countries) to file an application for protection. *See* 8 C.F.R. § 1240.10(f) (stating that the "immigration judge shall notify the [noncitizen]" of proposed countries of removal); 8 C.F.R. § 1240.11(c)(1)(i) ("If the [noncitizen] expresses fear of persecution or harm upon return to any of the countries to which the [noncitizen] might be removed pursuant to § 1240.10(f) . . . the immigration judge shall . . . [a]dvise [the noncitizen] that he or he may apply for asylum in the United States or withholding of removal to those countries[.]").

103. Courts repeatedly have held that individuals cannot be removed to a country that was not properly designated by an IJ if they have a fear of persecution or torture in that country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004).

104. Providing such notice and opportunity to present a fear-based claim prior to deportation also implements the United States' obligations under international law. *See* United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8 U.S.C. § 1231(b)(3)); *INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting that the Refugee Act of 1980 "amended the language of [the predecessor statute to § 1231(b)(3)], basically conforming it to the language of Article 33 of the United Nations Protocol"); *see also* United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature Dec. 10, 1984, art. III, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, 114; FARRA at 2681–822 (codified at 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."); United Nations Committee Against Torture, General Comment No. 4 ¶ 12, 2017, Implementation of Article 3 of the Convention in the Context of Article 22, CAT/C/GC/4 ("Furthermore, the person at risk [of torture] should never be deported to another State where he/she may subsequently face deportation to a third State in which there are substantial grounds for believing that he/she would be in danger of being subjected to torture.").

105. As the Supreme Court has explained, "shall" language "generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive." *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661 (2007) (cleaned up); *see also Black's Law Dictionary* (11th ed. 2019) ("Shall" means "[h]as a duty to; more broadly, is required to . . . . This is the mandatory sense that drafters typically intend and that courts typically uphold."); *United States v. Monsanto*, 491 U.S. 600, 607 (1989) (finding that "shall" language in a statute was unambiguously mandatory).

106. Accordingly, any imminent third country removal fails to comport with the statutory obligations set forth by Congress in the INA, the CAT, and due process. Numerous

district courts have already found as much. *See Hoac*, 2025 WL 1993771, at *7; *Phan*, 2025 WL 1993735, at *7; *J.R. v. Bostock*, No. 2:25-cv-01161-JNW2025 WL 1810210, at *4 (W.D. Wash. June 30, 2025); *M.T.M. I*, 2025 WL 4058220 at *3; *A.A.M. v. Andrews* (*A.A.M. I*), 815 F.Supp. 3d. 1124, 1138 (C.D. Cal. 2025); *Vaskanyan*, 2025 WL 2014208, at *6 ("third-country removals are subject to the same mandatory protections that exist in removal or withholding-only proceedings.").

107. Meaningful notice and opportunity to present a fear-based claim prior to deportation to a country where a person fears persecution or torture are also fundamental due process protections under the Fifth Amendment. *See Ibarra-Perez v. United States*, 154 F.4th 989, 995 (9th Cir. 2025) ("DHS must also notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported; otherwise, DHS violates their constitutional right to due process.") (internal quotations marks omitted); *Andriasian*, 180 F.3d at 1041; *Protsenko*, 149 F. App'x at 953; *Kossov*, 132 F.3d at 408; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Similarly, a "last minute" IJ designation of a country during removal proceedings that affords no meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process." *Andriasian*, 180 F.3d at 1041.

108. Notice is only meaningful if it is presented sufficiently in advance of the deportation to stop the deportation, is in a language the person understands, and provides for an automatic stay of removal for a time period sufficient to permit the filing of a motion to reopen removal proceedings so that a third country for removal may be designated as required under the regulations and the noncitizen may present a fear-based claim. *Andriasian*, 180 F.3d at 1041; *Aden*, 409 F. Supp. 3d at 1009 ("A noncitizen must be given sufficient notice of a country of deportation [such] that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation."); *Esmail II*, 2025 WL 3030589, at *6; *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *5 (N.D. Cal. Aug. 6, 2025) ("Accordingly, there are no countries to which Ortega could currently be removed

without his first being afforded notice and opportunity to be heard on a fear-based claim as to that country, as the Fifth Amendment Due Process Clause requires.").

109. An opportunity to present a fear-based claim is only meaningful if the noncitizen is afforded adequate review before an immigration judge. *See Aden*, 409 F. Supp. 3d at 1010 (holding that merely giving petitioner an opportunity to file a discretionary motion to reopen "is not an adequate substitute for the process that is due in these circumstances" and ordering reopening); *see also A.A.M. v. Andrews (A.A.M. II)*, No. 25-cv-1514-DC-DMC, 2026 WL 1266280 at *2 (E.D. Cal. May 8, 2026) ("Respondents do not cite, and the court is not aware of, any authority finding that USCIS's third country removal policy meets constitutional muster."); *A.A.M. I*, 815 F.Supp. 3d at 1137 ("the court finds Petitioner has a protected liberty interest in having an immigration judge review USCIS's determination on his fear-based claim regarding removal to [a third country]."); *Pacheco v. Baltazar*, No. 26-cv-01176-PAB, 2026 WL 1223414, at *4 (D. Col. May 5, 2026) ("Thus, many courts have found that ICE's third-country removal policies violate the constitutional right to due process. . . Accordingly, the Court will require respondents to provide petitioner with notice and an opportunity to challenge his removal before removing him to a third country."); *Pao Moua v. Warden*, No. 1:26-cv-02562-TLN-DMC, 2026 WL 1158841, at *3 (E.D. Cal. Apr. 29, 2026) (ordering the government to comply with third country removal procedures established in this case before noncitizen petitioner can be removed to third country); *Douangdala v. Bondi*, No. 2:26-cv-00963-DGE, 2026 WL 1113383, at *4 (W.D. Wash. Apr. 24, 2026) (same); *Perez Canet v. Blanche*, No. 2:26-cv-00223-APG-NJK, 2026 WL 1091763, at *4 (same); *Vishal v. Chestnut*, No. 1:25-CV-01469-SAB-HC, 2025 WL 3511815, at *6 (E.D. Cal. Dec. 8, 2025) (noting "[m]ultiple courts have found the government's third country removal policy violates due process and is contrary to Ninth Circuit precedent" and concurring (citing cases)); *Giebashvili v. Noem*, No. 25-cv-3432 BJC VET, 2026 WL 114422, at *3 (same) (collecting cases); *Nguyen*, 796 F. Supp. 3d at 728 ("It would be impossible to comply both with Ninth Circuit precedent and the policy." (*citing Andriasian*, 180 F.3d at 1041; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019)).

* * *

110. In order to remove Juan to a country other than Honduras, Respondents-Defendants must designate another country of removal and provide Juan the opportunity to seek fear-based protection before a neutral adjudicator. *See* 8 U.S.C. § 1231(b); *Himri*, 378 F.3d at 939; *Andriasian*, 180 F.3d at 1041. The Third Country Removal Policy delineated by Respondents-Defendants, in which Juan would be afforded little or no notice and opportunity to be heard on his fear claims, does not "meet[] constitutional muster." *A.A.M. II*, 2026 WL 1266280 at *2 ("Respondents do not cite, and the court is not aware of, any authority finding that USCIS's third country removal policy meets constitutional muster.") Intervention from this Court is necessary to ensure that Juan is afforded due process.

CLAIMS FOR RELIEF

First Cause of Action

Procedural Due Process – Re-Arrest and Re-Detention

U.S. Const. amend. V

111. Juan G.S. re-alleges and incorporates by reference the paragraphs above.

112. 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.

113. Juan G.S. 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 judge. *See Morrissey*, 408 U.S. at 487-488. *Young*, 520 U.S. at 146-47; *Gagnon*, 411 U.S. at 781-82 (1973); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025).

114. For these reasons, Juan's re-arrest and detention without a hearing would violate the Constitution. Juan must be afforded a hearing before a neutral adjudicator prior to detention. At any such hearing, the neutral adjudicator would evaluate whether clear and convincing evidence demonstrates that Juan is a danger to the community or a flight risk, taking into consideration alternatives to detention, and that his removal is reasonably foreseeable, such that his re-detention is warranted.

Second Cause of Action

Substantive Due Process – Re-Arrest and Re-Detention

U.S. Const. amend. V

115. Juan G.S. re-alleges and incorporates by reference the paragraphs above.

116. 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.

117. Civil immigration detention is warranted for only two bases: to mitigate against the risk of flight or to protect the community from danger. *Zadvydas v. Davis*, 533 U.S. 678, 694 (2001). Civil detention must not be excessive to its legitimate regulatory purpose. *C.f. Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

118. For over a decade, Juan has complied with the conditions of release imposed on him by ICE, thus demonstrating that he is neither a flight risk nor a danger. Moreover, each time that he has been permitted to return for another check-in date—including as recently as June 16, 2026—ICE has necessarily determined that he does not pose a flight risk or danger. Re-arresting him now would be punitive and violate his constitutional right to be free from the unjustified deprivation of his liberty.

119. For these reasons, Juan's re-detention would violate the Due Process Clause.

Third Cause of Action

Violation of the INA and Applicable Regulations –

Re-Arrest and Re-Detention

120. Juan G.S. re-alleges and incorporates by reference the paragraphs above.

121. The INA provides for detention during the ninety-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-day removal period, the INA and its applicable regulations provide that detaining a noncitizen 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).

122. No statute permits Respondents to re-detain an individual who has been released under § 1231(a)(3) without evidence that removal is now reasonably foreseeable or that the individual has violated the conditions of their release.

123. In addition, "if removal is not reasonably foreseeable"—as is the case here—"detention is unreasonable and no longer authorized by statute." *See Zadvydas*, 533 U.S. at 682 (citing 8 U.S.C. § 1231(a)(6)). Here, given the procedural steps that would need to take place to effectuate Juan's to a third country—*see* Count Four, *infra*—Juan's removal is not reasonably foreseeable.

124. Juan was previously detained by ICE and released after necessary consideration of any danger or unmitigable flight risk in 2013. He has an interest in remaining free from physical confinement where removal is not reasonably foreseeable, he has not violated the conditions of his release, and where re-detention is unlawful because Respondents have not created a lawful mechanism to ensure that he receives meaningful notice and an opportunity to present a fear-based claim before removal to a third country.

125. Respondents are not permitted to detain Juan on the basis of his prior order of removal and without establishing to a neutral adjudicator, by clear and convincing evidence, that his removal is reasonably foreseeable *and* that he is a danger to the community or a flight risk. 8 C.F.R. § 241.13(i)(2)-(3).

Third Cause of Action

Violation of the APA – Unlawful Re-Arrest and Re-Detention

126. Juan G.S. re-alleges and incorporates by reference the paragraphs above.

127. Juan was previously released by Respondents because he did not pose a danger or flight risk. As long as he complies with the conditions of his release, Respondents have authority to revoke release only if circumstances have changed—i.e., he has violated a condition of release or there is a "significant" likelihood that he will be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(1), (2); 8 C.F.R. § 1231(a)(6).

128. Were Respondents to revoke his release, their actions would be arbitrary, capricious, an abuse of discretion, and contrary to law. 5 U.S.C. § 706(a)(2)(A). Respondents

determined in 2013 when placing Juan on an OSUP—and each subsequent year, at his check-ins—that his detention was not warranted. No material change has taken place indicating that his detention is now warranted. The only indications Juan received from his Deportation Officer for why he may now be detained were due to unreasoned policy change and the decision of the individual officer.

129. The appropriate relief under the APA when an agency violates the law is vacatur of the agency's action and restoration of the status quo. *C.f. Maldonado Bautisa v. Santacruz*, 820 F.Supp.3d 1016, 1030 (C.D. Cal. 2026); *Nat'l TPS All. V. Noem*, 166 F.4th 739, 760 (9th Cir. 2026). In this case, Respondents must be enjoined from re-detaining Juan unless and until they can demonstrate he is a flight risk or danger and his removal is reasonably foreseeable, as required by due process and the INA.

Fourth Cause of Action

Due Process, U.S. Const. amend. V, and APA, 5 U.S.C. § 706(2)(D)

Constitutionally Inadequate Procedures Regarding Third Country Removal

130. Juan G.S. re-alleges and incorporates by reference the paragraphs above.

131. 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. Juan G.S. 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.

132. The INA, FARRA, and implementing regulations further mandate meaningful notice and opportunity to present a fear-based claim to an Immigration Judge before ICE deports a person to a third country. *See, e.g., Aden*, 409 F. Supp. 3d at 1004; *A.A.M. I*, 815 F.Supp. 3d. 1124, 1138 (C.D. Cal. 2025).

133. 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).

134. In order to effectuate the removal of Juan G.S. to a third county, Respondents-Defendants would need to demonstrate that a third country will accept Juan, and afford him the meaningful opportunity to present a claim for withholding of removal under 8 U.S.C. § 1231(b) and under the Convention Against Torture as to that country before an Immigration Judge. *See* 8 U.S.C. § 1231(b)(2)(E); 8 C.F.R. §§ 208.16(c)(4), 208.17(a); *Jama*, 543 U.S. at 348; *Himri*, 378 F.3d at 939; *Andriasian*, 180 F.3d at 1041; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019); *A.A.M. v. Andrews* (*A.A.M. I*), 815 F.Supp. 3d. 1124, 1138 (C.D. Cal. 2025).

135. By failing to implement a process or procedure to afford Juan meaningful notice and opportunity to present a fear-based claim to an IJ before DHS deports a person to a third country and by re-detaining previously released individuals pursuant to the July 9, 2025 "Guidance," Respondents would violate Juan's substantive and procedural due process rights and are not implementing procedures required by the INA, FARRA, and the implementing regulations.

136. For these reasons, Juan G.S.'s removal to any third country without adequate notice and an opportunity to apply for withholding of removal and protection under the CAT would violate his due process rights, as well as his rights under the INA, FARRA, and the implementing regulations. 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, *inter alia*, adequate notice and the opportunity to apply for fear-based relief before an immigration judge.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Enjoin Respondents from re-arresting Juan unless and until a hearing can be held before a neutral adjudicator to determine whether his re-detention would be lawful because the government has shown that he is a danger or a flight risk and that his removal is reasonably foreseeable 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;

(3) Declare that Respondents may not lawfully re-arrest Juan G.S. unless and until he is afforded a hearing in front of a neutral adjudicator as to whether the government can prove by clear and convincing evidence that Juan G.S. is a danger or a flight risk and that his removal is reasonably foreseeable;

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

(4) Order that Juan G.S. cannot be removed to any third country without first being provided constitutionally compliant procedures, including:

a. Written notice to Juan G.S. and counsel of the third country to which he may be removed, in a language that Juan G.S. can understand;

b. Demonstration by Respondents-Defendants that the noticed third country has agreed to accept Juan G.S. for legal residence;

c. A meaningful opportunity for Juan G.S. to raise a fear of return for eligibility for withholding of removal under 8 U.S.C. § 1231(b)(3) and protection under the CAT before a neutral adjudicator, i.e. an immigration judge;

(5) Award reasonable costs and attorney fees; and

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

Dated: July 2, 2026

Respectfully submitted,

/s/ Sean Lai McMahon
Sean Lai McMahon

Pro Bono Attorney for Juan G.S.

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this July 2, 2026, in San Francisco, California.

/s/ Sean Lai McMahon
Sean Lai McMahon