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**United States District Court
for the District of Colorado**

Phanara HOM,
Petitioner,

v.

Dawn Ceja,
Warden, Aurora ICE Processing Center;
Robert Guadian,
Field Office Director,
U.S. Immigration & Customs Enforcement,
U.S. Department of Homeland Security;
Kristi Noem,
Secretary,
U.S. Department of Homeland Security;
and **Pamela Bondi,**
Attorney General of the United States,
in their official capacities,

Respondents.

) Case No. 1:25-cv-2221

)
) **VERIFIED PETITION FOR**
) **WRIT OF HABEAS CORPUS**

)
) **ORAL ARGUMENT**
) **REQUESTED**

) Agency Case No. 

INTRODUCTION

1. The Petitioner, Mr. Phanara Hom (DOB ) is a 37-year-old stateless¹ refugee, born in Thailand to Cambodian parents who had fled the Khmer Rouge. Mr. Hom immigrated to the United States in refugee status with his family on or about January 7, 1984, when he was one year old. He adjusted his status to that of lawful permanent resident and thereafter resided in the United States.

2. Mr. Hom pled guilty on December 1, 2006, in Denver County, District Court, case number 2006CR2803, to the offense of possession of a Schedule II controlled substance, Colo. Rev. Stat. § 18-18-405(1), (2)(a)(I)(A), based on an alleged offense on May 2, 2006. Exhibit 1 – LexisNexis Colorado Courts (CoCourts) Record Search Report. The Department of Homeland Security (“Department” or “DHS”) detained Mr. Hom and initiated removal proceedings – upon information and belief, the underlying basis for which was Mr. Hom’s aforementioned conviction.

3. An immigration judge ordered Mr. Hom removed (deported) on October 4, 2012 (the “2012 Removal Order”). Exhibit 2 – Printout from EOIR Case Portal (ECAS). However, the Department was not apparently not able to effect Mr. Hom’s removal and eventually released him from custody, after which he lived as a free man through three presidential administrations. The Department recently detained

¹ Upon information and belief, Mr. Hom never acquired either Cambodian or Thai citizenship or nationality.

Mr. Hom again and, upon information and belief, is actively seeking to remove him to a country that will accept him.

4. In an email dated July 2, 2025, a deportation officer assigned to the Denver Field Office stated to undersigned counsel that “DHS will continue all efforts for removal” and “HQ is working on acquiring a TD [travel document].” Therefore, Mr. Hom believes that ICE will remove him as soon as it is able to do so.

5. The 2012 Removal Order was based on Mr. Hom's 2006 Colorado conviction for simple possession of a controlled substance. However, the U.S. Court of Appeals for the Tenth Circuit held definitively in *Johnson v. Barr*, 967 F.3d 1103 (2020), that such convictions cannot support removal under federal immigration law. Therefore, the Department of Homeland Security (the “Department”) is actively attempting to execute a removal order that lacks any valid legal foundation.

6. Mr. Hom respectfully seeks this Court's intervention to prevent his removal based on a fundamental legal error exposing him to removal despite his never being properly deportable under federal immigration law. The Department lacks the legal authority to detain and deport Mr. Hom. Consequently, Mr. Hom asks this Court to find that Mr. Hom’s detention and removal are unlawful and order him released from civil immigration detention.

JURISDICTION

7. This action arises under the Constitution of the United States and the

Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Fifth Amendment.

9. Under 8 U.S.C. § 1252(e)(2), this Court has habeas authority to determine whether Mr. Hom was lawfully ordered removed under 8 U.S.C. § 1229a and thereby stripped of permanent residence and whether the immigration judge properly terminated his refugee status pursuant to 8 U.S.C. § 1157.

10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

11. Venue is proper, because Mr. Hom is, upon best available information, detained at the GEO Group, Inc.'s ICE Processing Center in Aurora Colorado, located at 3130 N. Oakland Street, Aurora, Colorado 80111, within the jurisdiction of this District Court. 28 U.S.C. § 1391. Venue is also proper, because a substantial part of the events giving rise to Mr. Hom's claims occurred within this Court's jurisdiction, Mr. Hom resides within this Court's jurisdiction, and no real property is involved in this legal action. 28 U.S.C. §§ 1391(b) and (e)(1); *Braden v. 30th Judicial Circuit*, 410 U.S. 484, 493–94 (1973).

PARTIES

12. The Petitioner, Mr. Hom, is a 37-year-old stateless individual born in Thailand of Cambodian parents and admitted as a refugee to the United States at the age of one. He is detained at the GEO Group, Inc.'s ICE Processing Center in Aurora, Colorado.

13. Mr. Hom sues Respondent Dawn Ceja as the Warden of the Geo Group, Inc.'s ICE Processing Center in Aurora, Colorado. Ms. Ceja, upon information and belief, has immediate physical custody of Mr. Hom under the GEO Group, Inc.'s contract with the Department to detain noncitizens in civil immigration custody. Ms. Ceja is a legal custodian of Mr. Hom.

14. Mr. Hom sues Respondent Robert Guadian in his official capacity as the Field Office Director of the ICE Denver Field Office, located at 12445 E. Caley Avenue, Centennial, Colorado 80111. ICE is an agency within the Department, and in his capacity as Field Office Director, Mr. Guadian is responsible for the administration of immigration laws and the execution of detention and removal operations. Mr. Guadian is a legal custodian of Mr. Hom and has authority to release him.

15. Mr. Hom sues Respondent Kristi Noem in her official capacity as the Homeland Security Secretary, in which capacity Ms. Noem is responsible for the implementation and enforcement of the immigration laws pursuant to 8 U.S.C. § 1103(a). She routinely transacts business in this District and is legally responsible

for pursuing any effort to detain and remove Mr. Hom, including coordination with Immigration and Customs Enforcement, an agency within the Department. Ms. Noem is a legal custodian of Mr. Hom.

16. Mr. Hom sues Respondent Pamela Bondi in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (“DOJ”), in which capacity she has authority to adjudicate removal cases and oversee the Executive Office for Immigration Review (“EOIR”), which in turn administers the Immigration Courts and the Board of Immigration Appeals (“Board” or “BIA”). 8 U.S.C. § 1103(g). Attorney General Bondi has the authority to release Mr. Hom pending a decision on whether he is removable from the United States. Attorney General Bondi is a legal custodian of Mr. Hom.

REQUIREMENTS OF 28 U.S.C. § 2243

17. This Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If this Court issues an order to show cause, it 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).

18. 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).

STATEMENT OF FACTS

19. Mr. Hom, the Petitioner, is a 37-year-old stateless individual born in Thailand to Cambodian parents who were then refugees fleeing the Khmer Rouge.

20. Mr. Hom was admitted in refugee status to this country on or about January 7, 1984 and later became a permanent resident.

21. But for foundational legal error in the initiation and conduct of the removal proceedings against him, Mr. Hom would still be a permanent resident and perhaps even a U.S. citizen.

22. Mr. Hom pled guilty on December 1, 2006 in Denver County District Court, case number 2006CR2803, to the offense of possession of a Schedule II controlled substance, Colo. Rev. Stat. § 18-18-405(1), (2)(a)(I)(A), based on an offense on May 2, 2006. The historical version of the statute² that Mr. Hom pled guilty to violating read, at the time of his offense:

² The historical statute is the version following amendment effective August 4, 2004 and prior to further amendment effective July 1, 2007. The Colorado General Assembly made further, significant changes to the statute in 2010, eliminating simple possession as one of the alternative means of committing the offense. C.R.S § 18-18-405 (2010), as amended by HB 10-1352, Ch. 259, pp. 1163, 1166 §§ 3, 5 (effective Aug. 11, 2010). Mr. Hom does not know whether the immigration judge presiding over his 2012 removal proceeding correctly reviewed the historical statute as it existed at the time of Mr. Hom’s offense on May 2, 2006. Undersigned counsel has asked to review the designated administrative record (DAR) in Mr. Hom’s removal proceeding, but court staff have told him that the file will take considerable time to retrieve.

18-18-405. Unlawful distribution, manufacturing, dispensing, sale, or possession - repeal

(1) (a) Except as authorized by part 3 of article 22 of title 12, C.R.S., or by part 2 or 3 of this article, **it is unlawful for any person knowingly to** manufacture, dispense, sell, distribute, possess, or to possess with intent to manufacture, dispense, sell, or distribute a controlled substance; or induce, attempt to induce, or conspire with one or more other persons, to manufacture, dispense, sell, distribute, possess, or possess with intent to manufacture, dispense, sell, or distribute a controlled substance; or possess one or more chemicals or supplies or equipment with intent to manufacture **a controlled substance.**

(b) As used in this subsection (1), "dispense" does not include labeling, as defined in section 12-22-102 (16), C.R.S.

(2) (a) Except as is otherwise provided in subsection (2.3) of this section for possession offenses not including possession with the intent to distribute involving one gram or less of any material, compound, mixture, or preparation that contains any quantity of a schedule I through IV controlled substance, and for offenses concerning marihuana and marihuana concentrate in section 18-18-406, and for offenses involving minors in section 18-18-407(1)(g), any person who violates any of the provisions of subsection (1) of this section:

(I) In the case of a controlled substance listed in schedule I or II of part 2 of this article, commits:

(A) A class 3 felony; except that a person commits a class 4 felony if such violation is based on the possession of a controlled substance listed in schedule II unless otherwise provided in paragraph (a) of subsection (3) of this section . . .

(Emphasis added).

23. At the time of Mr. Hom's offense, the Colorado Uniform Controlled Substances Act, Colo. Rev. Stat. § 18-18-101 et seq., included "morpholine" as a Schedule II controlled substance. Colo. Rev. Stat. § 18-18-204 (2006) (the version of

the statute following amendment in 2000 and prior to further amendment in 2022 – morpholine appears under subparagraph (2)(f)(II)(D)). *See also Arellano v. Barr*, 784 F. App'x 609, 612-613 (10th Cir. 2019), cited with approval by *Johnson v. Barr*, 967 F.3d 1103, 1109 (10th Cir. 2020). Morpholine was not (and is not) listed as a federally controlled substance.

24. On July 31, 2020, the U.S. Tenth Circuit Court of Appeals issued its precedential opinion in *Johnson v. Barr*, 967 F.3d 1103 (10th Cir. 2020), approving of its earlier, unpublished decision in *Arellano v. Barr*, 784 F. App'x 609 (10th Cir. 2019), decided August 23, 2019. Read together, these two decisions conclusively establish that the precise statute under which Mr. Hom was convicted, Colo. Rev. Stat. § 18-18-405, where the conviction is for possession of a Schedule II substance, is categorically not a controlled substance violation within the meaning of the INA, because the Colorado offense sweeps more broadly than the federal generic definition of a deportable controlled substance offense, under 8 U.S.C. § 1227(a)(2)(B).

25. Based upon undersigned counsel's present understanding of Mr. Hom's criminal history prior to the 2012 Removal Order, none of his other convictions would appear to implicate removability, leading undersigned counsel to conclude

that Mr. Hom's conviction in 2006CR2803 is the most likely basis upon which the immigration judge entered a finding of removability.³

26. Moreover, the EOIR (immigration court) electronic filing system (ECAS) states, "The Immigration Judge found no jurisdiction" to issue a custody release bond at the time of Mr. Hom's removal proceedings, strongly suggesting that the immigration judge erroneously believed that Mr. Hom had been convicted of a federal controlled substance offense that rendered him deportable. Exhibit 3 – Printout from EOIR Case Portal (ECAS). This is so, because the grounds for "mandatory detention," which remove jurisdiction from the immigration judge to issue a release bond, include noncitizens convicted of deportable controlled substance offenses. 8 U.S.C. § 1226(c)(1)(B). There is no indication that any other portion of Mr. Hom's criminal history would have triggered the grounds of mandatory detention. See ¶ 25 above.

³ As of the date of Mr. Hom's 2012 Removal Order, his criminal history included several non-alcohol-related traffic and driver licensing matters. He also appears to have a 2002 conviction for possession of drug paraphernalia under C.R.S. § 18-18-428, a class two petty offense; a 2005 conviction for possession of less than one ounce of marijuana under C.R.S. § 18-18-406(1), also a class two petty offense; and a 2006 conviction for criminal mischief, a class two misdemeanor. This other criminal history is unlikely to have supported a finding of removability, because paraphernalia crimes are not deportable controlled substance offenses within the meaning of the INA, *see Mellouli v. Lynch*, 575 U.S. 798 (2015), and, even if Colorado's definition of marijuana is not overbroad, *see Fuad Said v. Attorney General*, 28 F.4th 1328 (11th Cir. 2022), a single conviction for possession only of less than 30 grams (1.06 oz.) of marijuana does not render a noncitizen deportable. 8 U.S.C. § 1227(a)(2)(B)(i).

27. Separately, undersigned counsel, lacking official records of the proceedings before the immigration judge, cannot determine whether the immigration judge complied with the regulatory obligations to rule on whether the Department had sustained its burden to prove removability by “clear and convincing evidence” and, if so, to determine whether Mr. Hom would have been eligible for any forms of relief from removal. *See, e.g.*, 8 C.F.R. §§ 1240.8 (burden of proof), 1240.10 (IJ must be satisfied no issues of law or fact remain after accepting pleadings); 1240.11(a)(2) (IJ “shall” inform noncitizen of “apparent eligibility” for relief); 1240.12(a) (required finding of removability); *see also* 8 U.S.C. § 1229a(c)(3)(A), INA § 240(c)(3)(A).

28. On behalf of Mr. Hom, undersigned counsel filed, on July 7, 2025, a motion to reconsider and reopen the 2012 Removal Order, which, as of the date of writing, remains pending. Exhibit 4 – Immigration Court Filing Stamp on Motion Cover Sheet. Mr. Hom is concerned that this motion will not receive timely consideration, because recent firings of immigration judges have left the Aurora Immigration Court, the court with jurisdiction over his removal case, with only one sitting immigration judge and, more broadly, created a severe shortage of judges nationwide.⁴ Moreover, the deportation officer overseeing Mr. Hom’s case

⁴ *See* <https://www.justice.gov/eoir/aurora-immigration-court> (last visited July 19, 2025) (the Aurora Immigration Court website, showing, under “Aurora (AUR) Staff Directory,” the one remaining immigration judge); Alexx Altman-Devilbiss, “17 Immigration Court Judges Have Been Fired by the Trump’s Administration across 10 States, Union Says,” PBS (July 16, 2025), available at:

communicated to undersigned counsel in an email dated July 2, 2025 that ICE would continue efforts to remove Mr. Hom notwithstanding any pending motion.⁵ Mr. Hom may therefore face imminent removal from the United States.

29. Mr. Hom had no reason to challenge the 2012 Removal Order after its entry, because following the order, ICE released him from custody, and he remained free to live his life through three presidential administrations, until the Department recently detained him.

30. Prior to July 31, 2020, when the U.S. Tenth Circuit Court of Appeals published its decision in *Johnson v. Barr*, Mr. Hom had no reason to doubt the Department's charge that he was removable and the Immigration Judge's determination that the Department had sustained the charge by clear and convincing evidence.

31. Even after the Tenth Circuit decided *Johnson v. Barr*, Mr. Hom could not reasonably have known, as a layperson without counsel, either of the existence or import of this legally arcane but, for him, monumentally consequential judicial decision.

<https://www.pbs.org/newshour/politics/17-immigration-court-judges-have-been-fired-by-the-trump-administration-across-10-states-union-says> (last visited July 19, 2025); Ximena Bustillo, "Trump Fires More Immigration Judges Even As He Aims to Increase Deportations" NPR (April 22, 2025) (reporting on earlier rounds of firings of immigration judges), available at: <https://www.npr.org/2025/04/22/nx-s1-5372681/trump-immigration-judges-fired> (last visited July 19, 2025).

⁵ The officer's precise wording is, "[P]lease file motion if needed as to DHS will continue all efforts for removal . . ."

32. The first warning to Mr. Hom of his urgent need to revisit the 2012 Removal Order was his recent detention in 2025, after which he diligently sought counsel and acted quickly, first by filing a motion to reconsider and reopen to the immigration court and then by filing this Verified Petition for Writ of Habeas Corpus to this Honorable Court.

LEGAL PRINCIPLES

A. Mr. Hom is not (and was not) removable, because the legal basis upon which the Department initiated removal proceedings and the immigration court ordered him removed is void *ab initio*.

33. A categorical analysis applies to the question whether a state predicate offense corresponds to the generic definition of a federal controlled substance offense under the INA. *Johnson*, F.3d at 1106.

34. The INA provides that a permanent residence like Mr. Hom is deportable where he is convicted for violating “any law or regulation of a State . . . relating to a controlled substance (as defined in Section 802 of title 21) . . .”

35. 21 U.S.C. § 802(6) in turn defines a “controlled substance” as including substances listed in “schedule I, II, III, IV, or V of part B of this subchapter.”

36. 21 U.S.C. § 812 sets forth lists of substances under the five schedules, none of which include – and did not include at the time of Mr. Hom’s offense – “morpholine” as a controlled substance. *See Johnson*, F.3d at 1109-10.

37. By comparison, Colorado’s controlled substance schedules are (and were) broader than the federal schedules in at least one respect: Colorado’s schedule

II lists (and at all relevant times listed) “morpholine” as a controlled substance. *Id.*; C.R.S. § 18-18-204.

38. The U.S. Tenth Circuit Court of Appeals concluded in *Johnson v. Barr* that the Colorado offense of possession of a schedule II controlled substance, pursuant to C.R.S. § 18-18-403.5(1), is not categorically a “controlled substance” offense under federal immigration law, because the Colorado statute is not divisible as to the individual substances listed in Colorado’s controlled-substance schedules and is instead divisible only as to the schedules themselves. *Id.* at 1108.

39. The court based its conclusion on the language of the Colorado statute, which makes the schedule, not the particular controlled substance, an element of the crime. *Id.* Thus a jury need only conclude that a defendant possessed any substance under a particular schedule to convict. *Id.* Moreover, the court examined the penalty provisions under that statute and concluded that the Colorado legislature distinguished only among schedules – not substances – when setting forth penalties. *Id.*

40. In addition – and importantly for the present analysis – the *Johnson* court cited with approval to its earlier, unpublished decision in *Arellano v. Barr*, in which it concludes that the precise statute under which Mr. Hom was convicted – C.R.S. § 18-18-405 – is, like the provision at issue in *Johnson*, divisible only as to the controlled substance schedule, and not as to the substance. *Johnson*, 967 F.3d at 1109, citing *Arellano v. Barr*, 784 F. App’x 609, 612-613 (10th Cir. 2019).

41. Furthermore, the *Johnson* panel concludes:

Although the Colorado statute may be divisible as to the particular schedules, the statute is indivisible as to the identity of the particular controlled substance. And because the Colorado statute includes morpholine as a schedule II controlled substance, and the [federal] CSA does not, the Colorado statute's schedules sweep more broadly. Thus, no categorical match exists between the state and federal schedules.

Johnson, 967 F.3d at 1110.

42. Therefore, Mr. Hom's 2006 conviction is not (and never was) grounds for his removal under 8 U.S.C. § 1227(a)(2), because Colorado's Schedule II is broader than the federal controlled substance schedules, meaning that Mr. Hom was not necessarily convicted of a crime that falls within the generic federal definition of a deportable controlled substance offense, pursuant to 8 U.S.C. § 1227(a)(2)(B).

43. Notably, because Mr. Hom was a permanent resident charged as being deportable in removal proceedings, the burden was on the government to prove by clear and convincing evidence that he was deportable, a legally impossible burden for the government to meet where the alleged predicate conviction involves a Colorado state conviction for violating C.R.S. 18-18-405 in connection with Colorado's schedule II. *Woodby v. INS*, 385 U.S. 276 (1966).

44. The *Johnson* holding did not create new law but instead clarified existing categorical analysis principles. The Tenth Circuit's holding that Colorado controlled substance offenses premised on Colorado's Schedule II are overbroad has

always been true under a long line of cases announcing and applying the categorical approach. *See, e.g., Taylor v. United States*, 495 U.S. 575, 599-600 (1990); *Shepard v. United States*, 544 U.S. 13, 24 (2005); *Moncrieffe v. Holder*, 569 U.S. 184, 190 (2013); *Descamps v. United States*, 570 U.S. 254 (2013); *Mellouli v. Lynch*, 575 U.S. 798 (2015); *Mathis v. United States*, 579 U.S. 500 (2016).

45. The U.S. Tenth Circuit's holding in *Johnson v. Barr* is therefore a statement of the law as it has always been and not an intervening change in the substantive law, and consequently, Mr. Hom was never removable and the 2012 Removal Order is void *ab initio*.

46. The INA does not vest the BIA or Immigration Court with authority to impose "conviction" based statutory removability where a conviction does not correspond to a removability provision. *See Woodby v. I.N.S.*, 385 U.S. at 277 ("The question presented by these cases is what burden of proof the Government must sustain in deportation proceedings. We have concluded that it is incumbent upon the Government in such proceedings to establish facts supporting deportability by clear, unequivocal, and convincing evidence").

47. *Johnson v. Barr* itself stands for this principle, because the court decided in 2020 that Mr. Johnson's 2016 conviction for possession of a controlled substance did not render him removable *ab initio*.⁶ 967 F.3d.

⁶ In *Arellano v. Barr*, the court went even further back in time to a 1997 statute. 784 F. App'x 609 (10th Cir. 2019).

48. Moreover, under a correct interpretation of contemporaneous law, the Department lacked a substantive legal basis for subjecting Mr. Hom to removal proceedings in the first place, because his possession conviction did not correspond to any of the grounds of deportability at 8 U.S.C. § 1227. Where, as here, a conviction clearly and unequivocally falls outside of a removability category, the Department cannot satisfy its burden to prove deportability by “clear and convincing evidence.” 8 U.S.C. § 1229a(C)(3)(A).

49. Mr. Hom seeks redress of a threshold error by the immigration judge in determining removability, but for which he would still be a permanent resident, perhaps a U.S. citizen, and certainly not detained in immigration custody. *See Moncrieffe v. Holder*, 569 U.S. 184 (2013) (the threshold issue of removability based on a criminal conviction is a “pure” question of law); *INS v. St. Cyr*, 533 U.S. 289 (2001) (distinguishing between legal determinations about removability and discretionary relief applications); *Landon v. Plasencia*, 459 U.S. 21 (1982) (lawful permanent residents have a liberty interest in retaining permanent residence); *Matter of G-D-*, 22 I&N 1132, 1135 (BIA 1999) (distinguishing between motions to reopen based on fundamental legal errors and those seeking discretionary relief on account of changed circumstances).

50. Finally, and perhaps most significantly, Mr. Hom has a constitutional liberty interest in retaining his permanent residence, because the 2012 Removal

Order, if enforced, would unconstitutionally deprive him of his right to live and reside in the United States. *Landon, supra*.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

51. Mr. Hom realleges and incorporates herein the foregoing paragraphs.

52. The Respondents' detention of Mr. Hom with the presumed intent of deporting him to an unnamed country where he is neither a national nor resident violates the Due Process Clause, because the original charges of removability and order of removal against him are void *ab initio*.

COUNT TWO

Violation of 8 U.S.C. § 1229a and Implementing Regulations

53. Mr. Hom realleges and incorporates herein the foregoing paragraphs.

54. Mr. Hom specifically realleges and incorporates paragraph 27 above, in which he alleges that his counsel has not yet had the opportunity to review the record of the prior removal proceeding, including the recording of the hearing at which the immigration judge issued the 2012 Removal Order, to determine whether the immigration judge complied with the regulatory obligations to rule on whether the Department had sustained its burden to prove removability by "clear and convincing evidence" and, if so, to determine whether Mr. Hom would have been eligible for any forms of relief from removal, as required by regulations. *See, e.g.*, 8 C.F.R. §§ 1240.8 (burden of proof), 1240.10 (immigration judge must be satisfied no

issues of law or fact remain after accepting pleadings); 1240.11(a)(2) (immigration judge “shall” inform noncitizen of “apparent eligibility” for relief); 1240.12(a) (required finding of removability); *see also* 8 U.S.C. § 1229a(c)(3)(A), INA § 240(c)(3)(A).

55. If the immigration judge did not comply with the aforesaid regulatory obligations, the immigration judge may have issued the removal order in violation of law, rendering the order void.

COUNT THREE
Violation of 8 U.S.C. § 1231 and Implementing Regulations –
Convention against Torture and Implementing Statute and
Regulations

56. Mr. Hom realleges and incorporates herein the foregoing paragraphs.

57. Mr. Hom fears that the Department may attempt to remove him to a country where he would face persecution or torture, in violation of 8 U.S.C. § 1231(b)(3) and the Convention against Torture and its implementing statute.

58. 8 U.S.C. § 1231(b)(3) forbids removal to a country where the noncitizen’s “life or freedom” would be threatened.

59. The Convention against Torture and its implementing regulations forbid removal to a country where a noncitizen would face a likelihood of torture.

60. Mr. Hom’s fear is not speculative, because the Department has recently removed and attempted to remove numerous noncitizens to countries

where they face unlawful incarceration, persecution, torture, and death.⁷ A recent ICE memo, obtained by the *Washington Post*, does not appear to mandate that the government follow laws requiring reliable political assurances that noncitizens will be safeguarded prior to removing them to third countries.⁸

61. The Department remains bound by statutes like 8 U.S.C. § 1231 and the Convention against Torture, both of which require an individualized determination as to whether Mr. Hom would face persecution or torture following removal to a third country.

62. Moreover, the Department is prohibited by law from removing noncitizens to third countries without following mandatory procedures such as those outlined at 8 C.F.R. § 1208.18(c).

⁷ See, e.g., Giselle R. Ewing, “Trump Launches Next Round of Third Country Deportations with New Flight to Eswatini,” POLITICO (July 16, 2025), available at: <https://www.politico.com/news/2025/07/16/trump-third-country-deportations-eswatini-00455757> (last visited July 19, 2025); Nate Raymond and Ted Hesson, “ICE May Deport Migrants to Countries Other Than Their Own with Just Six Hours Notice, Memo Says,” REUTERS (July 14, 2025), available at: <https://www.reuters.com/world/us/ice-may-deport-migrants-countries-other-than-their-own-with-just-six-hours-2025-07-13/> (last visited July 19, 2025); Josephine Walker, “Here are the 3rd-countries Where the Trump Admin is Deporting Migrants,” AXIOS (July 16, 2025), available at: <https://www.axios.com/2025/07/17/trump-deportation-migrants-third-countries> (last visited July 19, 2025) (countries include Rwanda, El Salvador, and South Sudan).

⁸ Maria Sacchetti, Carol D. Leonnig and Marianne LeVine, WASHINGTON POST (July 13, 2025), available at: <https://www.washingtonpost.com/immigration/2025/07/12/immigrants-deportations-trump-ice-memo/> (last visited July 19, 2025).

63. The Department's removal of Mr. Hom to a third country based on a legally flawed removal order would potentially expose him to irreparable harm, an egregious result where the underlying removal order lacks a valid basis in law.

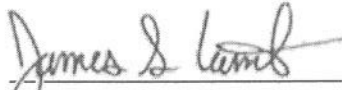
PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter.
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Declare that Petitioner's detention and removal to an unnamed country violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1226(a), 8 U.S.C. § 1229a, and 8 U.S.C. § 1231.
- (4) Issue an emergency injunction preventing Petitioner's removal to avoid irreparable harm while these proceedings are ongoing and during the pendency of Mr. Hom's motion to reconsider and reopen, filed to the immigration court.
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately or schedule a bond hearing before an immigration judge.
- (6) Order Respondents to expeditiously produce to Mr. Hom's counsel the complete administrative record in removal proceedings, including, but not limited to, the recordings of all hearings in removal proceedings.

- (7) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), and on any other basis justified under law.
- (8) Grant any further relief this Court deems just and proper.

Respectfully submitted,

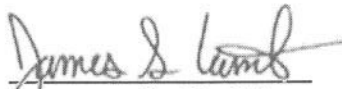

Counsel for Petitioner

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

I represent Petitioner, Phanara Hom, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 20th day of July, 2025.


Attorney for Petitioner