UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Tai Thien HA,

Petitioner,

v.

PAMELA BONDI, in their official capacity as Attorney General of the United States;
MARKWAYNE MULLIN, in her capacity as Secretary of the United States Department of Homeland Security;
TODD M. LYONS, in his official capacity as Acting Director of the United States Immigration and Customs Enforcement;
KELEI WALKER in her official capacity as Acting Director, Denver Field Office, U.S. Immigration and Customs Enforcement;

Respondents.

Case No. 26 -Cv-1238

Verified Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner, Tai Thien HA ("Mr. Ha" or "Petitioner"), by and through undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to prevent the U.S. Department of Homeland Security ("DHS"), U.S. Immigration and Customs Enforcement ("ICE") from returning him to immigration detention pending resolution of his motion to reopen based on a pardon granted by the Governor of

Minnesota, Ex. 7, without first providing him a due process hearing where the government bears the burden of demonstrating that his removal to Vietnam is reasonably foreseeable and otherwise whether circumstances have changed such that his re-detention would be justified—that is, whether he poses a danger or a flight risk.

2. Mr. Ha has a removal order to Vietnam from 2003 which Respondents have never been able to execute, and there is no credible evidence they will ever be able to execute it due to the existence of a treaty with Vietnam governing the repatriation of Vietnamese individuals who came to the U.S. before 1995. Exs. 2, 17. Because Mr. Ha came to the United States in 1994, his removal is not reasonably foreseeable. Exs. 2, 6.

3. Importantly, the basis of Mr. Ha's removal stems from his felony conviction from 2002 under Minn. Stat. 609.66 for a "Drive by Shooting", for which he would later receive an unconditional pardon from the Governor of Minnesota in January of 2024. Exs. 2, 7. After his conviction was set aside, Mr. Ha filed a Motion to Reopen with the Immigration Court system to terminate his removal proceedings. Ex. 2. Execution of Mr. Ha's removal order today would not be lawful. Ex. 12; see Cardoso-Tlaseca v. Gonzales, 460 F.3d 1102, 1107 (9th Cir. 2006) (holding that removal order is not legally executed where criminal court subsequently vacates a conviction that constituted a "key part" of the order). Allowing a removal order to stand when the underlying conviction no longer exists flaunts the Congressional requirement that once "granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States," a pardon waiver applies to the order of removal. See 8 U.S.C. § 1227 (a)(2)(A)(iv); 8 U.S.C. § 1101(a)(48).

4. Mr. Ha first entered the United States in 1994 around the age of 11 as the child of a refugee. Exs. 2, 6. He became a lawful permanent resident in 1995, and that status was retroactively applied to the date of his arrival, June 15, 1994. Ex. 2.

5. On February 21 2002, Mr. Ha was convicted of Felony Drive-By Shooting (Minn. Stat. 609.66 Subd. 1e) and sentenced to 48 months in prison for actions he committed in 2000 when he was seventeen years old. Ex. 2. ICE initiated removal proceedings against Mr. Ha on July 12, 2002, while he was still serving his prison sentence. Ex. 2. Mr. Ha was ordered removed on July 7, 2003. Exs. 2, 12. After his release from prison in June of 2004, he was subsequently detained by ICE for six months, then granted supervised release. Exs. 2, 5. On December 18, 2023, Mr. Ha received an unconditional pardon from the Governor of Minnesota for his crime. Ex. 7.

6. Mr. Ha was released because ICE determined that his removal to Vietnam was not reasonably foreseeable. Exs. 2, 17. Mr. Ha after his release was required to file for a travel document and on June 30. 2005, the Vietnamese Consulate informed him that the US and Vietnam have "not reached any agreement as to deportation" and as such could not issue him a travel document. Ex. 17. He was placed on the Intensive Supervision Appearance Program ("ISAP") from September 2004 to July 2006 and subject to electronic monitoring. Ex. 5. He was removed from ISAP and granted an Order of Supervision ("OSUP") on July 18, 2006, which permits him to remain free from custody so long as he attends regular check-in appointments at his local ICE Field Office. Ex. 5. For the past 20 years, Mr. Ha has fully complied with the terms of his OSUP, attending his appointments at first every month, and then eventually every year. Ex. 2. He has never been charged or convicted of a subsequent crime. Ex. 2.

7. Mr. Ha is scheduled to attend a check-in at the ICE Denver Field Office on March 25, 2026. Ex. 5. In light of credible and recent reports of ICE re-detaining individuals at their ICE check-ins,[1] it appears likely that Mr. Ha will be arrested and detained at this appointment, despite the fact that his removal is not reasonably foreseeable and he is neither a flight risk nor a danger to the community. Moreover, ICE has received multiple directives to meet daily arrest quotas that leave the agency no other option but to arrest noncitizens whose incarceration is not necessary.[2] Petitioner's counsel has reached out to the Denver ICE office inquiring as to whether they intend to detain Mr. Ha, but have not heard back as of the date of this petition. Ex. 18.

8. If Mr. Ha was arrested, he would face the very real possibility of being immediately transferred outside of Colorado with little or no notice,[3] far away from his family—including his two U.S. Citizen children—and his small business that supports 6 full-time employees.

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[1] Ex. 16 (Declaration of Tin Thanh Nguyen); *see, e.g.,* "In San Francisco, arrests at ICE check-ins have resumed," Mission Local (March 13, 2026) https://missionlocal.org/2026/03/in-san-francisco-arrests-at-ice-check-ins-have-resumed/; "Wisconsin mom who won green card detained by ICE after routine check-in," Wisconsin Public Radio (March 13, 2026), https://www.wpr.org/news/wisconsin-mom-who-won-green-card-detained-by-ice-after-routine-check-in.

[2] ICE agents reveal daily arrest quotas and surveillance app in rare court testimony," The Guardian (March 13, 2026), https://www.theguardian.com/us-news/2026/mar/13/ice-agent-court-testimony-oregon ("There's no lower-hanging fruit than immigrants following the rules, who reliably show up when they are called in for immigration check-ins or court dates").

[3] See e.g., "'ICE conveyor belt' illegally detaining, moving Minnesota children to Texas faster than courts can respond," MPR News (Jan. 28, 2026), https://www.mprnews.org/story/2026/01/28/ice-detaining-moving-minnesota-children-to-texas-faster-than-courts-can-respond ("'We have clients that once they're picked up, they're whisked away to the airport literally within hours.'").

9. Mr. Ha is no longer deportable in the first place because of the executive pardon he received in 2023 for his criminal conviction. Ex. 7. When the basis of non-citizen's removal is an conviction that has later been fully and unconditionally pardoned, than several grounds of deportability no longer apply. 8 U.S.C. § 1227(a)(2)(A)(vi). Moreover, the Board of Immigration Appeals recognizes that an executive pardon constitutes an "*automatic* waiver of removability." See In re Suh, 23 I. & N. Dec. 626, 627 (BIA 2003) (emphasis added). Mr. Ha's 2002 conviction was the sole basis for his 2003 finding of removability—the same conviction that has now been pardoned. ICE thus has no reason to re-detain Mr. Ha for the purposes of effectuating his removal pursuant to 8 C.F.R. § 241.13(i) and contemplated by Zadvydas. 533 U.S. at 690 ("[W]here detention's goal is no longer practically attainable, detention no longer 'bear[s] [a] reasonable relation to the purpose for which the individual [was] committed.'") (quoting Jackson v. Indiana, 406 U.S. 715, 738 (1972)).

10. The Immigration Court that denied his Motion to Reopen based on the pardon did so not on a substantive basis, but by finding that Mr. Ha had triggered the so called "departure bar" and that despite filing his Motion to Reopen within sixty days of the receipt of his pardon, was "untimely." Ex. 3. The entirety of the Immigration Court's decision was a form check-list. *Id.*

11. Since his release from ICE custody in 2004, ICE has not sought to re-detain Mr. Ha. For the past 22 years, he has been attending his routine check-in appointments as required, with the expectation that he would remain free to continue rebuilding his life, raising his children, and operating his small business so long as he complied with his OSUP. Exs. 2, 5–6. In early 2024, he acted diligently to submit a Motion to Reopen his case and close his removal proceedings upon receiving his pardon in late December 2023. Ex. 2.

12. Respondents' authority to re-detain a noncitizen on an OSUP is governed by 8 C.F.R. § 241.13(i) when ICE has previously determined that there is no significant likelihood of removal for a noncitizen under a final order of removal. ICE may only re-detain a person released on an Order of Supervision if they violate a condition of supervised release, 8 C.F.R. § 241.13(i)(1), or "if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," 8 C.F.R. § 241.13(i)(2). Respondents must give notice of the reasons for revocation and provide the noncitizen an "initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." However, these regulations are not the *only* limit on Respondents' authority to redetain, and the Due Process Clause may impose additional limitations. Morrissey v. Brewer, 408 U.S. 471, 481 (1972) ("[D]ue process is flexible and calls for such procedural protections as the particular situation demands."). "Accordingly, resolution of the issue whether the administrative procedures provided here are constitutionally sufficient requires analysis of the governmental and private interests that are affected." Mathews v. Eldridge, 424 U.S. 319, 334 (1976).

13. It is well-established that individuals released from incarceration have a liberty interest in their continued freedom. Villanueva v. Tate, 801 F. Supp. 3d 689, 704 (S.D. Tex. 2025) (quoting Young v. Harper, 520 U.S. 143, 147, 117 S.Ct. 1148, 137 L.Ed.2d 270 (1997)) ("individuals who have been conditionally released from detention have a protected interest in their "continued liberty"... [t]his is true even when the released individual is subject to extensive conditions of release"). To protect that interest, on the particular facts of Mr. Ha's case, due process requires notice and a hearing, *prior to any re-detention*, at which (1) the government bears

the burden of demonstrating that his removal to Vietnam is reasonably foreseeable and otherwise whether circumstances have changed such that his re-detention would be justified (whether he poses a danger or a flight risk), and (2) he is afforded the opportunity to advance his arguments as to why he should not be re-detained.

14. During his 22 years of release, Respondents have created a reasonable expectation that Mr. Ha is permitted to live and work in the United States without being subject to arbitrary arrest and removal. Exs. 6, 11. This reasonable expectation creates constitutionally protected liberty and property interests. Perry v. Sindermann, 408 U.S. 593, 601–03 (1972) (reliance on policies and practices may establish a legitimate claim of entitlement to a constitutionally protected interest); Guillermo M. R. v. Kaiser, 791 F. Supp. 3d 1021, 1030–33 (N.D. Cal. 2025) (holding that noncitizens on conditional release "possess an interest in their continued liberty, which grows over time, and a due process right to a hearing before being re-detained").

15. The basic principle that individuals placed at liberty are entitled to process before the government imprisons them has particular force here, where Mr. Ha was already previously released from ICE detention twenty-two years ago, after which he began to rebuild his life, including by securing employment, getting married, having children, and opening a small business. Exs. 6, 11; Zinermon v. Burch, 494 U.S. 113, 127 (1990) ("the Court usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property.").

16. Therefore, at minimum, in order to lawfully re-arrest Mr. Ha, Respondents must establish before a neutral decision maker that Mr. Ha's detention is lawful under the INA, its implementing regulations, and the Due Process Clause of the Constitution. First, Respondents

bear the burden of proof that detention is justified despite the pardon Mr. Ha received in 2023—which eliminates the sole conviction underlying his final order or removal—and the pardon waiver provision of the INA. See 8 U.S.C. § 1227(a)(2)(A)(vi). If Respondents make this showing, they must then bear the burden of proving that Mr. Ha's removal to Vietnam is now significantly likely in the reasonably foreseeable future due to changed circumstances such that his re-detention is justified under 8 C.F.R. § 241.13(i). See Yee S. v. Bondi, No. 25-CV-02782 (JMB/DLM), 2025 WL 2879479, at *4 (D. Minn. Oct. 9, 2025) (holding that the regulations "place the burden on ICE to establish that 'changed circumstances' justified the revocation of release").

PARTIES

17. Petitioner Mr. Ha has lived in the United States since 1994, when he entered as the child of a refugee and was admitted as a lawful permanent resident. Ex. 6. He was originally ordered removed after having been convicted of Drive-By Shooting, Minn. Stat. § 609.66 Subd.1e, in 2002. Exs. 2, 12. He received a pardon by the Governor of Minnesota and the Minnesota Pardon Board on December 18, 2023. Ex. 7. He filed a Motion to Reopen based on the pardon on March 11, 2024. Ex. 2. The Board of Immigration appeals has been considering his appeal of the denial of the MTR since April 29, 2024. Ex. 4. He has been under supervised release since 2004, after spending 6 months in ICE detention. Exs. 2, 5. Mr. Ha resides in [redacted] Colorado and his next scheduled check-in at the ICE Denver Field Office is March 25, 2026. Exs. 2, 5–6.

18. Respondent Pamela Bondi is named in her official capacity as the U.S. Attorney General. Attorney General Bondi is responsible for continuing a custody case against a noncitizen and as such is Mr. Ha's legal custodian.

19. Respondent Markwayne Mullin is named in his official capacity as the Secretary of the United States Department of Homeland Security. DHS is a department of the executive branch of the U.S. government tasked with administering and enforcing the federal immigration laws. Secretary Mullin is ultimately responsible for ICE's actions; specifically, he is responsible for the administration and enforcement of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a). Secretary Mullin is legally responsible for any effort to detain and remove Mr. Ha and as such is Mr. Ha's legal custodian.

20. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of the United States Immigration and Customs Enforcement. ICE is the agency within DHS that is specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is responsible for apprehension, incarceration, and removal of noncitizens, and the supervision of noncitizens ordered released from the United States, and as such Acting Director Lyons is Mr. Ha's legal custodian.

21. Respondent Kelei Walker is named in her official capacity as the Director for the ICE Denver Field Office. Director Walker is responsible for the enforcement of immigration laws within this district, and for ensuring that ICE officials follow the agency's policies and procedures. As such, Field Office Director Walker is Mr. Ha's legal custodian and probable immediate physical custodian as her office is responsible for making custody determinations and detaining and removing noncitizens in Colorado and Wyoming. Because Mr. Ha is required to

check-in at the Denver field office and ICE officers at this location are responsible for providing new check-in dates, modifying conditions of release, and decisions to revoke release, Director Lyons is Mr. Ha's legal custodian.

JURISDICTION AND VENUE

22. For purposes of the "custody" requirement to invoke habeas jurisdiction, Mr. Ha's Order of Supervision and its restrictions on his freedom allows this Court to invoke jurisdiction under 28 U.S.C. § 2241(c)(1). Custody for purposes of habeas jurisdiction does not require strict confinement. Jones v. Cunningham, 371 U.S. 236 (1963). In fact, the Supreme Court has allowed for habeas jurisdiction for those challenging convictions even after release, or those on pre-trial release subject to significant bail restrictions. Hensley v. Municipal Court, 411 U.S. 345 (1973).

23. District Courts who have considered whether being on an order of supervision have similarly concluded that habeas jurisdiction does lie. Doe v. Barr, 479 F. Supp. 3d 20, 26 (S.D.N.Y. 2020) ("And neither party disputes that even though Doe is not currently incarcerated, the order of supervision renders him 'in custody' for purposes of his habeas petition, as the Supreme Court has repeatedly held that the in-custody requirement is met where the Government restricts a petitioner's freedom of action"). See also, He v. Lyons, No. 3:25-CV-10639-JSC, 2026 WL 280074, at *2 (N.D. Cal. Feb. 3, 2026), Sun v. Santacruz, No. 5:25-CV-02198-JLS-JC, 2025 WL 2730235, at *3 (C.D. Cal. Aug. 26, 2025) (collecting several cases in the 9th Circuit all concluding that jurisdiction for habeas purposes when petitioners seek to prevent detention at a check-in as with this petition.).

24. Mr. Ha's Order of Supervision requires not only regular check-ins, but he must subject himself to psychiatric or health exams as requested, all of these restrictions amount to

significantly impacting his freedom and thus constituting "custody" for purposes of habeas jurisdiction.

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

26. Nothing in 8 U.S.C. § 1252 or FARRA deprives this Court of jurisdiction.

27. Moreover, 8 U.S.C. § 1252 does not prevent this Court from enjoining the removal of Petitioner pursuant to a final order of removal if the noncitizen "shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law." 8 U.S.C. § 1252(f)(2). Although Petitioner is not requesting a stay of removal here, he points out that the execution of his removal order is prohibited as a matter of law because the sole grounds for his removal, his felony conviction, no longer exists.

28. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, the Suspension Clause, and the Court's inherent equitable powers.

29. Venue lies in the U.S. District Court for the District of Colorado because it is the judicial district in which Mr. Ha is currently released from custody on an OSUP issued by ICE. The terms of his OSUP require him to attend check-ins with the Denver ICE Field Office on a regular basis, and comply with other conditions of release, including updating his address. Such stringent requirements "impose[] conditions which significantly confine and restrain his freedom; this is enough to keep him in the 'custody' of [DHS] within the meaning of the habeas corpus statute." Jones v. Cunningham, 371 U.S. 236, 243 (1963); Rumsfeld v. Padilla, 542 U.S. 426, 437

(2004) ("our understanding of custody has broadened to include restraints short of physical confinement").

30. Venue is also properly before this Court pursuant to 28 U.S.C. § 1391(e)(1) because Respondents are employees or officers of the United States, acting in their official capacity; because a substantial part of the events or omissions giving rise to the claim occurred in the District of Colorado; because Mr. Ha is under the jurisdiction of the Denver ICE Field Office, which is in the jurisdiction of the District of Colorado; and because Mr. Ha resides in the District of Colorado and no real property is involved in this case.

REQUIREMENTS OF 28 U.S.C. § 2243

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

32. Habeas corpus is "perhaps the most important writ known to the constitutional law. . . 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) (citation omitted). "The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time." Jones v. Shell, 572 F.2d 1278, 1280 (8th Cir. 1978).

33. Due to the nature of this proceeding, Mr. Ha asks this Court to expedite proceedings in this case as necessary and practicable for justice.

EXHAUSTION

34. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. Salvador F.-G. v. Noem, 25-CV-0243-CVE-MTS, 2025 WL 1669356, at *6 (N.D. Okla. June 12, 2025) (quoting Hernandez v. Sessions, 872 F.3d 976, 988 (9th Cir. 2017)); see also L.G. v. Choate, 744 F. Supp. 3d 1172, 1181 (D. Colo. 2024) ("When Congress does not require exhaustion in the statute then the district court has discretion to decide if administrative exhaustion is required.")

35. 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." Hernandez at 988. (quoting Laing v. Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Petitioner asserts that exhaustion is satisfied as there is no administrative jurisdiction over his detention status because he already has a final order of removal.

36. No statutory exhaustion requirements apply to Petitioner's claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. 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).

STATEMENT OF FACTS

37. Mr. Ha entered the United States in 1994 as the child of a refugee. Exs. 2, 6. He became a lawful permanent resident in 1995, and the status was retroactively applied to the date of his arrival, June 15, 1994. Ex. 2.

38. On January 16, 2002, Mr. Ha was convicted of Felony Drive-By Shooting (Minn. Stat. 609.66 Subd. 1e and sentenced to 48 months in prison. Ex. 2. ICE initiated removal proceedings against Mr. Ha on July 12, 2002 on the ground that his conviction constituted an aggravated felony under INA 101(a)(43)(F) and he was ordered removed on July 7, 2003. Exs. 2, 12. After his early release from prison, he was subsequently detained by ICE for six months, then granted supervised release on September 30, 2004. Exs. 2, 5.

39. After spending ninety in ICE detention, Mr. Ha was placed on the Intensive Supervision Appearance Program ("ISAP") from September 2004 to July 2006 and subject to electronic monitoring. Ex. 5. He was removed from ISAP and granted a less restrictive Order of Supervision ("OSUP") on July 18, 2006, which permits him to remain free from custody so long as he attends regular check-in appointments at his local ICE Field Office. Ex. 5. For the past 20 years, Mr. Ha has fully complied with the terms of his OSUP, attending his appointments at first every month, and then eventually every year. Ex. 2. He has never been charged or convicted of a subsequent crime. Ex. 2.

40. In October 2015, Mr. Ha—unsure of his exact legal status nearly 12 years after his order of removal was issued—filed Form I-90 to apply for a green card. Ex. 13. Despite his final order of removal, USCIS erroneously issued Mr. Ha a green card on September 12, 2016. *Id.* After speaking with an ICE officer who confirmed that he could travel out of the country because he was a green card holder, Mr Ha travelled with his family to visit Vietnam in December 2016—his first time back in Vietnam since immigrating to the United States in 1994. Ex. 6. In order to apply for a travel document to Vietnam he had to provide a copy of his newly issued green card. *Id.* He returned using the green card on January 11, 2017, and was allowed to enter the

country without issue. *Id.* On the assumption that his green card was valid, Mr. Ha believed that he was no longer required to regularly report to ICE for check-ins. *Id.* Only after Mr. Ha innocently missed a scheduled ICE check-in date did USCIS realize its error and rescind the green card.[4] *Id.* An ICE officer contacted him to explain that the green card was approved in error, and that Mr. Ha remained subject to his OSUP. *Id.*

41. After this incident, Mr. Ha became fully aware that he was not a lawful permanent resident and began to pursue other avenues to restore his status. In October 2021, he filed an I-485 Application to Adjust Status and I-601 Application for Waiver of Grounds of Inadmissibility based on his marriage to a U.S. citizen. Ex. 14. These applications were denied based on the prior aggravated felony finding and Mr. Ha's failure to file Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal. *Id.* In the denial, USCIS asserted that Mr. Ha's month-long trip to Vietnam with his family in 2017 effectively executed his order of removal, triggering the order of removal ground of inadmissibility under 8 U.S.C. § 1182(a)(9)(a)(ii) (any noncitizen who "departed the United States while an order of removal was outstanding… and who seeks admission within 10 years of the date of such alien's departure or removal" is inadmissible). *Id.*

42. After his attempt to regain his green card through his United States citizen spouse failed, Mr. Ha applied for a pardon with the state of Minnesota seeking to remove his sole criminal conviction that led to his removal order in the first place. Ex. 7.

43. Mr. Ha received an unconditional pardon for the conviction underlying his order of removal from the Governor of Minnesota in 2023. *Id.* After a hearing in front of the Governor

[4] This is the only check-in date Mr. Ha has ever missed.

of Minnesota and the Minnesota Pardon Board on December 18, 2023, he was granted a pardon. *Id.* The pardon certificate was issued later on January 3, 2024. *Id.* He filed a Motion to Reopen based on the pardon on March 11, 2024, less than 60 days after the Minnesota District Court set aside his conviction on January 12, 2024. Exs. 2, 7. In denying his Motion to Reopen, the Immigration Court relied soley on the fact that Mr. Ha had left the United States after having received a green card issued by USCIS and that his motion to reopen was "untimely." Ex. 3. The entirety of the decision by the Immigration Court was on a form checklist. *Id.* Mr. Ha promptly appealed to the Board of Immigration Appeals, and his appeal has been pending before the BIA for almost two years. Ex. 4.

LEGAL FRAMEWORK

I. There is No Reason to Arrest Mr. Ha Because His Pardon Makes Execution of His Order of Removal Unlawful

44. While Mr. Ha has sought to get the Immigration Court system to reopen his case and terminate the prior order of removal, there is good reason to believe that the Immigration and Nationality Act does not require a motion to reopen, if the basis of one's removal order is from a conviction has been pardoned. In other words, the provision under 8 U.S.C. § 1227(a)(2)(A)(iv) applies automatically and renders the underlying removal order invalid. There is no reason to read the statutory provisions as requiring the extra step to file for a "motion to reopen" when the underlying conviction has been pardoned.

45. Mr. Ha is no longer deportable because the full, unconditional executive pardon of Mr. Ha's 2002 conviction is an automatic waiver of deportability. For immigration purposes, a "conviction" occurs when a court has entered "a formal judgment of guilt of the alien … and the

judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed." 8 U.S.C. § 1101(a)(48)(A)(i)-(ii). When the basis for a non-citizen's deportability is a conviction for an aggravated felony that has later been provided a full and unconditional executive pardon, that ground of deportability no longer applies. 8 U.S.C. § 1227(a)(2)(A)(vi). Thus, an executive pardon constitutes an "automatic waiver of removability." In re Suh, 23 I. & N. Dec. 626, 627 (BIA 2003). Mr. Ha's pardon is one such case.

46. The sole basis for Mr. Ha's 2003 finding of removability was his 2002 conviction: the same conviction that has now been pardoned. Ex. 2. In Minnesota, authority to pardon criminal convictions rests in the Board of Pardons, made up of Minnesota's governor, attorney general, and the chief justice of its supreme court. Minn. Const. art. V, sec. 7. This pardon "wipes out the conviction itself" and "leaves the individual as innocent as if he had never committed the offense." State v. Meyer, 37 N.W.2d 3, 13. After this pardon, the government "is without jurisdiction or power to make deportation, or to engage in any consideration thereof, in relation to such a conviction." Taran v. United States, 266 F.2d 561, 566 (8th Cir. 1959). Because Mr. Ha received a pardon under this authority, his 2002 conviction has no further legal effect and falls within the Pardon Waiver Provision. See also Graham v. Garland, No. 20-2785, 2023 WL 8177111 (2d Cir. Nov. 27, 2023) (holding that the BIA had erred in failing to recognize the effect of an executive pardon from Connecticut on an individual's removal proceedings through the Pardon Waiver Provision). This conviction was the sole basis for Mr. Ha's 2003 finding of removability. Ex. 2.

47. Furthermore, a pardon of this nature is of the type contemplated by the Pardon Waiver Provision. The Pardon Waiver Provision applies to any "full and unconditional pardon by

the President of the United States or by the Governor of any of the several States." 8 U.S.C. § 1227(a)(2)(A)(vi). Within this is the vital distinction between "legislative pardons" and "executive pardons," with the distinction resting on "the nature of the pardon and whether the pardon is conferred automatically." Thompson v. Barr, 959 F.3d 476, 487 (1st Cir. 2020). Pardons in Minnesota are not received automatically and instead are conferred upon the discretion of the Board of Pardons, a body of which the governor of Minnesota is the head. *See* ex. 7.

48. The Board of Immigration Appeals considered a similar pardon structure to Minnesota's in Matter of D-, 7 I. & N. Dec. 476 (BIA 1957). In Matter of D-, Georgia's pardon structure involved a constitutionally created Board of Pardons and Paroles. Id. at 476. Despite the pardon not coming solely from Georgia's governor, it nonetheless fulfilled the requirements of the Pardon Waiver Provision because it was "the only unconditional executive pardon" available in the state. Id. at 477. The pardon Mr. Ha received is likewise the only executive pardon available in Minnesota and therefore also satisfies the requirements of the Pardon Waiver Provision. Because Mr. Ha has satisfied the Pardon Waiver Provision, his deportation order should not be executed. See Wiedersperg v. INS, 896 F.2d 1179, 1182 (9th Cir.1990) ("This and other courts have clearly established that the nullification of a conviction upon which deportability is premised deprives deportation of a legal basis.").

II. Respondents' Authority to Re-Detain Mr. Ha Is Subject to Regulatory Constraints

49. Following a final order of removal, ICE is directed by statute to detain an individual for ninety (90) days in order to effectuate removal. 8 U.S.C. § 1231(a)(2). If ICE fails to remove an individual during the ninety (90) day removal period, the law requires ICE to release the individual under conditions of supervision, including periodic reporting. 8 U.S.C. § 1231(a)(3)

("If the alien . . . is not removed within the removal period, the alien, pending removal, shall be subject to supervision."). If the individual was ordered removed on criminal grounds or is determined to pose a danger or flight risk, ICE "may" detain an individual beyond ninety days. 8 U.S.C. § 1231(a)(6).

50. However, 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 v. Davis, 533 U.S. 678, 690 (2001). 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. In Zadvydas, the Supreme Court established a presumptively reasonable 6 month period of detention. 533 U.S. at 701. If a detainee provides "good reason" to believe that his or her removal is not significantly likely in the reasonably foreseeable future, "the Government must respond with evidence sufficient to rebut that showing." Id.

51. After the expiration of the statutory ninety-day removal period, if "there is no significant likelihood the alien can be removed in the reasonably foreseeable future," the noncitizen shall be granted conditional release. 8 C.F.R § 241.13(a); 8 C.F.R § 241.13(g)(1) ("unless there are special circumstances justifying continued detention, the Service shall promptly make arrangements for the release of the alien subject to appropriate conditions"). Mr. Ha was released from prison directly into ICE custody, where he was detained for ninety days from June 2004 to September 2004. Ex. 2. After Respondents found that his removal to Vietnam was not significantly likely in the reasonably foreseeable future, he was released pursuant to Zadvydas and 8 C.F.R. § 241.13. Exs. 2, 5, 17.

52. Supervised release upon a finding that removal cannot be carried out is subject to Form I-220B, Order of Supervision, which specifies requirements that the noncitizen attend ICE check-ins and report changes in their address to ICE, among other conditions. 8 CFR 241.5(a).

53. Once an individual is released on OSUP, as Mr. Ha was, ICE cannot revoke such status without cause or adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3). When an OSUP is revoked, the noncitizen must "be notified of the reasons for revocation of his or her release" and must be afforded an "initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation." 8 CFR § 241.13(i)(3).

54. The majority of courts throughout the country hold that ICE regulations mandate important procedural safeguards against wrongful detention. Rodriguez Romero v. Ladwig, CV 25-1106-JWD-EWD, 2026 WL 321437, at *11 (M.D. La. Feb. 6, 2026) ("This conclusion is especially warranted considering the re-detention of a noncitizen following supervised release deprives them of personal liberty."); see also Villanueva, 801 F. Supp. 3d at 704 ("[E]ven if the government has the discretion to revoke [Petitioners'] supervision, [their] constitutionally protected liberty interests are implicated by [their] re-detention.").

II. The Due Process Clause Imposes Additional Limits on Respondents' Authority to Re-Detain Mr. Ha

55. In addition to the statutory and regulatory limits on ICE's authority to redetain noncitizens released on OSUP, the Due Process Clause demands a pre-deprivation hearing before ICE re-detention when the petitioner has developed a weighty liberty interest, like Mr. Ha.

A. Mr. Ha Has a Protected Liberty Interest in His Continued Release

56. Mr. Ha's liberty from immigration custody is protected by the Due Process Clause: "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 v. Davis, 533 U.S. 678, 690 (2001). Since 2006, Mr. Ha has exercised that freedom pursuant to his OSUP. Exs. 5–6, 11. He thus retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding reincarceration, which is not diminished by the supervised nature of his release. Zadvydas, 533 U.S. at 679 ("[A] noncitizen's liberty interest is not diminished by their lack of a legal right to live at large, for the choice at issue here is between imprisonment and supervision under release conditions that may not be violated and their liberty interest is strong enough to raise a serious constitutional problem with indefinite detention."); see also Young v. Harper, 520 U.S. 143, 14647 (1997); Gagnon v. Scarpelli, 411 U.S. 778, 781-82 (1973); Morrissey v. Brewer, 408 U.S. 471, 482-483 (1972).

57. In Morrissey, the Supreme Court recognized the interest that a parolee has in "his continued liberty." 408 U.S. at 481-82. In contrast to a person in detention, "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 a "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.

58. This basic principle—that individuals have a liberty interest in their continued release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. See, e.g., Young v. Harper, 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 v. Scarpelli, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process).

59. As the First Circuit has explained, when analyzing whether due process applies to protect the liberty interest of an individual subject to conditional release, "[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). When the person is at liberty to "be gainfully employed" and "be with family and friends and to form the other enduring attachments of normal life," and "expect[s] all of this to continue so long as they remain[] on good behavior," then release merits due process protection. Id. at 888, 890 (quoting Morrissey, 408 U.S. at 482, 92 S.Ct. 2593); 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).

60. Here, when this Court "'compar[es] the specific conditional release in [Petitioner's case], with the liberty interest in parole as characterized by Morrissey,'" it is clear that they are strikingly similar. See Gonzalez-Fuentes, 607 F.3d at 887. Just as in Morrissey, Mr. Ha'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 in his community, and spend time with family and friends. Morrissey, 408 U.S. at 482; Exs. 6, 11.

B. The Due Process Clause Requires a Hearing *Before* A Deprivation of Liberty

61. In Mr. Ha's particular case, the Due Process Clause of the Constitution makes it unlawful for Respondents to re-detain him without first providing a pre-deprivation hearing before a neutral decisionmaker to determine (1) whether his removal is reasonably foreseeable or (2) whether circumstances have changed since his release from ICE custody in 2006 such that detention would now be warranted on the basis that he is a danger or a flight risk.

62. "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 [Petitioner's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws in order to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. Id. at 1357. Under the 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)).

63. 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 certain situations can liberty be deprived without a pre-deprivation hearing. Zinermon v. Burch, 494 U.S. 113, 132 (1990) (“”[i]n situations where a predeprivation hearing is unduly burdensome in proportion to the liberty interest at stake, or where the [government] is truly unable to anticipate and prevent a random deprivation of a liberty interest, postdeprivation remedies might satisfy due process.”). Moreover, courts have held that “absent the necessity of quick action by the State or the impracticality of providing any predeprivation process, a post-deprivation hearing here would be constitutionally inadequate.” Haygood v. Younger, 769 F.2d 1350, 1357 (9th Cir. 1985).

64. In the immigration context, district courts have recognized that immigration detainees possess the same liberty interest as parolees already released who “have a constitutional due process right to a hearing *prior to* being re-incarcerated.” Guillermo M. R. v. Kaiser, 791 F.Supp.3d 1021 (N.D.Cal., 2025) (emphasis added) (“It is conceivable that due process might permit a delay in assessing individuals for release when they are initially detained by ICE upon their completion of a prison sentence, due to the high probability of imminent removal and thus the presumption of their heightened potential for flight. But…those presumptions are no longer applicable after a neutral adjudicator has performed an individualized assessment and found no flight risk or danger, and determined that removal is not imminent.”).

65. Because, in this case, the provision of a pre-deprivation hearing is both possible and valuable to preventing an erroneous deprivation of liberty, ICE must be required to provide Mr. Ha with notice and a hearing prior to re-arresting him. See Morrissey, 408 U.S. at 481-82; Haygood, 769 F.2d at 1355-56; Zinermon, 494 U.S. at 985. Under Mathews, “the balance weighs heavily in favor of [Petitioner’s] liberty” and requires a pre-deprivation hearing before a neutral

adjudicator. See e.g. Ahmed v. Noem, 2026 WL 764782 (E.D.Cal.), at 4 (ordering Respondents to "hold a pre-deprivation bond hearing before an immigration judge at which the government shall bear the burden of justifying petitioner's detention by clear and convincing evidence"); Singh v. Warden Of The Golden State Annex Detention Facility, 2026 WL 731053, at *7 (E.D. Cal. Mar. 16, 2026) (calling for 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"); Garcia v. Andrews, 2025 WL 1927596, at *6 (E.D. Cal. July 14, 2025) ("prior to any redetention…Petitioner is entitled to notice of the reasons for revocation of his release and a hearing before an immigration judge to determine whether detention is warranted"); Vargas v. Jennings, 2020 WL 5074312 (N.D. Cal. Aug. 23, 2020) ("respondents are enjoined from re-detaining petitioner unless and until he is afforded a pre-deprivation administrative hearing").

66. Petitioner Mr. Ha asserts that, here, (1) where his detention would be civil, (2) where he has been at liberty for 20 years, during which time he has diligently complied with ICE's reporting requirements on a regular basis, (3) where his removal is not reasonably foreseeable, (4) where no change in circumstances exist that would justify his detention, and (5) where the only circumstance that has changed is ICE's move to arrest as many people as possible because of the new administration, due process mandates that he receive notice and a hearing before a neutral adjudicator prior to any re-arrest.

II. The Mathews Test Requires that Respondents Conduct a Pre-Deprivation Hearing Before a Neutral Adjudicator Prior to Arresting and Re-Detaining Mr. Ha

A. Mr. Ha's Private Interest in His Continued Liberty is Profound

67. Under Morrissey, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." Morrissey, 408 U.S. at 482. See 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"). This principle applies with equal and arguably greater force to individuals like Mr. Ha released pursuant to civil immigration removal proceedings, rather than parolees released pursuant to a criminal conviction. See e.g., Rodriguez Romero v. Ladwig, CV 25-1106-JWD-EWD, 2026 WL 321437, at *11 (M.D. La. Feb. 6, 2026) ("[T]his Court now joins the multitude of courts within the Fifth Circuit and across the country recognizing that non-citizens have an "overwhelming liberty interest" in their "continued release under [an] Order of Supervision . . . that may not be removed without due process.") (quoting Gurung v. Warden, S. Texas Ice Processing Ctr., SA-25-CA-01614-XR, 2026 WL 93145, at *8 (W.D. Tex. Jan. 6, 2026)); Ramirez Tesara v. Wamsley, 800 F. Supp. 3d 1130, 1136 (W.D. Wash. 2025) (same); Ortega v. Bonnar, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) ("Ortega has already completed his criminal sentence, and at issue now is a civil detention. Given the civil context, his liberty interest is arguably greater than the interest of parolees in Morrissey.").

68. What is at stake in this case for Mr. Ha is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior release decision and be able to take away his physical freedom. 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 Clause protects"); Hamdi v. Rumsfeld, 542 U.S. 507, 531 (2004) ("We reaffirm today the fundamental nature of a citizen's right to be free from involuntary confinement by his own government without due process of law, and we weigh the opposing governmental interests against the curtailment of liberty that such confinement

entails."); Foucha v. Louisiana, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause.").

69. More specifically, Mr. Ha's private liberty interest equates to his ability to engage in activities "only made possible by Petitioner's freedom." Ramirez Tesara v. Wamsley, 800 F. Supp. 3d 1130, 1136 (W.D. Wash. 2025). These include the ability to live at home, work, and "be with family and friends and to form the other enduring attachments of normal life." 408 U.S. at 482 ("Though the [government] properly subjects [the parolee] to many restrictions not applicable to other citizens," such as monitoring, his "condition is very different from that of confinement in a prison.").

70. Mr. Ha's actions since his initial release show that not only has he reasonably relied on this interest, but that the interest formed over the past twenty years is weighty. Since his release from ICE custody, not only avoided any criminal activity, but has gotten married, had two U.S citizen children and built a small but successful business. Exs. 2, 6, 11.

71. Courts have repeatedly held that "the duration of [a noncitizen's] conditional release elevates and underscores [their] liberty interest." Singh v. Warden Of The Golden State Annex Detention Facility, 2026 WL 731053, at *5 (E.D. Cal. Mar. 16, 2026) (petitioner released for over three and a half years); see also Pinchi v. Noem, 2025 WL 2084921, at *3 (N.D. Cal. July 25, 2025) (in the past five years, petitioner developed "extensive relations of support and interdependence" that "underscore the high stakes of [his] liberty."); Ortega v. Bonnar, 415 F. Supp. 3d 963, 963 (N.D. Cal. 2019) (holding that petitioner had a substantial liberty interest where he had been released from custody for 18 months and was living with his wife, spending time with his mother and other family members, working as a bicycle mechanic, and developing

friendships); Ramirez Tesara v. Wamsley, 800 F. Supp. 3d 1130, 1136 (W.D. Wash. 2025) ("[Petitioner] and his partner had their first child together, who is a citizen of the United States). In Rodriguez Romero v. Ladwig, the court ordered the release for four noncitizens detained at a routine ICE check-in, as required by their OSUP, noting that "[m]ost of these Petitioners have lived in this country for decades." 2026 WL 321437, at *2 (M.D. La. Feb. 6, 2026) ("They have complied with all of ICE's conditions of supervised release. They have established lives, jobs, communities, and families, and have enjoyed relatively free lives in the United States.").

72. Mr. Ha has been released on an OSUP for *22 years*, during which time he reintegrated into society, met his ex-wife, had two children, and opened a successful small business. Exs. 2, 6, 11. His liberty interest is at least as strong as the Petitioners in the above mentioned cases, which must be weighed heavily when determining what process he is owed under the Constitution. See Mathews, 424 U.S. at 334-35.

B. Without a Due Process Hearing Prior to Re-Arrest, the Risk of an Erroneous Deprivation of Liberty is High, and Process in the Form of a Constitutionally Compliant Hearing Where ICE Carries the Burden of Justifying Re-Derention Decreases That Risk

73. Providing Mr. Ha with a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Mr. Ha can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the government must prove that his removal is reasonably foreseeable and otherwise whether circumstances have changed such that he is a danger to the community or a flight risk. See 8 CFR § 241.13(i); Rodriguez Romero v. Ladwig, 2026 WL 321437, at *8 (M.D. La. Feb. 6, 2026) ("the intent of the interview is to contest re-detention and avoid erroneous deprivation of a noncitizen's liberty").

74. The regulatory process affords Mr. Ha insufficient process given his profound liberty interest because Respondents can simply re-arrest him at any point if the agency desires to do so. ICE is permitted to re-detain a noncitizen released on an Order of Supervision if the noncitizen "violates any of the conditions of release," 8 C.F.R. § 241.13(i)(1), or "if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," 8 C.F.R. § 241.13(i)(2). "The regulations clearly indicate, upon the revocation of supervised release, it is [ICE's] burden to show a significant likelihood that the [noncitizen] may be removed." Escalante v. Noem, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025); see Tran v. Noem, No. 3:25-CV-02391-BTM-BLM, 2025 WL 3005347, at *2 (S.D. Cal. Oct. 27, 2025) ("§ 241.13(i)(2) requires that this determination is made before the removable alien has had his release revoked"). However, the regulations do not provide that Respondents meet this burden of proof in any proceeding before a neutral arbiter prior to making the arrest. Instead, Respondents can arrest Mr. Ha on the basis of a completely internal determination, and then delay his right to be heard before an ICE officer pursuant to 8 C.F.R. § 241.13(i)(3).

75. Under the regulatory scheme, Mr. Ha has no opportunity to appear before a *neutral arbiter* to contradict Respondent's unilateral determination that his detention is justified. 8 C.F.R. § 241.13(i) (authorizing revocation of release on an OSUP at the discretion of Respondents). The risk that Mr. Ha will be erroneously deprived of his liberty is considerable if ICE is permitted to reincarcerate him without hearing before a neutral immigration judge to demonstrate that changed circumstances render his removal significantly likely in the reasonably foreseeable future. District courts have held that Respondent's determination under 8 C.F.R. §

241.13(i)(1) must be *individualized* to the noncitizen and address the "particular obstacles" to removing that individual. Liu v. Carter, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025). Respondents cannot base their determination on facts about the designated country of removal, rather, they must point to concrete steps taken to secure the petitioner's own travel documents. Nguyen v. Hyde, 788 F. Supp. 3d 144, 152 (D. Mass. 2025). However, ICE's failure to make such an individualized determination and give the noncitizen notice explaining the decision has been documented in over 100 cases around the country. Ex. 15. Requiring a neutral arbiter to evaluate Respondent's determination that Mr. Ha should be re-detained pursuant to 8 C.F.R. § 241.13(i) would ensure that this individualized standard of proof is actually met.

76. After authorizing a one-sided custody determination, the regulations merely provide that Respondents must "conduct an initial informal interview *promptly* after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.13(i)(3). The vague and indefinite time frame to afford a noncitizen an opportunity to be heard has been abused by Respondents, who have repeatedly been found in violation of 8 C.F.R. § 241.13(i) by courts for failure to comply with the procedural requirements of timely notice and opportunity to be heard. See e.g., Ceesay v. Kurzdorfer, 781 F. Supp. 3d 137, 163-64 (W.D.N.Y. May 2, 2025) (collecting cases and rejecting the government's argument that an initial informal interview is only required if supervision is revoked based on a violation of conditions of release); K.E.O. v. Woosley, 2025 WL 2553394, at *4-6 (W.D. Ky. Sept. 4, 2025) (finding due process violation where ICE failed to provide notice and interview as required under 8 C.F.R. § 241.13(i)). In such cases, Respondents have re-detained noncitizens on OSUP and denied them an the informal interview proscribed by 8

C.F.R. § 241.13(i)(3) for multiple weeks, and even months, while they sit in detention. See e.g., Woosley, at *6 (holding that an informal interview provided three months after re-arrest was not "upon revocation"); see also ex. 15.

77. By contrast, the procedure Petitioner Mr. Ha seeks—a hearing before a neutral adjudicator *before* any re-arrest—will produce an accurate determination regarding the limited circumstances that could justify his arrest under 8 C.F.R. § 241.13(i), without subjecting him to the unnecessary risk of prolonged detention while Respondents delay the required informal interview.

78. Moreover, civil immigration detention is "nonpunitive in purpose and effect" and is usually justified under the Due Process Clause only when a noncitizen presents a risk of flight or danger to the community. See Zadvydas, 533 U.S. at 690. When a noncitizen has been previously found to qualify for supervised release by a neutral adjudicator, the risk of erroneous deprivation is high. Garcia v. Andrews, 2025 WL 1927596, at *5 (E.D. Cal. July 14, 2025); see Guillermo M. R. v. Kaiser, 791 F. Supp. 3d 1021, 1035 (N.D. Cal. 2025) ("allowing a neutral arbiter to review the facts would significantly reduce the risk of erroneous deprivation").

79. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews at 902 (internal quotations omitted). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under Mathews can be 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). The substantial risk of erroneous deprivation of liberty in this case is avoided by requiring Respondents to appear before an immigration judge and bear the burden of justifying Mr. Ha's re-detention by clear and

convincing evidence—rather than allowing Respondents to re-arrest Mr. Ha with no guarantee that Respondents will provide him an meaningful opportunity to be heard within the days, or even weeks, following his arrest.

C. The Government's Interest in Re-Detaining Mr. Ha Without First Providing a Pre-Deprivation Hearing Is Low and the Burden on the Government to Refrain from Re-Detaining Mr. Ha is Minimal

80. The government's interest in re-detaining Mr. Ha without a due process hearing is low, and when weighed against Mr. Ha's significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents from re-detaining Mr. Ha unless and until the government demonstrates that his removal is reasonably foreseeable. It becomes abundantly clear that the Mathews test favors Mr. Ha when the Court considers that the process he seeks— notice and a hearing prior to his re-detention—is a standard course of action for the government.

81. The only constitutional purposes for post-removal immigration detention under 8 U.S.C. § 1231(a) are "'ensuring the appearance of [noncitizens] at future immigration proceedings' and 'preventing danger to the community.'" Zadvydas, 533 U.S. at 690. Detaining a noncitizen to effectuate any other goal is without statutory basis and thus arbitrary and unconstitutional. Jackson v. Indiana, 406 U.S. 715, 737 (1972); Foucha v. Louisiana, 504 U.S. 71, 79 (1992). Redetention is only justified—and therefore only constitutional—if there has been a change in circumstances that leads Respondents to believe that the noncitizen has violated the conditions of their OSUP or that there is now a substantial likelihood of reasonably foreseeable future. 8 CFR. § 241.13 (i).

82. As immigration detention is civil, it can have no punitive purpose. Zadvydas at 679. The Supreme Court has made clear that indefinite detention of noncitizens who cannot be

removed to the country in the removal order is unconstitutional. Id. at 690. In this case, the government cannot plausibly assert that it has any basis for detaining Mr. Ha now when he has lived at liberty and fully complied with the terms of his release since 2006. Exs. 2, 6.

83. Providing Mr. Ha with a hearing before a neutral decisionmaker to determine whether his removal is reasonably foreseeable would impose only a de minimis burden on the government, because the government routinely conducts these reviews for individuals in Mr. Ha's same circumstances. 8 C.F.R. § 241.13(i); Singh v. Warden Of The Golden State Annex Detention Facility, 2026 WL 731053, at *6 (E.D. Cal. Mar. 16, 2026) ("Detention hearings in immigration courts are routine, and impose a 'minimal cost.'"). Respondent's interest in "successfully removing deportable non-citizens, ensuring compliance with their orders of supervision, and protecting the public" is not "significantly impaired by the requirement of a pre-deprivation hearing." Guillermo M. R. v. Kaiser, 791 F. Supp. 3d 1021, 1036 (N.D. Cal. 2025). Courts have acknowledged that the government's interest in delaying a hearing until after arresting a non-citizen "does not weigh heavily in the Mathews analysis." Jorge M.F. v. Jennings, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021). If Mr. Ha is only provided a hearing after he is re-detained by Respondents, "he will already have suffered the injury he is now seeking to avoid." Id.

84. Since Respondents are required to provide Mr. Ha with an opportunity to be heard by 8 C.F.R. § 241.13(i) anyway—whether on a pre-deprivation or post-deprivation basis—there is no additional administrative cost to affording Mr. Ha a pre-deprivation before arresting him. In fact, "a pre-deprivation hearing could reduce administrative costs by potentially avoiding an erroneous deprivation of liberty, which would save the costs of unnecessary detention." Guillermo M. R. v. Kaiser at 1037; Hernandez v. Sessions, 872 F.3d 976, 996 (9th Cir. 2017) ("The costs to

the public of immigration detention are staggering…supervised release programs cost much less by comparison.") (interal quotations omitted). The "fiscal and administrative burdens" that a pre-deprivation hearing would impose is nonexistent in this case. See Mathews, 424 U.S. at 334-35. Mr. Ha does not seek a unique or expensive form of process, but rather a routine hearing regarding whether his release should be revoked and whether he should be re-incarcerated. Enjoining Mr. Ha's re-arrest until he is provided a hearing being a neutral decisionmaker is far less costly and burdensome for the government than detaining him first and holding a hearing later.

85. The government's interest in detaining him to ensure his appearance at immigration proceedings is low. Mr. Ha's post-release conduct in the form of full compliance with his check-in requirements confirms that he is likely to present himself at any future ICE appearances, as he always has done. Exs. 2, 6. Moreover, nothing has changed regarding the likelihood of Mr. Ha's removal to Vietnam.

86. 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.[5]

CLAIMS FOR RELIEF

COUNT I
Procedural Due Process, U.S. Const. amend. V – Unconstitutionally Indefinite Detention

[5] *See e.g.,* As Immigration Officials Ramp Up Migrant Arrests, New Tactics Emerge (Jan. 28, 2026), https://www.houstonpublicmedia.org/articles/news/politics/immigration/2026/01/28/541911/immigration-arrests-quotas-north-texas-dallas-ice-tactics/.

87. Petitioner incorporates by reference all preceding paragraphs as if fully set forth herein.

88. Mr. Ha has Due Process rights as a resident of the United States. Zadvydas v. Davis, 533 U.S. 678, 693 (2001).

89. Mr. Ha has a vested liberty interest in his supervised release. Any attempt to deprive Mr. Ha of that liberty interest is thus subject to the requirements of due process, including a due process hearing before a neutral arbiter prior to his detention.

90. Mr. Ha's redetention without a pre-deprivation hearing would be a violation of his Due Process rights because all three Mathews factors favor Mr. Ha. Mr. Ha has a profound liberty interest in his continued supervised release. Because of Respondents' repeated refusal to follow procedural requirements, there is a significant risk of erroneous deprivation of Mr. Ha's liberty without the additional safeguard of a pre-deprivation hearing before a neutral arbitrator. And the government has little additional interest in detaining him prior to a hearing instead of after determining whether his detention would be lawful.

91. This Court must therefore order that the government provide Mr. Ha with a hearing before a neutral adjudicator prior to any re-detention. At that hearing, the adjudicator must determine, *inter alia*, whether Mr. Ha's removal is reasonably foreseeable and, if not, whether circumstances have changed such that Mr. Ha poses a danger to the public or presents a flight risk. During any custody redetermination hearing that occurs, the neutral adjudicator must consider alternatives to detention when determining whether Mr. Ha's re-detention is warranted.

COUNT II

Substantive Due Process, U.S. Cont. amend. V

92. Petitioner incorporates by reference all preceding paragraphs as if fully set forth herein.

93. The Due Process Clause of the Fifth Amendment states that no person "shall be deprived of … liberty…without due process of law." U.S. Const. amend. V.

94. Mr. Ha has a vested liberty interest in his continued supervised release and freedom from detention that cannot be deprived under the Constitution without a sufficiently strong justification from the government.

95. Because immigration detention is civil, it must be related to a nonpunitive purpose–either to effectuate removal or to prevent danger to the community or flight risk. Zadvydas, 533 U.S. at 690-91. Thus, for any re-detention of Mr. Ha to be constitutional, the government must show before a neutral adjudicator that either Mr. Ha's removal is reasonably foreseeable or that circumstances have changed such that he poses either a danger or a flight risk. Absent such a showing, the government may not re-detain Mr. Ha under the Constitution.

96. The government has made no showing that it can reasonably effectuate Mr. Ha's removal to Vietnam. It has not been able to do so for over twenty years, and the treaty governing repatriation of Vietnamese nationals who entered the United States prior to 1995 is still in place. Ex. 17. He has also been granted a full pardon and his removal would be precluded by the pardon wavier clause of the INA under 8 U.S.C. § 1227(a)(2)(A)(iv). Ex. 7. Nor does Mr. Ha pose a danger to his community or a flight risk. He has established a full life in his community. Exs. 6, 11. He has two U.S. citizen children, and he runs a small business that demands his constant attention. Exs. 6, 8–9, 11.

97. This Court must therefore order a pre-deprivation hearing before a neutral adjudicator to determine whether any of the stated conditions for detention are met. If the adjudicator determines that there is no constitutionally valid reason for Mr. Ha's detention, this Court must order that Mr. Ha not be re-detained.

COUNT III

Procedural Due Process, U.S. Const. amend. V – Detention When Removal is has been Waived by the Pardon Clause of the INA violates Due Process

98. Petitioner incorporates by reference all preceding paragraphs as if fully set forth herein.

99. The purpose of immigration detention under 8 U.S.C. § 1241 is limited to effectuate removal. Zadvydas v. Davis, 533 U.S. 678, 690 (2001). The Due Process Clause of the Fifth Amendment requires that any curtailing of Mr. Ha's liberty must be narrowly tailored to the government interest, and in this case it would be to effectuate removal.

100. Mr. Ha's 2002 conviction — the sole predicate for his 2003 order of removal — was fully and unconditionally pardoned by the Governor of Minnesota. Ex. 7. By the mandatory operation of 8 U.S.C. § 1227(a)(2)(A)(v), the criminal ground of deportability underlying that order "shall not apply" to Mr. Ha, and the BIA has confirmed that such a pardon constitutes an "automatic waiver of removability." *In re Suh*, 23 I. & N. Dec. 626, 627 (BIA 2003). Because the pardon extinguishes the sole legal predicate for his removal by operation of statute, there is no remaining lawful basis upon which the government may execute his removal order.

101. Where removal is legally foreclosed — not merely practically difficult — there is no constitutionally permissible purpose served by detention. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("[D]etention no longer 'bear[s] [a] reasonable relation to the purpose for which the individual [was] committed'" where its goal is no longer attainable). A legal bar to removal is more absolute than a practical one: no change in diplomatic relations, no travel document, and no lapse of time can restore the government's authority to remove Mr. Ha on a ground Congress has declared shall not apply. Any detention of Mr. Ha therefore serves no legitimate purpose contemplated by § 1231(a)(6) and violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Mr. Ha requests that this Court:

a. Assume jurisdiction over this matter;

b. Enjoin ICE from re-arresting Petitioner unless and until a pre-deprivation hearing can be held before a neutral adjudicator to determine whether his re-incarceration would be lawful because the government has shown that circumstances have changed such that removal is now reasonably foreseeable;

c. Enjoin the Respondent from detaining the petitioner while his Motion To Reopen based on his pardon has been fully litigated.

d. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

DATED: March 24, 2026

s/ R. Linus Chan
Linus Chan, Reg. No. 0403311

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

My name is Tai Thien Ha 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. I am currently on an Order of Supervision and am scheduled to check in with ICE ERO in Denver Colorado on March 25, 2026.

Dated: March 23, 2026

Respectfully submitted,

