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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Maria Rocio Caso Flores De Araujo,

Petitioner,

v.

Christopher LAROSE, in his official capacity, Warden of OTAY MESA DETENTION CENTER;

Gregory ARCHAMBEAULT, in his official capacity, Field Office Director of ICE's San Diego Field Office;

TODD LYONS, in his official capacity, Acting Director of ICE;

MARKWAYNE MULLIN, in his official capacity, Secretary, U.S. Department of Homeland Security;

TODD BLANCHE, in his official capacity, Acting Attorney General of the United States,

Respondents.

Case No. '26CV4649 DMS GC

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

IMMIGRATION HABEAS CASE

Petitioner Maria Rocio Caso Flores De Araujo ("Petitioner" or "Ms. Caso") respectfully petitions this Honorable Court for a writ of habeas corpus to remedy their unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner is a 57-year-old person who is citizen of Peru. Petitioner entered the United States as a seeking asylum in late 2022. On February 18, 2026, Petitioner was ordered removed to Ecuador or Honduras based on the bare allegation from the Department of Homeland Security ("DHS" or "the Department") that an asylum cooperation agreements existed and that she would be able to fight her asylum case in Ecuador or Honduras. That has not happened; is exceptionally unlikely to happen; and was simply a way to avoid hearing the merits of Ms. Caso's claim.

2. Now, more than eight months after being detained at a scheduled ICE check-in, with an order of removal to a country where Ms. Caso holds no status whatsoever, based on a diplomatic notes concerning agreements which have not been implemented, it is manifestly obvious that removal is not reasonably foreseeable, and she should be released.

3. Petitioner is presently detained at the OTAY MESA DETENTION CENTER. To date, Petitioner has spent nearly 250 days in immigration custody during ICE's unsuccessful attempts to remove her to Ecuador or Honduras—countries to which she has no status and where she has genuine fears of persecution based on her gender identity.

4. Petitioner files this habeas petition to seek release from ICE custody because Petitioner's removal is not reasonably foreseeable and because ICE's continued detention violates Petitioner's due process rights. Petitioner also seeks to enjoin Respondents from removing her to a third country without notice and an opportunity to be heard as required by the Constitution and the Immigration and Nationality Act ("INA").

JURISDICTION

5. Petitioner is currently detained in the custody of Respondents at the OTAY MESA DETENTION CENTER, located at 7488 Calzada De La Fuente, San Diego, CA 92154.

6. This Court has jurisdiction over the present action pursuant to Art. 1 § 9, cl. 2 of the United States Constitution (the Suspension Clause); 28 U.S.C. § 2241(habeas corpus); 28 U.S.C. § 1651 (All Writs Act); and 28 U.S.C. § 1331 (federal question). This action arises under the Constitution of the United States, the INA, 8 U.S.C. §§ 1101-1537, and the Administrative Procedures Act ("APA"), 5 U.S.C. §§ 500-596, 701-706. The Court may grant relief under the habeas corpus statutes, 28 U.S.C. §§ 2241-2251, the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, the All Writs Act, 28 U.S.C. § 1651, and the Court's inherent equitable powers.

VENUE

7. Venue is proper in this District pursuant to 28 U.S.C. § 2241(a) because this is the district in which Petitioner is confined at the time of filing. *See Ex Parte Endo*, 323 U.S. 283, 306 (1944).

8. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States, acting in their official capacities; a substantial part of the events or omissions giving rise to the claim occurred in this District; Petitioner is currently detained in this District; and there is no real property involved in this action.

REQUIREMENTS OF 28 U.S.C. § 2243

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

10. 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), *abrogated on other grounds by Wainwright v. Sykes*, 433, U.S. 72 (1977).

PARTIES

11. Petitioner entered the United States in late 2022, and has lived in the United States since. Petitioner has an order of removal, with Ecuador or Honduras as the country designated for removal, which she is currently appealing before the Board of Immigration Appeals ("BIA"). Petitioner is currently detained by ICE at the OTAY MESA DETENTION CENTER.

12. Respondent Christopher LAROSE is the facility administrator of OTAY MESA DETENTION CENTER. Respondent LAROSE is the warden of the facility and is the immediate physical custodian of Petitioner. Respondent LAROSE is named in their official capacity.

13. Respondent Gregory ARCHAMBEAULT is the Acting Field Office Director for the San Diego Field Office of ICE Enforcement and Removal Operations. As such, Respondent ARCHAMBEAULT oversees the administration of immigration laws and execution of immigration enforcement and detention policy within ICE's San Diego Area of Responsibility, including the detention of Petitioner. Respondent Marin is named in his official capacity.

14. Respondent TODD LYONS is the Acting Director of U.S. Immigration and Customs Enforcement. Respondent LYONS is responsible for ICE's policies, practices, and procedures, including those relating to the detention of noncitizens. He is named in his official capacity.

15. Respondent MARKWAYNE MULLIN is the Secretary of the U.S. Department of Homeland Security ("DHS"), an agency of the United States. Respondent MULLIN is responsible for overseeing DHS and its sub-agencies, including ICE, and has ultimate responsibility over the detention of noncitizens in civil immigration custody. *See* 8 U.S.C. § 1103(a). Respondent MULLIN is named in his official capacity.

16. Respondent TODD BLANCHE is the Acting Attorney General of the United States and the head of the Department of Justice, which encompasses the Board of Immigration Appeals ("Board") and immigration courts as part of its sub-agency, the Executive Office for Immigration Review ("EOIR"). As Attorney General, Respondent BLANCHE is responsible for overseeing the adjudication of removal and bond hearings. *See* 8 U.S.C. § 1103(g). The

Attorney General delegates this responsibility to the EOIR, which administers the immigration courts and the Board. Respondent BLANCHE is named in his official capacity.

STATEMENT OF FACTS

I. Petitioner's Facts

17. Petitioner was born in Peru. She entered into the United States in late 2022, fleeing the [redacted]

18. Since arriving to the United States, Petitioner timely filed an application for asylum, and unfailingly attended every required ICE check-in.

19. Petitioner was abruptly detained in September 2025 as she attended a scheduled ICE check-in. She was not provided any explanation or reason for her detention, nor an opportunity to consult counsel or respond.

20. On information and belief, ICE knows that Petitioner cannot be removed to Ecuador or Honduras and has no realistic probability of deporting her. What ICE can do, however, is use her extended detention and legally dubious removal order to coerce and intimidate him into leaving without any process whatsoever.

II. Third Country Removals without Fair Notice or an Opportunity to Contest

21. Since January 2025, federal government Respondents have developed and implemented a policy and practice of removing individuals to third countries, without providing adequate notice or an opportunity to contest the removal in immigration court, in violation of the Fifth Amendment, the INA, and governing regulations.

22. Respondents have negotiated with more than 20 countries to accept deportees from other nations in exchange for funding and other benefits. *See* Third Country Deportation Watch, https://www.thirdcountrydeportationwatch.org/ (last visited Jan. 30, 2026). Most of these countries have egregious track records of human rights abuses. *See generally* Tobi Raji & Sammy Westfall, *These countries are taking millions from Trump to accept U.S. deportees,* Wash. Post (Nov. 25, 2025), https://www.washingtonpost.com/world/2025/11/25/deportation-third-country-removals-trump/. For example, in March 2025, the United States paid approximately $6 million to El Salvador to arbitrarily and unlawfully detain 250 Venezuelan

migrants in CECOT, a notorious maximum-security prison known for gross human rights abuses. *Id; see also* Human Rights Watch, "*You Have Arrived in Hell" Torture and Other Abuses Against Venezuelans in El Salvador's Mega Prison* (Nov. 12, 2025), https://www.hrw.org/report/2025/11/12/you-have-arrived-in-hell/torture-and-other-abuses-against-venezuelans-in-el. In May 2025, the United States paid Eswatini $5.1 million to accept up to 160 third country deportees. Raji, *supra.* Deportees to Eswatini, which include Vietnamese, Laotian, Yemeni, Cuban, and Jamaican nationals, are detained incommunicado in a maximum-security prison. *See* Noah Lanard, *ICE Is Sending People to a Prison in Africa's Only Absolute Monarchy*, Mother Jones (Oct. 8, 2025), https://www.motherjones.com/politics/2025/10/ice-third-country-deportation-monarchy-eswatini-legal-black-hole-trump/. Ghana agreed to accept dozens of non-nationals who are detained at military camps, illegally dumped into other countries without identification, or subjected to chain refoulment, which is the practice of returning an individual to their country of origin where they face persecution or torture.[1] *See* Sarah Stillman, *Disappeared to a Foreign Prison*, The New Yorker (Nov. 24, 2025), https://www.newyorker.com/magazine/2025/12/01/disappeared-to-a-foreign-prison. Although no public agreement exists, the visa restrictions on Ghanaian nationals and the tariffs on Ghanaian exports have been lifted since Ghana started accepting third country removals. *See* Third Country Deportation Watch - Ghana, https://www.thirdcountrydeportationwatch.org/ghana (last visited Jan. 30, 2026).

[1] "[M]any of the countries who have received third-country deportees from the United States have proceeded to send them back to their home countries – including people who had specifically received protection in the United States from being sent back there. Officials in countries who have agreed to accept third-country migrants have said that the aim of the agreement is to take them temporarily before sending them home. Federal judges have accused the Trump administration of deliberately engaging in chain refoulement as an 'end-run' around international law." American Immigration Council, What Are Third-Country Removals? Understanding Their Use in U.S. Immigration Policy (Dec. 4, 2025), https://www.americanimmigrationcouncil.org/fact-sheet/what-are-third-country-removals-factsheet/.

23. On March 23, 2025, several non-citizens filed a putative nationwide class action to challenge the practice of removing noncitizens to countries not designated on their removal order, commonly referred to as "third country removals." *See D.V.D. v. U.S. Dep't of Homeland Sec.*, 786 F. Supp. 3d 223, 228 (D. Mass. 2025). The district court granted a preliminary injunction for a certified class that blocked third country removals without notice and a meaningful opportunity to seek Convention Against Torture ("CAT") protections.[2] *Id.* at 229. Thereafter, the Government failed to comply with the *D.V.D.* injunction on multiple occasions. *Id.* at 229, 231-33. On June 23, 2025, the Supreme Court granted the government's motion to stay the *D.V.D.* injunction in a summary order that did not provide any reasoning. *See Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2153 (2025).[3]

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[2] The United States is a signatory to the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, which means that it cannot return a noncitizen to a country where they are likely to face torture. *See* Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105-277, § 2242(a), 112 Stat. 2681 (1998) (codified as Note to 8 U.S.C. § 1231) (codifying protections under the Convention Against Torture and prohibiting the removal of an alien to any country where they would likely be tortured); *see also* 28 C.F.R. § 200.1 ("A removal order . . . shall not be executed in circumstances that would violate Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment . . . .").

[3] Multiple courts have held that members of the *D.V.D.* certified class are not precluded from seeking individual relief from unlawful third-country removals. *See, e.g., Nguyen v. Scott*, 796 F. Supp. 3d 703, 730-32 (W.D. Wash. 2025) (holding that petitioner could bring an individual third-country removal claim for injunctive relief because it is not duplicative of the systemic claim in the *D.V.D.* litigation that only focused on the ability to bring CAT claims); *A.A.M. v. Andrews,* No. 1:25-cv-01514-DC-DMC (HC), 2025 WL 3485219, at *6-7 (E.D. Cal. Dec. 4, 2025) (noting that "numerous courts in the Ninth Circuit have issued injunctive relief requiring identical, or substantially similar, third-country removal procedures as those articulated in the *D.V.D.* preliminary injunction" and holding that petitioner's individual claim for injunctive relief is not barred by the "systemic reform" injunctive relief sought by the *D.V.D.* class action, especially where the claims are not identical); *M.T.M. v. Andrews*, No. 2:25-CV-08208-SRM-PD, 2025 WL 2995053, at *2 (C.D. Cal. Sept. 24, 2025) (declining to limit preliminary injunctive relief based on the pending *D.V.D.* case); *Sagastizado v. Noem,* 802 F. Supp. 3d 992, 1006-08 (S.D. Tex. 2025) (declining to dismiss individual petitioner's third-country removal claims despite petitioner's membership in the *D.V.D.* class).

24. On July 9, 2025, ICE's Acting Director Todd Lyons issued a policy memo ("Lyons memo") to all ICE employees that states:

> Effective immediately . . . [i]f the United States has received diplomatic assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured, and if the Department of State believes those assurances to be credible, the alien may be removed [to a third country] without the need for further procedures.

Exh. A (Lyons Memo). Thus, under current policy, ICE is empowered to remove any noncitizen with a final order of removal to a third country with ***absolutely no notice or opportunity to be heard***, provided that the State Department finds diplomatic assurances to be credible. This is not sufficient process; for example, the State Department found diplomatic assurances from South Sudan to be credible, despite well-documented threats and a "Do not travel" advisory for United States citizens. *See Nguyen v. Scott*, 796 F. Supp. 3d 703, 716 (W.D. Wash. 2025); *see also* U.S. Dep't of State, South Sudan Travel Advisory Home Page, https://travel.state.gov/en/international-travel/travel-advisories/south-sudan.html (last visited Feb. 2, 2026). As of January 2026, six out of eight of the individuals removed remain detained. Third Country Deportation Watch – South Sudan, https://www.thirdcountrydeportationwatch.org/south-sudan (last visited Feb. 2, 2026).

25. If no assurances are made or if the assurances are not believed to be credible, ICE's new standard procedure is as follows:

- Serve a notice of removal on the detained individual, but not on their counsel of record;
- Do not affirmatively ask whether the noncitizen is afraid of being removed to the third country;
- If the noncitizen was "provided reasonable means and opportunity to speak with an attorney," then remove them to the third country in as few as ***6 hours*** after serving the notice of removal;
- If the noncitizen does not affirmatively state a fear of persecution or torture, regardless of whether they had the opportunity to speak to counsel, then remove them in as few as ***24 hours*** after serving the notice of removal;
- If the noncitizen affirmatively states a fear if removed to the third country, USCIS will screen the noncitizen within 24 hours and unless the noncitizen—again without any mention of right to counsel—establishes they "would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal," the noncitizen will be removed;

- Only if a noncitizen affirmatively states a fear of removal to a third country and, on less than 24 hours' notice and without access to counsel, establishes that they are more likely than not to be persecuted or tortured upon removal, will USCIS refer the matter to immigration court for further proceeding … or "[a]lternatively, ICE may choose to designate another country for removal."

See Exh. A (Lyons memo). Thus, even in cases where there are ***no assurances (or inadequate assurances)*** that a noncitizen will not be persecuted or tortured, there is no meaningful opportunity to contest third-country removal in reopened proceedings, which is required by constitutional due process and statute. *See Nguyen,* 796 F. Supp. 3d at 727 ("[Due process and the governing statute] cannot be satisfied by simply allowing the noncitizen to file a motion to reopen their removal proceedings; rather, the removal proceedings must be reopened so that a hearing can be held" (citing *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1011 (W.D. Wash. 2019)).

26. Noncitizens—like Petitioner—with a removal order are subject to the ICE policies on third-country removal set forth in the Lyons Memo. Respondents have deported noncitizens with final orders of removal to third countries without first attempting to remove them to their designated country of removal. *See, e.g. Nguyen v. Scott*, 796 F. Supp. 3d at 716-17 (identifying multiple instances of third country removal of Vietnamese nationals without efforts to repatriate to Vietnam); *J.R. v. Bostock*, 796. F. Supp. 3d 684, 688, 691 (W.D. Wash. Nov. 17, 2025) (enjoining government from removing or deporting petitioner to a third country where government twice attempted to remove petitioner to a third country even though the designated country of removal had indicated it would accept him).

27. Here, the risk of unlawful removal is exceptionally high because ICE has already attempted entered a removal order to Ecuador for Ms. Caso.

LEGAL FRAMEWORK

I. The Retroactive Application of the Asylum Cooperation Agreements ("ACA") Violates Due Process

28. Apply the ACA to Petitioner would constitute an impermissible retroactive application of the law. United States jurisprudence has a "deeply rooted" presumption against the retroactive application of legislation, grounded in the belief that "settled expectations should not be lightly disrupted." *Landgraf v. USI Film Products*, 511 U.S. 244, 265 (1994). The Supreme

Court requires a "clear indication from Congress that it intended such a result" to overcome this presumption. *INS v. St. Cyr*, 533 U.S. 289, 316 (2001).

29. Petitioner entered the United States in December 2022 and filed for asylum—years before the ACAs took effect in mid-2025. The governing statute, INA § 208(a)(2)(A), 8 U.S.C. § 1158(a)(2)(A), contains no express language authorizing the retroactive application of ACAs to pending asylum applications. Applying the ACA bar now attaches severe and unforeseen legal consequences to the past act of seeking asylum, violating fundamental principles of fair notice and due process.

30. Even if pretermission were appropriate here, it could only be granted when facts are undisputed. It was improper here. An IJ may only pretermit protection applications if the factual allegations, "viewed in the light most favorable to the respondent," do not establish prima facie eligibility. *Matter of H-A-A-V-*, 29 I&N Dec. 233, 238 (BIA 2025).

31. Ms. Caso submitted evidence of material facts concerning the safety of Ecuador or Honduras, showing that the issue was sharply in dispute. Petitioner submitted evidence indicating that migrants in Ecuador and Honduras face significant dangers, including gender-based violence, human trafficking, and forced recruitment into criminal activity. Given these complex, disputed issues of fact, pretermission without a full evidentiary hearing was entirely inappropriate and a violation of Ms. Caso's due process rights.

II. Post-Removal Order Detention is Constitutionally Suspect and not Authorized by Statute where Removal is not Reasonably Foreseeable

32. Even if Ms. Caso's case did not remain on appeal at the BIA, he would still be entitled to be released from detention.

33. The INA provides that after a removal order becomes final, the government "shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). During this 90-day initial removal period, the government "shall" detain the noncitizen. *Id.* § 1231(a)(2)(A). 8 U.S.C. § 1231(a)(6) allows the government to detain certain enumerated classes of immigrants—including those ordered removed due to criminal convictions—beyond the initial 90-day removal period.

34. In *Zadvydas v. Davis*, the Court addressed the question of how long DHS can detain a noncitizen pursuant to § 1231(a)(6). 533 U.S. 678, 682 (2001). The Court first highlighted that "[f]reedom from . . . government custody . . . lies at the heart of the liberty that [the Due Process] Clause protects" and that civil detention violates the Due Process Clause outside of "certain special and 'narrow' nonpunitive 'circumstances' . . . where a special justification . . . outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (internal citations omitted). Under the principle of constitutional avoidance, the *Zadvydas* Court then rejected the government's position that § 1231(a)(6) permits indefinite civil detention and determined that § 1231(a)(6) no longer authorizes detention when "removal is not reasonably foreseeable." *Id.* at 699; *see also id.* at 690 (a "statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem").

35. The Court went on to establish a framework for future challenges to § 1231(a)(6) detention. "[F]or the sake of uniform administration in the federal courts" and because "Congress previously doubted the constitutionality of detention for more than six months," the Court found that detention was "presumptively reasonable" for the first six months of post-removal order detention. *Id.* at 700-01. When the "presumptively reasonable" six-month period ends, noncitizens seeking release from custody bear the initial burden of providing "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. Once that initial showing is made, the burden shifts to DHS to respond with sufficient rebuttal evidence. *See id.* The Court further held that "for detention to remain reasonable, as the period of [post-order] confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.*

36. Courts consider the cumulative length of post-order detention when determining if post-order detention exceeds the six-month "presumptively reasonable" period. *See, e.g., Nguyen v. Scott,* 796 F. Supp. 703, 721-22 (W.D. Wash. 2025); *S.F. v. Bostock*, No. 3:25-cv-01084-MTK, 2025 WL 2841022, at *4 (D. Or. Oct. 7, 2025) (the government "concede[s] that Petitioner's detention should be measured cumulatively"); *Chen v. Holder*, No. 6:14-2530, 2015 WL 13236635, at *2 (W.D. La. Nov. 20, 2015) ("Surely, under the reasoning of *Zadvydas*, a series

of releases and re-detentions by the government . . . in essence results in an indefinite period of detention"). Notably, the six-month period of presumptive reasonableness set out in *Zadvydas* "outlined a 'guide' for approaching these detention challenges . . . not a prohibition on claims challenging detention less than six months." *Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018).

III. Ms. Caso Has a Protected Interest in Her Liberty

37. The initial question in any procedural due process claim is whether a protected liberty interest exists. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989). It is well-established that all people within the U.S., including noncitizens subject to a final order of removal, possess a liberty interest in their physical freedom. *See Zadvydas*, 533 U.S. at 693 ("the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent"); *id.* at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause protects" (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 144 ("This case raises the question of whether a noncitizen subject to a final order of removal and released on an order of supervision is entitled to due process when the government decides—in its discretion—to revoke that release. The Court answers that question simply and forcefully: Yes.").

38. Supreme Court precedent also makes clear that individuals whose physical freedom is qualified in some way nonetheless have a liberty interest that "is valuable and must be seen as within the protection" of the Due Process Clause. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (explaining that a parolee is able to live a "relatively normal life" and the termination of parole "inflicts a grievous loss on the parolee and often on others" (internal quotation marks omitted)); *see also Young v. Harper*, 520 U.S. 143, 147-153 (1997) (following *Morrissey* and holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-detention process). Courts in this Circuit have

repeatedly applied the *Morrissey* line of cases to the immigration context and held that individuals on conditional release from ICE custody have a protected liberty interest in their continued release. *See, e.g., Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1030 (N.D. Cal. 2025) (holding that the petitioner, an individual who had been out of immigration custody for more than two years on conditional release, had a "liberty interest in his continued release" that is "arguably greater than the interest of parolees in *Morrissey*" "given the civil context").

39. Once it is clear that a protected liberty interest exists, courts then assess what process is due, using the flexible balancing test set forth in *Mathews*, 424 U.S. at 335. Under the *Mathews* test, the Court assesses three factors: "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." *Mathews*, 424 U.S. at 335. "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." *Morrissey*, 408 U.S. at 481-82.

40. Importantly, the Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Post-deprivation process only comports with due process in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide." *Id.* at 128. Further, only where "one of the variables in the *Mathews* equation—the value of pre-deprivation safeguards—is negligible in preventing" an erroneous deprivation can the government avoid providing pre-deprivation process. *Id.*; *see also Lynch v. Baxley*, 744 F.2d 1452, 1457-62 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted).

41. Further, even in circumstances lacking a prior detention, release, and re-detention, noncitizens already in the country who have "established a life here—albeit without authorization," possess "a strong liberty interest in their freedom from detention." *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *4 (W.D. Tex. Oct. 21, 2025). This is "consistent with the longstanding principle that due process applies to those who are present in the interior of the United States, regardless of their citizenship status." *Id.*

A. Substantive due process requirements

42. Substantive due process places limits on civil immigration detention in addition to those imposed by procedural due process. *See Reno v. Flores*, 507 U.S. 292, 302 (1993) (holding that substantive due process "forbids the government to infringe certain 'fundamental' liberty interests *at all,* no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest" (emphasis in original)). Substantive due process prohibits civil detention that is punitive in purpose or in effect.

43. Further, when a noncitizen was previously released, which in and of itself reflects a determination that the individual is neither a flight risk nor a danger to the community, there is "a very high risk of erroneous deprivation of liberty" absent an individualized custody determination. *Cruz-Reyes v. Bondi*, No. 5:26-CV-60, 2026 WL 332315, at *7 (S.D. Tex. Feb. 3, 2026). "Without an individualized hearing, there is substantial risk that noncitizens with a substantial presence in the United States who pose neither flight risk nor danger to the community will be detained." *Aliaga Za-mora v. Bondi*, No. SA-26-CA-00447-XR, 2026 WL 693054, at *13 (W.D. Tex. Mar. 10, 2026). Absent "evidence of a change in the individualized circumstances, there is no reason to believe that re-detention serves any permissible purpose of confinement." *Id.*

44. The only two permissible purposes for civil immigration detention are to prevent flight and to protect the community from danger. *See Zadvydas*, 533 U.S. at 690-91. Thus, where immigration detention is "excessive in relation" to the government's permissible purpose of reducing risk of flight or danger to the community, or any such risk could be adequately mitigated by "alternative and less harsh methods," detention violates substantive due process.

Zadvydas, 533 U.S. at 690-91; *see also Doe v. Becerra*, 732 F. Supp. 3d 1071, 1088-90 (N.D. Cal. 2024); *Doe v. Chestnut*, --- F. Supp. 3d ---, No. 1:24-cv-00943-EPG-HC, 2025 WL 3240400, at *22 (E.D. Cal. Nov. 20, 2025).

IV. Right to Constitutionally Adequate Procedures Prior to Third-Country Removal

45. The INA delineates the proper procedures by which a country may be designated for removal. *See* 8 U.S.C. § 1231(b). These procedures move in incremental steps. First, an individual has a right to designate the country to which they want to be removed. § 1231(b)(2)(A). The designation may be disregarded under certain circumstances, including when the country refuses to accept the individual. § 1231(b)(2)(C). Second, if the individual is not removed to the country they designated, the government shall remove the individual to the country where they are a "subject, national, or citizen" unless the government of that country is "not willing to accept the alien into the country" or fails to provide a response about whether it will accept the individual within 30 days of inquiry or a reasonable period of time. § 1231(b)(2)(D). Third, if the individual is not removed to either the country they designated or the country where they are a subject, national, or citizen, then the government shall remove them to countries where they have some connection, such as the country where they were born, a country where they resided before they came to the United States, or the country from which they were admitted to the United States. § 1231(b)(2)(E)(i)-(vi). Only if it is "impracticable, inadvisable, or impossible" to remove the individual to any of these countries may the government seek to remove the individual to "another country whose government will accept [them] into that country." § 1231(b)(2)(E)(vii).

46. Notwithstanding this framework, immigration laws prohibit removal to a country where a person may be persecuted or tortured. *See* 8 U.S.C. § 1231(b)(3)(A) (prohibiting removal to a country where the [noncitizen's] "life or freedom would be threatened . . . because of [their] race, religion, nationality, membership in a particular social group, or political opinion); Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105-277, § 2242(a), 112 Stat. 2681 (1998) (codified as Note to 8 U.S.C. § 1231) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to

a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States"); *see also* 8 C.F.R. §§ 208.16-208.18 (2026) (implementing regulations).

47. If ICE cannot remove an individual to the country or countries specified in their removal order, an alternative country may be designated, but the designation must occur "in the appropriate way." *See Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019) (internal quotations and citations omitted). "That means the designation must be permitted by § 1231(b) and . . . must comport with due process." *Id.* Constitutional due process requires that noncitizens receive sufficient notice of the country of removal and a meaningful opportunity to be heard through reopened removal proceedings. *See Nguyen v. Scott*, 796 F. Supp. 3d 703, 727-29 (W.D. Wash. 2025) (holding that removal to a third country without meaningful notice and reopening of removal proceedings for a hearing would violate due process); *see also Sagastizado v. Noem,* 802 F. Supp. 3d 992, 1012-13 (S.D. Tex. 2025) (holding that detainee had a procedural due process right to have an immigration judge review of USCIS's negative reasonable fear determination prior to the government's execution of this third-country removal); *Cruz Medina v. Noem*, --- F. Supp. 3d ---, No. 25-cv-1768-ABA, 2025 WL 2841488 at *6 (D. Md. Oct. 7, 2025) (same). The onus is on the government to reopen immigration proceedings to adjudicate the legality of removal to a third country. *See, e.g., Nguyen*, 796 F. Supp. 3d at 777 ("[The due process clause and the governing statute] place the burden on the government – regardless of whether the country of deportation is designated during or after the removal hearing—to provide a meaningful opportunity to be heard on asylum and withholding claims."); *Arenado-Borges v. Bondi*, No. 2:25-CV-02193-JNW, 2025 WL 3687518, at *6 (W.D. Wash. Dec. 19, 2025) ("Simply allowing the petitioner *to move to reopen* their immigration proceedings is not enough to satisfy Due Process—the Government must *actually reopen* proceedings so that the petitioner has a fair and adequate opportunity to be heard." (emphasis in original)).

48. Numerous courts have held that ICE's third-country removal policies violate the INA, 8 U.SC. § 1231(a)(6), its implementing regulations, and the Fifth Amendment because they do

not provide sufficient process and circumvent the statutory framework. *See, e.g., Nguyen,* 796 F. Supp. 3d at 728 (holding that the ICE policy on third-country removals set forth in its July 9, 2025 memo "contravenes Ninth Circuit law" and that "[i]t would be impossible to comply both with Ninth Circuit precedent and the policy" (citing *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 2014)); *Vu v. Noem*, No. 1:25-cv-01366-KES-SKO (HC), 2025 WL 3114341, at *9 (E.D. Cal. Nov. 6, 2025) ("ICE's policy is contrary to Ninth Circuit precedent."); *Esmail v. Noem*, No. 2:25-CV-08325-WLH-RAO, 2025 WL 3030589 at *6-7 (C.D. Cal. Sept. 26, 2025) (providing a detailed analysis of how ICE's third-country removal policy violates due process, regardless of whether an assurance is provided by the receiving country); *Baltonado v. Bondi*, No. C25-1958RSL, 2025 WL 3123991, at *3 (W.D. Wash. Nov. 7, 2025) (collecting multiple cases that found that challenges to ICE's policy on third-country removals are likely to succeed on the merits).

CLAIMS FOR RELIEF

COUNT ONE

Detention in violation of the INA and the Fifth Amendment Due Process Clause

49. Petitioner re-alleges and incorporates by reference the paragraphs above.

50. Respondents' detention of Petitioner violates 8 U.S.C. § 1226(a), 8 U.S.C. § 1231(a)(6) and Petitioner's rights under the Due Process Clause of the Fifth Amendment of the U.S. Constitution because Petitioner's removal is not reasonably foreseeable.

51. Petitioner has been subjected to more than 250 days of immigration detention and is therefore beyond the six-month period of presumptively reasonable post-order detention. *See Zadvydas v Davis*, 533 U.S. 678, 701 (2001). Petitioner has established "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" and Respondents have not and cannot rebut that showing. *See Zadvydas,* 533 U.S. at 701. There is no evidence that Ecuador or Honduras—nations to which Petitioner has no ties—has or will issue travel documents for Petitioner or that Petitioner is even eligible to be removed to Ecuador or Honduras.

52. Under similar circumstances, courts have repeatedly found that removal is not reasonably foreseeable and that detention is therefore no longer authorized by § 1231(a)(6). *Nguyen,* 796 F. Supp. 3d at 723; *Tran v. Scott*, No. 2:25-cv-01886-TMC-BAT, 2025 WL 2898638, at *4-5 (W.D. Wash. Oct. 12, 2025); *Tang v. Bondi*, No. 2:25-cv-01473-RAJ-TLF, 2025 WL 2637750, at *4-5 (W.D. Wash. Sept. 11, 2025); *S.F. v. Bostock*, No. 3:25-cv-01084-MTK, 2025 WL 2841022, at *4-5 (D. Or. Oct. 7, 2025). "The standard for lawful continued detention is not that the government simply continue 'good faith efforts to effectuate [removal],' nor that a non citizen must show that removal is impossible." *Bostock*, 2025 WL 2841022, at *4 (citing *Zadvydas*, 533 U.S. at 702).

53. Accordingly, Respondents cannot meet their burden to show that removal is reasonably foreseeable, Petitioner's detention is no longer authorized under § 1231(a)(6), and this Court should order Petitioner's immediate release.

COUNT TWO

Detention in violation of the Fifth Amendment's procedural due process protections

54. Petitioner re-alleges and incorporates by reference the paragraphs above.

55. Respondents' re-detention of Petitioner violates Petitioner's procedural due process rights under the Fifth Amendment's Due Process Clause.

56. Petitioner had a protected liberty interest in being released from immigration custody. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1030-31 (N.D. Cal. 2025); *Phouvieng v. Andrews*, No. 1:25-cv-01512-KES-SAB (HC), 2025 WL 3265504, at *8 (E.D. Cal. Nov. 24, 2025); *Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL 2791778, at *7 (E.D. Cal. Aug. 20, 2025) (government concedes that individual with final order of removal had protected liberty interest in continued conditional release from ICE custody). Thus, the Court should apply the *Mathews* balancing test to determine what process is due.

57. Turning to the first *Mathews* factor, Petitioner has a profound private interest in remaining free from detention. *See Zadvydas*, 533 U.S. at 690; *Phouvieng*, 2025 WL 3265504, at *8; *Yang*, 2025 WL 2791778, at *8. Petitioner's private interest in freedom from ICE custody

is particularly weighty given the negative impacts that detention is having on them and their family.

58. As to the second *Mathews* factor, releasing Petitioner from custody until and unless Petitioner is provided with a pre-detention hearing before a neutral adjudicator where the government establishes that Petitioner's re-detention is warranted will greatly decrease the risk of Petitioner being erroneously deprived of liberty. The existing procedural protections associated with re-detention, found in ICE's regulations, are woefully insufficient to reduce the risk of erroneous detention because the regulations allow ICE to make a unilateral decision to revoke release. 8 C.F.R. §§ 241.4(*l*)(2), 241.13(i). On the other hand, a pre-detention hearing would ensure that a neutral adjudicator reviews Petitioner's substantial evidence that they are neither a danger nor a flight risk, thus vastly reducing the risk of erroneous detention. *See Foucha*, 504 U.S. at 81-82 (striking down civil detention scheme that did not provide for an "adversary hearing" before a neutral decisionmaker).

59. Turning to the third *Mathews* factor, the government's interest in keeping Petitioner in detention without a due process hearing is low, and the burden of providing such a hearing would be minimal. DHS cannot credibly contend that, after allowing Petitioner to live in the community for years, it has an urgent need to detain Petitioner without any pre-detention process. *See Zakzouk v. Becerra*, No. 25-cv-06254-KAW, 2025 WL 2097470, at *6-7 (N.D. Cal. Oct. 10, 2025). Providing such a hearing will impose a *de minimis*, if any, burden on the government, *see Singh v. Barr*, 400 F. Supp. 3d 1005, 1021-22 (S.D. Cal. 2019), and would be far *less* costly and burdensome for the government than keeping Petitioner detained, *see Zakzouk*, 2025 WL 2097470 at *7. In any event, it is "always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal citations and quotations omitted).

60. Given Petitioner's weighty interest in freedom from incarceration, the government's comparatively extremely weak interest in re-detaining Petitioner without a hearing given Petitioner's consistent compliance with reporting requirements, and the fact that a pre-detention hearing will substantially reduce the risk of erroneous deprivation of liberty, procedural due

process requires that Petitioner be released and that the government be enjoined from re-detaining Petitioner absent a pre-detention hearing where the government establishes that detention is warranted. *See Phouvieng*, 2025 WL 3265504, at *8-9, 11; *Yang*, 2025 WL 2791778, at *9, 11; *Khan v. Noem*, No. 1:25-cv-01411-EPG-HC, 2025 WL 3089352, at *5-8 (E.D. Cal. Nov. 5, 2025).

COUNT THREE

Detention in violation of the Fifth Amendment's substantive due process protections

61. Petitioner re-alleges and incorporates by reference the paragraphs above.

62. Respondents' re-detention of Petitioner violates Petitioner's substantive due process rights under the Fifth Amendment's Due Process Clause.

63. The only two permissible purposes for civil immigration detention are to prevent flight and to protect the community from danger. *See Zadvydas*, 533 U.S. at 690-91. Respondents cannot reasonably assert that Petitioner—who has complied with their conditions of release during more than two years of life in the community—poses a risk of flight or danger. Even if Petitioner posed some degree of risk of flight or danger, this risk could be sufficiently mitigated by alternative and less harsh methods for example, through release on the same reporting requirements—the ICE check-in—that led to his detention.

64. Thus, because Petitioner's immigration detention is "excessive in relation" to the government's permissible purpose of reducing risk of flight or danger to the community, substantive due process requires that Petitioner be released from detention. *See Zadvydas*, 533 U.S. at 690-91; *see also Doe v. Chestnut*, --- F. Supp. 3d ---, No. 1:24-cv-00943-EPG-HC, 2025 WL 3240400, at *22-23 (E.D. Cal. Nov. 20, 2025).

COUNT FOUR

Third-country removal in violation of the Fifth Amendment, 8 U.S.C. § 1231, the Convention Against Torture, and governing regulations

65. Petitioner re-alleges and incorporates by reference the paragraphs above.

66. The Fifth Amendment, the INA, the CAT, and governing regulations mandate meaningful notice and opportunity to respond to any attempt to remove Petitioner to a third

country in reopened removal proceedings. Respondents' policy for third country removals is unlawful because it directs ICE agents to remove individuals to third countries without any notice or process *at all* where diplomatic assurances are received and, where no diplomatic assurances are received, to provide flagrantly insufficient notice (6-24 hours) and opportunity to respond, in violation of governing the statutes and regulations and the Fifth Amendment.

67. Prior to any third-country removal, Respondents must provide Petitioner with constitutionally and statutorily compliant notice and an opportunity to present any fear-based claims in reopened removal proceedings. *See, e.g. Nguyen v. Scott*, 796 F. Supp. 3d 703, 727-29 (W.D. Wash. 2025) (citing *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999), *Najjar v. Lynch*, 630 F. App'x 724 (9th Cir. 2016), and *Sadychov v. Holder,* 565 F. App'x 648, 651 (9th Cir. 2014)); *A.A.M. v. Andrews,* No. 1:25-cv-01514-DC-DMC (HC), 2025 WL 3485219, at *11 (E.D. Cal. Dec. 4, 2025); *Cruz Medina v. Noem*, --- F. Supp. 3d ---, No. 25-cv-1768-ABA, 2025 WL 2841488, at *6 (D. Md. Oct. 7, 2025).

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that the Court:

1) Assume jurisdiction over this matter;
2) Order Respondents to immediately release Petitioner from custody under the conditions of Petitioner's prior supervised release;
3) Order that Respondents may not re-detain Petitioner unless they first establish, at a hearing before a neutral adjudicator, that Petitioner is a flight risk or a danger to the community such that re-detention is warranted;
4) Order that Respondents may not remove Petitioner to a third country without notice and meaningful opportunity to respond in compliance with the INA and due process, which should minimally include written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand and a meaningful opportunity to be heard in reopened removal proceedings with a hearing before an immigration judge;

5) Award reasonable costs and attorney's fees under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

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

Dated: Aug. 14, 2026

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VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

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

Dated: Aug. 14, 2026

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EXHIBIT LIST

Exhibit A: Lyons Memo

Exhibit B: ICE motion to pretermit Petitioner's asylum case

Exhibit C: Petitioner's response to ICE

Exhibit D: The Immigration Judge's Order of Removal to Ecuador or Honduras