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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

HAZVINEYI GRACE MUTSEYEKWA,

Petitioner,

v.

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

Respondents.

Case No. 3:26-cv-8468

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Immigration Habeas Case

INTRODUCTION

1. Petitioner, Hazvineyi Grace Mutseyekwa, is a native of Zimbabwe who has resided in the United States since 2004.

2. Though Petitioner was ordered removed on March 22, 2005, it was found by an Immigration Judge that she is likely to suffer persecution if returned to Zimbabwe. Petitioner was granted Withholding of Removal by the Immigration Judge and can not be removed to Zimbabwe.

3. Petitioner was previously scheduled for her annual check-in with U.S. Immigration and Customs Enforcement ("ICE") on January 22, 2027. A few days ago, she received a call from ICE that her check-ins would now be every six months and that she must report to the San Francisco ICE office on August 14, 2026.

4. On August 14, 2026, Petitioner duly reported for her appointment. Petitioner was unlawfully detained by ICE and verbally informed by an Officer that she would be removed to Cameroon. This arrest was without proper notice and without due process after over twenty years of living at liberty in the United States.

5. Petitioner has complied fully and completely with all required ICE check-ins. She brings this petition to obtain her release and to enjoin Respondents from unlawfully redetaining her without a meaningful opportunity to be heard on whether her detention is necessary and warranted.

6. Petitioner has not been given the opportunity to express her fear of being sent to a third country, specifically Cameroon.

7. Petitioner has multiple medical conditions and requires medication daily to control her cholesterol, diabetes, high blood pressure and schizophrenia.

8. Petitioner has been arrested and detained without any prior notice in violation of US regulations and the Constitution. Her detention infringes on her constitutionally protected liberty interest in her physical freedom and is unlawful pursuant to the agency's own regulations. The Court should enjoin ICE from continuing this unlawful course of conduct.

CUSTODY

9. Ms. Mutseyekwa is currently in ICE custody at 630 Sansome Street, San Francisco, California, 94111. She was arrested by ICE on August 14, 2026.

JURISDICTION

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

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

VENUE

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

occurred in this District.

INTRADISTRICT ASSIGNMENT

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

REQUIREMENTS OF 28 U.S.C. § 2243

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

15. 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).

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

PARTIES

17. Petitioner HAZVINEYI GRACE MUTSEYEKWA is a citizen of Zimbabwe and has resided in the United States since 2004. She lives in Pleasanton, California. On March 22, 2005, Petitioner was granted Withholding of Removal and has been subject to and complied with ICE supervision since.

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

19. Respondent DAVID J. VENTURELLA is the Acting Director of ICE. As the head of ICE, an agency within the U.S. Department of Homeland Security that detains and removes certain noncitizens, Respondent Venturella is a legal custodian of Petitioner. He is sued in his official capacity.

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

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

FACTUAL ALLEGATIONS

22. Petitioner was born in Zimbabwe in 1977. She first entered the United States in 2004 and has lived here since.

23. Petitioner was granted Withholding of Removal protection from deportation to Zimbabwe in 2005. She has complied with ICE supervision conditions since.

24. Approximately three days before August 14, 2026, Petitioner received a call from ICE officials ordering her to appear at the ICE office in San Francisco on August 14, 2026. As always, Petitioner complied with the mandatory check-in.

25. While at the ICE office in San Francisco for her appointment, Petitioner was arrested and informed that ICE would be removing her to Cameroon, a third country where she is not a citizen.

26. Petitioner was given no written notice of the intended removal.

27. Petitioner has never had the opportunity to express fear of being sent to a third country.

28. Petitioner has significant community ties in Northern California after having lived in the United States for over twenty years. She works as a caregiver and attends [redacted] in Fremont, California.

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

30. More importantly, she has not been provided the opportunity to express fear of a proposed third country removal.

Third Country Removals

31. Since early 2025, ICE has escalated efforts to remove noncitizens with final orders of removal to "third countries," *i.e.*, countries that the immigration judge has not designated as potential countries for removal during the noncitizen's removal proceedings. *See Ffriend v.*

Albarran, No. 3:26-cv-03942-WHO (N.D. Cal. May 1, 2026), *Zakzouk v. Becerra*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *2 (N.D. Cal. July 26, 2025) ("Although Petitioner-Plaintiff informed the ICE officer that he has no right to return to either country because he is stateless, the officer told Petitioner-Plaintiff that "things are different now."); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *6 (E.D. Cal. July 16, 2025).

32. Because the "third country" was not at issue during the original removal proceedings, a noncitizen who is threatened with removal to a third country has never had an opportunity to express fear of or seek legal protection from removal to that country. Individuals must be given proper written notice and an opportunity to raise a fear-based claim for protection prior to removal. *Abduvakhidov v. Warden, Golden State Annex Detention Facility*, 2026 WL 1298157, at *8 (E.D.Cal., 2026).

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

34. The memo provides that if the United States has not received such diplomatic assurances, ICE officers must serve the noncitizen a "Notice of Removal" stating the intended country of removal; it need not, however, ask whether the noncitizen fears removal to that country. *Id.* Although officers should "generally wait at least 24 hours following service of the Notice of

Removal before effectuating removal," they may under certain conditions effectuate removal only six hours after service of the Notice of Removal. *Id.*

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

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

37. There have been multiple credible reports of persons being subjected to these third country removals. Once removed, individuals have been subject to torture and or refoulement.

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

LEGAL FRAMEWORK

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

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

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

41. If ICE does not effectuate removal during the removal period, the noncitizen is released "subject to supervision," 8 U.S.C. § 1231(a)(3), except that certain categories of noncitizens "may be detained" beyond the removal period, 8 U.S.C. § 1231(a)(6). In light of the due process concerns that indefinite detention would raise, the Supreme Court has construed section 1231(a)(6) to limit a noncitizen's "post-removal period detention to a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

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

43. 8 C.F.R. § 241.4 creates a system of custody reviews for noncitizens whom ICE detains beyond the 90-day removal period. ICE may grant release if the noncitizen demonstrates that "his or her release will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending such [noncitizen's] removal from the United States." § 241.4(d)(1).

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

45. 8 C.F.R. § 241.13 creates "special review procedures" where the noncitizen "has provided good reason to believe there is no significant likelihood of removal . . . in the

reasonably foreseeable future." § 241.13(a); *see also* § 241.13(b)(1) (providing that § 241.4 governs unless ICE "makes a determination under this section that there is no significant likelihood of removal in the reasonably foreseeable future").

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

47. The Due Process Clause further constrains ICE's ability to re-detain a noncitizen who was previously released on an order of supervision. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

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

49. In addition, procedural due process requires that a noncitizen's detention be accompanied by strong "procedural protections," *Zadvydas*, 533 U.S. at 691, 692, such as a hearing before a neutral adjudicator. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"). Courts in this Circuit have determined that a noncitizen subject to conditional release has a liberty interest in that release such that a pre-deprivation hearing before a neutral adjudicator is required prior to any redetention. *See e.g. Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL 2791778, at *8 (E.D. Cal. Aug. 20, 2025); *Guillermo*

M. R., 2025 WL 1983677, at *5 ("The fact that Petitioner is subject to discretionary conditions of release likewise does not mean he lacks a protectable liberty interest and can be re-detained without process."). That is because, generally, the Due Process Clause "requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original).

Third Country Removals

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

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

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

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

54. Importantly, the statute prohibits removal to any country where a person may be persecuted or tortured, a form of protection known as withholding of removal. *Id.* §

1231(b)(3)(A) (providing that ICE "may not remove" a noncitizen to a country if "the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion"). Petitioner has not been afforded any opportunity to assert such a fear.

55. Congress has also codified the protections of the Convention Against Torture ("CAT") prohibiting the government from removing a person to a country where they face torture. *See* Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105-277, div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.").

56. Courts have held repeatedly that ICE may not remove a noncitizen to a country that was not properly designated by an immigration judge if the noncitizen has a fear of persecution or torture in that country. *See, e.g.*, *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999). Due process requires meaningful notice and an opportunity to present a fear-based claim prior to deportation. *See also Abduvakhidov v. Warden, Golden State Annex Detention Facility*, 2026 WL 1298157, (E.D.Cal., 2026), *A.A.M. v. Andrews*, No. 1:25-CV-01514-DC-DMC (HC), 2025 WL 3485219, at *11 (E.D. Cal. Dec. 4, 2025) ("[E]enjoin[ing] Respondents from removing Petitioner to Cameroon until Petitioner has had the opportunity to present his fear-based claim in reopened removal proceedings before an Immigration Judge"); *Y.T.D. v. Andrews,* No. 1:25-CV-01100 JLT SKO, 2025 WL 2675760, at *1 (E.D. Cal. Sept. 18, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *8 (N.D. Cal. Aug. 6, 2025); *Aden v. Nielsen*, 409 F.

Supp. 3d 998, 1004 (W.D. Wash. 2019). A "last minute" designation of a country for removal, affording no meaningful opportunity to apply for protection, "violate[s] a basic tenet of constitutional due process." *Andriasian*, 180 F.3d at 1041.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

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

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

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

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

60. The process afforded to her by the regulations is insufficient to protect her liberty interest, as the lack of access to counsel, notice and a neutral adjudicator creates a heightened risk of erroneous deprivation. *See Yang*, 2025 WL 2791778, at *9 ("The court therefore rejects

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

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

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

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

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

64. Petitioner has a vested liberty interest in her conditional release. Due Process does not permit the government to strip her of that liberty without it being tethered to one of the two

constitutional bases for civil detention: to mitigate against the risk of flight or to protect the community from danger.

65. Since approximately 2005, Petitioner has complied with the reporting requirements imposed on her by ICE, thus demonstrating that she is not a flight risk. Moreover, each time that she has been permitted to return for another check-in date, ICE has necessarily determined that she does not pose a danger. Finally, there has been no change in circumstances that now renders her detention necessary. Re-arresting her now is punitive and violates her constitutional right to be free from the unjustified deprivation of her liberty.

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

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

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

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

69. As long as Petitioner complies with her imposed conditions, Respondents have authority to revoke her release only if circumstances have changed such that the government "determines there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2); 8 C.F.R. § 1231(a)(6). Pursuant to § 241.13(i)(2), the burden is on ICE to first establish changed circumstances that make removal significantly

likely in the reasonably foreseeable future. *Tran v. Noem*, No. 1:25-CV-01523-TLN-CKD, 2025 WL 3268491, at *2 (E.D. Cal. Nov. 24, 2025). The phrase "significant likelihood," as used in the regulation, requires something more than a mere possibility of removal. *Vu v. Noem*, No. 1:25-CV-01366-KES-SKO (HC), 2025 WL 3114341, at *7 (E.D. Cal. Nov. 6, 2025).

70. As such, the revocation of Petitioner's order of supervision was also not in accordance with the INA and implementing regulations governing who may lawfully revoke an order of supervision and under what circumstances. Government agencies are required to follow their own regulations. *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Nat'l Ass'n of Home Builders v. Norton*, 340 F.3d 835, 852 (9th Cir. 2003). "Numerous district courts, including courts in the Ninth Circuit, have determined that where ICE fails to follow its own regulations in revoking release, the detention is unlawful and the petitioner's release must be ordered." *Constantinovici v. Bondi*, No. 3:25-CV-02405-RBM-AHG, 2025 WL 2898985, at *6 (S.D. Cal. Oct. 10, 2025) (citing cases). *See e.g.*, *Phouvieng K.*, 2025 WL 3265504, at *4; *Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL 2791778, at *6 (E.D. Cal. Aug. 20, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025); *Rombot v. Souza*, 296 F. Supp.3d 383, 387 (D. Mass. 2017).

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

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

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

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

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

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

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

77. For these reasons, Petitioner's removal to any third country without adequate notice and an opportunity to apply for relief under the Convention Against Torture would violate her due process rights. The only remedy of this violation is for this Court to order that she not be

summarily removed to any third country unless and until she is provided constitutionally adequate procedures.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

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

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

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

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

(5) Award reasonable costs and attorney fees; and

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

Dated: August 14, 2026

Respectfully submitted,

/s/Nicole A. Gorney

Nicole A. Gorney
Pro Bono Attorney for Petitioner