UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HARRY PANGEMANAN, MARIYANA SUNARTO, ROBY SANGER, GUNAWAN ONGKOWIJOYO LIEM, individually and on behalf of all others similarly situated, Petitioners/Plaintiffs, v. JOHN TSOUKARIS Newark Field Office Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement MATTHEW ALBENCE Executive Associate Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement THOMAS D. HOMAN Acting Director of U.S. Immigration and Customs Enforcement KIRSTJEN M. NIELSEN Secretary of the U.S. Department of Homeland Security JEFFERSON B. SESSIONS Attorney General of the United States CHARLES L. GREEN Warden, Essex County Correctional Facility and ORLANDO RODRIGUEZ Warden, Elizabeth Detention Center Respondents/Defendants.	Civil Action No. _____

PETITION FOR WRITS OF HABEAS CORPUS AND MANDAMUS AND CLASS COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Petitioners/Plaintiffs are Indonesian nationals, who have resided in New Jersey for decades, but now ICE has begun targeting them for imminent removal to Indonesia — where they fear persecution, torture, or death due to their Christian faith. They seek stays of removal so that may have a reasonable period of time in which to compile and present evidence that would permit them to file motions to reopen their removal cases, including evidence of recent changes in country conditions that make Indonesia increasingly dangerous for Christians. Most have United States citizen children, and their removal would rip apart close-nit, loving families and leave their children without support. They are devout and extremely active in their churches, some in official roles. Many volunteer their time to help disadvantaged members of their local community and beyond: participating in disaster relief efforts and volunteering through their churches.

2. The Government's attempt to summarily remove the putative class here mirrors other analogous enforcement actions—undertaken with little or no notice— targeting groups that have long been allowed to remain in the United States with final orders of removal under Orders of Supervision. In each case, the relevant federal court enjoined the summary removal of these groups. *Devitri* v. *Cronen*, No. 17 Civ. 11842, slip op., ECF No. 90 (D. Mass. Feb. 1, 2018) (Indonesian Christians); *Ibrahim* v. *Acosta*, No. 17 Civ. 24574, 2018 WL 582520, at *3 (S.D. Fla. Jan. 26, 2018) (Somalis); *Chhoeun* v. *Marin*, No. 17 Civ. 1898, 2018 WL 566821, at *6 (C.D. Cal. Jan. 25, 2018) (Cambodians); *Hamama* v. *Adducci*, No. 17 Civ. 11910, 2017 WL 2684477 (E.D. Mich. June 22, 2017); *Hamama* v. *Adducci*, 258 F. Supp. 3d. 828 (E.D. Mich. 2017) (Iraqis).

3. Just yesterday, the United States District Court for the District of Massachusetts granted a preliminary injunction and stayed the removal of a group of Indonesian

Christian residents from New Hampshire on very similar facts in order to allow those petitioners to file motions to reopen based on the same changed country conditions. *Devitri*, *supra*, slip op. (D. Mass. Feb. 1, 2018). In doing so, that court framed its decision as "doing no more than allowing [the New Hampshire Indonesian Christians] to use the administrative and judicial procedures that Congress designed and the Constitution requires." *Id.* at 21.

4. Similar to the group of Indonesian Christians at issue in *Devitri,* Petitioners/Plaintiffs, and the members of the putative class they seek to represent, are undocumented individuals all Indonesian nationals within the jurisdiction of the Newark ICE Field Office with administratively final orders of removal predating 2009 and (at any point in time during or after 2009) were subject to an order of supervision.

5. Each voluntarily identified themselves to United States Immigration and Customs Enforcement ("ICE") as part of an agreement with the Newark ICE Field Office that was intended to encourage undocumented Indonesian Christians to come out of the shadows, based on the assurance that individuals without criminal records would be granted stays of deportation and employment authorizations in exchange for identifying themselves and being monitored by ICE pursuant to Orders of Supervision (the "New Jersey Indonesian Orders of Supervision Agreement" or the "Agreement"). The Agreement was made between ICE officials and Reverend Seth Kaper-Dale, the Senior Co-Pastor at the Reformed Church of Highland Park, a church that ministers to the Indonesian Christian community. After the Agreement was reached, Reverend Kaper-Dale received emails from ICE officials discussing the new initiative and congratulating him on the effort. (Kaper-Dale Decl. ¶ 5 and email attached thereto.)[1]

[1] Citations to "Kaper-Dale Decl." are to the Declaration of Reverend Seth Kaper-Dale dated February 2, 2018.

6. In short, members of the putative class relied upon the Agreement and thereafter came forward to voluntarily register with ICE and be subject to in-person reporting requirements under Orders of Supervision. In exchange, they were permitted to remain in and work in the United States. *Id.* at ¶¶ 5-7.

7. In March 2017, ICE ordered a few members of the group to report again in May. When they did so, they were detained and, within a month, deported. Though this caused concern in the community, other members of the group continued to appear for check-ins and were told to simply report again at a later date. *Id.* at ¶10.

8. Reverend Kaper-Dale attempted to dialogue with ICE officials to determine if the Agreement as to this group had been abandoned or would soon be. He realized that most of the members of the group had limited financial means and could not easily find or afford to hire a lawyer to pursue the complicated motions to reopen. Reverend Kaper-Dale hoped to bring his congregants clarity, and so repeatedly contacted Newark ICE Supervisor John Tsoukaris to schedule a meeting to discuss the status of the Agreement. He attempted contact for several weeks in April 2017, with no response. *Id.* at ¶ 12.

9. When members of Tsoukaris's staff finally met with Reverend Kaper-Dale on May 10, 2017 (Tsoukaris did not), they offered no clarity as to the status of the Agreement. But, neither did they tell Reverend Kaper-Dale that the Agreement had been abandoned. *Id.* By contrast, in New Hampshire, ICE explicitly "advised pastoral leaders in June 2017 that it would be terminating" a program that was functionally equivalent to the Agreement. *Devitri* v. *Cronen*, No. 17 Civ. 11842, 2017 WL 5707528, at *2 (D. Mass. Nov. 27, 2017). To the contrary, no member of the New Jersey group was detained or deported during the spring or summer of 2017. The common feeling was that while there might have been individual enforcement actions as

there had been a few years before, the group was still subject to the Agreement and that it was still largely being honored by ICE.

10. Petitioners/Plaintiffs long-held belief that they could, as a group, reasonably rely on the Agreement began crumble in late 2017 and early 2018. Their fear crystallized into panic when ICE attempted to detain three prominent members of the Indonesian Christian community in New Jersey on a single day: January 25, 2018. *Id.* at ¶ 14. One member of the group was apprehended immediately after he dropped his children off at school, while another was apprehended immediately after he dropped his child off at the school bus stop. The attempted detention of Petitioner Harry Pangemanan was particularly shocking, as Mr. Pangemanan has been a model member of his community—he led disaster relief efforts in New Jersey and Texas, and was honored with the Dr. Martin Luther King Jr. Humanitarian Award by the Highland Park Human Relations Commission on January 15, 2018, just ten days before ICE attempted to detain him. This dramatic ICE action sent an unequivocal message to all putative class members that the Agreement would not be honored.

11. Lacking the protection of the Agreement upon which they relied for many years, Petitioners now face the threat of imminent deportation to a country in which they will face persecution based upon their religion. Indeed, at least three Petitioners representing the putative class are currently detained by ICE and could be deported at any time. Others would have been detained and deported had they not sought sanctuary in a church. Still others are required to report to ICE in coming days and weeks with no certainty that they can safely do so without following other members of their community into ICE detention and ultimately, deportation.

12. Yet, it would be unlawful to allow this summary removal given that Petitioners face persecution based on a rising tide of violence and intolerance directed at religious minorities in Indonesia, especially Christians—conditions that have dramatically worsened since 2012. Given the timing of these changed country conditions, Petitioners face danger in Indonesia that is far more severe than the risks they faced when the Executive Office for Immigration Review and Board of Immigration Appeals adjudicated their asylum and withholding of removal claims in the past.

13. Indeed, yesterday's decision in *Devitri*, *supra,* unequivocally held that Indonesian Christians present sufficient evidence of likely persecution, if removed, to warrant injunctive relief—and accordingly enjoined their summary removal to afford them time in which to file motions to reopen their immigration cases. The decision acknowledged the expert testimony of Dr. Jeffrey A. Winter, the same expert who has submitted an affidavit here, and concluded that the New Hampshire Indonesian Christians had "presented unrebutted evidence to show that, if they were deported to Indonesia, they would face threat of persecution or torture." *Devitri*, slip op. at 18. The court further recognized record evidence in that case showing that "law enforcement in Indonesia is unlikely to provide meaningful protection to religious minorities—and [Christians], like Petitioners, in particular—in the face of violence and intolerance" and that "'the Indonesian government actively supports Islamic extremists who are anti-Christian and 'will punish those who are 'vocal' and 'assertive' Christians, such as Plaintiffs.'" *Devitri*, slip op. at 5 (citing Winters affidavit).

14. As is true for the petitioners in *Devitri*, the Petitioners here could not have presented such evidence in their original proceedings because these conditions arose after the adjudication of their immigration cases.

15. In light of ICE's Agreement with Pastor Kaper-Dale and the many Orders of Supervision for the members of the putative class pursuant to the Agreement, the agency's abrupt decision to detain and summarily remove class members violates the due process protections of the Fifth Amendment of the United States Constitution, as well as the Suspension Clause of the United States Constitution. These constitutional protections, and the District Courts' jurisdiction to enforce them, have already been recognized in the recent line of cases referenced herein. *Devitri, supra* (D. Mass. Feb. 1, 2018); *Devitri, supra* (D. Mass. Nov. 27, 2017); *Hamama* v. *Adducci*, No. 17 Civ. 11910, 2017 WL 2684477 (E.D. Mich. June 22, 2017); *Hamama* v. *Adducci*, 258 F. Supp. 3d. 828 (E.D. Mich. 2017).

16. Each of these federal court decisions rest on the ineluctable premise that U.S. law and international law prohibit the removal of individuals to countries where they would face a likelihood of persecution or torture. Despite the danger Petitioners/Plaintiffs face in Indonesia due to their Christian faith, ICE seeks to deport them based on many years old removal orders, with no notice and no opportunity to move to reopen. The removal orders predate the recent increased violence against Indonesian Christians—country conditions that could constitute changed circumstances supporting asylum, withholding of removal or Convention Against Torture relief.

17. Without action from this court, petitioners will be removed to Indonesia before they receive a meaningful hearing on their claims for protection as the Constitution requires. A stay is, therefore, necessary.

18. Because named Petitioners/Plaintiffs are a subset of a larger community impacted by ICE's sudden and arbitrary change in policy, they seek relief for themselves and for a class of similarly-situated individuals—Indonesian citizens of Christian faith living in New

Jersey who had an order of removal that became administratively final no later than 2009 and who subsequently were placed on an Order of Supervision.

JURISDICTION

19. This case arises under the Fifth Amendment to the United States Constitution; the Suspension Clause; the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*; the regulations implementing the INA's asylum provisions; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), 8 U.S.C. § 1231 note, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*

20. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241 *et seq.*, and Art. I § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may also exercise jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1361 (mandamus statute), 5 U.S.C. § 701 *et seq.* (Administrative Procedures Act); Art. III of the United States Constitution; Amendment V to the United States Constitution; and the common law. This Court may grant the relief requested herein pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651. *See also Devitri*, 2017 WL 5707528, at *2–3.

VENUE

21. Venue lies in the District of New Jersey, the judicial district in which the Newark ICE Field Office Director is located. *Alvardo* v. *United States*, No. 16 Civ. 5028, 2017 WL 2303758 (D.N.J. May 25, 2017). The Newark ICE Field Office Director issued the Denials of Stay of Removal, and the Orders of Supervision were issued under that Field Office's supervision.

PARTIES

22. Petitioner/Plaintiff HARRY PANGEMANAN and Petitioner/Plaintiff MARIYANA SUNARTO are nationals of Indonesia of Christian faith, who are participants in the New Jersey Indonesian Surrender Agreement, and are subject to final orders of removal. They have been living under Orders of Supervision since February 2013. They are subject to Orders of Supervision signed by Respondent/Defendant JOHN TSOUKARIS from the Newark ICE Field Office, and were ordered to report to ICE on January 30, 2018. They are married to each other and they have two U.S. citizen children.

23. Petitioner/Plaintiff ROBY SANGER is a national of Indonesia of Christian faith who is a participant in the New Jersey Indonesian Surrender Agreement. His order of removal became administratively final on December 4, 2006. He has been living under an Order of Supervision signed by Respondent/Defendant JOHN TSOUKARIS from the Newark ICE Field Office or his predecessor, which was valid through October 2018. Mr. Sanger had a routine annual ICE check-in scheduled for March 1, 2018. Before that, on Thursday, January 25, 2018, ICE agents arrested him with no warning, just after he dropped his daughters off at school. He is now detained by ICE at Essex County Correctional Facility. The Reformed Church of Highland Park provided him with an immigration attorney, and this attorney filed an emergency motion to reopen on Thursday, February 1, 2018. He does not have a stay of removal, so he is subject to imminent removal. If he is removed, the BIA will consider his motion to reopen withdrawn pursuant to 8 U.S.C. § 1003.2(4)(d). He is married and has two U.S. citizen children.

24. Petitioner/Plaintiff GUNAWAN ONGKOWIJOYO LIEM is a national of Indonesia of Christian faith who is a participant in the New Jersey Indonesian Surrender Agreement; he is subject to a final order of removal. An immigration judge granted him withholding of removal in 2003, but the BIA reversed this ruling and entered a final order of

removal in 2005. The BIA dismissed a motion to reopen in 2007, prior to the change in country conditions that gives rise to his current motion to reopen. He has been living under an Order of Supervision signed by Respondent/Defendant JOHN TSOUKARIS from the Newark ICE Field Office or his predecessor. Mr. Liem had a routine annual ICE check-in scheduled for February 14, 2018. Before that, on Thursday, January 25, 2018 ICE agents arrested him with no warning after he dropped his daughter off at her school bus stop. He is now detained by ICE at Essex County Correctional Facility. The Reformed Church of Highland Park provided him with an immigration attorney, and this attorney filed an emergency motion to reopen on Thursday, February 1, 2018. He does not have a stay of removal, so he is subject to imminent removal. He is married and has two U.S. citizen children.

25. Respondent/Defendant JOHN TSOUKARIS is the Newark Field Office Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement and is sued in his official capacity. The Field Office Director has responsibility for and authority over the detention and removal of noncitizens within the Newark Region, and is their custodian, for purposes of habeas corpus. Respondent/Defendant Tsoukaris's office is in Newark, New Jersey.

26. Respondent/Defendant MATTHEW ALBENCE is the Executive Associate Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement and is sued in his official capacity. Respondent/Defendant Tsoukaris reports to Executive Associate Director Albence, who therefore has supervisory responsibility for and authority over the detention and removal of the Petitioners/Plaintiffs.

27. Respondent/Defendant THOMAS D. HOMAN is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity.

Respondent/Defendant Albence reports to Acting Director Homan, who therefore has supervisory responsibility for and authority over the detention and removal of the Petitioners/Plaintiffs.

28. Respondent/Defendant KIRSTJEN M. NIELSEN is the Secretary of the U.S. Department of Homeland Security ("DHS") and is sued in her official capacity. Respondent/Defendant Homan reports to Secretary Nielsen, who therefore has supervisory responsibility for and authority over the detention and removal of the Petitioners/Plaintiffs.

29. Respondent/Defendant Jefferson B. Sessions III is the Attorney General of the United States, responsible for the interpretation and enforcement of the nation's immigration laws. He supervises the Executive Office of Immigration Review. He is sued in his official capacity.

30. Respondent/ Defendant ORLANDO RODRIGUEZ
is the Warden of Elizabeth Detention Center. He is the immediate custodian of all detainees in that facility, which upon information and belief, including one or more members of the putative class, and has the authority to order their release. He is sued in his official capacity.

31. Respondent/Defendant CHARLES L. GREEN is the Warden of the Essex County Correctional Facility. He is the immediate custodian of named Petitioner/Plaintiffs SANGER and LIEM, and has the authority to order their release. He is sued in his official capacity.

LEGAL BACKGROUND

32. Under federal law, ICE simply may not remove an individual to a country if the government decides that "the alien's life or freedom would be threatened in that country because of the alien's . . . religion." 8 U.S.C. § 1231(b)(3)(A). Removal becomes unlawful where the alien demonstrates an entitlement to asylum, *i.e.,* that it "is more likely than not that he

or she would be persecuted on account of . . . religion' if removed." 8 C.F.R. § 208.16(b)(2). Even where someone has a final order of removal, and even where the time to file a motion to reopen has run, mandatory relief from deportation can still be found through a motion to reopen the immigration case based on "changed country conditions." 8 U.S.C. § 1229a(c)(7)(c)(ii). Related relief is available in the form of withholding of removal under the United Nations Convention Against Torture (CAT), 8 C.F.R. § 208.16(c)(4). The law sets "no time limit on the filing of a motion to reopen . . . based on changed country conditions . . . if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding." 8 U.S.C. § 1229a(c)(7)(C)(ii).

33. Noncitizens who have been ordered removed from the United States have the statutory right to file motions to reopen their cases, which are governed by certain time and numerical requirements. *See* 8 U.S.C. § 1229a (c)(7). The statute grants special solicitude for noncitizens who are seeking relief from persecution. If the noncitizen is seeking asylum, withholding, or protection under CAT based "on changed country conditions arising in the . . . country to which removal has been ordered," the statute permits the noncitizen to file a motion to reopen at any time, even if he or she has previously filed a motion to reopen. *Id.* § 1229a(c)(7)(C)(ii); see also 8 C.F.R. § 1003.2(c)(3)(ii).

34. The exception to the numerical and time limits provides a safety valve for bona fide refugees who would otherwise be deported from the United States in violation of U.S. international treaty obligations of *nonrefoulement*. *See Salim* v. *Lynch*, 831 F.3d 1133, 1137 (9th Cir. 2016) ("Judicial review of a motion to reopen serves as a 'safety valve' in the asylum process. . . . Such oversight 'ensure[s] that the BIA lives by its rules and at least considers new

information' bearing on applicants' need for and right to relief.") (citing *Pilica* v. *Ashcroft*, 388 F.3d 941, 948 (6th Cir. 2004)).

35. In addition, the Due Process Clause and the INA grant Petitioners/Plaintiffs the right to counsel to challenge their removal, and to a fair proceeding before they are removed from the country. *Leslie* v. *Attorney General*, 611 F.3d 171, 181 (3d Cir. 2010) (holding that the Fifth Amendment and immigration statute affords a noncitizen right to counsel of her own choice); *Amadou* v. *INS*, 226 F.3d 724, 726–27 (6th Cir. 2000) (noting that noncitizens have "due process right to a full and fair hearing"); *see also 8 U.S.C. § 1362.*

FACTS

The Individuals Affected by the Abrupt Detention and Removal of Indonesian Christians Peacefully Living in New Jersey for Decades

36. Petitioner/Plaintiff Harry Pangemanan and his wife, Petitioner/Plaintiff Mariyanna Sunarto, live in Highland Park, New Jersey with their 11- and 15-year-old U.S. citizen daughters. Mr. Pangemanan has lived in the United States since 1993 and is an active member of the Reformed Church of Highland Park, where he serves as Minister of Facilities and Disaster Relief. After Superstorm Sandy in 2012, he led a team of volunteers in repairing over 200 homes in Monmouth and Ocean Counties. For his extraordinary efforts, he received the Dr. Martin Luther King Jr. Humanitarian Award on January 15, 2018 from the Highland Park Human Relations Commission.[2] After Hurricane Harvey, Mr. Pangemanan coordinated and drove a volunteer crew to the Houston area in order to assist with relief efforts in Texas. In past years, he and his wife have taken church members into their home rent-free when those individuals suffered economic hardships.

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[2] *See* "Immigrant who volunteered to rebuild N.J. homes after Superstorm Sandy seeks sanctuary from deportation" U.S.A. Today (Jan. 25, 2018), *available at* https://www.usatoday.com/story/news/nation-now/2018/01/25/n-j-gov-backs-immigrant-targeted-deporation/1068063001/.

37. Pursuant to his Order of Supervision, Mr. Pangemanan was not scheduled to check in with ICE until January 31, 2018. However, on January 25, 2018, ICE agents came to his house, seeking to arrest him without warning. Based on the recent experiences of others in his community, he feared that he would be removed and face persecution in Indonesia, with no opportunity to file a motion to reopen his immigration case based on the changed circumstances in that country. Therefore, Mr. Pangemanan and Ms. Sunarto made the difficult choice to upend their family's lives and seek sanctuary in a church, along with their children.

38. Petitioner/Plaintiff Roby Sanger lives in Metuchen, New Jersey with his wife and 12- and 15-year-old U.S. citizen daughters. He has lived in the United States since 1995. Mr. Sanger works as a forklift operator and is the sole wage-earner in his family. He is an active member of his church where he attends church services in both English and Indonesian and regularly volunteers—cleaning up after church events, cooking for church picnics, and fixing fellow parishioners' cars. Mr. Sanger had a routine annual ICE check-in scheduled for March 1, 2018. At his previous check-in in March 2017, ICE did not warn him that he would be removed and did not instruct him to provide a passport or plane ticket. Yet, on January 25, 2018, ICE agents pulled over his car right after he dropped his daughters off at school and arrested him without warning. He is now detained by ICE at Essex County Jail, and faces imminent deportation. Mr. Sanger's attorney has just filed a motion to reopen on February 1, 2018, but he does not have a stay of removal. Thus, absent relief from this Court, he will likely be removed before a motion to reopen can be adjudicated.

39. Petitioner/Plaintiff Gunawan Ongkowijoyo Liem is a citizen of Indonesia of Christian faith. Mr. Liem has lived in the United States since approximately 1999. He lives in Central New Jersey with his wife, 10-year-old daughter, and 12-year-old son. Both of his

children are U.S. citizens, and both children have medical issues— including food allergies (both), and asthma (his daughter). His wife, whom he met in church in the United States, also has medical issues, including diabetes, high blood pressure, and high cholesterol. Mr. Liem works in data entry for a trucking company. He is a deacon in his church. In this role, he distributes bread and wine during the services, collects parishioners' donations to the church, and visits parishioners who are ill. He also volunteered for Superstorm Sandy relief efforts. Mr. Liem had regularly reported to ICE without incident, and his next reporting date was set for February 14, 2018. At his previous check-in, ICE did not warn him that he would be removed and did not instruct him to provide a passport or plane ticket. Yet, without warning, on Thursday, January 25—the same day Mr. Sanger was arrested while dropping his kids at school—ICE agents arrested Mr. Liem right after he dropped his daughter off at her school bus stop. He is now detained by ICE at Essex County Jail, and he faces imminent deportation. As with Mr. Sanger, Mr. Liem's immigration attorney is preparing a motion to reopen his case—but Mr. Sanger does not currently have a stay of removal and, absent relief from this Court, will likely be removed before his motion to reopen can be adjudicated.

40. Messrs. Pangemanan, Sanger, and Liem, along with the other members of the putative class, now face imminent removal to Indonesia, a country they left years ago in the face of anti-Christian violence—a country that has become markedly more hostile toward Christians in recent years, due to the rising influence of the Islamic State.

ICE Induced Indonesian Christians with Final Removal Orders to Come Forward, But Then Abruptly Moved to Deport Them Without Sufficient Notice.

41. In 2009, The ICE Field Office in Newark worked with Reverend Seth Kaper-Dale to reach an agreement that encouraged Christian Indonesian nationals with final

orders of removal and without criminal records to identify themselves to ICE in exchange for the ability to remain in the United States under an Order of Supervision. (Kaper-Dale Cert. ¶ 5;)[3]

42. Reverend Kaper-Dale then encouraged members of the Indonesian Christian community to participate in the Agreement based on a good-faith representation from ICE that the agency sought to help upstanding members of the community. Ostensibly in support of the good-faith representation, ICE released seven individuals from immigration detention to show that the Agreement was not a trap. In the first few months, 78 individuals, and later several more, relied upon the Agreement—and the representations reflected therein—and voluntarily came forward to report and be supervised by ICE. (Kaper-Dale Cert. ¶ 6.)

43. Individuals who are now part of the putative class have, for nearly a decade, ordered their lives in reliance upon the Agreement and associated Orders of Supervision. They abided by the conditions imposed by the Orders, and continued to be productive and law-abiding members of their communities. Indeed, as discussed above, many of the Petitioners/Plaintiffs have made exceptional contributions to their communities through volunteer activities.

44. As set forth herein, at paragraphs 6-7, *supra,* Petitioners/Petitioners long-held belief that they could, as a group, reasonably rely on the Agreement began crumble in late 2017 and early 2018.

45. Reverend Kaper-Dale, in his long-standing role as advocate for the Indonesian Christian community, acted swiftly to seek clarity from the ICE Newark Field Office about whether the agency would continue to honor the Agreement. As set forth herein and in his

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[3] References to Kaper-Dale Cert. are to the Certification of Reverend Seth Kaper-Dale dated January 31, 2018. 1. *See also* "Church Works With U.S. to Spare Detention" N.Y. Times (Dec. 12, 2009, available at http://www.nytimes.com/2009/12/13/nyregion/13indonesians.html).

Affidavit filed herewith, Reverend Kaper-Dale's efforts to dialogue with ICE did not provide any clarity. (*Id.* ¶ 12.) However, at no point did ICE advise him that the Agreement had been abandoned. This ambiguity stands in contrast to the experience of the Christian Indonesian in New Hampshire, where ICE explicitly "advised pastoral leaders in June 2017 that it would be terminating" a program that was functionally equivalent to the Agreement. *Devitri*, *supra* at *2 (D. Mass. Nov. 27, 2017).

Individuals With Old Removal Orders May Have Multiple Bases for Reopening their Cases, Including Changed Country Conditions in Indonesia That Put Them at Risk of Persecution or Torture if Removed.

46. Petitioners/Plaintiffs may have multiple bases for reopening their removal cases, including recent attainment of eligibility for immediate relative status (such as marriage to a U.S. citizen or a U.S. citizen child's attainment of the age of the twenty-one), ineffective assistance of counsel, extraordinary circumstances, or changed country conditions in Indonesia, each of which must be carefully adjudicated by an immigration court and may warrant asylum or withholding of removal.

47. For example, with respect to country conditions, many of the Petitioners'/Plaintiffs' removal orders predate the significant deterioration in Indonesia starting in 2012, and the associated increased danger for Christians, caused in part by the rise of the so-called "Islamic State" in Indonesia. The affidavits of expert witness Dr. Jeffrey A. Winters filed in *Devitri, supra,* and here, provide ample detail of the risk of persecution and torture Plaintiffs/Petitioners face as Christians if returned to Indonesia—including the heightened risk present since 2012. *See* Affidavit of Jeffrey A. Winters, Ph.D. ("Winters Aff."),

48. As set forth above, yesterday's decision in *Devitri*, unequivocally held that Indonesian Christians present sufficient evidence of likely persecution, if removed, to warrant

injunctive relief—and accordingly enjoined their summary removal to afford them time in which to file motions to reopen their immigration cases. The decision acknowledged the testimony of Dr. Winter and concluded that the New Hampshire Indonesian Christians had "presented unrebutted evidence to show that, if they were deported to Indonesia, they would face threat of persecution or torture." *Devitri*, slip op. at 18.

49. At least two other district courts have heard analogous challenges by groups of noncitizens from countries where the level of persecution of Christians had recently increased, in part due to the rise of the Islamic State. In each, the court permitted a stay of removal to allow those subject to deportation orders an opportunity to file motions to reopen. *Hamama* v. *Adducci*, No. 17 Civ. 11901, 2017 WL 2806144 (E.D. Mich. June 26, 2017) (issuing preliminary injunction to stay the removal of Christians to Iraq).

ICE's Actions Infringe Upon the Putative Class Members' Rights to Seek Relief

50. The government's actions place petitioners in an impossible position, as they face removal to a country where they face potential persecution without a meaningful opportunity to have a constitutionally adequate hearing on their claims. Filing motions to reopen requires substantial time and resources. The court in *Hamama* v. *Adducci*, 258 F. Supp. 3d 828, 833 (E.D. Mich. 2017) called the motion to reopen process "no easy task," one that "requires "a high level of immigration law knowledge and experience," and one that can cost "up to $80,000." This process is even more difficult for those who lack assistance of counsel and/or the means to retain counsel—which includes most of the putative class. Those who have retained counsel still face additional hurdles in filing motions to reopen. Attorneys need time to visit and interview clients to verify extensive factual bases of claims for relief, obtain and review administrative records and applications for relief from removal previously adjudicated, marshal evidence, and draft pleadings and related papers—all impossible within a compressed timeframe.

51. Motions to reopen applications for asylum, withholding of removal, and/or CAT, the immediate removal timeline constitutes an even more egregious burden on due process rights. As here—where Petitioners/Plaintiffs have not filed a motion to reopen within 90 days of an order of removal – such a motion to reopen must be "based on changed circumstances arising in the country of nationality if such evidence is material and was not available and could not have been discovered or presented at the previous hearing." *Yan Fang Chen* v. *Attorney Gen. of U.S.*, 635 F. App'x 61, 63 (3d Cir. 2015) (quoting 8 C.F.R § 1003.2(c)(3)(ii)) (internal quotation marks omitted). To assess the deterioration of country conditions and, correspondingly, whether the Petitioners/Plaintiffs now have a well-founded fear of religious persecution based on changed circumstances, the Immigration Judge or the Board of Immigration Appeals will compare evidence presented at the initial adjudication with newly proffered evidence. *See Li Zhang* v. *Attorney Gen. of U.S.*, 543 F. App'x 277, 283 (3d Cir. 2013) (citing *Shu Han Liu* v. *Holder*, 718 F.3d 706, 713 (7th Cir. 2013)); *accord Marsadu* v. *Holder*, 748 F.3d 55, 58–59 (1st Cir. 2014).[4] Plaintiffs/Petitioners currently face a no-win situation. They could file motions to reopen, yet would be deprived of the time necessary to ensure thorough preparation of the papers that are necessary to meet an exacting legal standard. Of course, such a quickly-prepared motion to reopen will invariably be denied. By contrast, failure to file for relief within the immediate removal timeline could result in *refoulement*. Such a choice clearly does not satisfy the minimum procedural safeguards guaranteed by due process.

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[4] A "well-founded fear of persecution" is demonstrated by evidence establishing a "reasonable likelihood" that the Petitioner/Plaintiff will face persecution, "provided that his fears are subjectively genuine and objectively reasonable. *Marsadu*, 748 F.3d at 58 (quoting 8 C.F.R. § 208.13(b)).

> To prove that his fears are objectively reasonable, a petitioner typically must either: (a) produce credible, direct, and specific evidence supporting a fear of *individualized* persecution in the future, or (b) he must establish that there is a pattern or practice in his country of nationality of persecution of a group of persons similarly situated to the petitioner on account of race, religion, nationality, membership in a particular social group, or political opinion,

Id. (internal citations and quotations omitted).

52. As referenced *supra*, the putative class is not the first that ICE has attempted to recently and summarily remove under analogous circumstances. In each case, courts have stepped in to enjoin summary removal.

53. In *Hamama*, the United States District Court for the Eastern District Court of Michigan heard a challenge to the deportation of a group of Iraqis who similarly lived for years under Orders of Supervision. On June 22, 2017 the court stayed their removal pending a determination of the court's jurisdiction. *Hamama* v. *Adducci*, No. 17 Civ. 11910, 2017 WL 2684477, at *3 (E.D. Mich. June 22, 2017). Then, on July 11, 2017, the court recognized the Due Process and Suspension Clause rights at issue here, and granted an injunction against enforcement of the group members' orders of removal so that their rights could be "meaningfully asserted and addressed before other courts." *Hamama* v. *Adducci*, 258 F. Supp. 3d 828, 842 (E.D. Mich. 2017).

54. Next, on November 27, the United States District Court for the District of Massachusetts confronted a challenge to the removal of a group of Indonesian Christians who resided in New Hampshire under functionally identical terms as the putative class members here. *Devitri* v. *Cronen*, --- F. Supp. 3d ---, No. 17 Civ. 11842, 2017 WL 5707528, at *8 (D. Mass. Nov. 27, 2017). The *Devitri* court held that it had jurisdiction over the dispute and temporarily enjoined ICE from removing the New Hampshire group pending a ruling on the motion for preliminary injunction. *Id.* In that decision, the court concluded that the procedural safeguards would be adequate "as long as they receive from this Court a reasonable time period for filing the motions to reopen to which they are entitled." *Id.* at *7.

55. Just last week, two federal courts reached the same conclusions. The Central District of California issued a preliminary injunction to stop the deportation of a group of

Cambodians—without any showing of changed country conditions—based on the finding that their due process right to file motions to reopen were implicated by the fact that they "had been living undisturbed under supervised release for decades, and reasonably concluded that removal, particularly imminent removal, was unlikely." *Nak Kim Chhoeuen* v. *Marin*, No. 17 Civ. 01898, 2018 WL 566821 (S.D. Cal. Jan. 25, 2018). In so doing, the *Chhoeun* Court cautioned that

> It is disingenuous for the Government to claim that throughout the many years that Petitioners were permitted to live and work on supervised release, they should not have built up expectations that they would be permitted to remain in the country. Petitioners should instead be commended for investing in and becoming productive members of our communities notwithstanding their removal orders." [*9]

The very next day, the District Court for the Southern District of Florida similarly halted the deportation of a group of Somali nationals who alleged a due process right to reasonable time in which to file motions to reopen based on changed circumstances: the escalation of violence in Somalia caused by Muslim extremists—conditions that postdated their final orders of removal. *Ibrahim* v. *Acosta*, No. 17 Civ. 24574, Slip op. at 1, 6 (S.D. Fla. Dec. 19, 2017) [ECF No. 14].

56. Finally, just yesterday, the *Devitri* court issued its second decision, granting a preliminary injunction and staying the removal of Indonesian Christians in New Hampshire. *Devitri, supra*. Moreover, yesterday's *Devitri* decision noted that the court previously ordered the Government to produce each individual's A-file; *Devitri* Prelim. Inj. Dec. at 23 n.13 (citing Docket No. 58); *accord* Order, *Ibrahim* v. *Acosta*, No. 17 Civ. 24574, ECF No. 70 (S.D. Fla. Feb. 1, 2018) (also requiring the production of A-files). Finally, the court set a specific timeline under which motions to reopen must be heard. *Devitri, supra.* at 23

57. In short, the federal courts that have addressed analogous challenges took taken swift action to protect the rights of similarly situated groups facing summary removal by enjoining such removal.

CLASS ALLEGATIONS

58. Petitioners/Plaintiffs incorporate by reference the foregoing paragraphs as if fully alleged herein.

59. Petitioners/Plaintiffs represent a putative class of all Indonesian nationals within the jurisdiction of the Newark ICE Field Office with administratively final orders of removal predating 2009 and (at any point in time during or after 2009) were subject to an order of supervision.

60. Plaintiffs/Petitioners bring this action on behalf of themselves and all other similarly situated persons pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), and as a representative habeas class action for similarly situated persons pursuant to a procedure analogous to Rules 23(a) and 23(b)(2). *See Ali v. Ashcroft*, 346 F.3d 873, 889-91 (9th Cir. 2003) (holding that the district court did not exceed its habeas jurisdiction in certifying a nationwide habeas class), *withdrawn and amended on other grounds on reh'g, Ali v. Gonzales*, 421 F.3d 795 (9th Cir. 2005); *see also U.S. Parole Comm'n v. Geraghty,* 445 U.S. 388, 393 (1980)(recognizing class certification under Federal Rule of Civil Procedure 23 could apply to a writ of habeas corpus by analogy).

61. In addition to the named Petitioners/Plaintiffs, there are numerous other individuals living within the jurisdiction of the Newark ICE Field Office who were induced to participate in Agreement under humanitarian pretenses, who are now subject to Orders of Supervision, and whose rights under the United States Constitution and applicable international treaties are infringed by ICE's immediate removal timeline. Each of these similarly situated

individuals is in "custody," faces imminent removal from the United States, and, as a result, is effectively being deprived of the opportunity to prepare motions to reopen underlying applications prior to removal. Due process and statutory and treaty protections afforded to persons fearing religious persecution or torture in their home countries compels sufficient time to file. Petitioners/Plaintiffs and the putative class they seek to represent be afforded the opportunity to take such steps and have their arguments heard by an Immigration Court before the government can send them to a country that is now foreign and hostile to them.

62. Each of these similarly situated individuals is entitled to bring a petition for a writ of habeas corpus, and writ of mandamus or, in the alternative, a complaint for declaratory and injunctive relief, to prohibit the Respondents'/Defendants' attempts to foreclose their access to counsel and ability to prepare filings necessary to seek relief from removal due to changed country conditions in Indonesia, changed familiar status, or any other valid basis for relief.

63. These similarly situated individuals satisfy the numerosity, typicality, commonality, and adequacy of representation requirements of Rule 23 of the Federal Rules of Civil Procedure. *See Gayle v. Warden Monmouth Cty. Corr. Inst.,* No. 12-CV-02806(FLW), 2017 WL 5479701, at *1 (D.N.J. Nov. 15, 2017) (granting class certification to petitioners seeking habeas relief on behalf of themselves and all others similarly situated). The proposed class is defined under Rule 23(b)(2) as:

> All Indonesian nationals within the jurisdiction of the Newark ICE Field Office, with final orders of removal, who have been, or will be, arrested, detained, or removed by ICE after having participated at any time in the New Jersey Indonesian Order of Supervision Agreement.

The proposed class falls within the defined categories of Rule 23(b)(2) in that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, so that

final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole." *Baby Neal for & by Kanter* v. *Casey,* 43 F.3d 48, 56 (3d Cir. 1994) (*quoting* Fed. R. Civ. Proc. 23(b)(2)).

64. Upon information and belief, there are approximately 50 to 55 Indonesian Christian individuals currently known who could be part of the proposed class. *See Stewart* v. *Abraham,* 275 F.3d 220, 226–27 (3d Cir. 2001) (recognizing that forty or more persons in a class ordinarily satisfies the numerosity requirement). The total number of class, and the non-transparent manner and in which the United States will affect their removal is such that joinder of the claims of all class members would be impracticable.

65. Joinder is also impracticable because many members of the class have limited financial means to bring an individual action for the relief requested herein and some class members may be dissuaded from bringing suit individually for fear of retaliation by the government for exercising their rights. This putative class action is only the first legal step for the affected individuals, designed merely to afford them the opportunity to take further legal steps, to individually protect their rights. Judicial economy and the need to expeditiously resolve the claims raised herein also counsel in favor of class treatment.

66. Petitioners/Plaintiffs' claims are typical of the claims of the proposed class. Petitioners/Plaintiffs' claims arise from the same course of events—reliance on the Agreement described herein, and ICE's abrupt detention of class members last week with no warning—and are thus based on the same legal arguments. *Baby Neal for & by Kanter*, 43 F.3d at 56 (commonality requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class).

67. Petitioners/Plaintiffs will fairly and adequately protect the interests of the proposed class. Petitioners/Plaintiffs have no relevant conflicts of interest with other members of the proposed class, nor are any conflicts likely to arise, and Petitioners/Plaintiffs have the ability and incentive to prosecute the action vigorously on behalf of the class. Petitioners/Plaintiffs have retained competent counsel experienced in class action and immigration law.

68. There are multiple questions of law and fact common to the members of the proposed class. These common questions include, but are not limited to, the following:

a. Whether the Court has jurisdiction over this case;

b. Whether Petitioners/Plaintiffs and the proposed class can be removed without being provided an opportunity to demonstrate that they qualify for relief from persecution or torture based on, *inter alia,* changed country conditions in Indonesia;

c. Whether 8 U.S.C. § 1158, 8 U.S.C. § 1231(b)(3), and the Convention Against Torture impose a mandatory obligation to consider Petitioners/Plaintiffs' and class members' individualized requests for relief from persecution or torture; and

d. Whether Respondent violated Petitioners'/Plaintiffs' and class members' constitutional, statutory, and regulatory right to due process and a fair removal hearing by arbitrarily orchestrating a compressed process for removal that deprives them of their rights to reopen their individual immigration cases by giving them no time to make appropriate filings in Immigration Court.

69. Finally, the proposed class is ascertainable because the class is sufficiently definite and provable. The class consists of Christian Indonesian nationals living in New Jersey with final orders of removal who relied upon the Agreement reached with ICE to allow them to remain in the United States under Orders of Supervision. Respondent should have records sufficient to identify all persons in the class.

CAUSES OF ACTION

COUNT ONE
FIFTH AMENDMENT – PROCEDURAL DUE PROCESS
DENIAL OF RIGHT TO REOPEN REMOVAL ORDERS ON ACCOUNT OF ELIGIBILITY FOR ASYLUM/WITHHOLDING OF REMOVAL/CAT PROTECTION

70. Petitioners/Plaintiffs reallege the foregoing paragraphs as if set forth fully herein.

71. Procedural due process requires that the government be constrained before it acts in a way that deprives individuals of life or liberty interests protected under the Due Process Clause of the Fifth Amendment.

72. The United States government is obligated by federal and international law, to hear the claims of noncitizens, regardless of their status, who have a credible fear of persecution or torture emanating from their home country before they are removed from the United States to that country.

73. Because the danger to the named Petitioners/Plaintiffs and others similarly situated is based on changed country circumstances in Indonesia, they have not received their core procedural entitlement-they have not had an opportunity to have their claims heard at a meaningful time and in a meaningful manner, that is, with respect to current conditions, not the conditions that existed at the time their removal order was first issued. Removing the

Petitioners/Plaintiffs without giving them this opportunity violates due process guarantee of the Fifth Amendment.

COUNT TWO
IMMIGRATION AND NATIONALITY ACT – PROHIBITION ON REMOVAL TO COUNTRY WHERE INDIVIDUAL WOULD FACE PERSECUTION OR TORTURE

74. Petitioners/Plaintiffs reallege the foregoing paragraphs as if set forth fully herein.

75. Pursuant to the INA, and to ensure compliance with international treaties for which it is a signatory, including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, 8 C.F.R. §§ 208.16–208.18, and the Foreign Affairs Reform and Restructuring Act of 1998, 8 U.S.C. § 1231 note, the U.S. government is prohibited from removing noncitizens to countries where they are more likely than not to face persecution or torture.

76. The prohibition on removal is mandatory for anyone who satisfies the eligibility criteria set forth in the applicable statutes and regulations. In addition, where country conditions change after an individual has been ordered removed, the INA specifically provides for motions to reopen a removal order in order to renew one's claims for protection in light of new facts.

77. Petitioners/Plaintiffs, who are facing removal to Indonesia based on stale removal orders, face persecution and/or torture if removed to that country in light of changed circumstances since their cases were first considered. Removing the Petitioners/Plaintiffs without giving them a fair opportunity to raise these issues in Immigration Court violates the INA and international treaties to which the United States is a signatory.

COUNT THREE
SUSPENSION CLAUSE

78. Petitioners/Plaintiffs reallege the foregoing paragraphs as if set forth fully herein.

79. The Suspension Clause requires that the federal courts have opportunity for meaningful review of Petitioners' claims for relief. Absent this court's intervention, such Petitioners would be removed before being able to seek or avail themselves of such review.

COUNT FOUR--UNLAWFUL DETENTION

80. Petitioners/Plaintiffs reallege the foregoing paragraphs as if set forth fully herein.

81. Petitioners/Plaintiffs' detention violates due process unless it bears a reasonable relationship to the government's purposes—effectuating removal and protecting against danger.

82. The government's detention of Petitioners/Plaintiffs bears no reasonable relationship to either purpose. At a minimum, Petitioners/Plaintiffs must be afforded individualized determinations to assess whether their continued detention is justified.

PRAYER FOR RELIEF

WHEREFORE, Petitioners/Plaintiffs respectfully request that this Honorable Court:

A. Assume jurisdiction over this matter;

B. Issue a temporary restraining order staying Petitioners'/Plaintiffs' removal or detention, until this action is decided;

C. Certify a class defined as all Indonesian nationals within the jurisdiction of the Newark ICE Field Office with final orders of removal predating 2009.

D. Declare that Respondents/Defendants have violated the rights of Petitioners/Plaintiffs;

E. Order Respondents/Defendants to provide Petitioners'/Plaintiffs' counsel in this action with copies of their A files (immigration files).

F. Order Respondents/Defendants to provide Petitioners'/Plaintiffs' counsel in this action with any and all program descriptions, criteria, email and other correspondence, or policy memoranda relating to New Jersey Indonesian Orders of Supervision Agreement;

G. Enjoin Respondents/Defendants from removing Petitioners/Plaintiffs to Indonesia until they have an individualized opportunity to establish before an impartial adjudicator that, in light of current conditions, they are entitled to protection against removal;

H. Enjoin Respondents/Defendants from removing Petitioners/Plaintiffs to Indonesia until they have been given sufficient time to enable them to file motions to reopen their removal orders, if they do not already have pending motions to reopen, and to await adjudications of such motions; specifically, each Petitioner/Plaintiff should be given at least four months to file their motions to reopen, starting when the government provides a copy of the individual's A-file and the Record of Proceedings to the Petitioner's immigration counsel (*i.e.*, counsel who has filed a G-28 form or equivalent) or, if the Petitioner does not have counsel, to the Petitioner; any Petitioner who does file a motion to reopen should be protected by the stay until such time as the immigration court or the Board of Immigration Appeals ("BIA") adjudicate the motion, and the Petitioner has had the opportunity to file a petition for review and seek a stay of removal with the Court of Appeals;

I. Enjoin Respondents/Defendants from transferring Petitioners/Plaintiffs outside of the jurisdiction of Newark Field Office;

J. Order Respondents/Defendants to release all Petitioners/Plaintiffs from detention absent an individualized determination by an impartial adjudicator that their detention is justified based on danger or flight risk, which cannot be sufficiently addressed by alternative conditions of release and/or supervision;

K. Award reasonable attorneys' fees and costs to Petitioners/Plaintiffs; and

L. Grant such other further relief as is just and equitable.

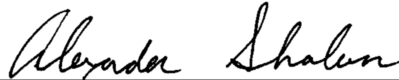
M. Date: February 2, 2018

Dated: February 2, 2018

Respectfully Submitted,

PETITIONERS/PLAINTIFFS

By Their Attorneys,



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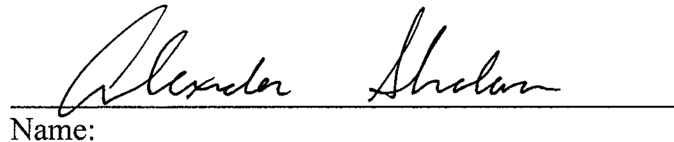
**pro hac vice* application forthcoming

VERIFICATION

I am an attorney admitted to practice in the State of New Jersey. I have reviewed the foregoing Verified Petition and the facts set forth therein. To the extent they relate to my personal involvement in these matters, they are true to the best of my knowledge, except as to any matters asserted upon information and belief, which I believe to be true. My understanding is based in part upon my familiarity with relevant documents and conversations with persons possessing first-hand knowledge.

In accordance with 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: February 2, 2018



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