Rebecca Hufstader, Esq.
Oleksandra Byelyakova, Esq.
LEGAL SERVICES OF NEW JERSEY
100 Metroplex Drive, Suite 101
Edison, New Jersey 08817
rhufstader@lsnj.org
(732) 529-8236

Pro Bono Attorneys for Petitioner

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

HORACIO MUNOZ-SAUCEDO, *Petitioner*, v. YOLANDA PITTMAN, *in her official capacity as Warden of Elizabeth Detention Center*; JOHN TSOUKARIS, *in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Newark Field Office*; and KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security*, *Respondents*.	**PETITION FOR A WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner Horacio Munoz is a national of Mexico who was granted withholding of removal protection by an Immigration Judge (IJ) who found that he would likely be persecuted if deported to his country. After his removal order and grant of protection became final, he spent ninety days in immigration custody while the Department of Homeland Security (DHS or

Department) unsuccessfully attempted to deport him to a safe third country, and was then released and returned to his home in New Jersey. He was recently re-detained due to alleged non-compliance with a requirement to request third country travel documents and currently remains in immigration custody with no likelihood of removal in the reasonably foreseeable future.

2. Mr. Munoz is detained pursuant to 8 U.S.C. § 1231, which governs the detention of non-citizens with a final order of removal that has been withheld or deferred by an IJ due to a substantial risk of persecution or torture in their country of origin. 8 U.S.C. §§ 1231(a)(1)(B)(i), 1231(a)(2). Mr. Munoz's removal order and accompanying relief grant became final when both parties waived appeal of the IJ's decision on December 15, 2022. 8 C.F.R. § 1241.1. Mr. Munoz was detained for the statutory removal period and was subsequently released on an order of supervision. On March 28, 2025, the DHS issued a notice of suspension of the removal period and revocation of release, claiming that he violated the requirement to assist in his removal. The DHS detained him at the Elizabeth Detention Center (EDC) in Elizabeth, New Jersey.

3. Mr. Munoz's continued detention violates 8 U.S.C. § 1231(a), because the DHS did not follow the proper procedure for revocation of his release and because his removal is not reasonably foreseeable, *see Zadvydas v. Davis*, 533 U.S. 678 (2001). He cannot be deported to his country of origin—Mexico—because he has been granted a withholding of removal under 8 U.S.C. § 1231(b)(3)(A). To the extent ICE is pursuing his removal to an alternative country, it has been unable to do so during the initial removal period while Mr. Munoz was detained and, as such, is very unlikely to accomplish this now. Even if the DHS identifies such a country, Mr. Munoz is entitled to notice and the opportunity to seek fear-based protection with respect to that country. *See D.V.D., et al. v. U.S. Department of Homeland Security*, No. CV 25-10676-BEM, ECF No. 34, 2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025). ICE's detention of Mr. Munoz without

notice and the opportunity to seek relief from the alternative countries to which it is supposedly attempting to remove him violates his due process rights.

4. Furthermore, ICE's re-detention of Mr. Munoz without proper notice of and opportunity to comply with the supervision requirements is inconsistent with ICE's own long-standing policy, thereby violating the Administrative Procedure Act (APA) and due process. *See Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

JURISDICTION & VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art. I § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 2201, 2202 (Declaratory Judgment Act).

6. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *See, e.g.*, *Zadvydas*, 533 U.S. at 687.

7. Venue is proper in the District of New Jersey pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Mr. Munoz is detained at Elizabeth Detention Center in Elizabeth, New Jersey and several Respondents reside in the District. 28 U.S.C. § 1391(b), (e)(1); *see Argueta Anariba v. Dir. Hudson C'ty Corr. Center*, 17 F.4th 434, 444 (3d Cir. 2021) (noting that a habeas petitioner "should name his warden as respondent and file the petition in the district of confinement").

PARTIES

8. Petitioner Horacio Munoz is a native and citizen of Mexico who was granted withholding of removal under the Immigration and Nationality Act (INA) in December 2022. He was detained at the Moshannon Valley Processing Center (Moshannon) during the initial removal

period and was then released on order of supervision. In March 2025, Mr. Munoz was re-detained at EDC.

9. Respondent Yolanda Pittman is the Warden of EDC. She is an employee of CoreCivic, the private company that contracts with ICE to run EDC. In her capacity as Warden, she oversees the administration and management of EDC. Accordingly, Ms. Pittman is the immediate custodian of Petitioner. She is sued in her official capacity.

10. Respondent John Tsoukaris is named in his official capacity as the Newark Field Office Director for ICE. In this capacity, Respondent Tsoukaris is responsible for administration and management of ICE Enforcement Removal Operations in New Jersey and exercises control over Petitioner's custody at EDC. Respondent Tsoukaris's office is located at 970 Broad Street, 11th Floor, Newark, New Jersey, 07102. He is sued in his official capacity.

11. Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS). DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity.

LEGAL FRAMEWORK

I. STATUTORY WITHHOLDING OF REMOVAL.

12. Non-citizens in immigration removal proceedings can seek three main forms of relief based on their fear of returning to their home country: asylum, withholding of removal, and relief under the Convention Against Torture (CAT). Non-citizens may be ineligible for asylum for several reasons, including failure to apply within one year of entering the United States. *See* 8 U.S.C. § 1158(a)(2). There are fewer restrictions on eligibility for withholding of removal (WOR). *Id.* § 1231(b)(3)(B)(iii).

13. To be granted WOR relief, a non-citizen must show that "more likely than not that they will face persecution on account of a protected ground if returned to his country of origin." 8 C.F.R. § 1208.16(b)(2); *INS v. Stevic*, 467 U.S. 407, 429-430 (1984). An applicant for WOR relief must show a higher likelihood of persecution than the likelihood of persecution an asylum applicant must demonstrate. *See id.*

14. When an IJ grants a non-citizen withholding relief, the IJ issues a removal order and simultaneously withholds removal with respect to the country or countries for which the non-citizen demonstrated a sufficient risk of persecution. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021). Once WOR is granted, either party has the right to appeal that decision to the BIA within 30 days. *See* 8 C.F.R. § 1003.38(b). If both parties waive appeal or neither party appeals within the 30-day period, the relief grant and the accompanying removal order become administratively final. *See id.* § 1241.1.

15. When a non-citizen has a final withholding grant, they cannot be removed to the country or countries for which they demonstrated a sufficient likelihood of persecution or torture. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.17(b)(2). While ICE is authorized to remove non-citizens who were granted withholding to alternative countries, *see* 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f), the removal statute specifies restrictive criteria for identifying appropriate countries. Non-citizens can be removed, for instance, to the country "of which the [non-citizen] is a citizen, subject, or national," the country "in which the [non-citizen] was born," or the country "in which the [non-citizen] resided" immediately before entering the United States. 8 U.S.C. § 1231(b)(2)(D)-(E).

16. If ICE identifies an appropriate alternative country of removal, the non-citizen must have notice and an opportunity to seek relief from removal to that country. *See Jama v. ICE*, 543

U.S. 335, 348 (2005) ("If [non-citizens] would face persecution or other mistreatment in the country designated under § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture, *see* 8 CFR §§ 208.16(c)(4), 208.17(a) (2004) . . ."); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (finding that "last minute" designation of alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process"); *Romero v. Evans,* 280 F. Supp. 3d 835, 848 n.24 (E.D. Va. 2017) ("DHS could not immediately remove petitioners to a third country, as DHS would first need to give petitioners notice and the opportunity to raise any reasonable fear claims."), *rev'd on other grounds, Guzman Chavez*, 141 S. Ct. 2271.

17. The Government itself has repeatedly acknowledged this right to notice and opportunity to seek relief, including just last week before the U.S. Supreme Court. Transcript of Oral Argument at 33, *Riley v. Bondi*, 23-1270 (2025) ("We would have to give the person notice of the third country and give them the opportunity to raise a reasonable fear of torture or persecution in that third country.");[1] *see also* Transcript of Oral Argument at 20-21, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021).

18. Specifically, if ICE were to attempt to remove a non-citizen to a country not designated on their removal order, the non-citizen's removal proceedings would have to be reopened for the IJ to designate the alternative country of removal and for the non-citizen to apply for any fear-based relief in withholding-only proceedings. *See Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006-10 (W.D. Wash. 2019); *accord* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1240.10(f); 8 C.F.R. § 1240.11(c)(1)(i).

[1] https://www.supremecourt.gov/oral_arguments/argument_transcripts/2024/23-1270_c0n2.pdf.

19. On March 28, 2025, the U.S. District for the District of Massachusetts issued a nationwide Temporary Restraining Order (TRO) enjoying ICE from "[r]emoving any individual subject to a final order of removal from the United States to a third country, i.e., a country other than the country designated for removal in immigration proceedings, UNLESS and UNTIL Defendants provide that individual, and their respective immigration counsel, if any, with written notice of the third country to where they may be removed, and UNTIL Defendants provide a meaningful opportunity for that individual to submit an application for CAT protection to the immigration court, and if any such application is filed, UNTIL that individual receives a final agency decision on any such application." Ex. 1, D.V.D. TRO.

II. THIRD COUNTRY REMOVAL PROCEDURES

18. As a result of the aforementioned restrictions and procedures, "only 1.6% of noncitizens granted withholding-only relief were actually removed to an alternative country" in FY 2017. *Guzman Chavez*, 141 S. Ct. at 2295 (Breyer, J., dissenting). And from FY 2020 to FY 2023, according to publicly available data, ICE removed a total of only *five* non-citizens granted withholding or CAT relief to alternative countries. Ex. 2, ICE Removal Data.[2]

19. When a non-citizen in ICE custody obtains a final grant of WOR, the non-citizen's assigned Deportation Officer (DO) typically sends requests for removal to a random collection of three or more alternative countries. The request typically consists of an email to the country's

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[2] For the complete raw data for FY 2020 through FY 2023, visit https://deportationdata.org/data.html and select "*Removals (deportations)*." Exhibit 2 excerpts each removal classified under "[5C] Relief Granted - Withholding of Deportation / Removal" or "[5D] Final Order of Deportation / Removal – Deferred Action Granted." It highlights the five individuals in those categories who were removed to countries other than their country of origin. The rest of the deported individuals presumably won withholding or CAT relief with respect to a country different than their country of origin or their withholding or CAT relief was later terminated, neither of which situation applies to Mr. Munoz.

embassy, with an attached form entitled ICE Form I-241, "Request for Acceptance of Alien." *See* Ex. 3, I-241 Example. In nearly every case, the embassies either do not respond or they decline the request.

20. Indeed, the DHS already went through this process in Mr. Munoz's case, and released him after the ninety-day removal period because it could not remove him.

III. DETENTION OF NON-CITIZENS GRANTED STATUTORY WITHHOLDING OF REMOVAL

a. Statutory Framework.

21. Section 1231 of Title 8 governs the detention of non-citizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)-(6). The "removal period" begins once a non-citizen's removal order "becomes administratively final." 8 U.S.C. § 1231(a)(1)(B). The removal period lasts for 90 days, during which ICE "shall remove the [non-citizen] from the United States" and "shall detain the [non-citizen]" as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the non-citizen within the 90-day removal period, the non-citizen "*may* be detained beyond the removal period" if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6) (emphasis added).

22. To avoid "indefinite detention" that would raise "serious constitutional concerns," the Supreme Court in *Zadvydas* construed § 1231 to contain an implicit time limit. 533 U.S. at 682. *Zadvydas* dealt with two non-citizens who could not be removed to their home country or country of citizenship due to bureaucratic and diplomatic barriers. The Court held that § 1231 authorizes detention only for "a period reasonably necessary to bring about the [non-citizen]'s

removal from the United States." *Id.* at 689. Six months of post-removal order detention is considered "presumptively reasonable." *Id.* at 701.

23. But the "*Zadvydas* Court did not say that the presumption is irrebuttable, and there is nothing inherent in the operation of the presumption itself that requires it to be irrebuttable." *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008). Rather, "the presumption scheme merely suggests that the burden the detainee must carry within the first six months of postorder detention is a heavier one than after six months has elapsed." *Id.*; *see also Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) ("*Zadvydas* established a 'guide' for approaching detention challenges, not a categorical prohibition on claims challenging detention less than six months."); *Ali v. DHS*, 451 F. Supp. 3d 703, 708 (S.D. Tex. 2020) ("Whereas the *Zadvydas* Court established a presumption that detention that exceeded six months would be unconstitutional, it did not require a detainee to remain in detention for six months or to prove that the detention was of an indefinite duration before a habeas court could find that the detention is unconstitutional.").

b. Regulations and policies.

24. DHS regulations provide that, by the end of the 90-day removal period that ensues upon a non-citizen's removal order becoming final, the local ICE field office with jurisdiction over the non-citizen's detention must conduct a custody review to determine whether the non-citizen should remain detained. *See* 8 C.F.R. § 241.4(c)(1), (k)(1)(i) ("Prior to the expiration of the removal period, the district director . . . shall conduct a custody review . . ."). The Field Office Director, or their delegate, makes the final custody decision based on recommendations offered by lower-level officers. In making this custody determination, ICE considers several factors, including the availability of travel documents for removal. *Id.* § 241.4(e). The removal period can be extended and the non-citizen may remain in detention during such extended period if he fails

or refuses to make timely application in good faith for travel or other documents necessary for departure. 8 U.S.C. 1231(a)(1)(C); 8 C.F.R. § 241.5. If the factors in § 241.4 are met, ICE releases the non-citizen under conditions of supervision. 8 C.F.R. § 241.4(j)(2). The order of supervision must specify the conditions. *Id.* § 241.5. ICE internal policies further specify that the non-citizen must be served with a notice of what he is required to do on an "Instruction Sheet to Detainee" and must be given the opportunity to comply. Chapter 17.3, Detention and Deportation Officer's Field Manual (March 27, 2006), at 96.[3] If the non-citizen violates the set conditions, he may be returned to custody after being notified of the reasons for revocation. 8 C.F.R. § 241.4(I).

25. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that established "special review procedures" to determine whether detained non-citizens with final removal orders are likely to be removed in the reasonably foreseeable future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56,967 (Nov. 14, 2001). While 8 C.F.R. § 241.4's custody review process remained largely intact, subsection (i)(7) was added to include a supplemental review procedure that ICE HQ must initiate when "the [non-citizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [non-citizen] is not significantly likely in the reasonably foreseeable future." *Id.* § 241.4(i)(7).

26. Under this procedure, ICE HQ evaluates the foreseeability of removal by analyzing factors such as the history of ICE's removal efforts to five countries. *See id.* § 241.13(f). If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on "special circumstances," it must justify the detention based on narrow grounds such as national security or public health concerns, *id.* § 241.14(b)-(d), or by demonstrating by

[3] https://www.ice.gov/doclib/foia/dro_policy_memos/09684drofieldpolicymanual.pdf

clear and convincing evidence before an IJ that the non-citizen is "specially dangerous." *Id.* § 241.14(f).

STATEMENT OF FACTS

27. Mr. Munoz is a 36-year-old national and citizen of Mexico. When Mr. Munoz was only two years old, his parents separated, and his mother left Mexico. He had no contact with his mother until many years later when she contacted him, offering to help him come to the United States. He came to the United States without inspection in September 2006 and remained here since. He has lived in New Jersey throughout his time in the United States.

28. After arrival to this country, Mr. Munoz resided with his mother until she suspected he was gay and started forcing him into a relationship with a woman. Mr. Munoz has always identified as homosexual but hid his identity for many years out of fear of non-acceptance and violence. After coming out to his mother, he moved out, started engaging in open relationships with men, and soon met his husband. Mr. Munoz's wedding took place in October 2013.

29. In 2020, Mr. Munoz and his husband experienced marital problems. Mr. Munoz looked for the company of another man on the same app where he met his husband. He started communicating with someone who stated that he was fourteen years old. Not believing that the person was underage, Mr. Munoz agreed to meet with him. When he arrived for a meeting, he learned that he was communicating with an undercover detective. Mr. Munoz was arrested and eventually pleaded guilty to attempted endangering of a child's welfare pursuant to N.J.S.A. 2C:5-1(A)(1) and N.J.S.A. 2C:24-4(A)(1). He was sentenced to serve three years in jail. On August 15, 2022, Mr. Munoz was released from criminal custody. Upon his release, the DHS initiated removal proceedings against him, and he was detained in an immigration facility in Pennsylvania pending a resolution of his case.

30. The DHS charged Mr. Munoz with removability pursuant to Section 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), of the Immigration and Nationality Act as an alien present in the United States without being admitted or paroled, and pursuant to Section 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for commission of a crime involving moral turpitude, referencing his conviction for attempted endangering of the welfare of a child in the third degree. Mr. Munoz successfully challenged the § 1182(a)(2)(A)(i)(I) charge, arguing that his conviction was not for a crime of moral turpitude. The IJ only sustained the charge of removal under § 1182(a)(6)(A)(i). Ex 4, Order of the Immigration Judge.

31. In defense to his removal, Mr. Munoz filed an application for withholding of removal and protection under the CAT because he believes that he will be harmed or even killed in Mexico due to his sexual orientation. On December 15, 2022, the IJ ordered Mr. Munoz's removal but granted his application for WOR from Mexico and deemed his CAT application moot. *Id.* Both parties waived appeal. *Id.*

32. Mr. Munoz remained in detention for 90 days following the IJ's order while the DHS searched for safe third country of deportation. On March 9, 2023, Mr. Munoz was released from detention under supervision and provided the list of requirements he was supposed to comply with. Ex. 5, Release Notification and Order of Supervision. Among other things, he was instructed to provide "ICE with written copies of requests to Embassies or Consulates requesting the issuance of a travel document." The instructions, however, did not specify which country or countries this requirement was related to.

33. Mr. Munoz reported to ICE in Newark, New Jersey without incident in March 2024 and February 2025. He was then instructed to return on March 28, 2025. During this last appointment, Mr. Munoz was served a notice of revocation of release and taken to immigration

custody at the Elizabeth Detention Center. The notice advised that a decision of re-detention was made due to Mr. Munoz's failure to "provide[] ICE with written travel document requests or acceptance letters from alternate countries to affect your removal from the United States." Ex. 6, Release Revocation Notice.

34. In subsequent emails, Supervisory Detention and Deportation Officer Alexander Cabezas indicated that Mr. Munoz was verbally instructed to provide additional travel document applications in 2024. Ex. 7, Emails with SDDO Cabezas.

35. On March 28, 2025, Mr. Munoz was detained at the Elizabeth Detention Center. As of the time of this filing, the ICE Detainee Locator indicates that he remains at EDC. Ex. 8, ICE Detainee Locator.

CLAIMS FOR RELIEF

COUNT I

PETITIONER'S CONTINUED DETENTION IS UNLAWFUL UNDER *ZADVYDAS* BECAUSE HIS REMOVAL IS NOT REASONABLY FORESEEABLE, AND THIS COURT SHOULD ACCORDINGLY ORDER HIS IMMEDIATE RELEASE

A. Mr. Munoz's removal is not reasonably foreseeable.

36. Petitioner realleges and incorporates by reference the paragraphs above.

37. Mr. Munoz's detention is governed by 8 U.S.C. § 1231(a) because he was ordered removed. The 90-day removal period began for Mr. Munoz on December 15, 2022, when the parties waived their appeal rights. *See* 8 U.S.C. § 1231(a)(1)(B)(i); 8 C.F.R. § 1241.1(b). Therefore, the *Zadvydas* framework applies to Mr. Munoz's detention.

38. 8 U.S.C. § 1231(a), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for "a period reasonably necessary to bring about the [non-citizen's] removal from the United States." 533 U.S. at 689.

39. Petitioner cannot be deported to Mexico, the only country of which he is a citizen, because he has a final grant of protection from removal there. There is no indication that ICE has identified another country to which he can be feasibly removed. Mr. Munoz spent an initial removal period in detention while ICE unsuccessfully attempted to find a third safe country before finally releasing him on an order of supervision. Based on the data mentioned *supra,* there is less than a 2% chance of deportation to a third country of a non-citizen like Mr. Munoz, who was granted WOR relief.

40. If ICE does identify such a country, ICE would be legally obligated to inform Petitioner's counsel of the identified country. Petitioner would then be given the opportunity to seek fear-based relief from removal to that country, further prolonging his proceedings and detention.

41. Therefore, Petitioner will not be removed from the United States in the "reasonably foreseeable future" because 1) he cannot be deported to his home country due to his WOR relief grant; 2) ICE has historically managed to remove only a tiny fraction of non-citizens granted withholding or CAT to alternative countries; 3) ICE has not been able to secure travel documents to or even identify any alternate countries during Mr. Munoz's initial removal period; and 4) deporting Mr. Munoz to those alternative countries would require additional, lengthy proceedings. As such, Mr. Munoz's continued detention violates 8 U.S.C. § 1231(a). *Id.* at 701.

B. This Court should order Mr. Munoz's immediate release.

42. Because Mr. Munoz's removal is not reasonably foreseeable, *Zadvydas* requires that he be immediately released. *See* 533 U.S. at 700-01 (describing release as an appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release "subject to . . . terms of supervision"). To order his immediate release, this Court need only determine that Mr. Munoz's removal is not

reasonably foreseeable under *Zadvydas*; it need not analyze whether he poses a danger to the community or a flight risk. *See* 533 U.S. at 699-700 ("[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.").

43. *Zadvydas* explicitly held that flight risk is already baked into the reasonable foreseeability analysis, *see id.* at 690 (observing that the "justification . . . [of] preventing flight . . . is weak or nonexistent where removal seems a remote possibility at best"), and that dangerousness cannot unilaterally justify indefinite civil detention barring "special circumstances," which may include the non-citizen being a "suspected terrorist[]" but do not include the non-citizen's "removable status itself." *Id.* at 691; *see also Kansas v. Hendricks*, 521 U.S. 346, 358 (1997) ("A finding of dangerousness, standing alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary [civil detention]."). With respect to Mr. Munoz's detention, ICE has not invoked the regulations governing these "special circumstances" determinations. *See* 8 C.F.R. § 241.14.

COUNT II

ICE'S CONTINUED DETENTION OF MR. MUNOZ WITHOUT PROVIDING ADEQUATE NOTICE OF SUPERVISION REQUIREMNETS AND THE OPPORTUNITY TO COMPLY AS REQUIRED BY REGULATIONS AND ICE POLICY VIOLATES THE APA AND DUE PROCESS

44. Petitioner realleges and incorporates by reference the paragraphs above.

45. Under the *Accardi* doctrine, which originated in the context of an immigration case and has been developed through subsequent immigration caselaw, agencies are bound to follow their own rules that affect the fundamental rights of individuals, even self-imposed policies and processes that limit otherwise discretionary decisions. *See Accardi*, 347 U.S. at 226 (holding that BIA must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow

their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

46. The requirement that an agency follow its own policies is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Even an unpublished policy binds the agency if "an examination of the provision's language, its context, and any available extrinsic evidence" supports the conclusion that it is "mandatory rather than merely precatory." *Doe v. Hampton*, 566 F.2d 265, 281 (D.C. Cir. 1977); *see also Morton*, 415 U.S. at 235–36 (applying Accardi to violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 813 (4th Cir. 1969) ("Nor does it matter that these IRS instructions to Special Agents were not promulgated in something formally labeled a 'Regulation' . . .").

47. When agencies fail to adhere to their own policies as required by *Accardi*, courts typically frame the violation as arbitrary, capricious, and contrary to law under the APA, *see Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) ("It is clear, moreover, that [Accardi] claims may arise under the APA"), or as a due process violation, *see Sameena, Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual's constitutional right to due process.") (internal quotations omitted).

48. Prejudice is generally presumed when an agency violates its own policy. *See Montilla*, 926 F.2d at 167 ("We hold that an alien claiming the INS has failed to adhere to its own regulations . . . is not required to make a showing of prejudice before he is entitled to relief. All that need be shown is that the subject regulations were for the alien's benefit and that the INS failed to adhere to them."); *Heffner*, 420 F.2d at 813 ("The *Accardi* doctrine furthermore requires reversal irrespective of whether a new trial will produce the same verdict.").

49. To remedy an *Accardi* violation, a court may direct the agency to properly apply its policy, *see Damus*, 313 F. Supp. 3d at 343 ("[T]his Court is simply ordering that Defendants do what they already admit is required."), or a court may apply the policy itself and order relief consistent with the policy. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners' custody under ICE's standards because "it would be particularly unfair to require that petitioners remain detained . . . while ICE attempts to remedy its failure").

50. ICE's long-standing policy (hereinafter "the Policy") is to provide non-citizens with clear, written supervision requirements and the opportunity to comply before revoking a post-order supervision order. Chapters 17.3, 12, Detention and Deportation Officer's Filed Manual (March 27, 2006). The Policy constitutes ICE's interpretation of the statute and regulations governing post-removal order detention. *See* 8 U.S.C. 1231(a)(3); 8 C.F.R. § 241.5(a)(2). The Policy is the type of rule ICE is obligated to follow under *Accardi*. In *Damus*, the U.S. District Court for the District of Columbia found that an ICE directive from 2009 laying out "procedures ICE must undertake to determine whether a given asylum-seeker should be granted parole" fell "squarely within the ambit of those agency actions to which the [*Accardi*] doctrine may attach," in part because it "establish[ed] a set of minimum protections for those seeking asylum" and "was intended—at least in part—to benefit asylum seekers navigating the parole process." 313 F. Supp. 3d at 324, 337-38; *see also Pasquini v. Morris*, 700 F.2d 658, 663 n.1 (11th Cir. 1983) ("Although the [INS] internal operating instruction confers no substantive rights on the [noncitizen]-applicant, it does confer the procedural right to be considered for such status upon application."). Similarly, the Policy here establishes procedures for reviewing the custody of non-citizens who are granted immigration relief and is clearly intended, at least in part, to benefit those non-citizens.

51. Newark ICE has clearly flouted ICE's national policy with respect to Petitioner's re-detention in violation of *Accardi*. Mr. Munoz was provided the initial supervision instructions, which broadly stated that he was required to "provide ICE with written copies of requests to Embassies or Consulates requesting the issuance of a travel document." The notice did not specify which countries Mr. Munoz was supposed to reach out to. It is also not clear how many requests Mr. Munoz was supposed to make to satisfy that requirement. Such notice was simply not an adequate written instruction Mr. Munoz could comply with in light of ICE's failure to identify any alternate removal countries during the removal period. Mr. Munoz was born in Mexico; he is a citizen of Mexico, the country of his last domicile before entry into the United States, and the country he was ordered removed to is Mexico. As such, the only country Mr. Munoz has a connection with is the country where he cannot be deported – Mexico.

52. Therefore, the notice requiring Mr. Munoz to reach out to "Embassies or Consulates" without specifying alternate countries did not constitute a clear instructions required under the agency's Policy. ICE's failure to provide the notice required under the Policy is prejudicial to him. Prejudice can be presumed because the Policy implicates Petitioner's fundamental liberty interests and due process rights. *See Delgado-Corea v. INS*, 804 F.2d 261, 263 (4th Cir. 1986) (holding that "violation of a regulation can serve to invalidate a deportation order when the regulation serves a purpose to benefit the [non-citizen]" and the violation affected "interests of the [non-citizen] which were protected by the regulation") (internal quotations omitted).

53. Therefore, Mr. Munoz has been prejudiced by ICE's failure to comply with the Policy. According to the *Accardi* doctrine, ICE's departure from its own policy is arbitrary, capricious, and contrary to law under the APA and violates Mr. Munoz's due process rights.

54. As a remedy, this Court should enforce the requirements of the Policy and order Mr. Munoz's immediate release. *See Jimenez*, 317 F. Supp. at 657 ("In these circumstances, it is most appropriate that the court exercise its equitable authority to remedy the violations of petitioners' constitutional rights to due process by promptly deciding itself whether each should be released.").

COUNT IIII

ICE'S CONTINUED DETENTION OF MR. MUNOZ WITHOUT PROVIDING ADEQUATE NOTICE OF HIS SUPERVISION REQUIREMNETS AND IDENTIFICATION OF ALTERNATE COUNTRIES OF REMOVAL VIOLATES DUE PROCESS.

55. 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. To comply with the Due Process Clause, civil detention must "bear[] a reasonable relation to the purpose for which the individual was committed," which for immigration detention is removal from the United States. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690). Furthermore, notice is one of the fundamental elements of due process. *See e.g., Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) ("The fundamental requisite of due process of law is the opportunity to be heard . . . This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.").

56. Here, Petitioner's due process rights were violated when ICE failed to provide him with adequate notice of his supervision requirements, as detailed above. Petitioner's continued detention without any indication of supposed third country removal efforts, without notice of

whether and to which countries ICE is actually attempting to remove him, further violates his due process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this Court:

a. Assume jurisdiction over this matter;

b. Declare that Petitioner's continued detention violates the Immigration and Nationality Act, the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution.;

c. Order Petitioner's immediate release from custody;

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

Dated: April 2, 2025

Respectfully submitted,

/s/Rebecca Hufstader
Rebecca Hufstader, Esq.
Oleksandra Byelyakova, Esq.
Legal Services of New Jersey
100 Metroplex Drive, Suite 101
Edison, New Jersey 08817
rhufstader@lsnj.org
(732) 529-8236

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

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys, and I have discussed the claims with Petitioner's legal team. Based on those discussions, 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: April 2, 2025

Respectfully submitted,

/s/ Rebecca Hufstader
Rebecca Hufstader
Pro Bono Counsel for Petitioner