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**VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS
PURUSANT TO 28 U.S.C. § 2241**

Petitioner, Ms. Andrea Jimenez Tepeque¹ (hereinafter “Petitioner” or “Ms. Tepeque”), submits this verified petition for writ of habeas corpus, by and through undersigned counsel, and alleges as follows:

I. INTRODUCTION

1. Petitioner Ms. Andrea Jimenez Tepeque has been in ICE detention with a final order of removal for over eight months. Even after securing withholding-only relief² there is no end in sight. She is a transgender woman who has experienced threats, harassment, and sexual assault while in detention. Her detention has become indefinite in violation of the U.S. Constitution and the Immigration and Nationality Act because there is no significant likelihood of her removal to any country in the reasonably foreseeable future.
2. Accordingly, Petitioner respectfully requests that this Court issue a writ of habeas corpus and order her release from custody, with appropriate conditions of supervision only if necessary.

¹ Ms. Tepeque’s legal name is  Jimenez Tepeque.

² In withholding-only proceedings, a noncitizen subject to a reinstated order of removal (i.e., a noncitizen who was removed from the United States and subsequently re-entered the country without inspection while the removal order was still in effect) may only apply for withholding of removal or protection under the Convention Against Torture, not asylum. *See* 8 CFR §208.16. These two forms of relief impose a higher burden of proof than an asylum application and do not guarantee release from detention pending adjudication. *See id.*

3. Petitioner has no other recourse than to petition this Court for a writ of habeas corpus, especially in light of the conditions she currently faces in ICE detention, including the risk of further sexual assault and discrimination.

II. PARTIES

4. Petitioner, Ms. Tepeque Jimenez Tepeque, is currently detained by the Respondents at the Department of Homeland Security ("DHS"), Eloy Detention Center in Eloy, Arizona.
5. Fred Figueroa is sued in his official capacity as warden of the Eloy Detention Center in Eloy, Arizona, where Petitioner is held. In this capacity, he has jurisdiction over the detention facility in which Petitioner is held, is authorized to release Petitioner, and is a legal custodian of Petitioner. *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992).
6. John E. Cantú is sued in his official capacity as the Field Office Director at U.S. Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") Phoenix Field Office. In this capacity, he has jurisdiction over the detention facility in which Petitioner is held, is authorized to release Petitioner, and is a legal custodian of Petitioner. *Id.*
7. Todd M. Lyons is sued in his official capacity as the Acting Director of ICE. In this capacity, he has responsibility for the enforcement of immigration laws. As such, he is a legal custodian of Petitioner.

8. Kristi Noem is sued in her official capacity as the Secretary of DHS, the arm of the U.S. government responsible for the enforcement of immigration laws. Because ICE is a sub-agency of DHS, Secretary Noem is a legal custodian of Petitioner.
9. Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States of America, the chief officer within the Department of Justice (DOJ). The DOJ encompasses the Board of Immigration Appeals (“BIA”) and the Immigration Courts as sub-agencies of the Executive Office of Immigration Review (EOIR). Attorney General Bondi shares responsibility for the implementation and enforcement of immigration laws and is a legal custodian of Petitioner.

III. JURISDICTION AND VENUE

10. This action arises under the Constitution of the United States of America; the Immigration and Nationality Act (INA) 8 U.S.C. § 1101 *et seq.*; and Title 8 of the Code of Federal Regulations and the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.* This Court has jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1346(a)(2) (United States as defendant), and 28 U.S.C. § 2241 (habeas corpus). This Court may grant relief pursuant to the U.S. Const., art. I, § 9, cl. 2 (Suspension Clause); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. §§ 2201-02 (declaratory relief); 28 U.S.C. § 2241 (habeas corpus); and 5 U.S.C. §§ 702, 706 (Administrative Procedure Act).

11. Petitioner's detention is under the actual control and "area of responsibility" of Fred Figueroa, the warden of Eloy Detention Center, and John Cantú, director of the ICE Arizona Field Office.³
12. This Court has jurisdiction due to her detention in the District of Arizona. *See Doe v. Becerra*, 697 F. Supp. 3d 937, 942 (N.D. Cal. 2023) ("Doe filed this habeas petition pursuant to Title 28 U.S.C. § 2241, which allows district courts to grant writs of habeas corpus 'within their respective jurisdictions.'")(citing 28 U.S.C. § 2241(a)).

IV. REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed. *Id.* (emphasis added).
14. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

³ Eloy Detention Center, Core Civic Facility Locator, <https://www.corecivic.com/facilities/eloy-detention-center> (last visited May 7, 2025).

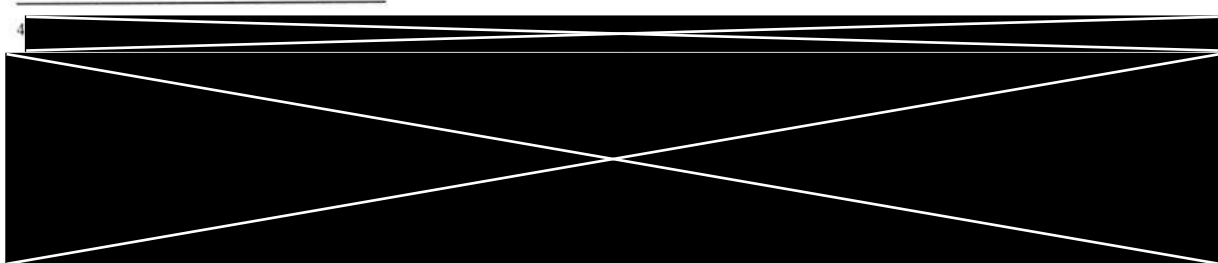
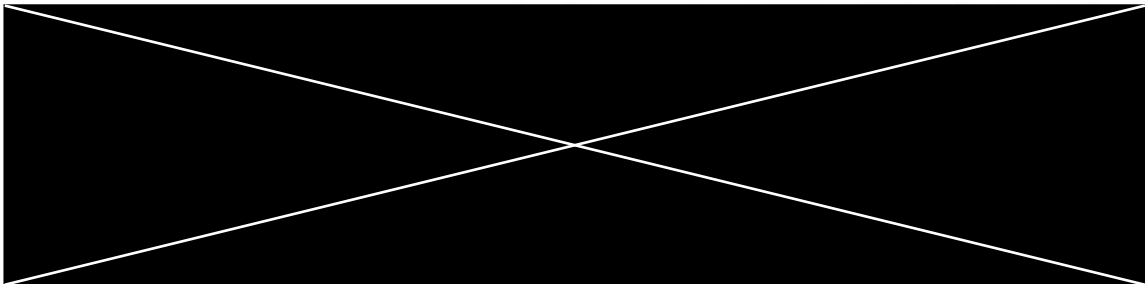
15. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs courts to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). The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

V. FACTUAL BACKGROUND

16. Ms. Tepeque was born on January 14, 1994, in Santa Rosa Cuilapa, Guatemala.

She is a transgender woman who faced severe persecution and violence in her home country due to her gender identity and sexual orientation. From a young age, Ms. Tepeque experienced bullying, harassment, and physical violence from members of her community, including being called homophobic slurs and extreme targeting by  ⁴

17. In 2008, at the age of 14, 



18. In late 2014, [REDACTED]

[REDACTED]. This incident prompted her to disclose the abuse to her mother, who urged Ms. Tepeque to flee to the United States for her safety. Ms. Tepeque left Guatemala in December 2014 and entered the United States in January 2015.

19. Upon entry, she was given a final order of removal and deported back to Guatemala despite having expressed grave fear of returning to Guatemala.

20. This fear was not noted by DHS and she was deported.

21. However, Ms. Tepeque only remained in Guatemala for two days, in acute fear for her safety. Because there was no place she could safely stay in Guatemala, she returned to the United States without inspection.

22. She settled in Florida and began to build her life there.

23. However, once in the United States, Ms. Tepeque continued to face challenges, including a hate crime in 2017 where she was shot and injured and her friend, Juan Javier Cruz, was killed. Ms. Tepeque served as a key witness in the prosecution of the perpetrator, who was found guilty of first degree murder.⁵

24. Ms. Tepeque struggled with depression and other mental health issues stemming from this incident and her years of abuse in Guatemala. This led to two minor encounters with law enforcement, including an arrest in 2021 for throwing a rock

⁵ See The Palm Beach Post, *Jury finds man guilty in 2017 fatal Lake Worth Beach shooting*, January 17, 2020, <https://www.palmbeachpost.com/story/news/courts/2020/01/17/jury-finds-man-guilty-in-2017-fatal-lake-worth-beach-shooting/112218960/> (last visited May 15, 2025).

through a window while in a state of panic and confusion after being drugged without her knowledge or consent, and an arrest last year for alleged animal cruelty against her two dogs that she continues to deny. To this latter offense, the conditions of her prolonged confinement in criminal custody caused her to plead guilty out of desperation and she served 9 months. The incarceration led to an ICE hold and eventual transfer to ICE custody.

25. Ms. Tepeque was detained at the Krome North Processing Center (“Krome”), an “all-male” facility from on or about August 21, 2024 until late March 2025. There she faced discrimination, harassment, and sexual assault.

26. Once she was detained in August 2024, ICE reinstated a prior order of removal and Ms. Tepeque requested a reasonable fear interview. She was determined to have a reasonable fear of returning to Guatemala. Her case was then referred to the immigration court at Krome for withholding-only proceedings.

27. Due to having a prior order of removal, Ms. Tepeque was not eligible for bond.

28. On February 20, 2025, the immigration court granted Ms. Tepeque protection in the form of withholding of removal to Guatemala due to severe past persecution and threat of future persecution on account of her identity as a transgender woman and sexual minority.

29. On February 24, 2025, DHS Supervisory Detention and Deportation Officer Jahmal Ervin (“SDDO Ervin”) communicated to undersigned counsel via electronic correspondence stating, “Your client is not being released at this time as his case is still being processed for removal efforts.” *See* Exhibit A.

30. Counsel replied requesting the names of the country or countries to which DHS was seeking to remove Ms. Tepeque. *See id.*
31. Neither SDDO Jahmal Ervin, nor the Miami ERO Acting Field Office Director nor the Acting Krome Assistant Field Office Director ever responded substantively to this request. *See id.*
32. Ms. Tepeque's counsel followed up with ICE over a dozen times over the past months. Ms. Tepeque's counsel informed ICE of the danger Ms. Tepeque was in by remaining in detention due to her status as a transgender woman and repeatedly requested information regarding ICE's intentions to remove her to a third country. These emails received no substantive response and ICE failed to provide her any protection. *See id.*
33. On or about March 24, 2025, Ms. Tepeque was sexually assaulted in the showers at Krome, an assault reportedly witnessed by officers at Krome.
34. Counsel again contacted ICE, informing them of this assault and requesting information about ICE's investigation and responsibilities under the Prison Rape Elimination Act. Counsel has yet to receive any substantive response to these requests. *See id.*
35. Counsel filed two motions to reopen to protect Ms. Tepeque's rights of due process, but the Immigration Judge ("IJ"), Romy Lerner, denied both motions as untimely because DHS had yet to identify a third country of removal. *See Exhibit B, 2nd Order Denying Motion to Reopen.*

36. On or about March 29, 2025, Ms. Tepeque disappeared from Krome and could not be found on the ICE Locator for nearly three days. Ms. Tepeque's counsel again contacted ICE, requesting information as to Ms. Tepeque's whereabouts. Finally Ms. Tepeque's assigned deportation officer, Kristy Zamir, wrote back stating that "Jimenez-Tepeque, Kevin is located at Eloy, AZ, Service Processing Center." *See Id.*

37. Ms. Tepeque's counsel requested confirmation from ICE as to whether efforts to deport Ms. Tepeque to a third country were ongoing. This information, once again, was not provided. *See id.*

38. On March 28, 2025, a district court in Massachusetts took up the issue of whether ICE could lawfully remove immigrants to third countries without due process. The court found resoundingly that plaintiffs are likely to demonstrate that such action is unlawful and preliminarily enjoined ICE from such deportations. This case has been expanded to a nationwide class action that includes Petitioner. *See D.V.D. v. United States Dep't of Homeland Sec.*, 2025 U.S. Dist. LEXIS 74197 (D. Mass. Apr. 18, 2025).

VI. LEGAL FRAMEWORK

A. Withholding of removal and relief under the Convention Against Torture Act.

39. Non-citizens in removal proceedings can seek three main forms of relief based on their fear of returning to their home country: asylum, statutory withholding of removal, and relief under the Convention Against Torture Act (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 under the INA or CAT, *see id.* § 1231(b)(3)(B); 8 C.F.R. § 1208.16(d), and no restrictions on eligibility for CAT deferral of removal. 8 C.F.R. § 1208.16(c)(4).

40. When an IJ grants a non-citizen withholding or CAT relief, the IJ issues a removal order and simultaneously withholds or defers that order with respect to the country or countries for which the non-citizen demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021). Once withholding or CAT relief 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 withholding or CAT relief grant and the accompanying removal order become administratively final. *See id.* § 1241.1.

41. Recently, the Supreme Court held that noncitizens with reinstated orders of removal (as is the case of Petitioner) who are placed in withholding-only proceedings are subject to final orders of removal and, therefore, fall within the ambit of the post-order detention statute, 8 U.S.C. §1231. *See Guzman Chavez*, 141 S. Ct. at 2277.

42. When a non-citizen is granted withholding or CAT relief, 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 or CAT relief to alternative third countries, *see* 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f), the removal statute specifies criteria for identifying appropriate countries.

43. 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 D.V.D.*, 2025 U.S. Dist. LEXIS 74197; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006-10 (W.D. Wash. 2019); *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[.]”); *Becerra*, 697 F. Supp. 3d at 945 n.4 (“Even if DHS found another country willing to accept Doe, they would have to provide him with notice and opportunity to apply for withholding or deferral of removal to that country[.]”); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (finding that “last minute” designation of an 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*; *D.V.D. v. United States Dep’t of Homeland Sec.*, 2025 U.S. Dist. LEXIS 59422, at *3 (D. Mass. Mar. 29,

2025) (“even if these removals can follow from authority exercised outside formal proceedings, that exercise must still comport with due process.”) ; *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998) (concluding that government's designation of Russia as the country of removal without affording petitioners “anything approaching a full opportunity to present evidence concerning their fears of persecution in Russia” constituted a “fundamental failure of due process”) (internal citations omitted).

44. The Government itself has recently acknowledged this right to notice and opportunity to seek relief before the Supreme Court. *See* 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.”);⁶ *see also id.* at 20-21.

45. 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*, 409 F. Supp. 3d at 1006-10; *accord* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1240.10(f); *id.* § 1240.11(c)(1)(i).

6

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

46. On April 18, 2025, the U.S. District for the District of Massachusetts issued a nationwide preliminary injunction enjoining ICE from removing individuals without such notice, finding that, prior to removing any individual to a third country, DHS must (1) provide written notice to the individual and their counsel of the third country to which they may be removed (in a language the individual can understand), (2) provide “meaningful opportunity” for the individual to raise a fear of return for eligibility for CAT protections, (3) move to reopen the proceedings if the individual does demonstrate “reasonable fear,” and (4) if they have not demonstrated “reasonable fear,” “provide meaningful opportunity, and a minimum of 15 days” to move to reopen immigration proceedings to challenge third-country removal. *See D.V.D.*, 2025 U.S. Dist. LEXIS 74197, at *56.

B. Third country removal procedures

47. 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 fiscal year (FY) 2017. *See Becerra*, 697 F. Supp. 3d at 946 (“an extremely limited number of persons granted withholding of removal were deported to a third country.”).⁷

⁷ *See also Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2295 (2021) (Breyer, J., dissenting) (citing American Immigration Council, *et.al.*, *The Difference Between Asylum and Withholding of Removal*, https://www.americanimmigrationcouncil.org/sites/default/files/research/the_difference_between_asylum_and_withholding_of_removal.pdf).

48. 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.⁸

49. When a non-citizen in ICE custody obtains a final grant of withholding or CAT relief, 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 embassy, with an attached form entitled ICE Form I-241, "Request for Acceptance of Alien." Most often, the embassies either do not respond or they decline the request. *See* Exhibit D, ICE Emails re: Removal.

50. While there has been an uptick in attempts at third country removals, such as flights to el Centro de Confinamiento del Terrorismo ("CECOT") in El Salvador and removals to Guantanamo Bay, Cuba, Respondents have yet to set up any lawful system of consistent third party removals. *See, e.g., D.V.D.*, 2025 U.S. Dist. LEXIS 74197 at *45. Further, Ms. Tepeque's record is completely void of any alleged gang affiliation, which also sets her apart from the groups and individuals targeted for third country removals to date. *See id.*⁹

⁸ *See* Exhibit C, ICE Data Third Country Removals Data. For the complete raw data for FY 2020 through FY 2023, visit <https://deportationdata.org/data.html> and select "Removals (deportations)" (last visited May 16, 2025).

⁹ *See also* Joseph Gedeon, *Trump administration deports more alleged gang members to El Salvador*, March 31, 2025; <https://www.theguardian.com/us-news/2025/mar/31/trump-deports-alleged-gang-members-el-salvador>.

C. The Due Process Clause of the Fifth Amendment prohibits indefinite detention.

51. The Due Process Clause of the Fifth Amendment to the United States Constitution forbids the Government from depriving a person of life, liberty, or property without due process of law. U.S. Const. Amend. V. The Supreme Court holds that a “fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotation marks and citation omitted).
52. This fundamental due process protection extends to “every person within the nation’s borders,” regardless of immigration status. *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir. 2014). “Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection.” *Mathews v. Diaz*, 426 U.S. 67, 77 (1976).
53. Immigrants in detention retain these core rights of due process. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (“once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”).
54. Immigration detention, civil in nature, “violates due process outside of ‘certain special and narrow nonpunitive circumstances.’” *Id.* at 690 (internal quotation marks and citation omitted). As the Court made clear, the statute permitting post-removal order detention is intended to facilitate the actual removal of the

noncitizen from the United States, and should not be read to permit prolonged, indefinite detention, where there is no reasonable likelihood the noncitizen will be removed in the near future. *Id.* Such is the case for Petitioner.

D. Respondents cannot indefinitely hold individuals with final removal orders granted withholding of removal.

55. To avoid “indefinite detention” that would raise “serious constitutional concerns,” the Supreme Court in *Zadvydas* construed 8 U.S.C. § 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. Post-removal order detention beyond six months is no longer considered “presumptively reasonable.” *Id.* at 701.

56. But the “*Zadvydas* Court did not say that the six-month 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).

57. 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* 8 C.F.R. § 241.4(i)(7). 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.*

58. Under this procedure, ICE evaluates the foreseeability of removal by analyzing factors such as the history of ICE’s removal efforts to third countries. *See id.* § 241.13(f). If ICE 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 clear and convincing evidence before an IJ that the non-citizen is “specially dangerous.” *Id.* § 241.14(f). ICE has not asserted that “special circumstances” apply in Ms. Tepeque’s case.

E. Agency noncompliance with post-order custody review requirements warrants habeas relief.

59. Should ICE fail to timely remove or release individuals detained with a grant of withholding, the proper remedy is for a district court to order release or to order a bond hearing by an immigration judge to determine Petitioner’s eligibility for release. *See Becerra*, 697 F. Supp. 3d at 944 (noting that an immigrant’s prolonged detention after a final order of removal with relief under CAT creates a constitutional problem resolved through habeas corpus).

60. The Supreme Court has held that noncitizens in withholding-only proceedings are not automatically entitled to a bond hearing under 8 USC §1231(a) after six months of detention. *Johnson v. Arteaga-Martinez*, 142 S. Ct. 1827, 1828 (2022).
61. However, the Court did not foreclose constitutional challenges to prolonged detention for persons in withholding-only proceedings. *Id.* at 1832-34; *see also Becerra*, 697 F. Supp. 3d at 947.
62. The court in *Becerra* found that granting a bond motion was the appropriate remedy for an individual held after being granted relief under CAT who was detained indefinitely. *See id.* at 944 (“The IJ’s final order of removal may have started a new clock for the Government to take a different type of action, but it did not reset the clock as to the time Doe has been detained without a bond hearing. Doe’s continued civil detention of more than 22 months without a hearing to consider the risks related to his potential release on bond supports his due process claim.”).
63. In order to determine if relief is appropriate due to prolonged and indefinite detention, the Court should consider the factors set forth in *Mathews v. Eldridge*, 424 U.S. at 333 (finding that due process requires “the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’”)(citation omitted).
64. Under *Mathews*, “courts consider (1) the individual’s private interest that will be impacted by the official action, (2) the risk of erroneous deprivation of that interest and the probable value of additional procedural safeguards, and (3) the

government's interest.” *Becerra*, 697 F. Supp. 3d at 945. These factors all weigh in Petitioner’s favor.

VII. PETITIONER'S DETENTION IS UNLAWFUL

65. Petitioner's detention has far exceeded the six-month benchmark in *Zadvydas*, and her removal is not reasonably foreseeable due to: (1) the fact that an immigration judge has granted her withholding of removal to Guatemala, and (2) there is no indication that a third country will accept Ms. Tepeque.

66. As Petitioner's own experience shows, it is unlikely that ICE will be successful in finding a third country to accept her and forcing her to languish in a detention center indefinitely after she has already been granted relief is unlawful. *See Zadvydas*, 533 U.S. at 699.

67. Petitioner has already been in ICE custody for over eight months with a final order of removal, and even after a favorable adjudication on her withholding claim in February 2025, ICE continues to detain her.

68. In the context of immigration detention, it is “well-settled” that “due process requires adequate procedural protections to ensure that the government’s asserted justification for physical confinement outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

69. To determine whether due process is met in an administrative procedure, courts weigh the private and governmental interests that are affected using the factors outlined in *Mathews v. Eldridge*, 424 U.S. at 333. *See Singh*, 638 F.3d at 1203.

70. Employing *Mathews*, Petitioner's private interest in liberty and rights to due process weigh in her favor.

71. For the first prong of the *Mathews* test, the Court must consider the private interest threatened by the governmental action. *See Mathews*, 424 U.S. at 355. Ms. Tepeque's private interest is in her freedom "from government custody, detention, or other forms of physical restraint, [which] lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. Ms. Tepeque has been in detention with a final order of removal for over 8 months, giving great weight to her private interest.

72. Further, since she was granted withholding of removal, Petitioner has been subject to homophobic discrimination and sexual assault as a transwoman detained in an "all-male" facility. There was no attempt to intervene on her behalf by detention center officials during the assault, and she continues to live in extreme fear for her safety. Ms. Tepeque's private interest is overwhelming.

73. Petitioner's case is remarkably similar to the facts in *Becerra*. The district court found that Doe's private interest in liberty outweighed the government's interest in prolonged detention, noting that "[a]lthough the clock has started to run on his 90-day detention period under Section 1231(a), Respondents fail to provide any certainty regarding the timing of Doe's removal. Such uncertainty is only exacerbated by the IJ's grant of relief under the CAT because the Government cannot simply remove him to Mexico, his country of origin." (internal citations omitted). *Becerra*, 697 F. Supp. 3d at 945.

74. Second, *Mathews* asks the Court to consider the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards. *See Mathews*, 424 U.S. at 333. This prong also weighs strongly in Petitioner's favor.
75. The risk of erroneous deprivation through the procedures used is extremely high. Due to her grant of withholding of removal, Ms. Tepeque cannot be removed to Guatemala, the only country where she has citizenship, which obligates ICE to identify alternative third countries of removal. *See* 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f). ICE has failed to do so.
76. Even if ICE was successful, it must allow Petitioner notice and opportunity to seek relief from removal to alternative third countries. *See Jama*, 543 U.S. at 348; *Andriasian*, 180 F.3d at 1041. Ms. Tepeque is entitled to request protection from removal from a third country if she fears persecution or torture. *See* 8 U.S.C. § 1231(b)(3)(A); *Aden*, 409 F. Supp. 3d at 1010 (holding that due process places the burden on ICE to ensure that petitioner is heard on his fear of removal to a non-designated country).
77. As in *Becerra*, by failing to secure a third country and prolonging her detention indefinitely, Respondents deny Ms. Tepeque due process and any procedure by which she secure release. *Becerra*, 697 F. Supp. 3d at 945 n.4.
78. Finally, weighing against these previous two factors, *Mathews* requires the Court to consider the government's interest in the matter, and its burden in providing additional procedures. *Mathews*, 424 U.S. at 334-5. In this case, the government's

interest, which is to continue detaining the Petitioner after she was granted withholding from removal, is negligible. There is no contention that she is a threat to public safety, or a drain on public resources. Moreover, the burden it would incur in providing due process to Ms. Tepeque could be easily met by simply granting her habeas release as conditioned by any form of supervision the Court deems appropriate, or at minimum, providing her with a bond hearing. Further, the impetus sustaining the government's interest, the search for a suitable third country for removal, can be pursued with similar if not the same efficacy without holding the Petitioner in detention indefinitely. *See Becerra*, 697 F. Supp. 3d at 947.

79. Petitioner also asks the Court to consider the abuses Petitioner suffered while in detention, including sexual assault and homophobic discrimination. Ultimately, the totality of the circumstances demonstrate that her detention has become unreasonably prolonged. Federal regulations, the post-order detention statute, and due process require that she be released.

80. Lastly, Petitioner's detention has not comported with the basic regulatory protections in place to constrain the length of post-order detention.

81. Respondents have yet to provide any notice of completed post-order custody reviews or notice of third country removal since Petitioner's detention at Krome on or around August 2024.

82. Petitioner's detention post-order granting withholding could continue indefinitely, especially as ICE has shown no inclination to release her or provide any

information of their efforts to remove her to a third country. Thus she may remain detained for many more months or even years.

83. Petitioner's ongoing detention is unlawful and requires relief pursuant to habeas corpus.

CLAIMS FOR RELIEF

COUNT ONE: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

84. Petitioner re-alleges and incorporates by reference paragraphs 1-83. Petitioner's eight months in detention with a final order of removal and without any evidentiary hearing has become unreasonably prolonged, depriving her of due process of law under the Fifth Amendment of the U.S. Constitution.

85. Therefore, Petitioner is unlawfully detained and entitled to a writ of habeas corpus ordering her immediate release from custody, subject to supervision.

COUNT TWO: VIOLATION OF 8 U.S.C. § 1231(a)

86. Petitioner re-alleges and incorporates by reference paragraphs 1-85.

87. The Immigration and Nationality Act at 8 U.S.C § 1231(a) authorizes detention "beyond the removal period" only for the purpose of effectuating removal. 8 U.S.C § 1231(a)(6); *see also Zadvydas*, 533 U.S. at 699 ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.").¹⁰

¹⁰ Though both *Guzman Chavez* 141 S. Ct. 2271 (2021) and *Arteaga-Martinez*, 142 S. Ct. 1827 (2022) consider the statute at issue here, both are limited to the statutory requirements of a bond hearing. Neither takes up the constitutional due process issue, and therefore, *Zadvydas v. Davis*, 533 U.S. 678 (2001), which does, controls. Petitioner suggests ordering a bond hearing as an

88. Because Petitioner's removal is not reasonably foreseeable, her detention does not effectuate the purpose of the statute and is accordingly not authorized by 8 U.S.C. § 1231(a).

89. Therefore, Petitioner is unlawfully detained and entitled to a writ of habeas corpus ordering her immediate release from custody.

COUNT THREE: VIOLATION OF 5 U.S.C. § 706

90. Petitioner re-alleges and incorporates by reference paragraphs 1-89.

91. The Administrative Procedures Act ("APA") prohibits agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706 (2)(A). Courts must assess, among other matters, "whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Judulang v. Holder*, 565 U.S. 42, 53 (2011). This assessment "involves examining the reasons for agency decisions—or, as the case may be, the absence of such reasons." *Id.*

92. Once withholding of removal was granted in favor of Petitioner, Respondent's failure to appeal that decision within the 30-day allotted period, and by extension, the continued incarceration of Petitioner, constituted a final agency action. *See* 8 C.F.R. §§ 1003.38(b); 1241.1, *see also* Exhibit B.

93. Here, Respondent violates the APA by arbitrarily detaining Ms. Tepeque, despite a final grant of relief from the immigration judge that bars removing Petitioner to

alternative to release herein merely as a means to satisfy constitutional requirements but primarily respectfully requests that this Court order her release.

Guatemala, (*see id.*) and the absence of any reliable indicia of her lawful status in any third country or evidence of a viable third country of removal. The government has offered no rationale, let alone evidence, why any third country would accept Petitioner thereby justifying her continued detention, and did not identify any third country option for Petitioner at any point in her removal proceedings. Moreover, the government has offered no explanation for why it continues to detain Ms. Tepeque under these circumstances when, based on information and belief, the local agency has repeatedly released similarly situated individuals immediately or days after an immigration judge's grant of relief from protection where Respondent has waived appeal.

94. For these reasons, Petitioner's continued incarceration is arbitrary and capricious.

Accordingly, the Court should "set aside" the DHS's detention order and order her immediate release from custody.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Set this matter for expedited consideration pursuant to 28 U.S.C. § 1657;
3. Enter an Order to Show Cause requiring Respondents to file a response to the Petition "within three days unless for good cause additional time, not exceeding twenty days, is allowed," 28 U.S.C. § 2243;

4. Order Respondents to refrain from transferring Petitioner out of the jurisdiction of this Court during the pendency of this proceeding and while Petitioner remains in Respondents' custody;
5. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
6. Declare that Petitioner's detention violates the Immigration and Nationality Act;
7. Declare that Petitioner's detention violates the Administrative Procedures Act;
8. Grant Petitioner a writ of habeas corpus that orders her immediate release from the custody of Respondents;
9. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, as amended, 5 U.S.C. § 2412, and on any other basis justified under law; and
10. Grant any other and further relief that the Court deems just and proper.

Submitted this 16th day of May, 2025.

/s/ Katherine H. Blankenship

Katherine H. Blankenship (Fl Bar No. 1031234)

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

I, Katherine H. Blankenship, am submitting this verification on behalf of Petitioner because I am her attorney. I have conferred with Ms. Andrea Jimenez Tepeque and also reviewed the administrative record of her case as her counsel acting before the agency. On the basis of this review, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: May 17, 2025

/s/ Katherine H. Blankenship

Katherine H. Blankenship (FL Bar No. 1031234)