

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

SAMUEL CABRERA-PEREZ

Petitioner,

DOUGLAS FENDER, Warden of Northeast Ohio Correctional Center, in his official capacity; **PAMELA BONDI**, Attorney General of the United States, in her official capacity; **KRISTI NOEM**, Secretary of the U.S. Department of Homeland Security, in her official capacity; **TODD LYONS**, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; **ROBERT LYNCH**, Director of the Detroit Field Office for U.S. Immigration and Customs Enforcement, in his official capacity.

Respondents-Defendants.

**PETITION FOR A WRIT OF
HABEAS CORPUS**

Case No. —

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §2241
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner, Samuel Cabrera-Perez, a long-term resident of the United States, is currently detained by federal immigration authorities at Northeast Ohio Correctional Center. His detention stems from criminal proceedings culminating in three charges of Identity Fraud under O.R.C. 2913.49(B)(1) to which Samuel negotiated a plea on March 14, 2024. Petitioner remains in ICE custody in Ohio despite being granted Withholding of Removal by the Immigration Court in Cleveland on April 14, 2025 based on findings by an Immigration Judge (“IJ”) that he would likely be subject to persecution or torture if deported to his home country.

2. Immigration and Customs Enforcement (“ICE”) refuses to release Mr. Cabrera-Perez, claiming that it is seeking alternative countries of removal despite knowing that he lacks citizenship or a connection to any other country other than Guatemala. Mr. Cabrera-Perez’s continued detention despite a positive grant of Withholding of Removal is arbitrary and unlawful, and he requests that this Court order his immediate release from ICE custody.

3. Mr. Cabrera-Perez 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 home country. 8 U.S.C. § 1231(a)(1)(B)(i). Mr. Cabrera-Perez’s removal order and accompanying relief grant became final when ICE failed to timely appeal his relief grant to the BIA, due on May 14, 2025, despite indicating to the IJ their intention to reserve the ability to file an appeal.

4. Petitioner seeks immediate judicial review of his detention, a declaration that his continued custody is unlawful, and an order for his immediate release on bond. This case raises urgent constitutional questions regarding the limits of immigration enforcement authority, the rights of noncitizens under the Constitution, and the legality of pre-removal detention in the absence of due process.

JURISDICTION AND VENUE

5. This action arises under the United States Constitution; the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.; and the regulations implementing the INA.

6. 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).

7. Petitioner is challenging the lawfulness of his ongoing detention in light of his continued detention despite a recent grant of Withholding of Removal. This case falls squarely within the core function of habeas corpus: protection against unlawful executive restraint. See *Hamama v. Adducci*, 912 F.3d 869, 877-78 (6th Cir. 2018) (recognizing availability of habeas for constitutional detention claims); *Trump v. J.G.G.*, 604 U.S. (2025) (per curiam) (affirming habeas jurisdiction even absent a direct request for release where detention is allegedly unconstitutional). To the extent that 8 U.S.C. § 1252 is construed to limit habeas review in this context, such a construction would raise serious constitutional questions under the Suspension Clause. See *INS v. St. Cyr*, 533 U.S. 289, 314. Petitioner seeks individualized relief for unconstitutional detention, not a challenge to a final removal order, and thus falls outside the jurisdiction-stripping provisions of § 1252.

8. Venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. §§ 1391(b), 1391(e)(1), and 2241(a), because Petitioner is currently detained in Northeast Ohio Correctional Center, located within this District, and because the events giving rise to his claims occurred in this District. Venue is also proper under § 1391(e) because Respondents are federal officers and agencies, no real property is involved, and a substantial part of the acts and

omissions occurred here.

PARTIES

i. Petitioner

9. Petitioner is currently detained in at Northeast Ohio Correctional Center. Petitioner is the husband and caretaker of his wife, Hermelinda Cabrera who suffers from blindness. Petitioner is also the caretaker of three U.S. citizen children. Both Petitioner's wife and children rely on him on a daily basis. Moreover, Petitioner's Counsel in relation to the underlying criminal proceedings has filed a motion to reopen and vacate Petitioner's plea, which is set for a hearing on July 22, 2025. *See Exh. C*, Copy of Mercer County Court Records. Should Petitioner's motion be granted in that instance, Petitioner would likely be eligible for Cancellation of Removal under INA § 240A(b).

ii. Respondents

10. **DOUGLAS FENDER** is the Warden of Northeast Ohio Correctional Center ("NEOCC"), located at 2240 Hubbard Rd, Youngstown, OH 44505. He is responsible for the operation of NEOCC, where Petitioner is currently detained, and has immediate physical custody over Petitioner. He is sued in his official capacity.

11. **PAMELA BONDI** is the Attorney General of the United States. As head of the U.S. Department of Justice, she has ultimate supervisory authority over federal immigration enforcement and removal proceedings. She is sued in her official capacity.

12. **KRISTI NOEM** is the Secretary of the U.S. Department of Homeland Security. In this role, she oversees the administration and enforcement of immigration laws, including detention and removal proceedings. She is sued in her official capacity.

13. **TODD LYONS** is the Acting Director of U.S. Immigration and Customs Enforcement (ICE). ICE is the agency charged with carrying out immigration detention and

deportation. He is sued in his official capacity.

14. **ROBERT LYNCH** is the Director of the Detroit Field Office for U.S. Immigration and Customs Enforcement, which has jurisdiction over Ohio. He is responsible for decisions concerning immigration enforcement and detention within this region. He is sued in his official capacity.

STATEMENTS OF FACTS

15. On April 14, 2025 Petitioner Samuel Cabrera-Perez's Application for Withholding of Removal was granted by the Cleveland Immigration Court. Petitioner was detained during the course of proceedings, and his detention continues despite a positive grant of Withholding of Removal. Counsel is not aware whether the Government has successfully identified to Petitioner, Counsel, or the Court an intended third country of removal.

16. Mr. Cabrera-Perez is a long-time resident of the United States and has lived in this country continuously for over twenty years. He is the sole provider for his family, which includes three U.S. citizen children and a spouse who is legally blind. Petitioner is not currently in lawful immigration status but has recently been granted Withholding of Removal by the Cleveland Immigration Court.

17. Additionally, Mr. Cabrera Perez's counsel in the underlying criminal proceedings has filed a motion to reopen in his case in order to vacate or alter his plea. *See Exh. C*, Copy of Mercer County Court Records. There is a Motion Hearing set for July 22, 2025 which the Court has ordered Petitioner be physically present for. *See Exh. D*, Copy of Mercer County Judgment Entry.

18. Mr. Cabrera-Perez's continued detention stems from the Government's desire to remove him to a yet-to-be determined or disclosed third country following the conclusion of Immigration Proceedings which culminated in a grant of Withholding of Removal. Despite the Court granting relief to Petitioner, he remains in detention. The government's continued civil

detention without due process and its attempt to remove him to a third country without notice or opportunity to express fear of removal violates Petitioner's constitutional rights under the Fifth Amendment of the United States Constitution. Petitioner now seeks relief through a writ of habeas corpus under 28 U.S.C. § 2241 to remedy his ongoing unlawful and unconstitutional detention.

ARGUMENT

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. Cabrera-Perez's removal is not reasonably foreseeable under *Zadvydas*.

19. Mr. Cabrera-Perez's detention is governed by 8 U.S.C. § 1231(a)(1) because he has not yet been detained for more than 90 days since he received a final grant of Withholding of Removal by the Cleveland Immigration Court. Mr. Cabrera-Perez has been detained for 74 days as of June 27, 2025. The 90-day removal period began for Mr. Cabrera-Perez on April 14, 2025 when he was granted Withholding of Removal.

20. Mr. Cabrera-Perez will very likely *never* be deported from the United States, let alone in the reasonably foreseeable future, as explained in further detail below. He cannot be deported to his home country of Guatemala because he has a final grant of Withholding of Removal. *See* 8 C.F.R. § 1208.16.

21. Although individuals granted withholding of removal can be removed to a third country other than the country to which removal has been withheld or deferred under 8 C.F.R. § 1208.16(f), it is exceedingly unlikely that ICE will identify an alternative country to which it can remove Mr. Cabrera-Perez. ICE only manages to remove to third countries approximately three percent of non-citizens granted withholding and CAT relief in FY 2019 and 2020, *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2295 (2021) (Breyer, J., dissenting), and a significant increase in ICE's third country removals is highly doubtful without a substantial change in diplomatic

relationships between the United States and various governments.¹

22. More specifically, Despite “negative responses” from several alternative removal countries to which ICE purportedly sought to remove individuals, ICE nonetheless continued to detain the individuals for months after receiving such “negative responses” and only later released the individuals after they each filed federal habeas petitions not dissimilar to the present petition. See *Martinez Alfaro v. Perry*, 1:22-cv-1243 (E.D. Va. 2022); *Hernandez Preza v. Perry*, 1:23-cv-200 (E.D. Va. 2023). Should the government seek to remove Mr. Cabrera-Perez to a third country, such as Mexico for example, it should be noted that Mexico has, as recently as January 2025, refused to accept a deportation flight originating from the United States. See *Exh. A*, January 2025 Reuters Article.

23. Given this history, it strains credulity to think that ICE will be able to remove Mr. Cabrera-Perez to a random collection of alternative countries that have recently and repeatedly declined to accept the deportation of similarly situated individuals, including but not limited to the country of Mexico. Like the individuals referenced in the above cited cases, Mr. Cabrera-Perez is not a citizen of, has never lived in, and has no connection to any country besides his home country of Guatemala let alone the countries to which ICE has purportedly attempted to remove individuals in the past, including Mexico.

24. Even in the highly unlikely scenario that an alternative country notifies ICE of its willingness to accept the deportation of Mr. Cabrera-Perez, ICE would still be required to obtain travel documents and afford him a Reasonable Fear Interview (“RFI”) at which he would have the opportunity to articulate a fear of return to the country willing to accept him. See 8 C.F.R. §

¹ Foreign countries do not accept the deportation of random non-citizens who lack any connection to their territory. According to a 2019 DHS report on ICE deportation procedures, “foreign governments do not issue travel documents without confirming the identity and citizenship of the [non-citizen]” and “with limited exceptions, require a passport or temporary travel permit to accept their nationals back into the country.” DHS Office of the Inspector General, ICE Faces Barriers in Timely Repatriation of Detained Aliens (March 11, 2019), at 8 <https://www.oig.dhs.gov/sites/default/files/assets/2019-03/OIG-19-28-Mar19.pdf>.

241.8(e). If an Asylum Officer (“AO”) were to find that Mr. Cabrera-Perez demonstrated a reasonable possibility of persecution or torture at the RFI, or an IJ subsequently vacated a negative finding by the AO, he would enter withholding-only proceedings before an IJ in which he would again seek to demonstrate his eligibility for withholding or CAT relief with respect to that country, thereby restarting the process that took several months to complete the first time. *See Id.*

25. Therefore, Mr. Cabrera-Perez’s is not reasonably foreseeable because 1) he cannot be deported to his home country due to his Withholding of Removal relief grant; 2) ICE has historically managed to remove only a tiny fraction of non-citizens granted withholding or CAT to alternative countries; 3) any countries to which requests may still be pending have no logical reason to accept Mr. Cabrera-Perez’s deportation and have provided no timeline under which they might decide; and 4) deporting Mr. Cabrera-Perez to those alternative countries would require additional, lengthy proceedings. *See Hassoun v. Sessions*, No. 18-cv-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019) (finding removal not reasonably foreseeable where several countries had declined to issue travel documents and several others had provided no response or timeline for response); *Kacanic v. Elwood*, No. 02-cv-8019, 2002 WL 31520362, at *5 (E.D. Pa. Nov. 8, 2002) (finding removal not reasonably foreseeable where the country of origin had “been in possession of all the information [ICE] is capable of providing to it” but had “never stated that the Petitioner is likely to be granted travel papers” and was “unable to tell the [ICE] when a decision will be reached”).

26. Despite finding himself within the statutorily defined removal period, Mr. Cabrera-Perez has still demonstrated that his continued detention is unreasonable under *Zadvydas*. Post-removal order detention for less than six months may still be unreasonable in unique circumstances like Petitioner’s where he can meet his burden of demonstrating that removal is not reasonably foreseeable. *See Cesar*, 542 F. Supp. 2d at 904 (“The burden might be on the detainee within the first six months to overcome the presumptive legality of his detention, but where a[] [non-citizen]

can carry that burden, even while giving appropriate deference to any Executive Branch expertise, his detention would be unlawful.”); *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.”).

27. For the reasons stated above, Mr. Cabrera-Perez has clearly met any burden of proof that this Court may place on him. Unlike *Zadvydas* and the vast majority of its progeny, which analyzed whether ICE will foreseeably remove non-citizens to their home country or country of citizenship, see, e.g., *Zadvydas*, 533 U.S. at 684-85, the question here is whether ICE will be able to deport Mr. Cabrera-Perez to random third countries to which he has no connection whatsoever. The answer to that question has been no from the moment Mr. Cabrera-Perez’s relief grant became final, and the likelihood of third-country removal has only decreased since then.

b. This Court should order Mr. Cabrera-Perez’s immediate release.

28. Because Mr. Cabrera-Perez’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. Cabrera-Perez’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.”).

29. *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. Cabrera-Perez’s detention, ICE has not invoked the regulations governing these “special circumstances” determinations. *See* 8 C.F.R. § 241.14.

30. To the extent this Court considers any factors outside of the foreseeability of Petitioner’s removal, which it need not do, Mr. Cabrera-Perez has significant equities that warrant release. Mr. Cabrera-Perez has lived in the United States for approximately twenty-one years, is the sole caretaker of his blind wife and three U.S. citizen children, and is respected within his community.

31. Additionally, this Court or ICE is free to impose conditions on release to mitigate any potential concerns regarding flight risk or danger. *See Zadvydas*, 533 U.S. at 700 (“[T]he [non-citizen]’s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances.”).

II. ICE’S CONTINUED DETENTION OF MR. CABRERA-PEREZ, WITHOUT REVIEWING HIS CUSTODY UNDER ICE POLICY VIOLATES THE APA AND DUE PROCESS.

32. 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.”).

33. 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’ . . .”).

34. 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).

35. 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.”).

36. 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”).

37. ICE’s long-standing policy (hereinafter “the Policy”) is to release non-citizens immediately following a grant of withholding or CAT relief absent exceptional circumstances. *See* Exh. B, ICE Policies on Post-Relief Release at 2. (“In general, it is ICE policy to favor the release [non-citizens] who have been granted protection by an immigration judge, absent exceptional concerns . . .”); *id.* at 3 (“Pursuant to longstanding policy, absent exceptional circumstances . . . noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge should be released . . .”) (emphasis added). The Policy specifically instructs the local ICE field office to make an individualized determination whether to keep a non-citizen detained based on exceptional circumstances. *See id.* at 4 (“[T]he Field Office Director must approve any decision to keep a [non-citizen] who received a grant of [asylum, withholding, or CAT relief] in custody.”).

38. The Policy constitutes ICE’s interpretation of the statute and regulations governing post-removal order detention. *See* 8 U.S.C. § 1231; 8 C.F.R. §§ 241.4, 241.13, 241.14. ICE has reasonably concluded that 8 U.S.C. § 1231(a)(2) does not require the detention of non-citizens granted withholding or CAT relief for the entirety of the 90-day removal period and that ICE “has the authority to consider the release of such [non-citizens] during the removal period.” *Exh. B* at 1. Furthermore, ICE later stated that the release policy established in 2004 “applies at all times following a grant of protection, including during any appellate proceedings and throughout the removal period,” thereby explicitly extending the Policy to non-citizens with final removal orders

who were granted withholding or CAT relief. *Id.* at 3.

39. Such an application of the Policy is consistent with the broad discretion afforded to ICE by the statute and regulations governing post-removal order detention and is a reasonable interpretation of the ambiguities in that framework. Neither statutes nor regulations specifically contradict the Policy and the regulatory language suggests that the standard custody review procedures for non-citizens with final removal orders do not apply to non-citizens like Petitioner who have been detained for 90 days or more after being granted Withholding or CAT and lack a connection to an alternative country. See, e.g., 8 C.F.R. § 241.4(b)(4) (“The custody review procedures in this section do not apply after the Service has made a determination, under the procedures provided in 8 C.F.R. § 241.13, that there is no significant likelihood that [non- citizen] under a final order of removal can be removed in the reasonably foreseeable future.”).

40. The Policy and its application to individuals with final grants of withholding or CAT relief are thus entitled to deference. See *Kisor v. Wilkie*, 139 S. Ct. 2400, 2408 (2019) (“This Court has often deferred to agencies’ reasonable readings of genuinely ambiguous regulations. We call that practice Auer deference . . .”); *Auer v. Robbins*, 519 U.S. 452 (1997) (deferring to Labor Secretary’s reasonable interpretation of overtime pay regulations).

41. The Policy is precisely 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 a similarly styled 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. *See Exh. B* at 4 (referring to “ICE policy favoring a non-citizen’s release”).

42. Furthermore, by reiterating the Policy four times over the last two decades and using mandatory language, ICE leadership has clearly indicated that it intends the Policy to be binding on all field offices and officers. *See, e.g., Exh. B* at 2 (“In all cases, the Field Office director must . . .”) (emphasis added); *id.* at 4 (“I am issuing this reminder to ensure that ICE personnel remain cognizant of and continue to follow this Directive”); see also *Padula v. Webster*, 822 F.2d 97, 100 (D.C. Cir. 1987) (“[A]n agency pronouncement is transformed into a binding norm if so intended by the agency.”).

43. ICE has clearly flouted their own national policy with respect to Petitioner’s detention, in violation of *Accardi*. It appears that ICE is routinely detaining *every* non-citizen granted withholding or CAT relief, including Petitioner, for at least the 90-day removal period. After the 90-day removal period lapses, ICE appears to conduct a standard custody review pursuant to the factors in 8 C.F.R. § 241.4, without regard to the Policy’s requirements. Only after ICE denies release based on these factors does the case transfer to ICE HQ to consider the likelihood of removal under § 241.13. At no point does it appear to Counsel that ICE is conducting an individualized review under the “exceptional circumstances” standard as required by the Policy.

44. In Mr. Cabrera-Perez’s case, ICE should have reviewed his custody under the Policy as soon as they decided to appeal his Withholding grant, despite failing to ever file an appeal with the BIA. *See Exh. B* at 3. Yet they did neither. There is furthermore no evidence that the Detroit ICE Field Office Director, who is vested with non-delegable review power under the Policy, approved Petitioner’s continued detention at any point after he was granted relief, as required by

the Policy. *See Exh. B* at 2-3.²

45. ICE's failure to promptly review Petitioner's custody 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). The Policy provides Mr. Cabrera-Perez with a discrete opportunity to win his freedom from detention and that opportunity has thus far been withheld from him. *See Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

46. Conducting the standard 90-day custody review under 8 C.F.R. § 241.4, which ICE has not positively indicated they intent to do for Mr. Cabrera-Perez, does not suffice to comply with the Policy. 8 C.F.R. § 241.4, which facially applies to all non-citizens subject to an administratively final order of removal, employs a different standard that places the burden of proof on the non-citizen to justify their release. *See* 8 C.F.R. § 241.4(d)(1) ("[ICE] may release a[] [non-citizen] if the [non-citizen] demonstrates to the satisfaction of [ICE] that his or her release will not pose a danger to the community or to the safety of other person or to property or a significant risk of flight . . .").

47. In contrast, the Policy presumes that non-citizens granted Withholding or CAT relief

² That ICE is violating national policy is not surprising given its history of non-compliance with other national directives. In 2021, more than 50% of its enforcement actions were against non-citizens who did not fall within ICE's stated enforcement priorities. Where rank and file officers sought pre-approval from ICE leadership for these non-priority enforcement actions, leadership approved nearly 98% of the requests. *See* American Immigration Council (AIC), ICE Didn't Follow Federal Enforcement Priorities Set by Biden Administration (June 27, 2023), <https://www.americanimmigrationcouncil.org/foia/ice-enforcement-priorities?emci=b046dc53-8c16-ee11-a9bb-00224832eb73&emdi=ea000000-0000-0000-0000-000000000001&ceid=>

will be released “absent exceptional circumstances, such as when the non-citizen presents a national security threat or a danger to the community,” and it specifies that “prior convictions alone do not necessarily indicate a public safety threat or danger to the community.” Ex. C at 4. If ICE were to review Mr. Cabrera-Perez’s custody under the Policy, he would likely be released.

48. Therefore, Mr. Cabrera-Perez has been prejudiced by ICE’s failure to review his custody under the Policy’s “exceptional circumstances” standard. 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. Cabrera Perez’s due process rights.

49. As a remedy, this Court should review Mr. Rodriguez Guerra’s custody under the Policy’s “exceptional circumstances” standard and order his release accordingly. 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.”). At the very least, this Court should order that ICE immediately conduct such a review for Petitioner pursuant to the Policy. See *Damus*, 313 F. Supp. 3d at 343.

CONCLUSION

50. Petitioner Samuel Cabrera-Perez is a long-term resident of the United States who is a husband and father, home owner and diligent worker. He is currently detained based on criminal charges stemming from conduct which occurred more than a decade ago. Petitioner’s criminal counsel has filed a motion to reopen the criminal proceedings which would fundamentally alter the removability of the Petitioner. The government is now attempting to effect a Third-Country Removal of the Petitioner to Mexico despite a positive grant of Withholding of Removal by the Cleveland Immigration Court. His continued detention-absent additional and separate criminal charges or a constitutionally sufficient finding of dangerousness violates both the Fifth Amendment of the U.S. Constitution as well as the immigration laws of the United States.

51. Because Petitioner's detention is both unlawful and unconstitutional, and because all available administrative remedies have been exhausted or are inadequate to address the constitutional violations presented, habeas relief under 28 U.S.C. § 2241 is warranted. For the foregoing reasons, and in light of the constitutional violations and lack of lawful basis for his continued detention, Petitioner respectfully asks this Court to grant the relief requested herein and order his immediate release.

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1231(a)(6)

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

53. 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for "a period reasonably necessary to bring about the alien's removal from the United States." 533 U.S. at 689, 701.

54. Petitioner's continued detention has become unreasonable because his removal is not reasonably foreseeable. Therefore, his continued detention violates 8 U.S.C. § 1231(a)(6), and he must be immediately released.

COUNT II

ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)

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

56. Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

57. ICE has deviated from its own policy in continuing to detain Petitioner after he was granted immigration relief, without determining whether exceptional circumstances warrant his

continued detention. This is arbitrary, capricious, and contrary to law in violation of the APA.

58. As a remedy, this Court should conduct its own review of Petitioner's custody or, at least, order ICE to review Petitioner's custody under the standard articulated in ICE policy.

COUNT III

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

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

60. ICE has violated Petitioner's due process rights by denying him an individualized custody review to which he is entitled under ICE policy.

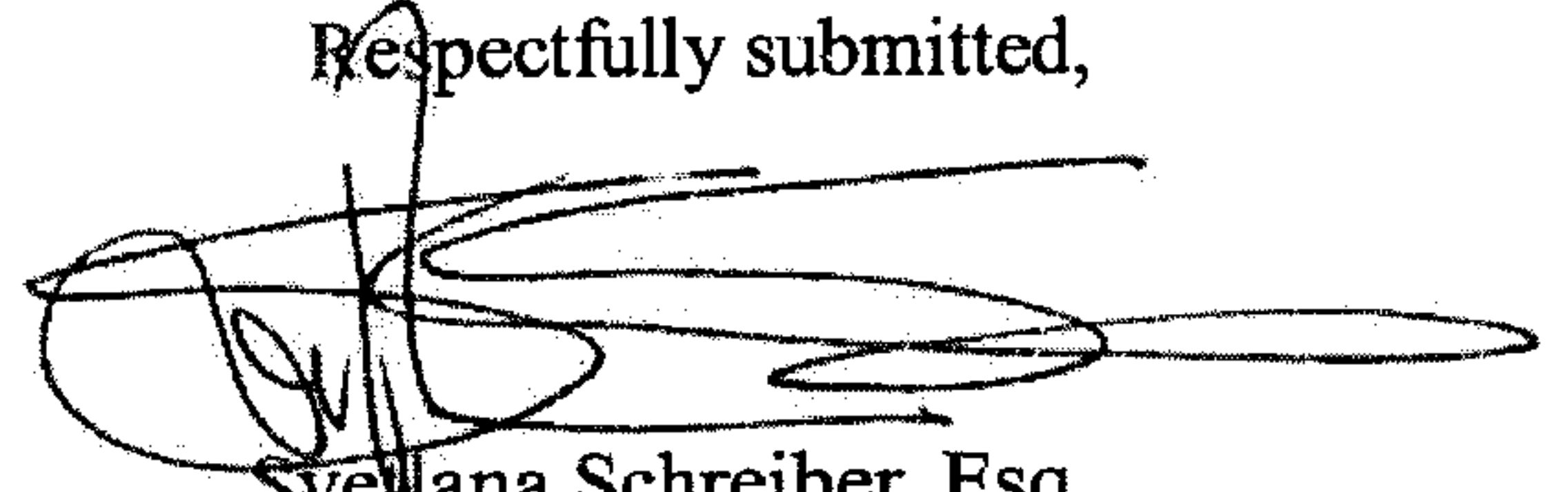
61. As a remedy, this Court should conduct its own review of Petitioner's custody or, at least, order ICE to review Petitioner's custody under the standard articulated in ICE policy.

PRAAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Assume jurisdiction over this matter pursuant to 28 U.S.C. § 2241;
- b. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner from immigration custody;
- c. Declare that Petitioner's continued detention violates the Constitution and laws of the United States;
- d. Enjoin Respondents from continuing to detain Petitioner absent an individualized showing of danger or flight risk supported by clear and convincing evidence;
- e. Award reasonable attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, if applicable; and
- f. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Svetlana Schreiber', written over a horizontal line.

Svetlana Schreiber, Esq.
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**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

**MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR WRIT OF
HABEAS CORPUS**

I. Withholding of Removal and Relief under the Convention Against Torture

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 CAT relief. 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, *id.* § 1231(b)(3)(B)(iii), and no restrictions on eligibility for CAT deferral of removal. 8 C.F.R. § 1208.16.

To be granted CAT relief, a non-citizen must show that “it is more likely than not that he or she would be tortured if removed to the proposed country of removal.” 8 C.F.R. § 1208.16(c)(2). An applicant for CAT relief must show a higher likelihood of torture than the likelihood of persecution an asylum applicant must demonstrate. *See id.*

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.

When a non-citizen has a final withholding or CAT relief 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 or CAT relief 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).

If ICE identifies an appropriate alternative country of removal, ICE must undergo further proceedings in immigration court to effectuate 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) . . .”); *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. As a result of these 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).

II. Detention of Non-Citizens Granted Withholding of Removal or Relief Under the Convention Against Torture

a. Statutory Framework

8 U.S.C. § 1231 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).³ The removal period lasts for 90 days,

³ There are two other events that trigger the start of the removal period, which are not applicable here. *See* 8 U.S.C. § 1231(a)(1)(B)(ii)-(iii).

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).

To avoid “indefinite detention” that would raise “serious constitutional concerns,” the Supreme Court in *Zadvydas* construed § 1231(a)(6) 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(a)(6) 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.

However, 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). “Within the six-month window,” the non-citizen bears the burden of “prov[ing] the unreasonableness of detention.” *Id.* After six months of detention, if there is “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the burden shifts to the Government to justify continued detention. *Zadvydas*, 533 U.S. at 701; *see also Cesar*, 542 F. Supp. 2d at 903 (“[T]he presumption scheme merely suggests that the burden the detainee must carry within the first six months of [post- order] detention is a heavier one than after six months has elapsed”).

b. Regulations

DHS regulations provide that, before 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), (h)(1), (k)(1)(i). If the non-citizen is not released following the 90-day custody review, jurisdiction transfers to ICE Headquarters (ICE HQ), *id.* § 241.4(c)(2), which must conduct a custody review before or at 180 days. *Id.* § 241.4(k)(2)(ii). In making these custody determinations, ICE considers several factors, including whether the non-citizen is likely to pose a danger to the community or a flight risk if released. *Id.* § 241.4(e). If the factors in § 241.4 are met, ICE must release the non-citizen under conditions of supervision. *Id.* § 241.4(j)(2).

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).

Under this procedure, ICE HQ 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 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 clear and convincing evidence before an IJ that the non-citizen is "especially dangerous." *Id.* § 241.14(f).

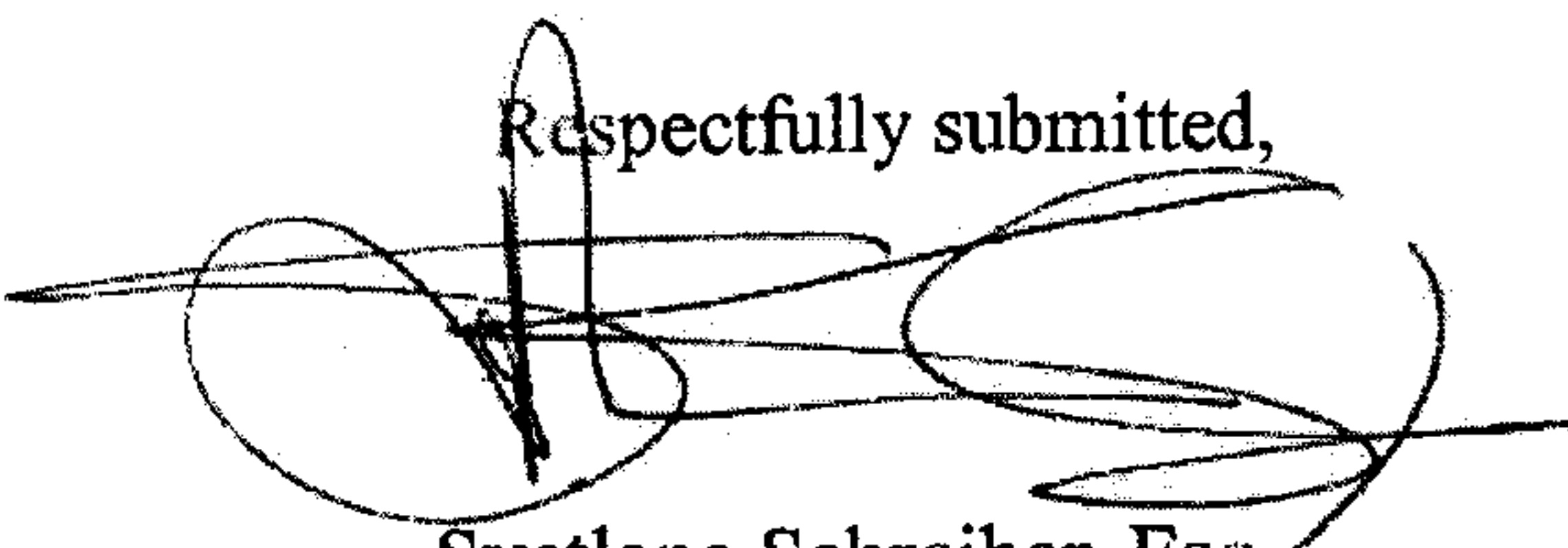
c. ICE Policy

Consistent with the statutory and regulatory scheme, long-standing ICE policy favors the prompt

release of non-citizens who have been granted withholding or CAT relief. In 2000, the then-Immigration and Naturalization Service (INS) General Counsel issued a memorandum clarifying that 8 U.S.C. § 1231 authorizes but does not require the detention of non-citizens granted withholding of removal or CAT relief during the 90-day removal period. *See Exh. B* at 1. A 2004 ICE memorandum turned this acknowledgment of authority into a presumption, stating that “it is ICE policy to favor the release of [non-citizens] who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain.” *Id.* at 2.

ICE leadership subsequently reiterated this policy in a 2012 announcement, clarifying that the 2000 and 2004 ICE memorandums are “still in effect and should be followed” and that “[t]his policy applies at all times following a grant of protection, including during any appellate proceedings and throughout the removal period.” *Id.* at 3. Finally, in 2021, Acting ICE Director Tae Johnson circulated a memorandum to all ICE employees reminding them of the “longstanding policy” that “absent exceptional circumstances, . . . noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge should be released. . . .” *Id.* at 4 (emphasis added). Director Johnson clarified that “in considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat of danger to the community.” *Id.*

Respectfully submitted,

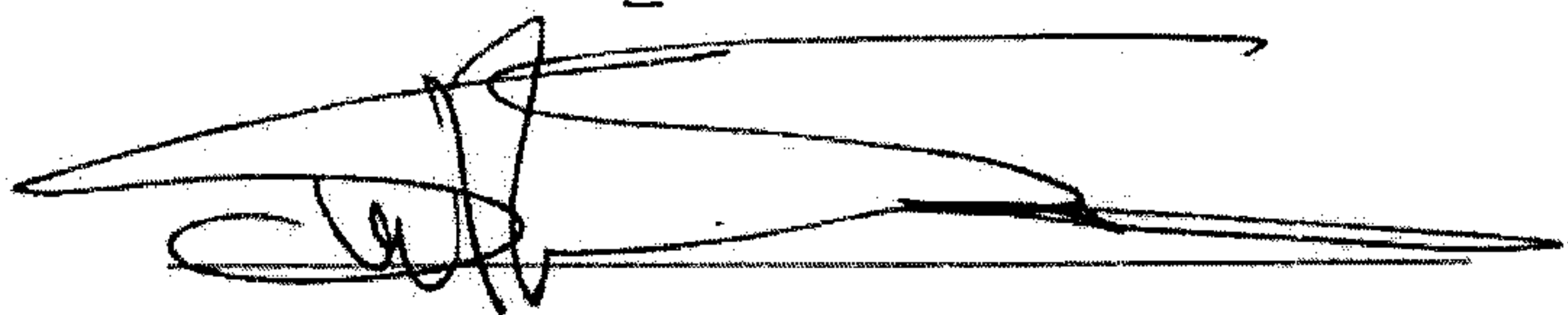


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VERIFICATION

I, the undersigned attorney for Petitioner Samuel Cabrera-Perez, hereby verify under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have reviewed the foregoing Petition for Writ of Habeas Corpus and, based on my knowledge, information, and belief formed after reasonable inquiry, the facts stated therein are true and correct to the best of my knowledge.

Executed on this 27th day of June, 2025.



Respectfully submitted,

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PROPOSED ORDER

**UNITED STATES DISTRICT
COURT SOUTHERN DISTRICT
OF OHIO**

Samuel Cabrera-Perez
Petitioner,

v.

Case No. _____

WARDEN, Northeast Ohio Correctional Center, et al.,:
Respondents.

[PROPOSED] ORDER GRANTING PETITION FOR WRIT OF HABEAS CORPUS

Upon consideration of the Petition for Writ of Habeas Corpus filed by Petitioner ___ and Pursuant to 28 U.S.C. § 2241, and the record before the Court, it is hereby:

ORDERED that the Petition is GRANTED; and it is further

ORDERED that Respondents shall immediately release Petitioner _____ from custody; and it is further

ORDERED that Respondents shall not re-detain Petitioner absent a new lawful basis and full compliance with constitutional due process.

SO ORDERED.

DATED: _____, 2025

UNITED STATES DISTRICT JUDGE

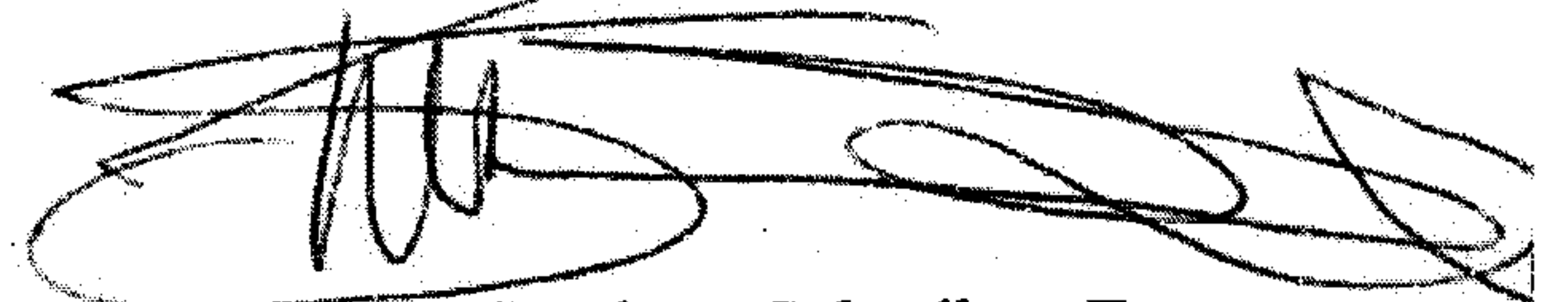
CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____ 2025, I caused a true and correct copy of the **Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241** and all accompanying documents to be served by electronic filing upon the following:

- **Douglas Fender**, Warden of Northeast Ohio Correctional Center
Northeast Ohio Correctional Center
2240 Hubbard Road
Youngstown, OH 44505
- **Pamela Bondi**, Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
- **Kristi Noem**, Secretary of the U.S. Department of Homeland Security
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Avenue SE
Washington, DC 20528
- **Todd Lyons**, Acting Director, U.S. Immigration and Customs Enforcement
U.S. Immigration and Customs Enforcement 500
12th Street SW
Washington, DC 20536
- **Robert Lynch**, Director, Detroit Field Office, U.S. Immigration and Customs Enforcement
333 Mt. Elliott Street
Detroit, MI 48207

Dated: 6/27/25

Respectfully submitted,



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