**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:25-CV-02205-WJM-STV

DENNIS AROSTEGUI-MALDONADO,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as warden of the Aurora Contract Detention Facility,

ROBERT HAGAN, in his official capacity as Field Office Director, Denver, U.S. Immigration and Customs Enforcement,

KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security,

TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement,

PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

PETITIONER'S BRIEF IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

INTRODUCTION

Respondents contend that the detention-based habeas claims in Petitioner, Mr. Dennis Arostegui Maldonado's ("Mr. Maldonado) Amended Petition for Writ of Habeas Corpus and Complaint (ECF No. 48) (hereinafter "Amended Petition") are moot because he was conditionally released. They are not. A noncitizen subject to ongoing supervision remains in "custody" under 28 U.S.C. § 2241 where, as here, his liberty is restricted by electronic monitoring, reporting requirements, and the government's continuing authority to re-detain.

Respondents also argue that this Court lacks jurisdiction to consider Mr. Maldonado's remaining claim. But the Amended Petition does not seek review of a final removal order or challenge any discretionary decision to execute such an order. Instead, it challenges the government's failure to give Mr. Maldonado notice and a fair opportunity to raise fear-based protections before any attempt to remove him to a third country.

Finally, the existence of a nationwide class action regarding third-country removal does not preclude this Court from adjudicating Mr. Maldonado's individual habeas petition asserting narrow, as-applied due process claims. Because Mr. Maldonado remains in "custody," faces a concrete risk of re-detention and third-country removal, and plausibly alleges violations of due process and the Administrative Procedure Act, Respondents' Motion to Dismiss should be denied.

SUMMARY OF RELEVANT BACKGROUND

Mr. Maldonado incorporates by reference the facts alleged in his Amended Petition and the procedural history set forth in his August 29, 2025 Reply to Respondents'

Response to the Order to Show Cause (ECF No. 52).

On July 18, 2025, Mr. Maldonado filed a Petition for Writ of Habeas Corpus (ECF No. 1) and filed a Motion seeking injunctive relief on an emergency basis (ECF No. 5). On July 21, 2025, this Court granted a temporary restraining order prohibiting Respondents from removing Mr. Maldonado from the United States or transferring him outside the District of Colorado. (ECF No. 17). The Court held an evidentiary hearing on August 1, 2025, and on August 8, 2025, granted in part his request for injunctive relief (ECF No. 46). The Court ordered that Mr. Maldonado receive a bond hearing within fourteen days and enjoin Respondents from removing him from the United States or transferring him outside of the District of Colorado while his habeas petition remained pending. (ECF No. 46 at 35-36).

Mr. Maldonado filed an Amended Petition for Writ of Habeas Corpus and Complaint on August 11, 2025. (ECF No. 48). Pursuant to the Court's order, an immigration judge conducted a bond hearing on August 20, 2025. (*Id.*). On August 22, 2025, the immigration judge granted Mr. Maldonado bond in the amount of $10,000. (*Id.*). After the bond was paid, ICE authorized Mr. Maldonado's release from immigration detention on August 27, 2025.

Upon his release, ICE placed Mr. Maldonado on an order of supervision and fitted him with a GPS ankle monitor. (Ex. 1, Maldonado Decl. ¶ 4). ICE required him to report to the ICE office in Chantilly, Virginia; Mr. Maldonado complied by attending a scheduled check-in on September 3, 2025. (*Id.* ¶¶ 4–5). Although the ICE officer stated that there were no concerns regarding his compliance, the ankle monitor was not removed, and ICE

has not provided a date for reevaluation. (*Id.* ¶ 5).

Mr. Maldonado remains subject to ICE supervision and is required to remain at his current address unless ICE approves a change. (*Id.* ¶ 7). He experiences physical discomfort from the ankle monitor, including leg pain that interferes with his sleep, and recurring headaches. (*Id.* ¶¶ 8–9). Mr. Maldonado also experiences ongoing stress and anxiety due to fear of re-detention. (*Id.* ¶¶ 10–11). These conditions substantially restrict his daily activities, his ability to work or pursue education, and his ability to live with or spend time with his children. (*Id.* ¶¶ 7, 11).

LEGAL STANDARD

In deciding a Rule 12(b)(1) motion challenging "the complaint's allegations as to the existence of subject matter jurisdiction," the Court "must accept a complaint's allegations as true." *Glenwood Springs Citizens' Alliance v. U.S. Dep't of Interior,* 639 F. Supp. 3d 1168, 1174 (D. Colo. 2022) (citation omitted). Likewise, when evaluating a Rule 12(b)(6) motion to dismiss for failure to state a claim, the Court must "accept the well-pleaded facts alleged as true and view them in the light most favorable to the plaintiff." *Clinton v. Sec. Benefit Life Ins. Co.,* 63 F.4th 1264, 1275 (10th Cir. 2023). There is a "low bar for surviving a motion to dismiss." *Id.* at 1276 (citation omitted).

ARGUMENT

I. The Habeas Petition is Not Moot Because Mr. Maldonado Remains "In Custody" and Subject to Re-Detention.

A. Conditional release does not moot a habeas petition because "custody" extends beyond physical detention.

Respondents argue that Mr. Maldonado's claims regarding unlawful detention

(Counts I and II) asserted in his Amended Petition are moot because Mr. Maldonado "has already been granted a bond hearing and release." (ECF No. 68 at 8). That is not the law. Mr. Maldonado's conditions of supervised release—including continuous electronic monitoring and mandatory check-ins with Immigration and Customs Enforcement ("ICE")—satisfy the "custody" requirement under 28 U.S.C. § 2241.

Section 2241 of Title 28 authorizes federal district courts to grant writs of habeas corpus when a person is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §§ 2241(a), (c)(3). "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). "Challenges to immigration detention are properly brought directly through habeas." *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) (citing *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001)).

Physical incarceration is not required to satisfy the "custody" requirement under § 2241. *See Jones v. Cunningham*, 371 U.S. 236, 243 (1963) ("While petitioner's parole releases him from immediate physical imprisonment, it imposes conditions which significantly confine and restrain his freedom; this is enough to keep him in the 'custody' ... within the meaning of the habeas corpus statute."). Instead, "[t]he relevant test [for custody] is whether the petitioner is subject to restraints not shared by the public generally." *Khabazha v. United States Immigr. & Customs Enf't*, No. 25-CV-5279, 2025 U.S. Dist. LEXIS 232130, at *8 (S.D.N.Y. Nov. 25, 2025) (quoting *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973)).

Here, Mr. Maldonado plainly remains "in custody" because he is subject to restraints "not shared by the public generally," *id.*, including continuous ankle monitoring, mandatory reporting to ICE, and the ongoing threat of re-detention. *See* Ex. 1, Decl. of Dennis Maldonado. These conditions "render[] him 'in custody' for purposes of his habeas petition." *Doe v. Barr*, 479 F. Supp. 3d 20, 26 (S.D.N.Y. 2020); *see also Hogarth v. Santaruz*, No. 5:25-cv-09472-SPG-MAR, 2025 U.S. Dist. LEXIS 228009, at *35-36 (C.D. Cal. Oct. 23, 2025) (holding that electronic monitoring and "multiple check-ins with ICE every month" were "sufficient to demonstrate that [the petitioner] is in custody"); *Khabazha*, 2025 U.S. Dist. LEXIS 232130 at *8 (requirements that petitioner "wear an ankle monitor at all times" and "check in at regular intervals" were sufficient to establish custody for purposes of his habeas petition); *Da Silva v. Laforge*, No. 25-cv-17095 (EP), 2026 LEXIS 71722, at *6 (D.N.J. Jan. 7, 2026) ("The threat of detention upon violation of any condition is another factor that weighs in favor of a conclusion that petitioner is in custody under § 2241.").

Because Mr. Maldonado is in custody within the meaning of § 2241, his Petition is not moot. *Neurological Surgery Prac. of Long Island, PLLC v. U.S. Dep't of Health & Hum. Servs.*, 145 F.4th 212, 223 (2d. Cir. 2025) ("[A] case that is live at the outset may become moot when it becomes impossible for the courts, through the exercise of their remedial powers, to do anything to redress the [claimed] injury." (internal quotation marks omitted)). This is not the case here where Mr. Maldonado is currently in custody with conditions of release including ankle monitoring, ICE check-ins and the threat of re-detention.

B. Mr. Maldonado faces a concrete and ongoing risk of re-detention.

Respondents' contention that Mr. Maldonado's habeas detention claims are moot because he was released ignores both settled habeas law and the reality of immigration detention practice nationwide.

A habeas petition is not rendered moot where a petitioner is released under temporary or conditional supervision, and the government retains unilateral authority to detain him. *See Nielsen v. Preap*, 586 U.S. 392, 403 (2019) (plurality opinion) (rejecting mootness where "release had been granted following a preliminary injunction," because "[u]nless that preliminary injunction was made permanent and was not disturbed on appeal, these individuals faced the threat of re-arrest and mandatory detention."); *see also Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1195 n.2 (9th Cir. 2022) (holding that the government's compliance with a district court order that a noncitizen petitioner be released on bond "does not moot its appeal").

Here, Mr. Maldonado faces a concrete and ongoing risk of re-detention. This risk has already been documented in several cases. For example, the petitioner in *Orellana v. Baker* was initially released from ICE custody on bond, won withholding of removal to El Salvador in 2023, was re-detained by ICE on June 4, 2025, and was granted immediate release after prevailing on a habeas petition on August 25, 2025. No. CV 25-1788-TDC, 2025 U.S. Dist. LEXIS 198884, at *1-3 (D. Md. Oct. 7, 2025). ICE released Mr. Santamaria Orellana on August 27, 2025, only to re-detain him on September 10, 2025. *Id.* at *3. Petitioner subsequently filed an Emergency Motion, and the court granted a TRO the next day and entered a preliminary injunction on October 7, 2025, granting release and barring

third country removal without adequate process. *Id.* at *46-47. In light of these circumstances, Mr. Maldonado's habeas detention claims are not moot.

II. The Court Has Jurisdiction Because Mr. Maldonado Challenges Process, Not the Merits of His Final Removal Order.

Respondents argue that Mr. Maldonado's "remaining request for relief is that the Court enjoin Respondents from removing him to a third country" and that this Court lacks jurisdiction to provide such relief under 8 U.S.C. § 1252. (Mot. at 9-10.) This is a fundamental mischaracterization of Mr. Maldonado's claims alleged in the Amended Petition.

Mr. Maldonado does not challenge the substance of his removal order or seek review of the merits of any immigration determination. Count III of Mr. Maldonado's Amended Petition requests that he be provided with adequate notice and a meaningful opportunity to present a fear-based claim to an immigration judge ("IJ") prior to third party removal consistent with the Immigration and Nationality Act ("INA"), Foreign Affairs Reform and Restructuring Act ("FARRA"), Due Process Clause of the Fifth Amendment, and implementing regulations. (Am. Pet. ¶¶ 9-10). Respondents' jurisdictional arguments fail because 8 U.S.C. § 1252 does not bar such relief.

A. 8 U.S.C. § 1252(g) is inapplicable and does not bar judicial review of Mr. Maldonado's claims.

The Respondents' contention that § 1252(g) bars review of Mr. Maldonado's claims relating to third-country removal is plainly foreclosed by binding precedent construing this provision narrowly. Section 1252(g) governs jurisdiction over actions "arising from" three discrete and discretionary actions: "the decision or action . . . to

commence proceedings, *adjudicate* cases, or *execute* removal orders." *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999) (emphasis in original). There are "many other decisions or actions that may be part of the deportation process," but challenges to them are not barred. *Id.; see also Zadvydas v. Davis,* 533 U.S. 678, 688 (2001) (holding 1252(g) did not bar a detention claim challenging "the extent of the Attorney General's authority" rather than the "exercise of discretion").

Here, subsection 1252(g) does not apply because Mr. Maldonado does not challenge DHS' discretionary decisions to execute his final removal order or remove him to a third country. Rather, he challenges DHS' failure to provide adequate notice and a meaningful opportunity to raise fear-based protections. These mandatory protections are imposed by FARRA, its regulations, and the Constitution; compliance is not discretionary or optional. Moreover, this portion of Mr. Maldonado's claim is directly linked to the fact that he is still in the constructive custody of Respondents, who monitor his every movement, could redetain him at a moment's notice, and spirit him away without the legal protections to which he is entitled. As a result, subsection 1252(g) does not bar Mr. Maldonado's claims. *See Herrera v. Baltazar*, No. 1:25-cv-04014-CNS, 2026 U.S. Dist. LEXIS 6571, at *20 (D. Colo. Jan. 13, 2026) (finding § 1252(g) inapplicable where petitioner challenged the fact and duration of detention rather than the decision to commence, adjudicate, or execute removal).

B. 8 U.S.C. § 1252(b)(9) does not bar judicial review of Mr. Maldonado's claims.

Respondents attempt to shoehorn Mr. Maldonado's claims into the scope of § 1252(b)(9) by arguing that they "aris[e] from any action taken ... to remove [a noncitizen]

from the United States under this subchapter." (Mot. at 10 (quoting § 1252(b)(9)). But this reading ignores the paragraph's "context" and "place in the overall statutory scheme." *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989). The title of § 1252, as well as that of subsection (b), make clear that (b)(9) specifically channels review of "orders of removal," rather than *any* "action" in the abstract. *Cf. Turkiye Halk Bankasi A.S. v. United States,* 598 U.S. 264, 275–76 (2023).

The U.S. Supreme Court has also rejected an "expansive interpretation of § 1252(b)(9)," explaining that it would be "absurd" to construe the provision to bar any claim that might tangentially relate to a removal proceeding. *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018). Mr. Maldonado has a final order of removal; however, he does not challenge that order, "the decision... to seek removal," or "any part of the process by which [his] removability will be determined." *Id.* at 294. Therefore, "§ 1252(b)(9) does not present a jurisdictional bar." *Id.* at 295*; see also Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 U.S. Dist. LEXIS 208290, at *5 (D. Colo. Oct. 22, 2025) (concluding that § 1252(b)(9) does not bar courts from considering whether a petitioner is detained pursuant to proper legal authority).

C. 8 U.S.C. § 1252(a)(4) and FARRA also do not bar judicial review of Mr. Maldonado's claims.

Respondents' reliance on FARRA § 2242(d) and § 1252(a)(4) is also misplaced. Count III does not ask this Court to adjudicate the merits of a CAT or withholding claim; rather, it challenges the lack of meaningful opportunity to assert such a claim. Mr. Maldonado's process claim is neither a merits CAT determination nor a petition for review; it preserves, rather than circumvents, the statutory review scheme.

FARRA § 2242(d), which bars review of "regulations adopted to implement [CAT]," is inapposite. Mr. Maldonado does not challenge the validity of any regulation promulgated to implement CAT. To the contrary, the injunction requires Respondents to comply with FARRA and the CAT regulations in executing third-country removals. *In McNary v. Haitian Refugee Center*, the Court held that a bar on "judicial review of a determination respecting an application" for an immigration benefit did not preclude jurisdiction over "general collateral challenges to unconstitutional practices and policies used by the agency in processing applications." 498 U.S. 479, 491-93 (1991). Similar to *McNary*, here Mr. Maldonado does not seek review of any individual CAT determination. Rather, he seeks adequate notice and a meaningful opportunity to raise fear-based protections. (Am. Pet. ¶¶ 9-10). In ruling on Mr. Maldonado's request for injunctive relief, this Court also held that it was not precluded "from fashioning the narrow relief that Maldonado seeks here: an injunction requiring Respondents to adhere to their non-discretionary obligation to provide Maldonado with notice and an opportunity to seek withholding of removal before he is deported to any third country." (ECF No. 46 at 28-29).

III. Mr. Maldonado's claims are not foreclosed by the *D.V.D.* class action.

Respondents' argument that Mr. Maldonado's claims must be dismissed because they overlap with claims asserted in the *D.V.D.* class action misunderstands both the scope of *D.V.D.* and the limits of class-action preclusion principles.

Although the *D.V.D.* litigation involves a certified Rule 23(b)(2) class challenging third-country removal practices, the existence of a non-opt-out class does not divest this Court of jurisdiction over an individual habeas petition properly before it. Nor does it

require automatic dismissal of individual claims that seek narrower, as-applied relief or arise in a distinct procedural posture. Furthermore, *D.V.D* does not override a court's obligation to adjudicate claims within its jurisdiction.

When ruling on Mr. Maldonado's motion for preliminary injunctive relief, this Court expressly recognized its authority to issue relief necessary to preserve its jurisdiction over the pending habeas petition, explaining that "it appears well within this Court's authority to issue an injunction preventing Maldonado's removal to preserve its jurisdiction over the Petition while it remains pending." (ECF No. 46 at 27). The Court further noted that such authority may be exercised under the All Writs Act, consistent with the Supreme Court's decision in *AARP v. Trump*. (*Id.*).

Other courts confronting the same argument have reached the same conclusion. For example, in *E.D.Q.C. v. Warden, Stewart Detention Center*, the court declined to dismiss an individual habeas petition notwithstanding *D.V.D.*, explaining that the petitioner's claims were "much narrower than those asserted in *D.V.D.*" and could be adjudicated without interfering with class-wide relief. 789 F.Supp. 3d 1234, 1244 (M.D. Ga. June 3, 2025). Likewise, courts across multiple districts have held that *D.V.D.* does not preclude individual petitioners from pursuing as-applied challenges to third-country removal procedures while class-wide relief remains pending. *See, e.g.*, *Baltodano v. Bondi*, No. C25-1958RSL, 2025 U.S. Dist. LEXIS 209241, at *5-6 (W.D. Wash. Oct. 23, 2025) (collecting cases and explaining that "[c]ourts in this district have recently found challenges to ICE's policy on third country removals are likely to succeed on the merits."); *J.R. v. Bostock*, 796 F. Supp. 3d 684, 688 (W.D. Wash. 2025) ("The facts resemble those

in *D.V.D.*... [t]his Court reaches the same conclusion."); *Sanchez v. Noem*, No. 5:25-CV-00104, 2025 U.S. Dist. LEXIS 205572, at *21 (S. D. Tex. Oct. 2, 2025) (determining that petitioner could "bring his individual claims while the class-wide relief remains pending" in *D.V.D.*).

IV. Count III States Valid As-Applied Due Process and Administrative Procedure Act Claims.

Count III challenges the Respondents' application of its third country removal practices to Mr. Maldonado absent adequate notice and a meaningful opportunity to raise fear-based protections. In support of his claim, Petitioner relies on three legal foundations: (1) the Due Process Clause of the Fifth Amendment of the United States Constitution; (2) statutes and regulations governing third-country removal; and (3) the Administrative Procedure Act ("APA"). Respondents' motion fails because it ignores the due process claim entirely and mischaracterizes the APA claim.

A. The as-applied due process claim independently sustains relief.

Even if certain APA theories were limited by *D.V.D.*, Mr. Maldonado's as-applied due process challenge plainly survives. Under the Due Process Clause of the Fifth Amendment to the United States Constitution, no person shall be "deprived of life, liberty, or property, without due process of law." U.S. Const. Amend V. "The Fifth Amendment guarantees due process in deportation proceedings." *Torres-Aguilar v. I.N.S.*, 246 F.3d 1267, 1270 (9th Cir. 2001). The Due Process Clause requires that individuals facing removal receive meaningful notice and opportunity to be heard before the government acts. *Zadvydas*, 533 U.S. at 690. It extends protection to a noncitizen subject to a final order of deportation. *Id.* at 693-694.

Courts considering the effect of the *D.V.D.* class action have consistently rejected the notion that its certification divests district courts of authority to adjudicate individual habeas petitions raising narrower or as-applied challenges. For example, in *Phong Thanh Nguyen v. Scott*, the court squarely addressed—and rejected—the government's argument that the *D.V.D.* class certification and subsequent emergency docket orders required dismissal of an individual petitioner's third-country removal claims. 796 F. Supp. 3d 703, 732 (W.D. Wash. 2025). The court held that "the class certification order in *D.V.D.* does not prevent this Court from adjudicating Petitioner's claims regarding third-country removal," emphasizing that absent "clear guidance from the Supreme Court," district courts remain bound to apply established due process and administrative law principles. *Id.*

Critically, *Nguyen* distinguished between wholesale challenges to DHS policy—which may be appropriately addressed through class-wide relief—and individual claims alleging that the government failed to provide constitutionally required notice and a meaningful opportunity to raise fear-based objections. *Id.* The court concluded that adjudicating such as-applied claims neither conflicted with nor undermined the *D.V.D.* litigation, and that petitioner was "likely to succeed on his claim that removal to a third country under ICE's current policy, without meaningful notice and reopening of his removal proceedings for a hearing, would violate due process." *Id.* at 728-729. Other courts have reached the same conclusion. In *Barka v. Mattos*, the court held that "[p]etitioner has a due process right to receive meaningful notice and opportunity to present a fear-based claim to an IJ before DHS deports him to a third country." *Barka v.*

Mattos, No. 2:25-cv-01781-GMN-MDC, 2025 LEXIS 564380, at *21-22 (D. Nev. Dec. 23, 2025).

Aside from arguing Petitioner is a member of the plaintiff class in *D.V.D*, Respondents do not address or substantively challenge Petitioner's third country removal due process claim. Cases including *Nguyen* and *Barka* confirm that *D.V.D.* does not bar district courts from adjudicating individual habeas petitions asserting as-applied due process claims, nor does it require petitioners to await resolution of complex, stayed class action litigation while facing potential re-detention and removal.

B. The APA claim is a distinct *Accardi*-type challenge to agency process.

Mr. Maldonado's APA claim is not a generalized policy challenge of the type at issue in *D.V.D.* It is an *Accardi* claim alleging that DHS is failing to follow its own binding regulations and procedures governing third-country removal and detention. Under the APA and the *Accardi* doctrine, agencies must follow the procedures that Congress and the agencies themselves have prescribed. When they do not, resulting action is unlawful and must be set aside. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (agency must adhere to its own regulations); *Yellin v. United States*, 374 U.S. 109, 121 (1963) (petitioner "should at least have the chance given him by the regulations"). The APA codifies this basic principle: agency action that is "arbitrary [or] capricious," "not in accordance with law," or "in excess of statutory jurisdiction, authority, or limitations" must be set aside. 5 U.S.C. § 706 (2)(A), (C).

The governing statutory and regulatory scheme imposes mandatory, non-discretionary steps that DHS must follow before attempting third-country removal

where fear is asserted. By regulation, when a person indicates fear with respect to a proposed country of removal, DHS must provide screening and review pathways. *See* 8 C.F.R. § 208.31 (reasonable-fear screening and IJ review); *see also* 8 C.F.R. § 1240.10(f) (IJ must notify the noncitizen of proposed countries of removal); 8 C.F.R. § 1240.11(c)(1)(i) (if fear is expressed as to any proposed country, the IJ must advise the noncitizen of the ability to apply for protection). Courts have recognized that failures to follow these mandated steps violate due process under *Accardi* and are unlawful under the APA. *See, e.g., Orellana v. Baker*, No. CV 25-1788-TDC, 2025 U.S. Dist. LEXIS 198884, at *37 (D. Md. Oct. 7, 2025) (finding a due process violation "under the *Accardi* doctrine" where procedures in 8 C.F.R. § 1208.31(g) were not followed); *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991) (prejudice presumed for certain *Accardi* violations).

Applied here, Count III plausibly alleges that DHS failed to implement a process or procedure to afford Mr. Maldonado meaningful notice and opportunity to present a fear-based claim to an IJ before DHS deports him to a third country. (Am Pet. ¶¶ 104-105). As a result, Respondents are failing to adhere to Mr. Maldonado's substantive and procedural due process rights and are not adhering to procedures required by the INA, FARRA, and the implementing regulations. Therefore, the agency policy, as applied to Mr. Maldonado, violates due process, FARRA, the INA, and the APA.

CONCLUSION

Because Mr. Maldonado remains in custody for habeas purposes, faces a risk of re-detention and third-country removal, and plausibly alleges violations of due process and the APA, Respondents' Motion to Dismiss should be denied in its entirety.

Dated: January 16, 2026

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