UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

JABA PATARAIA,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security;

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

TODD LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement;

BRIAN S. ACUNA, in his official capacity as Acting Field Office Director of the New Orleans Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations;

ELEAZAR GARCIA, in his official capacity as Warden, Winn Correctional Center;

Respondents.

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS

Case No. 1:25-cv-1188

INTRODUCTION

1. This case asks whether the government of the United States can indefinitely detain someone who has won immigration relief from deportation after a finding that he would likely be persecuted and tortured if deported to his country of origin. Petitioner Jaba Pataraia ("Petitioner" or "Mr. Pataraia") remains in ICE custody despite winning his immigration case more than ten

months ago. The government has failed to identify any third country willing to accept him and previous attempts to remove him to Armenia, Azerbaijan, and Kazakhstan have failed.

2. On September 23, 2024, an Immigration Judge ("IJ") granted Mr. Pataraia withholding of removal to his native Georgia and Russia. *See* Exh. A, Order of the Immigration Judge, dated September 23, 2024 ("IJ Order"). On that date, Mr. Pataraia was entitled to review for immediate release under the government's longstanding and current policy, the Fear-based Grant Release Policy,[1] which requires the release of such noncitizens absent exceptional circumstances. Likewise, the six-month presumptively reasonable time period in which ICE could have theoretically removed Mr. Pataraia to a country other than Russia or Georgia under 8 U.S.C. § 1231 has expired. Yet, he remains subject to indefinite civil detention at the notoriously abusive Winn Correctional Center with no end in sight.

3. Mr. Pataraia has been continuously detained by the government since on or about June 6, 2024, when he entered the United States after fleeing persecution on the basis of his political opinion in opposition of the Russian invasion of Ukraine. He is currently detained pursuant to 8 U.S.C. § 1231, which governs the detention of noncitizens with a final order of removal, including when that final order of removal has been withheld or deferred by an IJ due to a substantial risk of persecution or torture in their country of origin. 8 U.S.C. § 1231(a)(1)(B)(i). Mr. Pataraia's removal order and accompanying relief grant became final when the Board of

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[1] *See* Exh. B, U.S. Department of Justice, Immigration and Naturalization Service Memorandum, Re: Detention and Release during the Removal Period of Aliens Granted Withholding or Deferral of Removal (dated April 21, 2000); ICE Memorandum, Re: Detention Policy Where an Immigration Judge has Granted Asylum and ICE has Appealed (dated February 9, 2004); ERO, Re: Reminder on Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal or CAT (dated March 6, 2012); ICE, Re: Reminder: Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal, or Convention Against Torture Protection, and DHS has Appealed (dated June 4, 2021) (collectively "Fear-based Grant Release policy").

Immigration Appeals ("BIA") dismissed the government's appeal of the IJ's decision on February 6, 2025. 8 C.F.R. § 1241.1.

4. Mr. Pataraia's continued detention violates 8 U.S.C. § 1231(a), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his removal is not reasonably foreseeable. He cannot be deported to his countries of citizenship—Russian and Georgia—because he has been granted withholding of removal with respect to those countries. ICE has exhausted efforts to remove Mr. Pataraia to all previously identified alternate countries. Indeed, he has been denied entry by Armenia, Azerbaijan, and Kazakhstan. Even if the government identifies a third country willing to accept him, Mr. Pataraia is legally entitled to notice and the opportunity to seek fear-based protection with respect to that country.

5. In recent months, the government has stopped complying with its legal obligations and has deported other noncitizens to third countries without notice or opportunity to present their reasonable fear claims. In an attempt to bypass these protections, on March 30, 2025, the government issued an informal procedural policy memo that blatantly contravenes regulations, statutes and due process principles governing third country removals.[2] A district court in Massachusetts issued a class-wide temporary restraining order ("TRO") and then a preliminary

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[2] Memorandum of DHS Secretary Kristi Noem, *Guidance Regarding Third Country Removals*, March 30, 2025. Available at: https://immigrationlitigation.org/wp-content/uploads/2025/04/43-1-Exh-A-Guidance.pdf. *See also* Maria Sacchetti, et al, "ICE memo outlines plan to deport migrants to countries where they are not citizens," *The Washington Post* (July 13, 2025), available at: https://www.washingtonpost.com/immigration/2025/07/12/immigrants-deportations-trump-ice-memo/ ("Federal immigration officers may deport immigrants to countries other than their own, with as little as six hours' notice, even if officials have not provided any assurances that the new arrivals will be safe from persecution or torture, a top official said in a memo.").

injunction to protect impacted noncitizens like Mr. Pataraia facing summary removals to third countries where they have genuine claims based on the Convention Against Torture ("CAT"). *See D.V.D. v. DHS*, 778 F. Supp. 3d 355 (D. Mass. 2025) ("*D.V.D.*").

6. Even after the *D.V.D.* preliminary injunction was issued, the government defied the district court's orders and sought to summarily remove individuals to third countries such as to a maximum security prison in El Salvador, to Libya, and to South Sudan—without affording them their legally required opportunity to seek mandatory protection from those third countries with the assistance of counsel.

7. On June 23, 2025, the Supreme Court issued a summary order granting the government's application to stay the nationwide *D.V.D.* injunction. Therefore, at present, there is no longer a separate court order in place to help protect the rights of *D.V.D.* class members like Mr. Pataraia to fully present their mandatory protection claims, with assistance of counsel, prior to removal to third countries.

8. On July 9, 2025, ICE Acting Director Todd M. Lyons issued guidance to all ICE employees implementing the March 30, 2025 memo. *See* Exh. D, Memo by Todd M. Lyons, Acting Director, to All ICE Employees, Re: Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025), dated July 9, 2025 ("Third Country Removal ICE Memo").

9. Furthermore, when Mr. Pataraia was granted withholding of removal on September 23, 2024, under the government's own Fear-Based Grant Release policy, he was entitled to an immediate review of his custody by Respondents.

10. Because Mr. Pataraia has no criminal history and lacks any "exceptional circumstances" justifying continued detention, he should have been released at that time.

11. Pursuant to this policy, the government should have released Mr. Pataraia on an order of supervision while pursuing alternate or third countries of removal, pursuant to the statutory and regulatory scheme under 8 U.S.C. § 1231. If, at that point, the government identifies a third country of removal, it is required to move to reopen Mr. Pataraia's removal proceedings to designate that country as a country of removal. Mr. Pataraia would then be entitled to notice and a meaningful opportunity to respond and raise fear-based claims to relief from removal to that country.

12. Instead, here, the government seeks to short circuit this process, unlawfully subjecting Mr. Pataraia to indefinite detention while unlawfully applying an informal and unlawful procedural policy memo to summarily remove him to a country where he may face risk of torture.

13. Accordingly, Mr. Pataraia respectfully asks this Court to declare that his continued detention by Respondents is unlawful and order his release from custody.

14. Pursuant to 28 U.S.C. § 2243, Mr. Pataraia respectfully requests an order to show cause be issued within three days.

JURISDICTION & VENUE

15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, as Petitioner is currently in federal immigration custody and seeks habeas corpus relief for ongoing violations of the U.S. Constitution, federal statutes, and applicable regulations.

16. The case arises under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq., the regulations implementing the INA, the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 103-277, div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1998) (codified as Note to 8 U.S.C. § 1231), the regulations implementing the FARRA, the Administrative Procedure Act (APA), 5 U.S.C. §§ 551-559 et seq.; and 5 U.S.C. § 552 et. seq.

Jurisdiction is also proper under 28 U.S.C. § 1331, as this action arises under the laws and Constitution of the United States.

17. Additional jurisdiction exists under the Suspension Clause, U.S. Const. art. I, § 9, cl. 2, which guarantees the right to petition for habeas corpus to challenge unlawful executive detention.

18. Declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, and the Court has supplemental remedial authority under the All-Writs Act, 28 U.S.C. § 1651, to issue such writs as may be necessary to preserve its jurisdiction and protect Petitioner's rights. The government has waived its sovereign immunity pursuant to 5 U.S.C. § 702.

19. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Mr. Pataraia is detained at the Winn Correctional Center in Winnfield, Louisiana, within the jurisdiction of the Western District of Louisiana and its Alexandria Division. W.D. La. Local Civ. R. 77.3.

PARTIES

20. Petitioner Jaba Pataraia is a 33-year-old native of Georgia and citizen of Georgia and Russia who was granted withholding of removal by an IJ on September 23, 2024. He has been continuously detained in the custody of Respondents since he was apprehended at the U.S.-Mexico border on or about June 6, 2024—a period of over one year. He is currently incarcerated at the Winn Correctional Center, an immigration detention center in Winnfield, Louisiana, where he is languishing in punitive conditions, suffering from medical neglect and other forms of abuse.

21. Respondent, Kristi Noem, is named in her official capacity as the Secretary, U.S. Department of Homeland Security. In this capacity, she is responsible for overseeing ICE's day-

to-day operations, leading approximately 20,000 ICE employees, including Respondent Lyons. Secretary Noem is the ultimate legal custodian of Petitioner.

22. Respondent Pamela Bondi is the Attorney General of the United States. As Attorney General, Respondent Bondi oversees the immigration court system, including the immigration judges who conduct bond hearings as her designees, and is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g). She is legally responsible for administering Petitioner's removal and bond proceedings, including the standards used in those proceedings, and as such, she is Mr. Pataraia's legal custodian. She is sued in her official capacity.

23. Respondent Todd Lyons is sued in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement, and as such is the legal custodian of Mr. Pataraia.

24. Respondent Brian S. Acuna is ICE's Acting Field Office Director for the New Orleans Field Office of ICE Enforcement and Removal Operations ("NOLA ICE"). As Field Office Director, Respondent Acuna oversees ICE's enforcement and removal operations in the New Orleans Area of Responsibility ("AOR"), which includes Louisiana. Petitioner is currently detained within this area of responsibility and, as such, Respondent Acuna is a legal custodian of Mr. Pataraia. He is sued in his official capacity.

25. Respondent Eleazar Garcia is the Warden of the Winn Correctional Center in Winnfield, Louisiana, where Petitioner is currently detained. Respondent Garcia is responsible for the operation of Winn Correctional Center. He is employed by the LaSalle Corrections, the private prison company that operates Winn Correctional Center under a contract with ICE. He is sued in his official capacity.

STATEMENT OF FACTS

26. Mr. Pataraia is a 33-year-old native of Georgia and citizen of Georgia and Russia. He speaks Georgian and Russian and has limited English proficiency ("LEP"). After graduating from university in Georgia in 2014, Mr. Pataraia became involved in political organizing, eventually joining the United National Movement. In Georgia, he was persecuted by agents of the current Georgian regime who targeted him because of his political activism, resulting in a severe injury to his spine and Post-Traumatic Stress Disorder ("PTSD"). He was also attacked in Russia by Russian police and agents of the Putin regime because of his opposition to Russia's invasion of Ukraine, leading to further physical and psychological injuries.

27. Mr. Pataraia fled Russia and entered the United States on or about June 6, 2024, seeking protection. He was encountered by border patrol and taken into custody at a border patrol facility in Arizona. He was then transported to the Winn Correctional Center ("Winn") in Winnfield, Louisiana. After approximately three weeks, he was transferred to the Jackson Parish Correctional Facility in Jonesboro, Louisiana, where he had a credible fear interview and received a positive result. He was then transferred back to Winn, where he remains detained as of the date of this filing.

28. On September 23, 2024, IJ Cynthia Goodman granted Mr. Pataraia withholding of removal under 8 U.S.C. § 1231(b)(3), INA § 241(b)(3), to both Georgia and Russia. *See* Exh. A, IJ Order. The IJ found that Mr. Pataraia was ineligible for asylum as a result of the Circumvention of Lawful Pathways rule, which bars eligibility to those who enter the U.S. without utilizing the CBP One application. *See* 88 Federal Register 3134 (issued May 16, 2023). The government appealed this decision and the BIA dismissed that appeal on February 6, 2025.

29. On May 14, 2025, ICE issued a decision to continue detention pursuant to its 90-day Post-Order Custody Review ("POCR") process. *See* Exh. C, Decision to Continue Detention, dated May 14, 2025 ("90-day POCR Dec."). In issuing its decision, ICE denied release on the basis that Mr. Pataraia purportedly "poses a significant risk of flight." *Id.* at 1. The decision states that it made such a determination based upon Mr. Pataraia's "manner of entry into the United States" and "subsequent order of removal." *Id.* The decision also notes that "ICE is in receipt of or expects to receive the necessary travel documents to effectuate your removal, and removal is practicable, likely to occur in the reasonably foreseeable future, and in the public interest." *Id.*

30. When officials at Winn presented this document to Mr. Pataraia in English, they refused to utilize a Georgian or Russian interpreter. Because Mr. Pataraia did not understand the content of the document, he declined to issue his signature.

31. Upon information and belief, as of the date of this filing, ICE has failed to secure travel documents to remove Mr. Pataraia to any alternate or third country. Attempts to secure travel documents to Armenia, Azerbaijan, and Kazakhstan have failed.

32. Meanwhile, Mr. Pataraia has been subjected to continuous, punitive detention by ICE since on or about June 6, 2024—a period of over one year. He is currently detained at Winn, a facility with notoriously abusive detention conditions, as confirmed by a years-long record of reports by federal investigators, lawmakers, detained people, and their advocates. Winn is a former criminal facility that is currently owned and operated by private prison company, LaSalle Corrections. In August and November 2021, the government's own oversight investigators at the Office for Civil Rights and Civil Liberties ("CRCL") issued reports recommending that the government immediately close the facility due to systemic levels of abuse, stating, "overall, Winn has a culture and conditions that can lead to abuse, mistreatment, and discrimination against

detainees."[3] In May 2024, members of Congress issued a letter calling for the closure of Winn, citing "well-documented deficient conditions."[4] People detained at Winn have recently reported instances of physical abuse,[5] torture,[6] multiple retaliatory pepper-spraying incidents,[7] denial of language access,[8] and medical neglect,[9] among other forms of severe abuse.[10] In response, on

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[3] Aleaziz, Hamed. "Internal Investigators Told ICE To Stop Sending Immigrants To A Prison In Louisiana Because Of A Culture That Can Lead To Abuse." *Buzzfeed News*. Dec. 15, 2021. https://www.buzzfeednews.com/article/hamedaleaziz/ice-private-prison-louisiana-conditions.

[4] Letter by United States Senators to Secretary Mayorkas and Director Lechleitner. May 14, 2024. https://www.warren.senate.gov/imo/media/doc/final_-_letter_to_dhs_and_ice_on_private_detention_center_use_05142024.pdf.

[5] Borger, Julian. "Cameroonian asylum-seeker sues US for alleged assault by Ice officers." *The Guardian*. August 12, 2021. https://www.theguardian.com/us-news/2021/aug/12/cameroonian-asylum-seeker-sues-us-for-alleged-assault-by-ice-officers.

[6] Rouhandeh, Alex. "Torture, Racism, Food Deprivation: Human Rights Groups Decry ICE Facility in New Orleans." *Newsweek*. December 21, 2021. https://www.newsweek.com/torture-racism-food-deprivation-human-rights-groups-decry-ice-facility-new-orleans-1661825.

[7] Merchant, Nomaan. "ICE: Protest at Louisiana jail ends after pepper spray used." *The Associated Press*. December 4, 2019. https://www.columbian.com/news/2019/dec/04/ice-protest-at-louisiana-jail-ends-after-pepper-spray-used/; Miller, Hayley. "ICE Detention Center Officials Indiscriminately Tear Gassed Asylum Seekers, Complaints Say." *HuffPost*. August 16, 2020. https://www.huffpost.com/entry/ice-tear-gas-detainees-winn-correctional-center_n_5f35305ec5b6fc009a625a85.

[8] Cornell Law School, et al., Civil Rights and Civil Liberties Complaint, Re: Systemic Denial of Language Access at the Winn Correctional Center. August 12, 2024. https://rfkhumanrights.org/wp-content/uploads/2024/08/Winn-Language-Access-CRCL-Complaint_8.12.24_Redacted.pdf.

[9] Silva, Daniella. "Detainees and advocates decry 'horrific' conditions at Louisiana ICE detention center." *NBC News*. Jul. 17, 2023. https://www.nbcnews.com/news/detainees-advocates-decry-horrific-conditions-louisiana-ice-detention-rcna92339; Mamone, Davide. "Asylum seekers, advocates decry isolation, filth, lack of medical care at Winn Correctional Center." *The Acadiana Advocate*. Nov. 13, 2021. https://www.theadvocate.com/acadiana/news/asylum-seekers-advocates-decry-isolation-filth-lack-of-medical-care-at-winn-correctional-center/article_e4d1399a-4303-11ec-b798-afd87bfb7bf9.html.

[10] American Civil Liberties Union (ACLU), et al. "Inside the Black Hole: Systemic Human Rights Abuses Against Immigrants Detained and Disappeared in Louisiana." 2024. https://rfkhumanrights.org/wp-content/uploads/2024/08/Inside-the-Black-Hole_Systemic-Human-Rights-Abuses-Against-Immigrants-Detained.pdf; American Civil Liberties Union (ACLU), Human Rights First, and NIJC. "Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration." 2020. https://www.aclu.org/publications/justice-free-zones-us-immigration-detention-under-trump-administration.

September 5, 2024, CRCL issued a retention memo opening an investigation into Winn following its receipt of 120 separate allegations of civil rights violations, including excessive use of force and inadequate conditions.[11]

33. This prolonged detention has resulted in the deterioration of Mr. Pataraia's physical and mental health. As a result of his past persecution, Mr. Pataraia currently suffers from a severe spinal injury from multiple brutal beatings. He underwent spinal surgery in August 2023, and still requires monitoring by specialty medical providers, including a neurologist, and access to physical therapy. However, while incarcerated at Winn, Mr. Pataraia has been provided with only generic pain killers and muscle relaxants. He has placed at least three requests for access to external medical care that have remained unanswered. As a result of this medical neglect, Mr. Pataraia has experienced severe pain, numbness, and increased mobility issues. His PTSD symptoms, including flashbacks, insomnia, and feelings of hypervigilance and paranoia, have also markedly increased in detention and have not been adequately addressed by mental health treatment at Winn.

LEGAL FRAMEWORK

Withholding of Removal and Relief under the Convention Against Torture.

34. Noncitizens 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 protection under the CAT. Noncitizens 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), or failure to use the CBP One App when entering the United States, *see* 88 Federal Register 3134 (issued May 16, 2023).

[11] The CRCL retention memo was removed from the CRCL website. Undersigned counsel have retained a copy and are able to submit to this Court and opposing counsel upon request.

35. While statutes and regulations place certain restrictions on eligibility to seek asylum and withholding of removal, *see e.g.* 8 U.S.C. § 1158(c)(2), 8 U.S.C. § 1231(b)(3)(B), there are no restrictions on eligibility to apply for CAT deferral of removal. *See* Foreign Affairs 11 Reform Restructuring Act of 1998 (FARRA) (codified as Note to 8 U.S.C. § 1231); 8 C.F.R. §§ 208.16(c), 208.17(a), 1208.16(c), 1208.17(a); 28 C.F.R. § 200.1. Withholding of removal under 8 U.S.C. § 1231(b)(3) and CAT protection are both mandatory and country-specific. *Id.* CAT prohibits removal to any country where there is a substantial risk of torture, 28 C.F.R. § 200.1, and individuals are eligible to seek CAT protection no matter the basis of their removal order. *See* 8 C.F.R. §§ 208.16–208.18, 208.31, 241.8(e), 1208.16–1208.18.

36. To be granted CAT relief, a noncitizen 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.*

37. When an IJ grants a noncitizen 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 noncitizen demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 531–32 (2021).

38. 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.

39. An IJ may only terminate a grant of CAT protection based on evidence that the person will no longer face torture. DHS must move for a new hearing and provide evidence

"relevant to the possibility that the [noncitizen] would be tortured in the country to which removal has been deferred and that was not presented at the previous hearing." 8 C.F.R. §§ 208.17(d)(1), 1208.17(d)(1). If a new hearing is granted, the IJ must provide notice "of the time, place, and date of the termination hearing," and must inform the noncitizen of the right to "supplement the information in his or her initial [withholding or CAT] application" "within 10 calendar days of service of such notice (or 13 calendar days if service of such notice was by mail)." 8 C.F.R. §§ 208.17(d)(2), 1208.17(d)(2).

Detention Of Noncitizens Granted Withholding Of Removal Or Relief Under The Convention Against Torture.

40. 8 U.S.C. § 1231 governs the detention of noncitizens "during" and "beyond" the "removal period." 8 U.S.C. §§ 1231(a)(2)-(6). The "removal period" begins once a noncitizen's removal order "becomes administratively final." 8 U.S.C. § 1231(a)(1)(B). The removal period lasts for 90 days, during which ICE "shall remove the [noncitizen] from the United States" and "shall detain the [noncitizen]" as it carries out the removal. 8 U.S.C. §§ 1231(a)(1)-(2). If ICE does not remove the noncitizen within the 90-day removal period, the noncitizen "*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).

41. To avoid "indefinite detention" that would raise "serious constitutional concerns," the Supreme Court in *Zadvydas* construed § 1231 to contain an implicit time limit. 533 U.S. at 682. *Zadvydas* dealt with two noncitizens 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 [noncitizen]'s removal from the United States." *Id.* at 689. Six months of post-removal order detention is considered "presumptively reasonable." *Id.* at 701.

42. The Court underscored that civil detention is thus only constitutionally permissible in "special and narrow nonpunitive circumstances, where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* at 690 (citations omitted) (internal quotations omitted). The Court thus concluded that, "[a] statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem." *Id.*; *see id.* at 701 ("We do have reason to believe, however, that Congress previously doubted the constitutionality of detention for more than six months.").

43. DHS regulations provide that, by the end of the 90-day removal period that ensues upon a noncitizen's removal order becoming final, the local ICE field office with jurisdiction over the noncitizen's detention must conduct a custody review to determine whether the noncitizen should remain detained. *See* 8 C.F.R. §§ 241.4(c)(1), (k)(1)(i) ("Prior to the expiration of the removal period, the district director . . . shall conduct a custody review . . ."). The Field Office Director, or their delegate, makes the final custody decision based on recommendations offered by lower-level officers. In making this custody determination, ICE considers several factors, including the availability of travel documents for removal. *Id.* §§ 241.4(e)-(f). If there is a decision to release, ICE must release the noncitizen under conditions of supervision as it considers appropriate. *Id.* § 241.4(j).

44. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that established "special review procedures" to determine whether detained noncitizens 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

[noncitizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [noncitizen] is not significantly likely in the reasonably foreseeable future." *Id.* § 241.4(i)(7).

45. 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 noncitizen is "specially dangerous." *Id.* § 241.14(f).

46. The Supreme Court has held that post-removal order detention is limited to "a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas*, 533 U.S. at 689. This is because the primary purpose of post-order detention is to "assure[e] the [noncitizen's] presence at the moment of removal." *Id.* at 699. This government interest in "preventing flight," however, "is weak or nonexistent where removal seems a remote possibility at best." *Id.* at 690.

47. Therefore, in habeas proceedings, if a person "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the government must either "respond with evidence sufficient to rebut that showing" or release them from detention under supervision. *Id.* at 701; *see also Barco v. Witte*, Case No. 6:20-cv-00497, 2020 WL 7393924, at *3 (W.D. La. Nov. 19, 2020) (citing *Hassoun v. Session*, Case # 18-CV-586-FPG, 2019 WL 78984, at *4 (W.D.N.Y. Jan. 2, 2019)) (report and recommendation adopted by *Gomez Barco v. Witte*, Case No. 6:20-cv-00497, 2020 WL 7393786 (W.D. La. Dec. 16, 2020)); *see also*

Balza v. Barr, Case No. 6:20-cv-00866, 2020 WL 6143643, at *5 (W.D. La. Sep. 17, 2020) (report and recommendation adopted by *Balza v. Barr*, Case No. 6:20-cv-00866, 2020 WL 6064881 (W.D. La. Oct. 14, 2020)).

48. The government's "good faith efforts" to remove an individual are not sufficient to meet this standard. *Zadvydas*, 533 U.S. at 702. As the length of detention grows, the period of time that would be considered the "reasonably foreseeable future" conversely shrinks. *Id.* at 701. "Petitioner's removal need not necessarily be imminent, but it cannot be speculative." *Balza*, 2020 WL 7223258, at *4 (quoting *Hassoun*, 2019 WL 78984, at *6). Once the burden shifts to the government, an "unsubstantiated belief" that "ICE can request a travel document and effectuate [a petitioner's] removal from the United States to that country" is insufficient to meet that burden. *McKenzie v. Gillis*, Civil Action No. 5:19-cv-139-KS-MTP, 2020 WL 5536510, at *2-*3 (S.D. Miss. July 30, 2020), (report and recommendation adopted as modified by *McKenzie v. Gillis*, Civil Action No. 5:19-cv-139-KS-MTP, 2020 WL 5535367 (S.D. Miss., Sep. 15, 2020)).

49. If a court finds removal is reasonably foreseeable, the court may still order release, and may consider the risk posed by the individual to community safety in determining whether to do so. *Zadvydas*, 533 U.S. at 700. While dangerousness may justify immigrant detention in certain cases, the Court "uph[o]ld[s] preventive detention based on dangerousness only when limited to specially dangerous individuals and subject to strong procedural protections." *Id.* at 690–91.

The Government's Longstanding Fear-based Grant Release Policy

50. ICE's longstanding policy (hereinafter the "Fear-Based Grant Release Policy") is to release noncitizens immediately following a grant of withholding of removal or CAT protection absent exceptional circumstances. *See* Exh. B, Fear-based Grant Release Policy. "In general, it is ICE policy to favor the release of [noncitizens] when have been granted protection by an

immigration judge, absent exceptional concerns…" and "[p]ursuant to longstanding policy, absent exceptional circumstances… noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge *should* be released…" *Id.* (emphasis added). This policy specifically instructs the local ICE field office to make an individualized determination whether to keep a noncitizen detained based on exceptional circumstances. *Id.* ("[T]he Field Office Director must approve any decision to keep a [noncitizen] who received a grant of protection in custody.").

51. 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 noncitizens granted withholding of removal or CAT relief. *Id.* A 2004 ICE memorandum turned this acknowledgement of authority into a presumption, stating that "it is ICE policy to favor the release of [noncitizens] 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.* Further, this memorandum states that "in all cases, the Field Office Director must approve a decision to keep a [noncitizen] granted protection relief in custody pending appeal." *Id.*

52. 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.*

53. 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.* (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. Rather, the individual facts and circumstances of the case, including extensiveness, seriousness, and recency of the criminal activity, along with any evidence of rehabilitation, should be considered in making such determination." *Id.*

54. In *Rodriguez Guerra v. Perry*, No. 1:23-cv-1151 (E.D. Va.), a group of noncitizens detained by ICE in the Eastern District of Virginia filed suit in 2023 on behalf of themselves and a class claiming systemic violation of the same policies by the Washington, D.C., Field Office, which has jurisdiction over detention centers in Virginia. The suit alleged the Washington, D.C., Field Office was engaging in a widespread violation of the *Accardi* doctrine by ignoring the policies at issue here. That case settled in 2024. Although ICE did not admit liability, the Washington, D.C., Field Office agreed to review all detained noncitizens in their custody who had been granted relief for release pursuant to the policies described above.[12]

Third Country Removal Procedures

55. When a noncitizen 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 noncitizens who were granted withholding or CAT relief to alternative

[12] The settlement goes on to offer this definitional language about "exceptional circumstances": "In considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat or danger to the community. Rather, the individual facts and circumstances of the case, including extensiveness, seriousness, and recency of the criminal activity, along with any evidence of rehabilitation, should be considered in making such determinations." *Rodriguez Guerra v. Perry* Settlement Agreement at 6, *available at* https://www.acluva.org/sites/default/files/field_documents/redacted_settlement_agreement_signed_v.1_final_07282024_redacted_002.pdf.

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. Noncitizens can be removed, for instance, to the country "of which the [noncitizen] is a citizen, subject, or national," the country "in which the [noncitizen] was born," or the country "in which the [noncitizen] resided" immediately before entering the United States. 8 U.S.C. §§ 1231(b)(2)(D)–(E).

56. Paragraphs (b)(1) and (b)(2) of § 1231 make any designation of the country of removal, whether by DHS or an immigration judge, "[s]ubject to paragraph (3)." *Id.* Paragraph (3), entitled "Restriction on removal to a country where [noncitizen's] life or freedom would be threatened," reads:

> Notwithstanding paragraphs (1) and (2), the Attorney General may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion.

Id. § 1231(b)(3)(A); *see also Jama v. ICE*, 543 U.S. 335, 348 (2005). Likewise, where DHS seeks to remove a noncitizen to a country where the noncitizen has a lesser connection (or no connection), regulations implementing CAT prohibit deportation to a country where the noncitizen will face torture. 8 C.F.R. §§ 208.16(c)–208.18, 1208.16(c)–1208.18.

57. If ICE identifies an appropriate alternative country of removal, the noncitizen must have notice and an opportunity to seek relief from removal to that country. *See Jama*, 543 U.S. at 348 ("If [noncitizens] would face persecution or other mistreatment in the country designated under § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture, *see* 8 CFR §§ 208.16(c)(4), 208.17(a) (2004) . . ."); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (finding that "last minute" designation of alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process"); *Romero*

v. Evans, 280 F. Supp. 3d 835, 848 n.24 (E.D. Va. 2017) ("DHS could not immediately remove petitioners to a third country, as DHS would first need to give petitioners notice and the opportunity to raise any reasonable fear claims."), *rev'd on other grounds, Guzman Chavez*, 594 U.S. 523; *cf. Protsenko v. U.S. Att'y Gen.*, 149 F. App'x 947, 953 (11th Cir. 2005) (per curiam) (permitting designation of third country where individuals received "ample notice and an opportunity to be heard").

58. The statute and regulations implement Congress' designation scheme in a way that ensures that noncitizens receive meaningful notice and an opportunity to present a fear-based claim. In removal proceeding under 8 U.S.C. § 1229(a) (commonly referred to as "Section 240" proceedings), individuals receive notice of all countries to which they may be deported. The regulations mandate that the IJ "shall notify" the individual of the designated country of removal and "shall identify for the record" all alternative countries to which the person may be removed. 8 C.F.R. § 1240.10(f).

59. When the government commences removal proceedings against a noncitizen under 8 U.S.C. § 1229(a), it typically designates a country of removal to which it is seeking to remove the noncitizen. The IJ then officially designates the country suggested by the government. Those who have been deported and subsequently return to the United States without inspection can have their removal orders reinstated by DHS officers. *See* 8 U.S.C. § 1231(a)(5); 8 C.F.R. § 241.8. The reinstatement regulations contemplate notice of a designated country. *See* 8 C.F.R. § 241.8(e) (referring to "the country designated in [the reinstatement] order").

60. Likewise, DHS officers can issue an administrative removal order to nonpermanent residents with an aggravated felony conviction. *See* 8 U.S.C. § 1228(b); 8 C.F.R. § 238.1. In this process, the noncitizen may designate "the country to which he or she chooses to be deported" and

the "deciding [DHS] officer shall designate the country of removal." 8 C.F.R. §§ 238.1(b)(2)(ii), (f)(2). Consistent with the United States' commitment to *non-refoulement*, the government must provide individuals who express a fear of return to the designated country with an opportunity to demonstrate a reasonable fear of persecution or torture in interviews before asylum officers, and those who do so, are eligible to apply for withholding of removal under 8 U.S.C. § 1231(b)(3) and/or CAT protection in what are known as withholding-only proceedings. *See* 8 C.F.R. §§ 241.8(e), 238.1(f)(3); *see also* 8 C.F.R. §§ 208.31, 1208.31.

61. If the government seeks to remove an individual granted withholding or CAT to a different country—a country not designated by the removal order—the INA and due process principles require that the noncitizen have a meaningful opportunity seek fear-based protection from removal to that country. Specifically, if ICE were to attempt to remove a noncitizen to a country not designated on their removal order, the noncitizen's removal proceedings would have to be reopened for the IJ to designate the alternative country of removal and for the noncitizen to apply for any fear-based relief in withholding-only proceedings. *See Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006–10 (W.D. Wash. 2019); *accord* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 1240.10(f), 1240.11(c)(1)(i).

62. Notice is only meaningful if it is presented sufficiently in advance of the deportation to stop the deportation, is in a language the person understands, and provides for an automatic stay of removal for a time period sufficient to permit the filing of a motion to reopen removal proceedings so that a third country for removal may be designated as required under the regulations and the noncitizen may present a fear-based claim. *Andriasian*, 180 F.3d at 1041; *Aden*, 409 F. Supp. 3d at 1009 ("A noncitizen must be given sufficient notice of a country of deportation [such]

that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation.").

63. Further, an opportunity to present a fear-based claim is only meaningful if the noncitizen is not deported before removal proceedings are reopened. *See Aden*, 409 F. Supp. 3d at 1010 (holding that merely giving petitioner an opportunity to file a discretionary motion to reopen "is not an adequate substitute for the process that is due in these circumstances" and ordering reopening); *Dzyuba v. Mukasey*, 540 F.3d 955, 957 (9th Cir. 2008) (remanding to BIA to determinate whether designation is appropriate).

64. Providing such notice and opportunity to present a fear-based claim prior to deportation also implements the United States' obligations under international law. *See* United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8 U.S.C. § 1231(b)(3)); *INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting that the Refugee Act of 1980 "amended the language of [the predecessor statute to § 1231(b)(3)], basically conforming it to the language of Article 33 of the United Nations Protocol").

65. Meaningful notice and opportunity to present a fear-based claim prior to deportation to a country where a person fears persecution or torture are also fundamental due process protections under the Fifth Amendment. *See, e.g., Andriasian*, 180 F.3d at 1041. The federal government has repeatedly acknowledged these obligations in model notices of removal to other than designated countries. And, consistent with the above authorities and practices, at oral argument in *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), the Assistant to the Solicitor General represented that the government must provide a noncitizen with notice and an opportunity

to present fear-based claims, including claims for mandatory CAT protection, before that noncitizen can be deported to a non-designated third country. *See* Transcript of Oral Argument at 20-21, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021); *see also* 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.").

66. On March 23, 2025, a putative nationwide class challenged the government's third country removal practice in *D.V.D. v. DHS*, and obtained a temporary restraining order and later a preliminary injunction for a certified class,[13] blocking third country removals without notice and a meaningful opportunity to seek CAT protection. Under the *D.V.D.* injunction, the government was required to provide class members the following:

- Written notice of the third country in a language that the noncitizen can understand to the individual and their attorney, if any,
- An automatic 10-day stay between notice and any actual removal,
- Ability to raise a fear-based claim for CAT protection prior to removal, and:
  - If the noncitizen demonstrates "reasonable fear" of removal to the third country, DHS must move to reopen the noncitizen's immigration proceedings.
  - If the noncitizen does not demonstrate a "reasonable fear" of removal to the third country, DHS must provide a meaningful opportunity, and a minimum of fifteen days, for the noncitizen to seek reopening of their immigration proceedings.

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[13] The certified *D-V-D-* class is:

> All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

D.V.D. v. DHS, 778 F. Supp. 3d 355, 378 (D. Mass. 2025).

See D.V.D. v. DHS, 778 F. Supp. 3d 355, 392–93 (D. Mass. 2025).[14]

67. At multiple points when the TRO and then later the injunction were in place, the government failed to comply with the district court's orders.[15] On March 31, 2025, at least six *D.V.D.* class members were removed from Guantanamo to El Salvador on a U.S. Department of Defense plane, in violation of the TRO. The district court subsequently amended its preliminary injunction to clarify that Defendants must comply with the injunction prior to removing any class member from Guantanamo and prior to ceding custody or control to another agency in a manner that prevents provision of the procedural protections in the injunction. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. Apr. 30, 2025), ECF No. 86.

68. On May 7, 2025, the government attempted to deport a flight of class members to Libya without compliance with the preliminary injunction, leading to an emergency TRO motion. The district court promptly issued a memorandum reiterating the terms of its preliminary injunction and making clear that any such removals would violate it. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM, 2025 WL 1323697 (D. Mass. May 7, 2025).

69. On May 20, 2025, while the government was again in the process of removing class members in violation of the preliminary injunction (this time to South Sudan), the plaintiffs moved

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[14] *See also* Electronic Order – Amended Preliminary Injunction, Dkt. 86 (clarifying applicability to Guantanamo); Memorandum and Order on Plaintiffs' Motion for Emergency Relief, Dkt. 91 (clarifying that removals without required protections to Libya would have violated the preliminary injunction); Memorandum on Preliminary Injunction, Dkt. 118 (providing a ten-day stay between notice and removal).

[15] Soon after the *D.V.D.* complaint had been filed and one week after the district court entered its TRO, DHS responded with an informal policy memo implementing new procedures for conducting reasonable fear screenings and third-country removals that fall far short of the binding statutory, regulatory, and due process protections described above and enforced by the district court's TRO. *See* Memorandum of DHS Secretary Kristi Noem, *Guidance Regarding Third Country Removals*, March 30, 2025 ("March 30, 2025 memo"). Available at: https://immigrationlitigation.org/wp- content/uploads/2025/04/43-1-Exh-A-Guidance.pdf.

for another emergency TRO, leading the district court order that the government to retain custody of the class members and provide the preliminary injunction's protections. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM, 2025 WL 1449032 (D. Mass. May 20, 2025).

70. On June 23, 2025, the Supreme Court issued a summary order that did not provide reasoning, but granted the government's request to stay the district court's preliminary injunction in *D.V.D. See DHS v. D.V.D.*, 145 S. Ct. 2153 (U.S. 2025); *see also DHS v. D.V.D.*, 145 S. Ct. 2627 (U.S. 2025) (order on motion for clarification finding that the preliminary injunction had been stayed in full by the Supreme Court, and thus, District Court could not enforce the injunction by issuing a remedial order). As a result, at this time, the district court's class-based preliminary injunction in *D.V.D.* is no longer constraining the government from carrying out more unlawful third country removals, as it had both during and after the district court entered and restated its injunctive order.[16]

CLAIMS FOR RELIEF

COUNT I

MR. PATARAIA'S UNLAWFUL DETENTION VIOLATES THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1231(a)(6), AND THE SUBSTANTIVE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION

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

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[16] On June 24, 2025, a former high-level official with the Department of Justice's Office of Immigration Litigation filed a protected whistleblower claim alleging that high-level DOJ officials conspired to violate the *D.V.D.* TRO. The disclosure describes efforts to feign ambiguity in an unambiguous order, failing to disseminate the fact and terms of the injunction, and purposefully failing to respond to Plaintiffs' inquiries. *Protected Whistleblower Disclosure of Erez Reuveni Regarding Violation of Laws, Rules & Regulations, Abuse of Authority, and Substantial and Specific Danger to Health and Safety at the Department of Justice* at 16- 21. Available at: https://www.judiciary.senate.gov/imo/media/doc/06-24-2025_-_Protected_Whistleblower_Disclosure_of_Erez_Reuveni_Redacted.pdf.

72. The government is currently detaining Mr. Pataraia pursuant to 8 U.S.C. § 1231(a)(6), which governs the detention of noncitizens who have an administratively final order of removal. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for "a period reasonably necessary to bring about the [noncitizen's] removal from the United States." 533 U.S. at 689.

73. Petitioner's prolonged, indefinite detention under § 1231 violates his substantive due process rights under the Fifth Amendment by depriving him of liberty without due process of law. U.S. Cont. amend. V. In *Zadvydas*, the Supreme Court articulated that noncitizens detained post-final removal order by the government for over six months must be released from custody if there is no significant likelihood that they will be removed in the reasonably foreseeable future. 553 U.S. at 699-700.

74. Civil detention is a severe encumbrance on the liberty guaranteed by the Due Process Clause. Indeed, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690; *see also Boumediene v. Bush*, 533 U.S. 723, 739 (2008) ("The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty"). Accordingly, due process permits civil detention only when it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997).

75. At all times, detention must be reasonably related to that objective, and "where detention's goal is no longer practically attainable, detention no longer bears reasonable relation to the purpose for which the individual was committed." *Zadvydas*, 533 U.S. at 690 (internal citations and quotations omitted). At that point, otherwise permissible detention becomes "the

exercise of power without any reasonable justification" and a violation of due process. *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998).

76. Continuing to detain Mr. Pataraia under § 1231(a)(6) while there is no significant likelihood of his removal in the reasonably foreseeable future violates the Fifth Amendment because it deprives him of his "strong liberty interest." *United States v. Salerno*, 481 U.S. 739, 750 (1987).

77. Mr. Pataraia's continued detention further violates § 1231(a)(6) because there is not a substantial likelihood that the government will be able to carry out his removal in the reasonably foreseeable future.

78. In the six months since Mr. Pataraia's order of removal became administratively final, the government has failed to remove him to three countries – Armenia, Azerbaijan, and Kazakhstan – and, upon information and belief, is no closer to securing travel documents to effectuating his removal.

79. At six months post-final order of removal, the government must now bear the burden to justify Mr. Pataraia's continued detention because there are multiple "good reason[s] to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701.

80. First, Mr. Pataraia cannot be deported to his only designated countries of removal, Georgia and Russia, the only countries of which he is a citizen, because he has a final grant of withholding of removal to Georgia and Russia.

81. Second, Mr. Pataraia has no legal status or connections to any alternate country. The government's previous attempts to remove him to Armenia, Azerbaijan, and Kazakhstan have failed.

82. Third, should the government seek to remove Mr. Pataraia to any third country, it must afford Mr. Pataraia mandatory protection from torture and persecution. As discussed *supra*, the binding regulations, statutes, and due process require the government to provide Mr. Pataraia with an individualized and robust process, as set forth in the now stayed *D.V.D.* class injunction. Therefore, not only would the government need to identify a country willing to accept Mr. Pataraia, which is already unlikely after three failed attempts, the government must then (a) provide Mr. Pataraia the opportunity to raise a fear-based claim seeking relief from removal to that country and (b) if Mr. Pataraia is successful in showing a reasonable fear, allow him an opportunity to reopen his proceedings. Together, these three factors make his removal significantly less foreseeable.

83. Accordingly, this Court should order Respondents to immediately release Mr. Pataraia from their custody because his "continued detention [has become] unreasonable and [is] no longer authorized by statute." *Zadvydas*, 533 U.S. at 699–700; *Vaskanyan v. Janecka*, 5:25-cv-01475-MRA-AS, 2025 U.S. Dist. LEXIS 137846, at *16 (C.D. Cal., Jul 18, 2025) (granting a writ of habeas corpus where the countries designated for removal would not accept petitioner and "ICE d[id] not know whether and when the information requested by the [alternate third country] Consulate can be obtained or when it can expect to receive a response from the [alternate third country] consulate"). The government interest in "preventing flight [] is weak or nonexistent where removal seems a remote possibility at best." *Zadvydas*, 533 U.S. at 690.

84. Therefore, because Petitioner cannot be removed from the United States in the "reasonably foreseeable future," his continued detention violates both the Fifth Amendment and 8 U.S.C. § 1231(a). *See id.* at 701.

COUNT II

MR. PATARAIA'S UNLAWFUL DETENTION VIOLATES THE PROCEDURAL DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION

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

86. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Cont. amend. V. To comply with the Due Process Clause, civil detention must "bear[] a reasonable relation to the purpose for which the individual was committed," which for immigration detention is removal from the United States. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690). Furthermore, "[t]he 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 quotations omitted).

87. Petitioner's continued detention pending supposed third country removal efforts, without notice of whether and to which countries ICE is actually attempting to remove him, so that he may contest such removal, violates his procedural due process rights. *See, e.g., Vaskanyan*, 2025 U.S. Dist. LEXIS 137846 at *16 n.1 (noting that "[a]ny efforts to remove [p]etitioner to a third country must comport with due process. As [r]espondents admitted . . . , ICE is required as a matter of law and protocol to afford [p]etitioner a meaningful opportunity to contest his removal to a third country on the basis of fear of persecution or torture").

88. Respondent's ongoing failure to disclose purported third countries of removal to Petitioner has resulted in his prolonged and indefinite detention.

COUNT III

MR. PATARAIA'S UNLAWFUL DETENTION IN VIOLATION OF THE GOVERNMENT'S FEAR-BASED GRANT RELEASE POLICY VIOLATES THE ADMINISTRATIVE PROCEDURE ACT AND THE *ACCARDI* DOCTRINE

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

90. The Administrative Procedure Act empowers courts to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C).

91. Under the *Accardi* doctrine, 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 260 (holding that the 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.").

92. 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. 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. *Doe v. Hampton*, 566 F.2d 265, 281 (D.C. Cir. 1977); *see also Morton*, 415 U.S. at 235-36 (applying *Accardi* to a violation of internal agency manual).

93. When agencies fail to adhere to their own policies as required by *Accardi*, courts typically follow one of two courses of action. The first is to 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"). The second is to consider it 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 quotes omitted).

94. Prejudice is generally presumed when an agency violates its own policy. *See Montilla*, 926 F.2d at 167 ("We hold that a [noncitizen] claiming the INS has failed to adhere to its own regulations… is not required to make a showing of prejudice before [they are] entitled to relief. All that need be shown is that the subject regulations were for the [noncitizen'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.").

95. 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.").

96. As of January 31, 2024, Mr. Pataraia was eligible for release pursuant to ICE's fear-based grant release policy because an IJ granted him withholding of removal. On information and belief, he received no review for release at that time. The only custody reviews Mr. Pataraia has received are cursory and insufficient reviews under the regulatory POCR process by ICE.

97. ICE violated the APA and the *Accardi* doctrine when it continued Mr. Pataraia's detention despite the existence of its policy favoring release for noncitizens granted withholding of removal and CAT relief such as Mr. Pataraia.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Issue an order prohibiting Respondents from transferring Petitioner outside of this judicial district during the adjudication of this Petition without the fear-based protections required by law;

c. Use its authority under 28 U.S.C. § 2243 to order the Respondents to file a return within three days, unless they can show good cause for additional time; and

d. Declare that Respondents' actions or omissions violate the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6), the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

e. Grant a writ of habeas corpus directing Respondents to immediately release Mr. Pataraia from their custody;

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

Dated: August 19, 2025

Respectfully submitted,

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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Complaint and Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED: August 19, 2025
Washington, DC

/s/ Sarah Decker

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Pro Bono Counsel for Petitioner
**Pro hac vic application forthcoming*

EXHIBITS

A	Order Of The Immigration Judge, Dated September 23, 2024 ("IJ Order")
B	U.S. Department Of Justice, Immigration And Naturalization Service Memorandum, Re: Detention And Release During The Removal Period Of Aliens Granted Withholding Or Deferral Of Removal (Dated April 21, 2000); Ice Memorandum, Re: Detention Policy Where An Immigration Judge Has Granted Asylum And Ice Has Appealed (Dated February 9, 2004); ERO, Re: Reminder On Detention Policy Where An Immigration Judge Has Granted Asylum, Withholding Of Removal Or Cat (Dated March 6, 2012); Ice, Re: Reminder: Detention Policy Where An Immigration Judge Has Granted Asylum, Withholding Of Removal, Or Convention Against Torture Protection, And DHS Has Appealed (Dated June 4, 2021) (Collectively "Fear-Based Grant Release Policy")
C	U.S. Immigration and Customs Enforcement, Decision to Continue Detention, Dated May 14, 2025 ("90-Day POCR Dec.")
D	U.S. Immigration and Customs Enforcement, Memo by Todd M. Lyons, Acting Director, to All ICE Employees, Re: Third Country Removals Following the Supreme Court's Order in Department of Homeland Security v. D.V.D., No. 24A1153 (U.S. June 23, 2025), dated July 9, 2025 ("Third Country Removal ICE Memo")

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore send a courtesy copy via email to the office of the United States Attorney for the Western District of Louisiana at the following email addresses:

Shannon.Smitherman@usdoj.gov

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DATED: August 19, 2025

/s/ Charles Andrew Perry
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