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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

O.C.G.,

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Fred Figueroa, in his official capacity as Warden,
Eloy Detention Center;

Kristi Noem, in her official capacity as
Secretary, United States Department of
Homeland
Security;

Pamela Bondi, in her official capacity as
Attorney General of the United States;

Todd M. Lyons, in his official capacity as
Acting Director of United States Immigration and
Customs Enforcement; and

John Cantu, in his official capacity as Phoenix
Field Office Director, United States Immigration
and Customs Enforcement.

Respondents-Defendants.

1 INTRODUCTION

2 1. Petitioner O.C.G.¹ is a thirty-year-old man from Guatemala who is currently
3 detained by U.S. Immigration and Customs Enforcement (“ICE”) at the Eloy Detention
4 Center in Eloy, Arizona.

5 2. On February 19, 2025, an Immigration Judge ordered O.C.G. removed and granted
6 O.C.G. withholding of removal to Guatemala based on years of past persecution and
7 harm that he suffered on account of his sexual identity. During removal proceedings,
8 O.C.G. also testified and filed documents showing his past harm in Mexico, including
9 both a sexual assault and kidnapping that he suffered on the way to the U.S. in 2024.
10 The Immigration Judge did not designate Mexico or any other country on the removal
11 order. Both parties waived appeal, rendering the order final that same day.

12 3. Despite the lack of a valid order of removal to that country, on February 21, 2025
13 DHS unlawfully deported Petitioner to Mexico without notice or an opportunity to
14 assert a claim that he would be persecuted or an opportunity to speak to his attorney
15 before being placed on a transport bus. Shortly after his arrival in Mexico, O.C.G. was
16 given the option of being detained indefinitely while trying to obtain asylum in Mexico
17 or of being sent back to Guatemala—the very country from which an immigration judge
18 awarded him withholding from removal due to the risk of persecution that he faced.
19 Given these two options, O.C.G. elected Guatemala.

20 4. Terrified, Petitioner remained in hiding in Guatemala until, through separate
21 litigation in which he is a named plaintiff, *D.V.D., et al. v. U.S. Department of*
22 *Homeland Security, et al. v.*, No. 25-10676-BEM (D. Mass. May 23, 2025), a federal

23 ¹ O.C.G. is a named plaintiff in the *D.V.D.* litigation, a class action that requested notice
24 and an opportunity to assert a fear claim before DHS can remove a non-citizen to a third
25 country. Because the *D.V.D.* litigation was filed when O.C.G. was still in hiding in
26 Guatemala and at grave risk of persecution and torture, he filed the *D.V.D.* litigation
27 using only his initials. In order to continue to protect his privacy, he will file a
28 forthcoming motion with this Court asking for permission to proceed using his initials, a
pseudonym. See *D.V.D., et al. v. U.S. Department of Homeland Security, et al. v.*, No.
25-10676-BEM Doc. 13 (D. Mass. Apr. 18, 2025) (granting motion to proceed with
pseudonyms).

1 court ordered DHS to facilitate O.C.G.’s return to the United States after finding that
2 his removal to Mexico was unlawful. *Id.* at Doc. 132. On or about May 26, 2025, DHS
3 placed O.C.G. back into custody in Eloy, Arizona, where he remains detained today,
4 more than 180 days after his removal order became final.

5 5. O.C.G. has remained in the same legal limbo since his removal order was entered
6 on February 19, 2025: DHS cannot remove him to Guatemala and has no other third
7 country where he can be removed lawfully. In *Zadvydas v. Davis*, the United States
8 Supreme Court held that 8 U.S.C. § 1231(a)(6) does not allow DHS to detain a
9 noncitizen indefinitely while attempting to carry out removal. 533 U.S. 678, 689
10 (2001). Because of the “serious constitutional problem” posed by indefinite detention,
11 DHS’s authority to detain noncitizens subject to final removal orders is limited to “a
12 period reasonably necessary to bring about that alien’s removal from the United States.”
13 *Id.* at 682. Where removal is “a remote possibility at best,” immigration detention lacks
14 a reasonable relation to its purpose. *Id.* at 690. Thus, his continued detention serves no
15 purpose authorized by statute and violates both the Immigration and Nationality Act
16 and the Fifth Amendment’s Due Process Clause. Petitioner seeks immediate release
17 from custody.

18 **CUSTODY**

19 6. O.C.G. is currently held at the Eloy Detention Center, a facility that contracts with
20 ICE to detain individuals in removal proceedings or awaiting removal. He is in the
21 physical and legal custody of Respondents.

23 **JURISDICTION**

24 7. This action arises under the Constitution of the United States, the Immigration
25 and Nationality Act (“INA”), 8 U.S.C. § 1101 et. Seq., as amended by the Illegal
26 Immigration Reform and Immigrant Responsibility Act of 1996 (“IRRIRA”), Pub. L.
27 No. 104-208, 110 Stat. 1570. This Court has subject matter jurisdiction and may grant
28 relief under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1651 (All Writs Act), and

1 28 U.S.C. § 1331 (federal question). This Court also has jurisdiction to hear this case
2 under the Suspension Clause of Article I of the United States Constitution. *INS v. St.*
3 *Cyr*, 533 U.S. 289 (2001). The Court may also grant relief under 28 U.S.C. §§ 2201
4 (declaratory relief.)

5 8. Because Petitioner challenges his custody, jurisdiction is proper in this Court.
6 While the courts of appeals have jurisdiction to review removal orders through
7 petitions for review, *see* 8 U.S.C. §§ 1252(a)(1) and (b), the federal district courts have
8 jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging
9 the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687–88
10 (2001); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075–76 (9th Cir. 2006)

11 **REQUIREMENTS OF 28 U.S.C. § 2243**

12 9. The Court must grant the petition for writ of habeas corpus or issue an order to
13 show cause (“OSC”) to Respondents “forthwith,” unless the petitioner is not entitled to
14 relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file
15 a return “within *three days* unless for good cause additional time, *not exceeding twenty*
16 *days*, is allowed.” *Id.* (emphasis added).

17 10. Courts have long recognized the significance of the habeas statute in protecting
18 individuals from unlawful detention. The Great Writ has been referred to as “perhaps
19 the most important writ known to the constitutional law of England, affording as it does
20 a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v.*
21 *Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

22 11. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs
23 courts to give petitions for habeas corpus ‘special, preferential consideration to insure
24 expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir.
25 2000) (internal citations omitted).

26 **VENUE**

27 12. Venue is proper in the District of Arizona pursuant to 28 U.S.C. §§

1 1391(b) and (e) and local rules of this Court because a substantial part, if not all, of
2 the events or omissions giving rise to these claims occurred in this district, where
3 Respondents reside, and where Petitioner is detained.

4 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

5 13. No statutory exhaustion requirements apply to Petitioner's claim of unlawful
6 custody in violation of his due process rights, and there are no administrative remedies
7 that he needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d
8 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the
9 agency does not have jurisdiction to review" constitutional claims).²

10 14. Further, for habeas claims, exhaustion of administrative remedies is prudential, not
11 jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017).

12 15. A court may waive the prudential exhaustion requirement if "administrative
13 remedies are inadequate or not efficacious, pursuit of administrative remedies would be
14 a futile gesture, irreparable injury will result, or the administrative proceedings would be
15 void." *Id. (quoting Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and
16 quotation marks omitted)). Petitioner requested a bond before the immigration judge on
17 December 5, 2024 and was denied. For all these reasons, Petitioner asserts that
18 exhaustion is not required as there is no administrative jurisdiction over this detention
19 status because he already has a final order of removal.

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25 ² On June 26, 2025, the Supreme Court held in *Riley v. Bondi*, 606 U.S. __, 2025 WL
26 1758502 (2025), that the 30-day deadline at 8 U.S.C. § 1252(b)(1) for filing a petition for
27 review (PFR) is a nonjurisdictional claim-processing rule. The Court did not determine
28 whether the statute is subject to equitable tolling or waiver. Out of an abundance of
caution, O.C.G. filed a PFR regarding his initial reinstatement order from his first entry in
2024 but not his 2025 order withholding removal to Guatemala.

PARTIES

2 16. Petitioner O.C.G. is a 30-year-old native and citizen of Guatemala. In March 2024,
3 he entered the United States and attempted to apply for asylum, though he was summarily
4 ordered removed and deported to Guatemala. In April 2024, O.C.G. decided to try again
5 and crossed Mexico a second time on his way to the United States. During that trip, he
6 was raped and held hostage until a family member paid ransom. In May 2024, O.C.G.
7 arrived at the United States and was arrested by Border Patrol. This time, he was referred
8 to an asylum officer after expressing fear of return to Guatemala. An immigration judge
9 later granted O.C.G. withholding of removal to Guatemala after finding that it was more
10 likely than not that O.C.G. would be persecuted or tortured if sent back to Guatemala. He
11 is in the physical and constructive custody of ICE and has been subject to a final order of
12 removal since February 19, 2025.

13 17. Respondent Fred Figueroa is Petitioner's immediate custodian and resides in the
14 judicial district of the United States Court for the District of Arizona. Respondent
15 Figueroa is Warden and oversees the day-to-day operations of the Eloy Detention Center
16 and acts at the Direction of Respondents Cantu, Noem, and Lyons. He is a custodian of
17 Petitioner and is named in his official capacity.

18 18. Respondent John A. Cantu is the Field Office Director for the Phoenix Field
19 Office of U.S. Immigration and Customs Enforcement’s (“ICE”) Enforcement and
20 Removal (“ERO”) division. The Phoenix Field Office’s area of responsibility includes
21 the entire state of Arizona. Respondent Cantu has the authority to order Petitioner’s
22 release or continued detention. As such, Respondent Cantu is a legal custodian of
23 Petitioner.

24 19. Respondent Todd Lyons is the Acting Director of Immigration and Customs
25 Enforcement (ICE) and is named in his official capacity. He has the authority to order
26 Petitioner's release or continued detention. As such, Respondent Lyons is a legal
27 custodian of Petitioner.

1 20. Respondent Kristi Noem is the Secretary of the United States Department of
2 Homeland Security (“DHS”). She is responsible for the implementation and enforcement
3 of the immigration laws and oversees ICE. As such, Respondent Noem has ultimate
4 custodial authority over Petitioner.

5 21. Respondent Pamela Bondi is the Attorney General of the United States and the
6 most senior official in the U.S. Department of Justice (DOJ) and is named in her official
7 capacity. She has the authority to interpret immigration laws and adjudicate removal
8 cases. The Attorney General delegates this responsibility to the Executive Office for
9 Immigration Review (EOIR), which administers the immigration courts and the BIA.

STATEMENT OF FACTS

11 22. O.C.G. is a native and citizen of Guatemala. In March 2024, O.C.G. entered the
12 United States without prior authorization in order to request asylum. However, he was
13 denied an interview and swiftly removed to Guatemala. Fearing for his life, he
14 reembarked on the same trek to the U.S. a few weeks later in April 2024. While crossing
15 through Mexico, he was raped and held hostage until a family member paid ransom.

16 23. In May 2024, O.C.G. reached the United States and was taken into Customs and
17 Border Protection custody. He voiced a fear of return to Guatemala and passed a
18 threshold screening where a DHS official determined that he has reasonable fear of
19 persecution. ICE placed O.C.G. in custody at the Eloy Detention Center and DHS placed
20 O.C.G. in withholding-only proceedings before an immigration judge.

21 24. During the withholding-only proceedings when he was still pro se, O.C.G. asked if
22 he might be sent to Mexico and indicated that he had a fear of being sent there. The
23 immigration judge told him, "we cannot send you back to Mexico, sir, because you're a
24 native of Guatemala." At another hearing before the immigration court, O.C.G.
25 described in detail the violence he experienced while in Mexico. O.C.G., though
26 counsel, also submitted written evidence of the past harm he suffered in Mexico and the
27 risks that he faced there. At the close of that hearing, the government's attorney clarified
28 with the immigration judge that, because Guatemala was the country of removal

1 designated on O.C.G.’s order of removal, that was the only relevant country for purposes
2 of the withholding-only proceedings. Neither party appealed the order.

3 25. Two days after being granted withholding of removal, and with no warning in
4 advance, ICE officers put O.C.G. on a bus and sent him to Mexico. O.C.G. begged the
5 officers to let him call his attorney but was refused.

6 26. In the *D.V.D.* litigation, ICE maintained that O.C.G had received notice of his
7 removal to Mexico and an opportunity to voice a fear of that country. However, they later
8 retracted that assertion when they could provide *no* agent who could testify under oath
9 that O.C.G. had received notice and an opportunity to claim fear, stating that ICE “cannot
10 identify any officer who asked O.C.G. whether he had a fear of return to Mexico.” *See*
11 *D.V.D., et al. v. U.S. Department of Homeland Security, et al. v.*, No. 25-10676-BEM
12 Doc. 103 at pp. 2 (D. Mass. Apr. 18, 2025).

13 27. In Mexico, O.C.G. was given the option of being detained indefinitely while trying
14 to obtain asylum there—a country where he has consistently maintained that he faces a
15 significant risk of violence—or of being sent back to Guatemala—the very country from
16 which an immigration judge awarded him withholding from removal due to the risk of
17 persecution that he faced. O.C.G. elected Guatemala. He remained in Guatemala, in
18 constant fear of attacks and unable to leave the place where he was staying, until the
19 district court in *D.V.D.* ordered the U.S. to facilitate his return to the U.S. on about May
20 23, 2025. *D.V.D., et al. v. U.S. Department of Homeland Security, et al. v.*, No. 25-
21 10676-BEM Doc. 132 (D. Mass. May 23, 2025).

22 28. On or about May 26, 2025, DHS transported O.C.G. back to the Eloy Detention
23 Center where he remains today.

24 29. In July 2025, DHS conducted a screening to determine whether O.C.G. had a
25 reasonable fear of persecution or torture in Mexico. Upon information and belief, he
26 passed that screening on or about August 14, 2025.

27 30. Nonetheless, DHS has refused to release O.C.G. and ICE continues to search for
28 another country. On August 20, 2025 an ICE deportation officer wrote to O.C.G.’s

1 counsel that “[h]e is currently detained due to having no status in the United States.
2 Although he received positive fear to Mexico and withholding to Guatemala, **we are able**
3 **to find other countries to accept him.**” (emphasis added). O.C.G. has not received any
4 notification of any other potential third country of removal and remains at risk of the
5 same type of illegal removal that he incurred when removed to Mexico.

6 31. At no point since February 19, 2025 when his removal order became final has
7 O.C.G. been outside the physical and constructive custody of Respondents.

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9 **LEGAL BACKGROUND**

10 32. “Freedom from imprisonment—from government custody, detention, or other
11 forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause
12 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

13 33. Habeas corpus is at its core a constitutional protection against unlawful and
14 indefinite detention. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004); *see also*
15 *Zadvydas v. Davis*, 533 U.S. 678, 689 (“A statute permitting indefinite detention of an
16 alien would raise a serious constitutional problem.”).

17 Title 8 of the United States Code, Section 1231 governs the detention, release, and
18 removal of noncitizens ordered removed from the United States. Section 1231 directs the
19 government to carry out a removal order within 90 days. 8 U.S.C. § 1231(a)(1)(A). The
20 90-day “removal period” begins when the removal order becomes final. 8 U.S.C. §
21 1231(a)(1)(B). Detention is mandatory during the removal period. 8. U.S.C. § 1231(a)(2)
22 (“During the removal period, the Attorney General shall detain the alien.”). Generally, a
23 noncitizen who is not removed from the United States during the removal period should
24 be released subject to supervision. 8 U.S.C. § 1231(a)(3).

25 34. If ICE fails to remove an individual during the ninety (90) day removal period, the
26 law requires ICE to release the individual under conditions of supervision, including
27 periodic reporting. 8 U.S.C. § 1231(a)(3) (“If the alien . . . is not removed within the
28 removal period, the alien, pending removal, shall be subject to supervision.”). Limited

1 exceptions to this rule exist. Specifically, ICE “may” detain an individual beyond ninety
2 days if the individual is inadmissible, or removable on certain criminal grounds or is
3 determined to pose a danger or flight risk. 8 U.S.C. § 1231(a)(6). However, ICE’s
4 authority to detain an individual beyond the removal period under such circumstances is
5 not boundless. Rather, it is constrained by the constitutional requirement that detention
6 “bear a reasonable relationship to the purpose for which the individual [was] committed.”
7 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Because the principal purpose of the post-
8 final-order detention statute is to effectuate removal, detention bears no reasonable
9 relation to its purpose if removal cannot be effectuated. *Id.* at 697.

10 35. Detention of a noncitizen beyond the removal period is governed by
11 regulations that require administrative review of the noncitizen’s custody status at the
12 conclusion of the 90-day removal period, three months after the conclusion of the
13 removal period, and within one year thereafter. 8 C.F.R. § 241.4. Custody reviews are
14 performed by ICE officials, not by a neutral arbiter such as an immigration judge. *Id.*
15 Although 8 U.S.C. § 1231(a)(6) permits detention “beyond the removal period” of ninety
16 (90) days when a noncitizen is deemed to be a flight risk or danger, that detention is
17 circumscribed by the Constitution. “It is well established that the Fifth Amendment
18 entitled [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*,
19 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

20 36. Post-final order detention is only authorized for a “period reasonably necessary to
21 secure removal,” a period that the Court determined to be presumptively six months. *Id.*
22 at 699-701. After this six (6) month period, if a detainee provides “good reason” to
23 believe that his or her removal is not significantly likely in the reasonably foreseeable
24 future, “the Government must respond with evidence sufficient to rebut that showing.”
25 *Id.* at 701. If the government cannot do so, the individual must be released.

26 37. Moreover, as the period of post-final-order detention grows, what counts as
27 “reasonably foreseeable” must conversely shrink. *Zadvydas* 553 U.S. at 701.

1 38. Even where detention meets the *Zadvydas* standard for reasonable foreseeability,
2 detention violates the Due Process Clause unless it is “reasonably related” to the
3 government’s purpose, which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S.
4 at 700 (“[I]f removal is reasonably foreseeable, the habeas court should consider the risk
5 of the alien’s committing further crimes as a factor potentially justifying confinement
6 within that reasonable removal period”) (emphasis added); *Id.* at 699 (purpose of
7 detention is “assuring the alien’s presence at the moment of removal”); *Id.* at 690-91
8 (discussing twin justifications of detention as preventing flight and protecting the
9 community).

10 **Right to Constitutionally Adequate Procedures Prior to Third Country Removal**

11 39. Under the INA, Respondents have a clear and non-discretionary duty to execute
12 final orders of removal only to the designated country of removal. The statute explicitly
13 states that a noncitizen “*shall* remove the [noncitizen] to the country the [noncitizen] . . .
14 designates.” 8 U.S.C. § 1231(b)(2)(A)(ii) (emphasis added). And even where a noncitizen
15 does not designate the country of removal, the statute further mandates that DHS “*shall*
16 remove the alien to a country of which the alien is a subject, national, or citizen. *See id.* §
17 1231(b)(2)(D); *see also generally Jama v. ICE*, 543 U.S. 335, 341 (2005).

18 40. As the Supreme Court has explained, such language “generally indicates a
19 command that admits of no discretion on the part of the person instructed to carry out the
20 directive,” *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661
21 (2007) (quoting *Ass'n of Civilian Technicians v. Fed. Labor Relations Auth.*, 22 F.3d
22 1150, 1153 (D.C. Cir. 1994)); *see also Black's Law Dictionary* (11th ed. 2019) (“*Shall*”
23 means “[h]as a duty to; more broadly, is required to This is the mandatory sense that
24 drafters typically intend and that courts typically uphold.”); *United States v. Monsanto*,
25 491 U.S. 600, 607 (1989) (finding that “*shall*” language in a statute was unambiguously
26 mandatory). Accordingly, any imminent third country removal fails to comport with the
27 statutory obligations set forth by Congress in the INA and is unlawful.

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1 41. Moreover, prior to any third country removal, ICE must provide Petitioner with
2 sufficient notice and an opportunity to respond and apply for fear-based relief as to that
3 country, in compliance with 8 U.S.C. 1231(b)(3)(A), the Due Process Clause, and the
4 binding international treaty: The Convention Against Torture and Other Cruel, Inhuman
5 or Degrading Treatment or Punishment. *See* 8 C.F.R. 208.18.

6 42. The U.S. District Court for the District of Massachusetts previously issued a
7 nationwide preliminary injunction blocking such third country removals without notice
8 and a meaningful opportunity to apply for relief under the Convention Against Torture, in
9 recognition that the government's policy violates due process and the United States'
10 obligations under the Convention Against Torture. *D.V.D., et al. v. U.S. Department of*
11 *Homeland Security, et al. v.*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The U.S.
12 Supreme Court has since granted the government's motion to stay the injunction on June
13 23, 2025, just before the Court published *Trump v. Casa*, 606 U.S. ____ (2025) (June 27,
14 2025) limiting nationwide injunctions. The government has vehemently argued that 8
15 U.S.C. 1252(f)(1) precludes classwide injunctive relief. Thus, the Supreme Court's
16 order, which is not accompanied by an opinion, signals likely disagreement with the
17 preliminary injunctive relief provided for the nationwide class, as opposed to any
18 disagreement as to the substance of the statutory rights determined by the district court in
19 *D.V.D.*

20 43. Thus, if O.C.G. were to be removed to any third country—as Respondents have
21 already done when they unlawfully deported him to Mexico—it would violate his
22 statutory and due process rights unless he is first provided with constitutionally adequate
23 notice and a meaningful opportunity to apply for protection under the INA and the
24 Convention Against Torture. In the absence of any other injunction, intervention by this
25 Court is necessary to protect those rights.

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FIRST CAUSE OF ACTION

COUNT ONE

CONSTITUTIONAL CLAIM

44. Petitioner re-alleges and incorporates herein by reference, as if set forth fully herein, the allegations in all the preceding paragraphs.

45. Respondents' continued detention of Petitioner violates his substantive due process rights by depriving him of physical liberty without adequate justification. Because Petitioner's removal is not reasonably foreseeable, Respondents' interest in detaining him for the purpose of removal is "weak or nonexistent" and cannot outweigh Petitioner's fundamental liberty interest in freedom from physical restraint. *Zadvydas*, 533 U.S. at 690.

SECOND CAUSE OF ACTION

STATUTORY CLAIM

46. Petitioner re-alleges and incorporates herein by reference, as if set forth fully herein, the allegations in all the preceding paragraphs.

47. Respondents' continued detention of Petitioner violates 8 U.S.C. § 1231(a)(6) as interpreted by the Supreme Court in *Zadvydas*. Petitioner's removal is not significantly likely to occur in the reasonably foreseeable future and no longer is reasonably related to the statutory basis—to ensure his presence for removal. Therefore, Respondents lack statutory authority to continue detaining Petitioner.

48. The INA provides for detention during the ninety (90) day “removal period” that begins immediately after a noncitizen’s order of removal becomes final. 8 U.S.C. § 1231(a)(1). After the ninety (90) day removal period, the INA and its applicable regulations provide that detaining noncitizens is generally permissible only upon notice to the noncitizen and after an individualized determination of dangerousness and flight risk. *See* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(d), (f), (h) & (k).

1 Respondents are not permitted to detain Petitioner on the basis of his prior order of
2 removal and without any individualized determination that his removal is reasonably
3 foreseeable, and a determination of his danger and flight risk, by an Immigration Judge.

4 **THIRD CAUSE OF ACTION**

5 **Procedural Due Process – Unconstitutionally Indefinite Detention**

6 **U.S. Const. amend. V**

7 49. Petitioner re-alleges and incorporates herein by reference, as if set forth fully
8 herein, the allegations in all the preceding paragraphs.

9 50. The Due Process Clause of the Fifth Amendment forbids the government from
10 depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

11 51. Other than as punishment for a crime, due process permits the government to take
12 away liberty only “in certain special and narrow nonpunitive circumstances ... where a
13 special justification ... outweighs the individual’s constitutionally protected interest in
14 avoiding physical restraint.” *Zadvydas*, 533 U.S. 678, 690. Such special justification
15 exists only where a restraint on liberty bears a “reasonable relation” to permissible
16 purposes. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also Foucha v. Louisiana*,
17 504 U.S. 71, 79 (1992). In the immigration context, those purposes are “ensuring the
18 appearance of aliens at future immigration proceedings and preventing danger to the
19 community.” *Zadvydas*, 533 U.S. at 690 (quotations omitted).

20 52. Those substantive limitations on detention are closely intertwined with procedural
21 due process protections. *Foucha*, 504 U.S. 78-80. Noncitizens have a right to adequate
22 procedures to determine whether their detention in fact serves the purposes of ensuring
23 their appearance or protecting the community. *Id.* at 79; *Zadvydas*, 533 U.S. 692; *Casas-*
24 *Castrillon v. Dep’t of Homeland Sec.*, 535 F.3d 942, 949 (9th Cir. 2008). Where laws and
25 regulations fail to provide such procedures, the habeas court may assess whether the
26 noncitizen’s immigration detention is reasonably related to the purposes of ensuring his
27 appearance or protecting the community, *Zadvydas*, 533 U.S. at 699, or require release.

53. Under this framework, Petitioner's release is required because his detention violates his due process rights.

54. Petitioner's detention is unconstitutionally indefinite because he cannot be removed to Guatemala. His continued detention without any reasonably foreseeable end point is thus unconstitutionally prolonged in violation of clear Supreme Court precedent. *Zadvydas v. Davis*, 533 U.S. at 701.

55. Moreover, because Petitioner poses no danger or flight risk, his detention was and is not reasonably related to its purposes, and is unlawful.

ALTERNATIVE CAUSE OF ACTION

FOURTH CAUSE OF ACTION

Procedural Due Process – Unconstitutionally Inadequate Procedures Regarding Third Country Removal

U.S. Const. amend. V

56. Petitioner re-alleges and incorporates herein by reference, as if set forth fully herein, the allegations in all the preceding paragraphs.

57. The Due Process Clause of the Fifth Amendment requires sufficient notice and an opportunity to be heard prior to the deprivation of any protected rights. U.S. Const. amend. V; *see also Louisiana Pacific Corp. v. Beazer Materials & Services, Inc.*, 842 F.Supp. 1243, 1252 (E.D. Cal. 1994) (“[D]ue process requires that government action falling within the clause’s mandate may only be taken where there is notice and an opportunity for hearing.”).

58. Petitioner has a protected interest in his life. Thus, prior to any third country removal, Petitioner must be provided with constitutionally-compliant notice and an opportunity to respond and contest that removal if he has a fear of persecution or torture in that country.

59. For these reasons, Petitioner's removal to any third country without adequate notice and an opportunity to apply for relief under the Convention Against Torture would violate his due process rights. The only remedy of this violation is for this Court to order

1 that he not be summarily removed to any third country unless and until he is provided
2 constitutionally adequate procedures.

3 **PRAYER FOR RELIEF**

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

- 5 (1) Assume jurisdiction over this matter;
- 6 (2) Order that Petitioner's continued detention is unlawful in violation of
7 *Zadvydas* because his removal is not reasonably foreseeable;
- 8 (3) Order the immediate release of Petitioner from custody because his
9 detention is not reasonably foreseeable in violation of *Zadvydas*;
- 10 (4) Order the immediate release of Petitioner from custody on any other
11 basis that this Court finds proper;
- 12 (5) Order that Petitioner cannot be removed to any third country without
13 first being provided constitutionally-compliant procedures, including:
 - 14 a. Written notice to Petitioner and counsel of the third country to
15 which he may be removed, in a language that Petitioner can
16 understand, provided at least 21 days before any such removal;
 - 17 b. A meaningful opportunity for Petitioner to raise a fear of return
18 for eligibility for protection under the Convention Against
19 Torture, including a reasonable fear interview before a DHS
20 officer;
- 21 (6) Award Petitioner reasonable costs and attorney fees; and
- 22 (7) Grant such further relief as the Court deems just and proper.

23
24
25
26 Dated: August 22, 2025

Respectfully submitted,

27 s/ *Laura Belous*
28 Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

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

Executed on this August 22, 2025, in Tucson, Arizona.

/s/ *Laura Belous*
Laura Belous
Attorney for Petitioner

Certificate of Service

I hereby certify that on the date below, I electronically transmitted the attached documents to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing on all CM/ECF registrants.

I further certify that on the date below, I served the attached document by first class mail on the following persons not registered in the CM/ECF system:

John E. Cantu, Field Office Director

Phoenix Field Office, U.S. Immigration and Customs Enforcement

2035 N. Central Avenue

2055 N. Central Ave.
Phoenix, AZ 85004

Fred Figueroa, Warden

Eloy Detention Center

1705 E. Hanna Rd.

Eloy, AZ 85131

| s/ Laura Belous

3/ Laura Belous
August 22, 2024

August 22, 2023
Laura Belous

Laura Delous