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8 UNITED STATES DISTRICT COURT  
9 FOR THE DISTRICT OF ARIZONA

10 O.C.G.,

11 Petitioner-Plaintiff,

12 v.

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

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

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

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

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

27 Respondents-Defendants.  
28

Case No.

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

## INTRODUCTION

1  
2 1. Petitioner O.C.G.<sup>1</sup> 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 <sup>1</sup> 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  
20 6. O.C.G. is currently held at the Eloy Detention Center, a facility that contracts with  
21 ICE to detain individuals in removal proceedings or awaiting removal. He is in the  
22 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. §§  
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1 1391(b) and (c) 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).<sup>2</sup>

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 <sup>2</sup> 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**

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

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

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

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

10 **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.

### 8 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* 533 U.S. at 701.  
28

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

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

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

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

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.



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

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

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

9 **ALTERNATIVE CAUSE OF ACTION**

10 **FOURTH CAUSE OF ACTION**

11 **Procedural Due Process – Unconstitutionally Inadequate Procedures Regarding  
12 Third Country Removal**

13 **U.S. Const. amend. V**

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

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

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

26 59. For these reasons, Petitioner's removal to any third country without adequate  
27 notice and an opportunity to apply for relief under the Convention Against Torture would  
28 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  
Phoenix, AZ 85004

Fred Figueroa, Warden  
Eloy Detention Center  
1705 E. Hanna Rd.  
Eloy, AZ 85131

s/ Laura Belous  
August 22, 2025  
Laura Belous