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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. 2:25-cv-03048-SHD-
-DMF

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

1 **INTRODUCTION**

2 1. Petitioner O.C.G.¹ is a thirty-one-year-old man from Guatemala who was detained
3 by U.S. Immigration and Customs Enforcement (“ICE”) at the Eloy Detention Center in
4 Eloy, Arizona from May 2024 through October 3, 2025. After posting a bond, he has
5 since been released with an ankle monitor, enrolled in the ICE’s Intensive Supervision
6 Appearance Program (“ISAP”), and required to check-in with ICE every two months.
7 ICE has indicated that they will conduct a visit of his home on December 5, 2025. Exh.
8 1, Declaration of O.C.G.; Exh. 2, OSUP Order.

9 2. O.C.G. has an expedited removal order from March 2024 that was reinstated when
10 he re-entered the U.S. in May 2024. He was placed in withholding-only proceedings
11 after passing a reasonable fear interview. On February 19, 2025, an Immigration Judge
12 granted O.C.G. withholding of removal to Guatemala based on years of past
13 persecution and harm that he suffered on account of his sexual identity. During
14 withholding-only proceedings, O.C.G. also testified and filed documents showing his
15 past harm in Mexico, including [REDACTED]
16 the way to the U.S. in 2024. The Immigration Judge did not designate Mexico or any
17 other country on the removal order. Both parties waived appeal.

18 3. Despite the lack of a valid order of removal to that country, on February 21, 2025,
19 DHS unlawfully deported Petitioner to Mexico without notice or an opportunity to
20 assert a claim that he would be persecuted or an opportunity to speak to his attorney
21 before being placed on a transport bus. Shortly after his arrival in Mexico, O.C.G. was
22 given the option of being detained indefinitely while trying to obtain asylum in Mexico

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 filed a motion with
28 this Court asking for permission to proceed using his initials, a pseudonym, which this
Court granted. *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 or of being sent back to Guatemala—the very country from which an immigration judge
2 awarded him withholding from removal due to the risk of persecution that he faced.
3 Given these two options, O.C.G. elected Guatemala.

4 4. Terrified, Petitioner remained in hiding in Guatemala until, through separate
5 litigation in which he is a named plaintiff, *D.V.D., et al. v. U.S. Department of*
6 *Homeland Security, et al. v.*, No. 25-10676-BEM (D. Mass. May 23, 2025), a federal
7 court ordered DHS to facilitate O.C.G.’s return to the United States after finding that
8 his removal to Mexico was unlawful. *Id.* at Doc. 132. On or about May 26, 2025, DHS
9 placed O.C.G. back into custody in Eloy, Arizona..

10 5. After O.C.G. passed a reasonable fear screening regarding Mexico and showed
11 that he faces a likelihood of persecution in that country, ICE moved to reopen his
12 withholding-only proceedings, which O.C.G. did not oppose. O.C.G. filed a Form I-589
13 Application for Asylum, Withholding of Removal, and Protection Under the
14 Convention Against Torture before the immigration court on about September 25, 2025.

15 6. He was released from the Eloy Detention Center on or about October 3, 2025 after
16 posting a \$5,000 bond. Exh. 3, IJ Bond Order. Although the immigration judge did
17 require any other conditions on his release other than payment of the bond, ICE placed
18 an ankle monitor on him, enrolled him in an “intensive supervision” program and has
19 required that he appear for various check-ins with their office.

20 7. In *Zadvydas v. Davis*, the United States Supreme Court held that 8 U.S.C. §
21 1231(a)(6) does not allow DHS to restrict a noncitizen’s liberty indefinitely while
22 attempting to carry out removal. 533 U.S. 678, 689 (2001). Because of the “serious
23 constitutional problem” posed by indefinite detention, DHS’s authority to detain
24 noncitizens subject to final removal orders is limited to “a period reasonably necessary
25 to bring about that alien’s removal from the United States.” *Id.* at 682. Where removal
26 is “a remote possibility at best,” immigration detention lacks a reasonable relation to its
27 purpose. *Id.* at 690. While he has been released, O.C.G. remains under the constructive
28 custody of Respondents because they have placed an ankle monitor on him and have

1 required him to comply with extremely invasive conditions. These continued
2 impositions on his liberty serve no purpose authorized by statute and violate both the
3 Immigration and Nationality Act and the Fifth Amendment's Due Process Clause.
4 Petitioner seeks an order directing ICE to remove his ankle monitor and imposing no
5 other conditions of release other than those in the immigration judge's bond order.

6
7 **CUSTODY**

8 8. O.C.G. was held at the Eloy Detention Center, a facility that contracts with ICE to
9 detain individuals in removal proceedings or awaiting removal, from May 2024 through
10 October 6, 2025. He has been released from custody after posting a bond, though he is
11 still in the constructive custody of Respondents because of the conditions imposed in
12 his Order of Supervision. *See* Exh. 2; *see also Jones v. Cunningham*, 371 U.S. 236, 239
13 (1963) (constructive custody is not necessarily actual physical custody, but rather a
14 significant restraint upon his liberty 'not shared by the public generally').

15 **JURISDICTION**

16 9. This action arises under the Constitution of the United States, the Immigration
17 and Nationality Act ("INA"), 8 U.S.C. § 1101 et. Seq., as amended by the Illegal
18 Immigration Reform and Immigrant Responsibility Act of 1996 ("IRRIRA"), Pub. L.
19 No. 104-208, 110 Stat. 1570. This Court has subject matter jurisdiction and may grant
20 relief under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1651 (All Writs Act), and
21 28 U.S.C. § 1331 (federal question). This Court also has jurisdiction to hear this case
22 under the Suspension Clause of Article I of the United States Constitution. *INS v. St.*
23 *Cyr*, 533 U.S. 289 (2001). The Court may also grant relief under 28 U.S.C. §§ 2201
24 (declaratory relief.)

25 10. Federal district courts are vested with jurisdiction to address habeas claims of
26 noncitizens challenging the lawfulness and/or conditions of their custody following the
27 entry of a removal order against them. *Zadvydas v. Davis*, 533 U.S. 678, 687-88
28 (2001). Federal courts also have jurisdiction to address habeas claims of non-detained

1 noncitizens who are subject to a final order of removal. *Nakaranurack v. United States*,
2 68 F.3d 290, 293 (9th Cir. 1995) (holding that the “in custody” requirement of the
3 since-repealed INA habeas provision previously found at 8 U.S.C. § 1105a(a)(10) is
4 satisfied in “situations in which an alien is not suffering any actual physical detention;
5 i.e., so long as he is subject to a final order of deportation”); *see also Mustata v. U.S.*
6 *Dep't of Just.*, 179 F.3d 1017, 1022 (6th Cir. 1999); *Rosales v. Bureau of Immigration*
7 *& Customs Enforcement*, 426 F.3d 733, 734 (5th Cir. 2005) (holding that a noncitizen
8 “who is subject to a final order of deportation . . . is ‘in custody’” for habeas purposes);
9 *Simmonds v. INS*, 326 F.3d 351, 354 (2d Cir. 2003) (same); *Aguilera v. Kirkpatrick*,
10 241 F.3d 1286, 1291 (10th Cir. 2001) (same).

11 REQUIREMENTS OF 28 U.S.C. § 2243

12 11. 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 12. Courts have long recognized the significance of the habeas statute in protecting
18 individuals from unlawful detention or interference. The Great Writ has been referred to
19 as “perhaps the most important writ known to the constitutional law of England,
20 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
21 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

22 13. 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 14. Venue is proper in the District of Arizona pursuant to 28 U.S.C. §§
28

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 was detained.

4 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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

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

13 17. A court may waive the prudential exhaustion requirement if “administrative
14 remedies are inadequate or not efficacious, pursuit of administrative remedies would be
15 a futile gesture, irreparable injury will result, or the administrative proceedings would be
16 void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and
17 quotation marks omitted)). For all these reasons, Petitioner asserts that exhaustion is not
18 required as there is no administrative jurisdiction over the conditions of his ICE
19 supervision order.

20 **PARTIES**

21 18. Petitioner O.C.G. is a 31-year-old native and citizen of Guatemala. On March 27,
22 2024, O.C.G. entered the U.S. without inspection and was issued a Notice and Order of
23

24 ² On June 26, 2025, the Supreme Court held in *Riley v. Bondi*, 606 U.S. ___, 2025 WL
25 1758502 (2025), that the 30-day deadline at 8 U.S.C. § 1252(b)(1) for filing a petition for
26 review (PFR)) is a nonjurisdictional claim-processing rule. The Court did not determine
27 whether the statute is subject to equitable tolling or waiver. Out of an abundance of
28 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. He initially had a stay of
removal in place between July 30, 2025 that was lifted on September 26, 2025 after his
withholding-only proceedings were reopened.

1 Expedited Removal on that same date. He was removed on April 2, 2025. In April 2024,
2 O.C.G. decided to try again and crossed Mexico a second time on his way to the United
3 States. During that trip, [REDACTED]

4 [REDACTED] On May 5, 2024, O.C.G. arrived at the United States and was arrested by Border
5 Patrol. Agents served him with a Notice of Intent/Decision to Reinstate Prior Order. This
6 time, he was referred to an asylum officer after expressing fear of return to Guatemala.
7 An immigration judge later granted O.C.G. withholding of removal to Guatemala after
8 finding that it was more likely than not that O.C.G. would be persecuted or tortured if
9 sent back to Guatemala. He has been released from custody after posting a bond and is
10 residing in California.

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

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

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

26 22. Respondent Kristi Noem is the Secretary of the United States Department of
27 Homeland Security ("DHS"). She is responsible for the implementation and enforcement
28

1 of the immigration laws and oversees ICE. As such, Respondent Noem has ultimate
2 custodial authority over Petitioner.

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

8 **STATEMENT OF FACTS**

9 24. O.C.G. is a native and citizen of Guatemala. In March 2024, O.C.G. entered the
10 United States without prior authorization in order to request asylum. However, he was
11 denied an interview and swiftly given an expedited removal order to Guatemala. Fearing
12 for his life, he reembarked on the same trek to the U.S. a few weeks later in April and
13 May 2024. While crossing through Mexico, [REDACTED]

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

21 26. 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 27. 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 28. 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 29. 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 30. On or about June 5, 2025, DHS transported O.C.G. back to the Eloy Detention
23 Center where he remained until October 3, 2025, when he was released on a \$5,000 bond.
24 *See* Exh. 3, IJ Order.

25 31. In July 2025, DHS conducted a screening to determine whether O.C.G. had a
26 reasonable fear of persecution or torture in Mexico. He passed that screening on or about
27 August 14, 2025.

28

1 32. On August 20, 2025 an ICE deportation officer wrote to O.C.G.'s counsel that
2 "[h]e is currently detained due to having no status in the United States. Although he
3 received positive fear to Mexico and withholding to Guatemala, **we are able to find**
4 **other countries to accept him.**" (emphasis added).

5 33. DHS moved to reopen withholding-only proceedings to try and designate Mexico
6 as an alternate country of removal, which O.C.G. did not oppose, and O.C.G. filed an I-
7 589 Application for Asylum, Withholding of removal, and Protection under the
8 Convention Against Torture regarding Mexico before the immigration judge.

9 34. After posting a bond, O.C.G. been released with an ankle monitor, enrolled in the
10 ICE's Intensive Supervision Appearance Program, and required to check-in with ICE
11 every two months. ICE has indicated that they will conduct a visit of his home on
12 December 5, 2025. Exh. 1, Declaration of O.C.G; Exh. 2, OSUP Order. These onerous
13 requirements have caused O.C.G. both physical and psychological discomfort. The ankle
14 monitor is cumbersome and makes it difficult for him to run and exercise. Exh 1, ¶ 5. It is
15 hard to get clothes on and off over the monitor and it has already caused blisters and
16 bruising of O.C.G.'s skin. *Id.* He also has observed that people assume that he is a
17 criminal because of the ankle monitor and have discriminated against him because of it,
18 including refusing to let him rent a room at a hotel. *Id.* at ¶ 6. The frequent ICE check-ins
19 also cause O.C.G. enormous stress and worry; he fears that ICE could again detain him
20 without basis. *Id.* at ¶ 6–9.

21 35. As a condition of his release, and one *not* imposed by the immigration judge, ICE
22 required that he receive permission to leave California for any period longer than 48
23 hours, that he appear before the agency "each and every time" requested, that he submit
24 to medical or psychological evaluations and the agency's request, that he provide
25 information "under oath" about his habits and associations, and that he provide written
26 notice within 48 hours of any changes of employment or residence. *See* Exh. 2, OSUP
27 Order. The immigration judge imposed no conditions on O.C.G.'s release, other than the
28 payment of a \$5,000 bond. Exh. 3, IJ Order.

1 36. At no point since May 5, 2024 has O.C.G. been outside the physical and
2 constructive custody of Respondents.

3
4 **LEGAL BACKGROUND**

5 ***Zadvydas* and authority for post-final order detention**

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

9 38. Habeas corpus is at its core a constitutional protection against unlawful and
10 indefinite detention. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004); *see also*
11 *Zadvydas v. Davis*, 533 U.S. 678, 689 (“A statute permitting indefinite detention of an
12 alien would raise a serious constitutional problem.”). Title 8 of the United States Code,
13 Section 1231 governs the detention, release, and removal of noncitizens ordered
14 removed from the United States. Section 1231 directs the government to carry out a
15 removal order within 90 days. 8 U.S.C. § 1231(a)(1)(A). The 90-day “removal period”
16 begins when the removal order becomes final. 8 U.S.C. § 1231(a)(1)(B). Detention is
17 mandatory during the removal period. 8. U.S.C. § 1231(a)(2) (“During the removal
18 period, the Attorney General shall detain the alien.”). Generally, a noncitizen who is not
19 removed from the United States during the removal period should be released subject to
20 supervision. 8 U.S.C. § 1231(a)(3).

21 39. If ICE fails to remove an individual during the ninety (90) day removal period, the
22 law requires ICE to release the individual under conditions of supervision, including
23 periodic reporting. 8 U.S.C. § 1231(a)(3) (“If the alien . . . is not removed within the
24 removal period, the alien, pending removal, shall be subject to supervision.”). Limited
25 exceptions to this rule exist. Specifically, ICE “may” detain an individual beyond ninety
26 days if the individual is inadmissible, or removable on certain criminal grounds or is
27 determined to pose a danger or flight risk. 8 U.S.C. § 1231(a)(6). However, ICE’s
28 authority to detain an individual beyond the removal period under such circumstances is
not boundless. Rather, it is constrained by the constitutional requirement that detention

1 “bear a reasonable relationship to the purpose for which the individual [was] committed.”
2 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Because the principal purpose of the post-
3 final-order detention statute is to effectuate removal, detention bears no reasonable
4 relation to its purpose if removal cannot be effectuated. *Id.* at 697.

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



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

21 42. Moreover, as the period of post-final-order detention grows, what counts as
22 “reasonably foreseeable” must conversely shrink. *Zadvydas* 533 U.S. at 701.

23 43. Even where detention meets the *Zadvydas* standard for reasonable foreseeability,
24 detention violates the Due Process Clause unless it is “reasonably related” to the
25 government’s purpose, which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S.
26 at 700 (“[I]f removal is reasonably foreseeable, the habeas court should consider the risk
27 of the alien’s committing further crimes as a factor potentially justifying confinement
28 within that reasonable removal period”) (emphasis added); *Id.* at 699 (purpose of

1 detention is “assuring the alien’s presence at the moment of removal”); *Id.* at 690-91
2 (discussing twin justifications of detention as preventing flight and protecting the
3 community).

4 44. In August, DHS asylum officer interviewed O.C.G. and found that he has a
5 credible fear of persecution in Mexico. This is an unsurprising result; in Mexico, O.C.G.

6 
7  Reopening proceedings does not mean that O.C.G. can be removed to Mexico
8 anytime soon. He will have multiple hearings before a decision is made. If he prevails,
9 the government may appeal. If he loses, O.C.G. may need to do the same, and eventually
10 pursue review by the Ninth Circuit Court of Appeals. “Non-citizens who vigorously
11 pursue claims for relief from removal face substantially longer detention periods than
12 those who concede removability. Requesting relief from an IJ increases the duration of
13 class members' detention by an average of two months; appealing a claim to the BIA
14 adds, on average, another four months; and appealing a BIA decision to the Ninth Circuit
15 typically leads to an additional eleven months of confinement. *Rodriguez v. Robbins*, 804
16 F.3d 1060, 1072 (9th Cir. 2015), *rev'd on other grounds by Jennings v. Rodriguez*, 583
17 U.S. 281, (2018). Given the months or possibly years of litigation before him,
18 Respondents cannot rebut O.C.G.’s showing that his removal is reasonably foreseeable.

19
20 **The Date of O.C.G.’s final order**

21 45. 8 U.S.C. § 1231(a)(1)(B) provides that the removal period begins on the latest of
22 the following:

- 23 (i) The date the order of removal becomes administratively final.
 - 24 (ii) If the removal order is judicially reviewed and if a court orders a stay of the
25 removal of the alien, the date of the court's final order.
 - 26 (iii) If the alien is detained or confined (except under an immigration process), the
27 date the alien is released from detention or confinement.
- 28

1 46. Here, the removal period began on March 27, 2024 when O.C.G.'s order of
2 removal became final. He has been detained and subject to constructive custody since
3 May 5, 2024.

4 47. The reopening of O.C.G.'s withholding-only proceedings has no effect on the
5 finality of his order; when a person with a reinstated order seeks protection through
6 withholding of removal, immigration courts only consider whether the individual can be
7 removed to a particular country, not whether they can be removed at all. *Johnson v.*
8 *Guzman Chavez*, 594 U.S. 523, 524 (2021). "The removal order remains in full force,
9 and DHS retains the authority to remove the alien to any other authorized country." *Id.*
10 Because the validity of removal orders is not affected by the grant of withholding-only
11 relief, the initiation of withholding-only proceedings does not render non-final an
12 otherwise "administratively final" reinstated order of removal. *Johnson v. Guzman*
13 *Chavez*, 594 U.S. at 540. Thus the reopening of O.C.G.'s removal proceedings has no
14 effect on the finality of his removal order. And, with reinstated removal order, "the
15 statutory text makes clear that § 1231, not § 1226, governs [his] detention." *Id.* at 542.
16 *Zadvydas* already held that indefinite detention under § 1231 is not permitted under the
17 statute. 533 U.S. at 701 (2001).

18 48. ICE had sufficient time to attempt to find third countries to which to remove
19 O.C.G. While the time periods differ, courts have analyzed the reasonableness of post-
20 removal order detention based on the date of the final removal order triggering the
21 removal period rather than the date of detention. *See S.F. v. Bostock*, 2025 WL 2841022
22 (D. Or. Oct. 7, 2025), at *4 (noting that "federal courts have refrained from applying the
23 presumption of reasonableness under *Zadvydas* in re-detention cases" and pointing out
24 that "Respondents concede that Petitioner's detention should be measured cumulatively;
25 it is 'past the presumptive 180-day threshold of presumptive reasonableness.');" *Nguyen*
26 *v. Scott*, 2025 WL 2419288 (W.D. Wash. Aug. 21, 2025), at *13 ("[T]he six-month
27 period does not reset when the government detains [a noncitizen] ..., releases him from
28 detention, and then re-detains him again."); *Dong Van Nguyen v. Hyde*, 2025 WL
1725791 (D. Mass. June 20, 2025), at *3; *Escalante v. Noem*, 2025 WL 2206113 (E.D.

1 Tex. Aug. 2, 2025), at *3; *Zavvar v. Scott*, 2025 WL 2592543 (D. Md. Sept. 8, 2025), at
2 *6; *Tadros v. Noem*, 2025 WL 1678501 (D N.J. June 13, 2025), at *3 (ruling that for
3 petitioner re-detained years after his final removal order, his “final order of removal
4 [had] triggered the six-month detention period under *Zadyvdas*”). While the removal
5 period may have been tolled for the time that O.C.G. had a stay of removal in place at
6 the Ninth Circuit after filing a Petition for Review pursuant to *Riley v. Bondi*, *see supra*
7 *n.1*, the stay has been lifted and the two months that it was in placed are a small fraction
8 of the 20 months that ICE has had to try and find a country of removal.

9 49. Accordingly, since O.C.G.’s order of removal has been final since March 2024,
10 the Government bears the burden of demonstrating that there is a “significant likelihood
11 of removal in the reasonably foreseeable future,” a showing it cannot make. *See*
12 *Zadvydas*, 533 U.S. at 701.

13 **Constructive Custody**

14 50. This Court has jurisdiction to entertain and resolve petitions seeking habeas relief
15 filed by persons who are “in custody in violation of the Constitution or laws or treaties
16 of the United States.” 28 U.S.C. § 2241(c)(3)). It is well-settled that the “custody”
17 requirement for federal habeas purposes is satisfied in various circumstances short of
18 incarceration. *See Jones v. Cunningham*, 371 U.S. 236, 239 (1963) (constructive custody
19 is not necessarily actual physical custody, but rather a significant restraint upon his
20 liberty ‘not shared by the public generally’). *See also Ali v. Napolitano*, No. 12-cv-
21 11384-FDS, 2013 WL 3929788, at *2 (D. Mass. July 26, 2013). In *Ali*, the court
22 considered a similar argument that an immigration-related order of supervision impinged
23 on the petitioner’s liberty and satisfied the ‘custody’ requirement” for habeas purposes.
24 *Id.* The court held that “While the petitioner is ‘free’ in the sense that he is not behind
25 prison walls, he is subject to control over where and when he can travel, where he can
26 reside, with whom he can associate, what information he may keep confidential, and the
27 type of employment in which he can engage.” *Id.* at *4. Because such restraints on
28 liberty are “not shared by the public generally,” and “are substantially similar to those

1 restraints identified in the criminal context warranting a ‘custody’ finding,” they are
2 sufficient to “to trigger the ‘custody’ bar required to invoke the writ of habeas corpus.”
3 *Id.* at *5. *See also Flores Salazar v. Moniz*, No. CV 25-11159-LTS, 2025 WL 1703516,
4 at *5 (D. Mass. June 11, 2025); *Orellana Juarez v. Moniz*, No. 25-CV-11266-MJJ, 2025
5 WL 1698600, at *4 (D. Mass. June 11, 2025) (finding that petitioner was in-custody
6 when, among other requirements “petitioner is obligated to appear for check-ins at the
7 discretion of ICE.”

8 **The Immigration Judge’s bond order**

9 51. The Supreme Court has held that after the initial detention determination, a
10 petitioner may request a bond hearing before an IJ, who has the authority to determine
11 “the alien’s detention conditions.” *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527–
12 28 (2021) (citing 8 C.F.R. §§ 236.1(d)(1), 1003.19(a), 1236.1(d)(1)); *see also Huang*
13 *v. Decker*, 599 F. Supp. 3d 131, 138 (S.D.N.Y. 2022) (“Section 1226(a) gives the
14 Attorney General the choice to ‘continue to detain the arrested alien,’ or ‘release the
15 alien on (A) bond of at least \$1,500 with security approved by, and containing
16 conditions prescribed by, the Attorney General; or (B) conditional parole.’ The
17 Attorney General has delegated this authority to immigration judges.”).

18 52. In *Orellana Juarez v. Moniz*, an immigration judge ordered release on a \$4,000
19 bond with standard conditions to appear for hearings, update address, and obey the law -
20 -- F. Supp. 3d ----, 2025 WL 1698600 at *2 (D. Mass. May 2025). The IJ’s order did not
21 include GPS monitoring or ISAP. *Id.* ICE nevertheless attached a 24/7 ankle GPS
22 monitor and enrolled him in the Intensive Supervision Appearance Program (“ISAP”)
23 upon release on May 28 *Id.*

24 53. After Mr. Orellana Juarez filed a habeas petition challenging the additional
25 impositions on his liberty, the district court held that an individual released under ICE’s
26 Intensive Supervision Appearance Program (ISAP) with a GPS ankle monitor remained
27 “in custody” for habeas purposes because the 24/7 electronic tracking, geographic limits,
28 curfew, and threat of re-detention “significantly compromise[d]” his liberty, akin to
parole or probation. *Id.* at *5. The court granted habeas relief, ordering ICE to remove

1 all ankle monitor and ISAP conditions, finding ICE lacked authority to impose
2 restrictions beyond those set by an Immigration Judge. *Id.* at *5–8. O.C.G. asks this
3 Court to do the same.

4
5 **FIRST CAUSE OF ACTION**

6 **COUNT ONE**

7 **CONSTITUTIONAL CLAIM**

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

10 45. Respondents’ continued imposition on Petitioner’s liberty violates his substantive
11 due process rights by depriving him of physical liberty without adequate justification.
12 Further, Respondents are not allowed to impose restrictions not already imposed by the
13 immigration judge. Because Petitioner’s removal is not reasonably foreseeable,
14 Respondents’ interest in imposing on his liberty is “weak or nonexistent” and cannot
15 outweigh Petitioner’s fundamental liberty interest in freedom from physical restraint.
16 *Zadvydas*, 533 U.S. at 690.

17 **SECOND CAUSE OF ACTION**

18 **STATUTORY CLAIM**

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

21 47. Respondents’ continued imposition on Petitioner’s liberty violates 8 U.S.C. §
22 1231(a)(6) as interpreted by the Supreme Court in *Zadvydas*. Petitioner’s removal is not
23 significantly likely to occur in the reasonably foreseeable future and no longer is
24 reasonably related to the statutory basis—to ensure his presence for removal. Therefore,
25 Respondents lack statutory authority to impose restrictions on Petitioner. Further,
26 Respondents are not allowed to impose restrictions not already imposed by the
27 immigration judge.

1 48. The INA provides for detention during the ninety (90) day “removal period” that
2 begins immediately after a noncitizen’s order of removal becomes final. 8 U.S.C. §
3 1231(a)(1). After the ninety (90) day removal period, the INA and its applicable
4 regulations provide that detaining noncitizens is generally permissible only upon notice
5 to the noncitizen and after an individualized determination of dangerousness and flight
6 risk. *See* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(d), (f), (h) & (k). Respondents are not
7 permitted to impose on Petitioner’s liberty on the basis of his prior order of removal.

8
9 **THIRD CAUSE OF ACTION**

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

11 **U.S. Const. amend. V**

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

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

16 51. Other than as punishment for a crime, due process permits the government to take
17 away liberty only “in certain special and narrow nonpunitive circumstances ... where a
18 special justification ... outweighs the individual’s constitutionally protected interest in
19 avoiding physical restraint.” *Zadvydas*, 533 U.S. 678, 690. Such special justification
20 exists only where a restraint on liberty bears a “reasonable relation” to permissible
21 purposes. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also Foucha v. Louisiana*,
22 504 U.S. 71, 79 (1992). In the immigration context, those purposes are “ensuring the
23 appearance of aliens at future immigration proceedings and preventing danger to the
24 community.” *Zadvydas*, 533 U.S. at 690 (quotations omitted).

25 52. Those substantive limitations on detention are closely intertwined with procedural
26 due process protections. *Foucha*, 504 U.S. 78-80. Noncitizens have a right to adequate
27 procedures to determine whether their detention in fact serves the purposes of ensuring
28 their appearance or protecting the community. *Id.* at 79; *Zadvydas*, 533 U.S. 692; *Casas-*

1 *Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 949 (9th Cir. 2008). Where laws and
2 regulations fail to provide such procedures, the habeas court may assess whether the
3 noncitizen's restriction of liberty are reasonably related to the purposes of ensuring his
4 appearance or protecting the community, *Zadvydas*, 533 U.S. at 699 or must be lifted.

5 53. Under this framework, an order preventing the continued imposition on
6 Petitioner's liberty is required because the onerous conditions imposed by ICE violate his
7 due process rights. Further, Respondents are not allowed to impose restrictions not
8 already imposed by the immigration judge.

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

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

15
16 **PRAYER FOR RELIEF**

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

- 18 (1) Assume jurisdiction over this matter;
- 19 (2) Order that Petitioner's liberty restrictions imposed by ICE after his
20 release are unlawful in violation of *Zadvydas* because his removal is not
21 reasonably foreseeable;
- 22 (3) Order the removal of any restrictions of Petitioner's liberty imposed by
23 ICE including the ankle monitor and ISAP enrollment because his
24 detention is not reasonably foreseeable in violation of *Zadvydas*;
- 25 (4) Order the removal any restrictions of Petitioner's liberty imposed by
26 ICE including the ankle monitor and ISAP enrollment on any other
27 basis that this Court finds proper;
- 28 (5) Award Petitioner reasonable costs and attorney fees; and

(6) Grant such further relief as the Court deems just and proper.

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Dated: October 16, 2025

Respectfully submitted,
s/ Laura Belous
Attorney for Petitioner

