

Petitioner Ioan Muntean is a fifty-two year old gentleman from Romania, who underwent several heart procedures in February, April, and June of 2025. Petitioner was recovering from the most recent surgery in Maryland with family – because his doctors recommended against any traveling while recuperating – when in July he was arrested by ICE without cause in front of their home. Petitioner suffers from severe hypertension and type 1 and type 2 diabetes which require daily insulin shots and monitoring. Shortly after his arrest, Petitioner was transferred to the Elizabeth Detention Facility, where he remains detained today. In the six weeks since his ICE detention, upon information and belief, Petitioner has received only sporadic and inconsistent access to a limited number of prescribed medication. What’s more, while in ICE’s custody, Petitioner has already been hospitalized on three separate occasions, most recently due to a stroke which left him profoundly disoriented and without speech for four days.

Petitioner is a national and citizen of Romania and no other country. While Petitioner does have a final order of removal, he also secured withholding of removal under 8 U.S.C. § 1231(b)(3). Should Respondents wish to remove Petitioner to Romania, they must seek to reopen and set aside the grant of withholding of removal. Should Respondents wish to remove Petitioner to any other country, they must provide him with notice of that intent and the opportunity to apply for protection as to *that* country as well. Given the circumstances around his arrest, and the severe medical emergencies he has suffered, it is unclear if the Respondents’ basis for re-detention has been communicated to Petitioner or what, if any, steps have been taken thus far to effectuate his removal. It is unclear if Respondents have considered that as Petitioner has in recent months been medically restricted from traveling, making his removal indefinitely uncertain. Nonetheless, Respondents have arrested Petitioner without warning and without observance of procedures required by regulation, are detaining him without sufficient reason, and continue to pose severe

and acute risk to his health and his life. Expedient judicial intervention is warranted given the urgent circumstances.

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear this case under 28 U.S.C. § 2241; 28 U.S.C. § 2201, the Declaratory Judgment Act; and 28 U.S.C. § 1331, Federal Question Jurisdiction. In addition, the individual Respondents are United States officials. 28 U.S.C. § 1346(a)(2).

2. The Court has authority to enter a declaratory judgment and to provide temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, 28 U.S.C. §§ 2201-2202, the All Writs Act, and the Court's inherent equitable powers, as well as issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

3. This Court also has federal question jurisdiction, through the APA, to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA review of a final agency action may proceed, absent a special statutory review proceeding, by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction." 5 U.S.C. § 703.

4. Venue lies in this District because Petitioner is currently detained at the Elizabeth Contract Detention Facility in Elizabeth, NJ; and each Respondent is an agency or officer of the United States sued in his or her official capacity. 28 U.S.C. § 2241; 28 U.S.C. § 1391(e)(1).

THE PARTIES

5. Petitioner Ioan Muntean is a citizen and native of Romania. Respondents appear to seek to deport him without any legal process whatsoever, and in violation of an immigration judge order and a federal regulation prohibiting them from doing so.

6. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (“DHS”). She is the cabinet-level secretary responsible for all immigration enforcement in the United States.

7. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (“ICE”). He is the head of the federal agency responsible for all immigration enforcement in the United States.

8. Respondent John Tsoukaris is the Director for the Newark ICE Field Office. He is the immediate legal custodian of Petitioner.

9. Respondent Pamela Bondi is the Attorney General of the United States. The Immigration Judges who decide removal cases and application for relief from removal do so as her designees.

10. Respondent Warden, Elizabeth Contract Detention Facility is the warden of the Elizabeth Contract Detention Facility, located within this division of this District. They are the immediate physical custodian of Petitioner.

11. All government Respondents are sued in their official capacities.

LEGAL BACKGROUND

Withholding of Removal

12. Withholding of removal under 8 U.S.C. § 1231(b)(3) prohibits the government from removing a noncitizen to a country where it is more likely than not that the individual would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion. See 8 C.F.R. § 1208.16(b). This form of relief is mandatory if the applicant meets the standard and is distinct from asylum in that it does not lead to permanent residency.

13. To qualify for withholding of removal, the noncitizen bears the burden of proving

that it is more likely than not that they would face persecution if returned to their country of origin. The government may not remove an individual with a valid withholding order to that country unless the order is formally terminated following the procedures set forth in the regulations. *See* 8 C.F.R. § 1208.24(f).

14. If a noncitizen is granted withholding of removal, “DHS may not remove the alien to the country designated in the removal order unless the order of withholding is terminated.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021). No exceptions lie.

15. Federal regulations provide a procedure by which a grant of withholding of removal issued by an immigration judge may be terminated: DHS must move to reopen the removal proceedings before the immigration judge and must prove, by a preponderance of the evidence, that the individual would no longer face persecution. 8 C.F.R. § 1208.24(f). Only after termination may removal proceed.

16. Moreover, withholding of removal is a country-specific form of relief. Should the government wish to remove an individual with a grant of withholding of removal to some *other* country, it must first provide that individual with notice and an opportunity to apply for withholding of removal as to *that* country as well, if appropriate. 8 U.S.C. § 1231(b)(3)(A). *See also Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf. Protsenko v. U.S. Att’y Gen.*, 149 F. App’x 947, 953 (11th Cir. 2005) (per curiam) (permitting removal to third country only where individuals received “ample notice and an opportunity to be heard”).¹ In its recent

¹ Indeed, the Solicitor General’s office acknowledged this legal principle earlier this year in oral argument before the Supreme Court:

“Guidance Regarding Third Country Removals,” Respondent DHS committed to provide access to these very procedures. *See* DHS Noem Memo, dated March 30, 2025 (“Immigration officers will refer any alien who affirmatively states a fear of removal to U.S. Citizenship and Immigration Services (USCIS) for a screening for eligibility for protection under [8 U.S.C. § 1231(b)(3)] and the Convention Against Torture (CAT) for the country of removal.”), attached as Exhibit X.

Post-Removal Order Detention Standards

17. Finally, for individuals with a removal order but who cannot be removed (because there is no country designated to which they can lawfully be removed, or because logistical or practical considerations prevent execution of an otherwise lawfully executable order), 8 U.S.C. §1231(a) permits the government to detain noncitizens during the “removal period,” which is defined as the 90-day period during which “the Attorney General shall remove the alien from the United States.” 8 U.S.C. §1231(a)(1)(A).

JUSTICE KAGAN: So let me --let me make sure I understand that. You think you have the --the --the legal right -- . . . --to --to send the non-citizen to some other country, where he doesn't have a CAT --CAT claim, but, in fact, the U.S. government does not exercise that right?

MR. McDOWELL: Under Title 8 we --we do not do that as a matter of practice. We do think we have the legal authority to do that, with the following caveat: We would have to give the person notice of the third country and give them the opportunity to raise a reasonable fear of torture or persecution in that third country. If they raise that reasonable fear, the withholding-only proceedings would simply continue. They would just focus on the new country, rather than the original one.

JUSTICE KAGAN: But you don't have the legal power to remove the person to the country for which there is a pending CAT claim?

MR. McDOWELL: That's exactly right. The regulate --the regulations prohibit that.

Oral Argument Tr., *Riley v. Bondi*, No. 23-1270 (S. Ct., March 24, 2025), 32-33, *available at* https://www.supremecourt.gov/oral_arguments/argument_transcripts/2024/23-1270_c0n2.pdf.

18. After the expiration of the removal period, 8 U.S.C. § 1231(a)(3) provides that the government shall release unremovable noncitizens on an order of supervision (the immigration equivalent of supervised release, with strict reporting and other requirements). Pursuant to 8 U.S.C. § 1231(a)(6), even noncitizens with aggravated felony convictions may be “released” if “subject to the terms of supervision” set forth in 8 U.S.C. § 1231(a)(3).

19. Constitutional limits on detention beyond the removal period are well established. Government detention violates due process unless it is reasonably related to a legitimate government purpose. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). “[W]here detention’s goal is no longer practically attainable, detention no longer ‘bear[s][a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Additionally, cursory or pro forma findings of dangerousness do not suffice to justify prolonged or indefinite detention. *Zadvydas*, 533 U.S. at 691 (“But we have upheld preventative detention based on dangerousness only when limited to especially dangerous individuals [like suspected terrorists] and subject to strong procedural protections.”)

20. The purpose of detention during and beyond the removal period is to “secure[] the alien’s removal.” *Zadvydas*, 533 U.S. at 682. In *Zadvydas*, the Supreme Court “read § 1231 to authorize continued detention of an alien following the 90-day removal period for only such time as is reasonably necessary to secure the alien’s removal.” *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 699).

21. As the Supreme Court explained, where there is no possibility of removal, immigration detention presents substantive due process concerns because “the need to detain the noncitizen to ensure the noncitizen’s availability for future removal proceedings is “weak or nonexistent.” *Zadvydas*, 533 U.S. at 690-92. Detention is lawful only when “necessary to bring

about that alien's removal." *See id.* at 689.

22. To balance these competing interests, the *Zadvydas* Court established a rebuttable presumption regarding what constitutes a "reasonable period of detention" for noncitizens after a removal order. *Id.* at 700-01. The Court determined that six months detention could be deemed a "presumptively reasonable period of detention," after which the burden shifts to the government to justify continued detention if the noncitizen provides a "good reason to believe that there is not significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

23. Where a petitioner has provided "good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to rebut that showing. *Zadvydas*, 533 U.S. at 701.

Order of Supervision

24. The regulation 8 C.F.R. § 241.4 addresses continued detention beyond the period of removal. Subsection 241.4(l)(1)7 provides that "[u]pon revocation, the alien will be notified of the reasons for revocation of his or her release or parole."

25. The regulation allows re-detention, *inter alia*, when "[i]t is appropriate to enforce a removal order." *Id.* § 241.4(l)(2)(iii).

26. Finally, the regulation promises: "The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.* § 241.4(l)(1).

Medical Care While Detained

27. When an individual is detained by immigration officials, they are entitled to receive necessary medical care. *See* 42 U.S.C. §249 ("(a) Persons entitled to treatment. Any person when detained in accordance with quarantine laws, or, at the request of the Immigration and

Naturalization Service, any person detained by that Service, may be treated and cared for by the Public Health Service.”)

28. In particular the regulations provide that noncitizens shall receive basic care, and that those “in need of emergency care in the course of medical examination shall be treated to the extent deemed practical by the attending physician and if considered to be in need of further care, may be referred to DHS along with the physician's recommendations concerning such further care.” 42 C.F.R. § 34.7(a).

29. In 2024, the Congressional Research Service (CRS) issued a report on medical care in detention, which reiterated that routine and emergency care are required to be provided to detainees. *See* CRS report “Medical Care Standards in Immigrant Detention Facilities,” dated April 2, 2024.² In particular, the CRS report highlighted that “[t]here are multiple DHS, OIG and GAO reports that indicate inadequate compliance with detention standards; some focus specifically on health care issues.” *Id.* (listing reports on deficiencies in medical care in detention over the past ten years).

FACTS

30. Petitioner Ioan Muntean is a citizen of Romania, born there on September 21, 1972, and upon information and belief holds no status or citizenship to any other country. *See* Ex. 1, Declaration of Pabai Muntean (hereinafter “Muntean Decl.”) at ¶ 1.

31. Petitioner resides in Flushing, New York. Muntean Decl. ¶ 2.

32. Petitioner entered the United States at an unknown date and place. *See* Ex. 2, ICE Notice to Appear (NTA). Petitioner was issued a notice to appear for removal proceedings on July 9, 2018. *Id.* On February 28, 2020, Petitioner was ordered removed, but was also granted

² <https://www.congress.gov/crs-product/IF12623> (last accessed August 22, 2025).

withholding of removal pursuant to 8 U.S.C. § 1231(b)(3) after the immigration judge agreed that he had established it was more likely than not that he would be tortured in Romania. *See* Ex. 3, Immigration Court Order. Petitioner was detained in Eloy, AZ at the time the order was issued. *Id.*

33. To date, Respondents have not taken any steps to reopen or rescind the grant of withholding relief. *See* Ex. 6, EOIR Automated Case Information (which reflects that no appeals were taken and no motions to reopen or reconsider have been filed).

34. Petitioner was issued an order of supervision and released from ICE custody on or about May 15, 2020. *See* Ex. 5, ICE Release Notification, dated May 14, 2020; *see also* Ex. 4, excerpt from ICE Form I-220B. Upon information and belief, Petitioner has never violated the terms of his order of supervision.

35. At the time of Petitioner's notice to appear, he had not been convicted of any crimes, and upon information and belief, maintains a clean criminal record since his release from immigration detention in May 2020. *See* NTA (which makes no allegations of criminal history).

36. Petitioner has had serious medical conditions arise, attributable largely to his type 1 and type 2 diabetes. *See* Muntean Decl. ¶¶ 5-8.

37. Earlier this year, in February 2025, Petitioner had heart surgery to place coronary stents in his heart. Muntean Decl. ¶ 6; *see* Ex. 8, Northwell Health Physician Partners letter, dated February 18, 2025. Petitioner's active problems include:

[REDACTED]

38. In April 2025, Petitioner underwent an emergency triple bypass while visiting family in Maryland. *See* Ex. 9, Luminis Health medical records dated April 15, 2025, at 5 (full details of the cardiac surgery operative report). Following this surgery, Petitioner was, among other

activities, restricted from driving. *Id.* at 4. Petitioner was given extension post-operative instructions for care and medication. *Id.* at 14-18. His current medication list, as of May 20, 2025, included 16 different daily medications. *Id.* at 18.

39. In June 2025, Petitioner was admitted to the Luminis Health Emergency Department again, complaining of nausea and chest pain. Ex. 10, Luminis Health medical records dated June 2, 2025, at 1. He was diagnosed with:


 *Id.* at 5. His medication list was adjusted slightly and, as of June 2, 2025, included 15 different daily medications. *Id.* at 5-6.

40. On July 12, 2025, without warning, as he was stepping out of his daughter's home, ICE detained Petitioner. Muntean Decl. ¶ 10. He was taken to the ICE Field Office in Baltimore, MD and held there for two days. *Id.* ¶ 11. Petitioner was without his medications for the duration of this time. *Id.*

41. Petitioner was transferred to the Elizabeth Detention Facility in Elizabeth, NJ, (Muntean Decl. ¶¶ 12) and remains there today (*id.* ¶ 25). Upon information and belief, Petitioner has made countless requests for his medications, but the immigration officers continue in failing to provide his prescribed medications or to adhere to their prescribed timing. *Id.* ¶ 13.

42. Petitioner complained of chest pain on approximately July 14, 2025, and was readmitted roughly a week later, on approximately July 23, 2025, with the same complaint. *See* Ex. 12, RJW Barnabas medical records, dated July 25, 2025 at 2. Petitioner had also indicated to the medical staff that he was not receiving all of his medication, which appears to be contributing to Petitioner's condition:

CONSULTS OBTAINED:

Discharge Consults (720h ago, onward)

Start		Ordered
07/23/25 1943	Inpatient consult to Social Work Once Comments: Can you please talk to the ICE facility to make sure they give him his medications? He was admitted last week for chest pain and today he was readmitted again for chest pain secondary to non compliance for medications. Patient says they don't give him all his medications there. Thank you! Provider: (Not yet assigned) Question: Reason for Consult? Answer: Recommendations for patient medication compliance	07/23/25 1946
07/23/25 1644	Consult to Cardiology Once Specialty: Cardiology Provider: Wingfield, Edward A, MD Question Answer Comment Reason for Consult? chest pain	07/23/25 1643

Printed by Olivas, Carol E, MA at 7/25/2025 12:15 PM

2/5

Id. at 2. Petitioner’s medication list also appears to have dropped significantly at this time. *Id.* at 7 (discharge list includes only eight daily medications).

43. Also on July 23, 2025, Petitioner’s primary care physician, Jovan Milos MD, prepared a letter on his behalf. Ex. 11, Milos Medical P.C. letter, dated July 23, 2025. Dr. Milos’ letter outlines that Petitioner’s current diagnosis and treatment plans. *Id.* Further Petitioner’s doctor explains that “[d]ue to severely obstructed coronary arteries, coronary stents were placed and he is at increased risk for major coronary vascular and cerebral vascular events.” *Id.* He goes on, “[h]is health is compromised and he requires daily medical care with frequent visits to his primary care and cardiovascular and endocrinology specialist.” *Id.*

44. On approximately Sunday, August 17, 2025, while he was on a video call with his daughter, Petitioner began experiencing a stroke. Muntean Decl. ¶ 22. He was struggling to breathe, and was pointing at his chest where he was again experiencing pain, and suddenly stopped speaking. *Id.* Petitioner’s daughter yelled for help through the monitor. *Id.* Eventually an officer came in to assist him and cut the feed. *Id.*

45. Petitioner was taken to Trinitas hospital, where he was “hospitalized for acute stroke with severe speech and swallowing deficits.” Ex. 13, Trinitas Regional Medical Center

medical record, dated August 17, 2025. Further, the doctor determined that Petitioner “is not fit to return to the ICE detention facility.” *Id.* Petitioner remained at Trinitas, without speaking, for four days. Muntean Decl. ¶ 24. Petitioner was finally lucid waking on Thursday, August 21, 2025, and was slowly recovering his speech and swallowing. *Id.* ¶ 25.

46. Despite having been cleared and discharged back to the Elizabeth Detention Facility, Petitioner still reports headaches and chest pain to his daughter. *Id.* ¶ 25.

47. Upon information and belief, Petitioner and his family have not received notice as to whether his order of supervision has been revoked, whether ICE intends to remove him from the United States and, if so, where.

48. Respondents currently lack any factual or legal basis to detain Petitioner, since Respondents cannot establish that that Petitioner will likely be removed from the United States in the reasonably foreseeable future.

49. Petitioner has exhausted all administrative remedies. No further administrative remedies are available to Petitioner.

**FIRST CLAIM FOR RELIEF:
Violation of 8 U.S.C. § 1231(a)(6)**

50. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-49.

51. Petitioner’s continued detention by the Respondents violates 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas*. Petitioner’s 90-day statutory removal period ran from the date of his final order of removal, February 28, 2020 through May 28, 2020 (the majority of which Petitioner was in fact detained). The presumptively reasonable six-month period for removal would have lapsed thereafter on August 26, 2020. *Zadvydas*, 533 U.S. at 701. Rather, ICE opted to release Petitioner at that time instead.

52. Under *Zadvydas*, the continued detention of someone like Petitioner is

unreasonable and therefore not authorized by 8 U.S.C. § 1231.

**SECOND CLAIM FOR RELIEF:
Due Process/Detention**

53. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-49.

54. Petitioner's detention during the removal period is only constitutionally permissible under the Due Process Clause when there is a significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. Upon information and belief, Respondents have rearrested and re-detained Petitioner on the assumption that Petitioner will be removable, to Romania but there have been no efforts to reopen and terminate Petitioner's current order withholding removal. Further, there is no factual basis to believe that a third-country removal will ever become practicable and legally permissible.

55. Respondent continues to detain Petitioner without evidence that they will be able to remove him imminently, to Romania or to any other country.

56. Respondents' detention of Petitioner no longer bears any reasonable relation to a legitimate government purpose, and thus violates the Due Process Clause.

**THIRD CLAIM FOR RELIEF:
Habeas Corpus, 28 U.S.C. § 2241**

57. Petitioner incorporates the foregoing paragraphs 1-49 by reference.

58. The writ of habeas corpus is available to any individual who is held in custody of the federal government in violation of the Constitution or laws or treaties of the United States.

59. Respondents presently have no legal basis to detain Petitioner in immigration custody, and the writ of habeas corpus should issue.

**FOURTH CLAIM FOR RELIEF:
Violation of 8 C.F.R. § 241.4(l) / *Accardi Doctrine***

60. Petitioner incorporates the foregoing paragraphs 1-49 by reference.

61. As set forth above, Respondents' actions in re-detaining Petitioner – who had been released on supervision – and re-arresting Petitioner without any explanation of the legal or factual basis for re-detention, violated 8 C.F.R. § 241.4(l), a regulation designed to protect the due process rights of noncitizens like Petitioner.

62. Additionally, upon information and belief, Petitioner has not been afforded an initial informal interview to respond to the reasons for revocation stated in the notification, in violation of 8 C.F.R. § 241.4(l)(1). Petitioner maintains that there was no permissible reason existed to revoke the order of supervision because he was continuously compliant with its terms, and his removal order is not currently executable.

63. Accordingly, the revocation of the Order of Supervision violated 8 C.F.R. § 241.4(l), a regulation designed to protect the Fifth Amendment due process rights of noncitizens like Petitioner; and violated Petitioner's Fifth Amendment due process rights.

64. Respondents failed to comply with their own rules when they re-detained Petitioner. In arresting and re-detaining Petitioner, Respondents violated important substantive and procedural rules designed to protect his due process rights, and arrest and the revocation of the Order of Supervision should be deemed void under the *Accardi* doctrine. This violation of required procedures also violated Petitioner's due process rights under the Fifth Amendment to the U.S. Constitution, and the writ of habeas corpus should issue.

REQUEST FOR RELIEF

Petitioner prays for judgment against Respondents and respectfully requests that the Court enters an order:

- a) Issuing an Order to Show Cause, ordering Respondents to justify the basis of Petitioner's detention in fact and in law, forthwith;

- b) Preliminarily and permanently enjoining Respondents from removing Petitioner to Romania, unless and until his order of Withholding of Removal is terminated, including all appeals;
- c) Preliminarily and permanently enjoining Respondents from removing Petitioner to any other country without first providing him notice and offering him adequate opportunity to apply for withholding of removal or protection under the Convention Against Torture as to that country, including all appeals;
- d) Preliminarily enjoining Respondents from moving Petitioner out of the District of New Jersey pending the outcome of this litigation;
- e) Issuing a writ of habeas corpus, and ordering that Petitioner be released from physical custody;
- f) Granting Petitioner his costs and reasonable attorney's fees under the Access to Justice Act; and
- g) Granting such other relief at law and in equity as justice may require.

Respectfully submitted,

Marisol Gonzalez, Esq.
New Jersey Bar No. 166452020

Date: August 22, 2025

/s/ Stephanie Elizabeth Gibbs
Stephanie Elizabeth Gibbs, Esq.
New Jersey Bar No. 047482013
Murray Osorio PLLC
50 Park Place, Mezzanine Level
Newark, NJ 07102
Telephone: 862-465-9035
Facsimile: 703-763-2304
sgibbs@murrayosorio.com

Counsel for Plaintiff