Sean Lai McMahon (SBN: 329684)
California Collaborative for Immigrant Justice
1999 Harrison St, Ste 1800
Oakland, CA 94612
(415) 875-0550
sean@ccijustice.org

Pirzada Ahmad (*pro hac vice* application submitted)
Dontzin, Kolbe & Fleissig LLP
31 E 62nd St, Fl. 7
New York, NY 10065
(212) 717-2900
pahmad@dkfllp.com

Counsel for Petitioner

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

Y.T.D.[1],

Petitioner,

v.

TONYA ANDREWS, in her official capacity as Facility Administrator of Golden State Annex Detention Facility,

MOISES BECERRA, in his official capacity as Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, San Francisco,

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

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

Respondents.

No.

PETITION FOR A WRIT OF HABEAS CORPUS

[1] This Petition is accompanied by a motion for leave to proceed under pseudonym using Petitioner's initials, "Y.T.D."

Petitioner Y.T.D., by and through his undersigned counsel, hereby petitions for a writ of habeas corpus seeking his immediate release from immigration detention pursuant to 28 U.S.C. § 1331, 28 U.S.C. §§ 2201 and 2202, 28 U.S.C. § 2241, the Immigration and Nationality Act, the Administrative Procedure Act, the Due Process Clause of the Fifth Amendment to the U.S. Constitution, and the Suspension Clause of Article I, Section 9, Clause 2 to the U.S. Constitution.

Respectfully submitted,

Dated: August 29, 2025

/s/ Sean Lai McMahon

Counsel for Petitioner

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

TABLE OF CONTENTS

INTRODUCTION

1. Petitioner Y.T.D. (Y.T.D. or Petitioner) is a 28-year-old citizen and national of Ethiopia who remains in the custody of the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) (Government), despite winning his immigration case more than seven months ago. On January 6, 2025, an immigration judge (IJ) granted Y.T.D. withholding of removal to Ethiopia under § 241(b)(3) of the Immigration and Nationality Act (INA) because Y.T.D. would likely be tortured and/or persecuted if deported there. Respondents refuse to release Y.T.D., claiming that they are looking for alternative countries for removal, despite knowing that Y.T.D. lacks citizenship in or a connection to any other country. Y.T.D.'s continued detention is arbitrary and unlawful, and he respectfully requests that this Court order his immediate release from ICE custody.

2. Y.T.D. is currently detained pursuant to 8 U.S.C. § 1231 at the Golden State Annex Detention Facility (GSA) in McFarland, California. 8 U.S.C. § 1231 governs the detention of non-citizens with a final order of removal that has been withheld or deferred by an IJ due to a substantial risk of persecution or torture in their home country. 8 U.S.C. § 1231(a)(1)(B)(i). Y.T.D.'s removal order and accompanying relief grant became final on February 6, 2025, when ICE declined to appeal his grant of withholding of removal. 8 C.F.R. § 1241.1. Once Y.T.D. was granted withholding of removal, he became entitled to review for immediate release under the Government's longstanding—and still current—policy, the Fear-based Grant Release Policy,[2] which requires the release of noncitizens in Y.T.D.'s position absent exceptional circumstances. Just last month, ICE's Acting Director Todd Lyons reiterated: "under the Supreme Court ruling of *Zadvydas*, we don't hold punitively, so we can only hold someone for six months to effectuate their removal." Exhibit 11 (CBS - Transcript: Acting ICE director Todd Lyons on Face the Nation) at 14.

[2] *See* Exhibit 5 (Fear-based Grant Release Policy): U.S. Department of Justice, Immigration and Naturalization Service Memorandum, Re: Detention and Release during the Removal Period of Aliens Granted Withholding or Deferral of Removal (dated April 21, 2000); ICE Memorandum, Re: Detention Policy Where an Immigration Judge has Granted Asylum and ICE has Appealed (dated February 9, 2004); ERO, Re: Reminder on Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal or CAT (dated March 6, 2012); ICE, Re: Reminder: Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal, or Convention Against Torture Protection, and DHS has Appealed (dated June 4, 2021) (collectively "Fear-based Grant Release Policy").

3. That the Government has continuously detained Y.T.D. since May 27, 2024, including after he won withholding of removal relief, is unlawful. First, Y.T.D.'s continued detention violates 8 U.S.C. § 1231(a)(6) and due process, as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because indefinite civil detention beyond six months in this context is presumptively unlawful where a detainee establishes there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. The burden then shifts to the Government to evidentiarily rebut that presumption. But the *Zadvydas* Court was clear: the Government cannot merely point to good faith efforts to find third countries who would accept Y.T.D.'s removal. *Id.* at 702. Second, Respondents' failure to adhere to its Fear-based Grant Release Policy as applied to Y.T.D. is arbitrary and capricious administrative agency action that violates the Administrative Procedure Act (APA) and due process. *See Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

4. Y.T.D. petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to remedy his unlawful detention by Respondents.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, as Y.T.D. is currently in federal immigration custody and seeks habeas corpus relief for ongoing violations of the U.S. Constitution, federal statutes, and applicable regulations. *See, e.g.*, *Zadvydas*, 533 U.S. at 687–88 ("We conclude that § 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention.") This case arises under the INA, 8 U.S.C. § 1101 *et seq.*, the regulations implementing the INA, the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 103-277, div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1998) (codified as Note to 8 U.S.C. § 1231), the regulations implementing the FARRA, the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*; and 5 U.S.C. § 552 *et. seq*. Jurisdiction also exists under 28 U.S.C. § 1331, as this action arises under the laws and Constitution of the United States. Jurisdiction exists further under the Suspension Clause, U.S. Const. art. I, § 9, cl. 2, which guarantees the right to petition for habeas corpus to challenge unlawful executive detention.

6. Declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, and the Court has supplemental remedial authority under the All Writs Act, 28 U.S.C. § 1651, to issue such writs as may be necessary to preserve its jurisdiction and protect Y.T.D.'s rights. The Government has waived its sovereign immunity pursuant to 5 U.S.C. § 702.

7. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Y.T.D. is detained at GSA Detention Facility in Kern County within the Eastern District of California.

PARTIES

8. Petitioner Y.T.D. is a native and citizen of Ethiopia who has been in ICE custody since May 27, 2024, and is currently detained at Golden State Annex (GSA) Detention Facility in McFarland, California.

9. Respondent Tonya Andrews is the Facility Administrator of GSA. She is an employee of GEO Group, the private company that contracts with ICE to run GSA. In her capacity as Facility Administrator, she oversees the administration and management of GSA. Accordingly, Respondent Andrews is the immediate custodian of Y.T.D. Y.T.D. brings this action against Respondent Andrews in her official capacity.

10. Respondent Moises Becerra is the Acting Field Office Director of the ICE Enforcement and Removal Operations ("ERO") San Francisco Field Office. In that capacity, he is charged with overseeing all ICE detention centers in Northern California, Hawaii, Guam, and Saipan and has the authority to make custody determinations regarding individuals detained there. Respondent Becerra is a legal custodian of Y.T.D. Y.T.D. brings this action against Respondent Becerra in his official capacity.

11. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. DHS oversees ICE, which is responsible for the administration and enforcement of immigration laws and has supervisory responsibility for and authority over the detention and removal of non-citizens throughout the United States. Respondent Noem is the ultimate legal custodian of Y.T.D. Y.T.D. brings this action against Respondent Noem in her official capacity.

12. Respondent Pam Bondi is the Attorney General of the United States. As the Attorney General, she oversees the immigration court system, including all IJs and the Board of Immigration Appeals (BIA), and has authority over immigration detention. Y.T.D. brings this action against Respondent Bondi in her official capacity.

LEGAL FRAMEWORK

I. Withholding of Removal and Relief Under the Immigration and Nationality Act

13. Non-citizens in immigration removal proceedings may seek three main forms of relief based on a fear of returning to their home country: asylum, withholding of removal, and Convention Against Torture (CAT) relief. Non-citizens may be ineligible for asylum for several reasons. *See* 8 U.S.C. § 1158(a)(2). Relevant here, under President Biden's Circumvention of Lawful Pathways Final Rule, individuals who entered the United States through a country other than their origin country—i.e. individuals from countries other than Mexico who entered through the southern border—without inspection from May 10, 2023 through May 10, 2025, were presumptively ineligible for asylum unless they qualified for a narrow exception. *See* 88 Federal Register 31314, (May 16, 2023); 8 C.F.R. § 208.33(a). There are fewer restrictions on eligibility for withholding of removal. *Id.* § 1231(b)(3)(B)(iii).

14. To be granted withholding of removal under the INA, a non-citizen must objectively establish that it is "more likely than not" (i.e. 50%+) that the applicant's race, religion, nationality, membership in a particular social group, or political opinion would be "a reason" his or her "life or freedom would be threatened" in the future. INA § 241(b)(3)(A); *Barajas-Romero v. Lynch*, 846 F.3d 351, 359 (9th Cir. 2017). The "clear probability" standard required for withholding of removal is much more stringent than the "well-founded fear" standard for asylum. *Navas v. INS*, 217 F.3d 646, 663 (9th Cir. 2000).

15. When an IJ grants a non-citizen withholding or CAT relief, the IJ issues a removal order and simultaneously withholds or defers that order with respect to the country or countries for which the non-citizen demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021). Once withholding or CAT relief is granted, either party has the right to appeal that decision to the BIA within 30 days. *See* 8 C.F.R. § 1003.38(b). If

both parties waive appeal or neither party appeals within the 30-day period, the withholding or CAT relief grant and the accompanying removal order become administratively final. *See id.* § 1241.1.

16. When a non-citizen has a final withholding or CAT relief grant, they cannot be removed to the country or countries for which they demonstrated a sufficient likelihood of persecution or torture. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.17(b)(2). While ICE is authorized to remove non-citizens who were granted withholding or CAT relief to alternative countries, *see* 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f), the removal statute specifies restrictive criteria for identifying appropriate countries. Non-citizens can be removed, for instance, to the country "of which the [non-citizen] is a citizen, subject, or national," the country "in which the [non-citizen] was born," or the country "in which the [non-citizen] resided" immediately before entering the United States. 8 U.S.C. § 1231(b)(2)(D)–(E).

II. Requirements for and Reasonable Foreseeability of Lawful Third Country Removal

17. If ICE identifies an alternative country of removal, the "noncitizen must be given sufficient notice of a country of deportation that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation." *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019); *see also Jama v. ICE*, 543 U.S. 335, 348 (2005) ("If [non-citizens] would face persecution or other mistreatment in the country designated under § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture, *see* 8 CFR §§ 208.16(c)(4), 208.17(a) (2004).").

18. Ninth Circuit precedent is clear: "Failing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process." *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999) (finding that "last minute" designation of alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process"); *see also Najjar v.*

Lynch, 630 Fed. App'x. 724 (9th Cir. 2016) ("In the context of country of removal designations, last minute orders of removal to a country may violate due process if an immigrant was not provided an opportunity to address his fear of persecution in that country."). In practice, the "guarantee of due process includes the right to a full and fair hearing, an impartial decisionmaker, and evaluation of the merits of his or her particular claim." *Aden*, 409 F. Supp. 3d at 1010 (ordering the same for non-citizen petitioner and holding ICE "has an affirmative obligation to make a determination regarding a noncitizen's claim of fear before deporting" them). This is because "third-country removals are subject to the same mandatory protections that exist in removal or withholding-only proceedings." *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *3–9 (C.D. Cal. June 25, 2025) (citing *D. V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1142968, at *3 (D. Mass. Apr. 18, 2025)); *see also A. A. R. P. v. Trump*, 145 S. Ct. 1364, 1368 (2025) ("notice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster").

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

20. On July 9, 2025, ICE's Acting Director Todd Lyons issued a policy memo that states some non-citizens will be deported to third countries with ***literally no notice*** whatsoever if the Government receives certain diplomatic assurances from the third country. Exhibit 7 (July 9, 2025 Third Country Removals Memo) at 1. Otherwise, ICE's new standard procedure provides only 24 hours of notice to the non-citizen (not their counsel) prior to third-country removal if the non-citizen cannot speak with an attorney and only 6 hours if they can speak to an attorney. *Id.* ICE also will not affirmatively ask the non-citizen if they fear removal to the third country. *Id.* The Government's current third-country removal policy clearly runs afoul of mandatory statutory and constitutional protections and the Supreme Court's views in *A. A. R. P. See also Vaskanyan*, 2025 WL 2014208,

at *6–9 (enjoining third-country removal because the Government is likely to pursue such removal without providing mandatory protections); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *4 (W.D. Wash. June 30, 2025) (same); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2097979, at *3 (W.D. Wash. July 25, 2025) (same); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal. July 16, 2025); *Misirbekov v. Venegas*, No. 1:25-CV-00168, 2025 WL 2201470, at *2 (S.D. Tex. Aug. 1, 2025).

21. To illustrate the likelihood of third-country removal in light of statutory and constitutional restrictions and procedures, "only 1.6% of noncitizens granted withholding-only relief were actually removed to an alternative country" in FY 2017. *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2295 (2021) (Breyer, J., dissenting). Given binding statutory and constitutional requirements, in no sense can indefinite detention pending removal to a hypothetical third country be considered reasonably foreseeable.

III. Detention of Non-Citizens Granted Withholding of Removal

a. Statutory and Constitutional Framework

22. 8 U.S.C. § 1231 governs the detention of non-citizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)–(6). The "removal period" begins once a non-citizen's removal order "becomes administratively final." *Id.* § 1231(a)(1)(B). The removal period lasts for 90 days, during which ICE "shall remove the [non-citizen] from the United States" and "shall detain the [non-citizen]" as it carries out the removal. *Id.* § 1231(a)(1)–(2). If ICE does not remove the non-citizen within the 90-day removal period, the non-citizen "*may* be detained beyond the removal period" if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. *Id.* § 1231(a)(6) (emphasis added).

23. To avoid "indefinite detention" that would raise "serious constitutional concerns," the Supreme Court in *Zadvydas* construed § 1231(a)(6) to contain an implicit time limit. 533 U.S. at 682. *Zadvydas* dealt with two non-citizens who could not be removed to their home country or country of citizenship due to bureaucratic and diplomatic barriers. The Court held that § 1231(a)(6) authorizes detention only for "a period reasonably necessary to bring about the [non-citizen]'s removal from the United States." *Id.* at 689. Six months of post-removal order detention is

considered "presumptively reasonable." *Id.* at 701. After six months of detention, if there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the Government to justify continued detention. *Id.*

b. Regulations

24. DHS regulations provide that, by the end of the 90-day removal period that is triggered by a non-citizen's removal order becoming final, the local ICE field office with jurisdiction over the non-citizen's detention must conduct a custody review to determine whether the noncitizen should remain detained. *See* 8 C.F.R. § 241.4(c)(1), (k)(1)(i) ("Prior to the expiration of the removal period, the district director . . . shall conduct a custody review . . ."). The Field Office Director, or their delegate, makes the final custody decision based on recommendations offered by lower-level officers. In making this custody determination, ICE considers several factors, including the availability of travel documents for removal. *Id.* § 241.4(e). If the factors in § 241.4 are met, ICE must release the non-citizen under conditions of supervision. *Id.* § 241.4(j)(2).

25. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that established "special review procedures" to determine whether detained non-citizens with final removal orders are likely to be removed in the reasonably foreseeable future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56,967 (Nov. 14, 2001). While 8 C.F.R. § 241.4's custody review process remained largely intact, subsection (i)(7) was added to include a supplemental review procedure that ICE HQ must initiate when "the [non-citizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [non-citizen] is not significantly likely in the reasonably foreseeable future." *Id.* § 241.4(i)(7).

26. Under this procedure, ICE HQ evaluates the foreseeability of removal by analyzing factors such as the history of ICE's removal efforts to third countries. *See id.* § 241.13(f). If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention, such detention must be based on "special circumstances," and the Government must justify it only on narrow grounds such as national security or public health concerns, *id.* § 241.14(b)-(d), or by demonstrating by clear and convincing evidence before an IJ that the non-

citizen is "especially dangerous." *Id.* § 241.14(f).

c. The Government's Longstanding Fear-Based Grant Release Policy

27. Consistent with the statutory and regulatory scheme, ICE's longstanding Fear-based Grant Release policy (or Policy) is to release noncitizens immediately following a grant of CAT protection absent exceptional circumstances. Ex. 5. "In general, it is ICE policy to favor the release of [non-citizens] when have been granted protection by an immigration judge, absent exceptional concerns…" (*id.* at 2) and "[p]ursuant to longstanding policy, absent exceptional circumstances… noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge *should* be released . . ." (*id.* at 4 (emphasis added)). The Policy specifically instructs the local ICE field office to make an individualized determination whether to keep a noncitizen detained based on exceptional circumstances. *Id.* at 3 ("[T]he Field Office Director must approve any decision to keep a [non-citizen] who received a grant of protection in custody.").

28. In 2000, the then-Immigration and Naturalization Service ("INS") General Counsel issued a memorandum clarifying that 8 U.S.C. § 1231 authorizes, but does not require, the detention of non-citizens granted withholding of removal or CAT relief. *Id.* at 1. A 2004 ICE memorandum turned this acknowledgement of authority into a presumption, stating that "it is ICE policy to favor the release of [non-citizens] who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain." *Id.* at 2. Further, this memorandum states that "in all cases, the Field Office Director must approve a decision to keep a [non-citizen] granted protection relief in custody pending appeal." *Id.* at 3.

29. ICE leadership subsequently reiterated this policy in a 2012 announcement, clarifying that the 2000 and 2004 ICE memorandums are "still in effect and should be followed" and that "[t]his policy applies at all times following a grant of protection, including during any appellate proceedings and throughout the removal period." *Id.* at 3.

30. Finally, in 2021, Acting ICE Director Tae Johnson circulated a memorandum to all ICE employees reminding them of the "longstanding policy" that "absent exceptional circumstances… [non-citizens] granted asylum, withholding of removal, or CAT protection by an

immigration judge *should* be released…" *Id.* at 4 (emphasis added). Director Johnson clarified that "in considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat of danger to the community. Rather, the individual facts and circumstances of the case, including extensiveness, seriousness, and recency of the criminal activity, along with any evidence of rehabilitation, should be considered in making such determination." *Id.*

STATEMENT OF FACTS

I. Y.T.D.'s Immigration and Custody Status

31. Petitioner Y.T.D. was born in Ethiopia on July 4, 1997 and is an Ethiopian citizen. Exhibit 1 "Affidavit of Y.T.D." at 2. Neither he nor his parents are citizens of any country besides Ethiopia. *Id.*

32. Y.T.D. suffered repeated persecution and torture in Ethiopia on the basis of his ethnic background. *Id.*. He fled Ethiopia out of fear for his life. *Id.* He came to the United States through the southern border while President Biden's Circumvention of Lawful Pathways rule was in effect, presumptively disqualifying him from asylum. *Id.*; *supra* p. 12. Promptly upon entry into the United States, he was brought into custody and has been in detention since then. *Id.* On July 1, 2024, DHS served him with a Notice to Appear (NTA), charging him as inadmissible to the United States under two provisions of § 212(a) for being present in the United States without being admitted or paroled and without certain documents. Exhibit 3 (Notice to Appear). On June 1, 2024, Y.T.D. was brought to Golden State Annex Detention Facility, where he has been detained since. Ex. 1 at 2.

33. On January 6, 2025, an IJ granted Y.T.D. withholding of removal under the INA, finding that he would more likely than not be tortured and/or persecuted if he was removed back to Ethiopia because of his ethnic/racial status. Exhibit 4 (IJ Decision Granting Withholding of Removal). Y.T.D. was ordered to be removed to, and his removal withheld from, Ethiopia. *Id.* On February 6, 2025, Y.T.D.'s Withholding of Removal Order became final because the appeal period expired. *See* 8 U.S.C § 1231(a)(l)(B)(i); 8 C.F.R. § 1241.l(c).

34. It is worth noting that given the "clear probability" standard required for withholding

of removal is much more stringent than the "well-founded fear" standard for asylum, Y.T.D. would have qualified for asylum had he entered the United States before May 10, 2023 or after May 10, 2025—i.e., when the Circumvention of Lawful Pathways rule was not in effect. *See Navas*, 217 F.3d at 663 (comparing asylum and withholding of removal standards); *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987) (same).

35. Sometime after his Withholding of Removal Order became final, Y.T.D. was informed by ICE that it would attempt to remove him to a third country. Ex. 1 at 3. ICE told Y.T.D. that they would seek his removal to Kenya, Eritrea, Somalia, or Benin. *Id.* Y.T.D. is not a citizen of and has no connection to any of those countries. *Id.* Upon information and belief, ICE to date has failed to secure acceptance of Y.T.D.'s removal to any third country from any such third country despite Y.T.D. being granted withholding of removal more than seven months ago. *Id.*

36. On July 30, 2025, Y.T.D.'s counsel submitted a request to ICE for immediate release from ICE custody in accord with INA § 241(a)(3) and/or on parole under INA § 212(d)(5) and DHS Secretary Mayorkas's Memorandum, "Guidelines for the Enforcement of Civil Immigration Law," which went into effect on November 29, 2021. Exhibit 2 (Request for Release from ICE Custody). That request explained that Y.T.D. is not a flight risk and is committed to complying with any order of supervision. *Id.* at 2. Y.T.D.'s uncle is his sponsor, a U.S. citizen, and a resident of Colorado. *Id.* at 3. Y.T.D.'s uncle declared that he would be willing to provide for and support Y.T.D. comprehensively as Y.T.D. acclimates to life in the United States if released. *Id.* at 22 (Exhibit E: Declaration of Sponsor). Y.T.D. has no criminal record in the U.S. or his country of origin and has never had any dealings with drugs, firearms, or violence. *Id.* at 2.

37. The release request explained to ICE that Y.T.D.'s removal does not seem to be imminent given ICE's failure to identify a willing third country for removal in more than seven months. *Id.* at 1. Nevertheless, the request explained Y.T.D. fears removal to each of the four identified countries and demanded ICE comply with its obligations to provide him with sufficient notice and meaningful opportunity to reopen removal proceedings upon a potential designation of any third country for removal. *Id.* In other words, Y.T.D.'s counsel asked that ICE give him his statutory and constitutional opportunity to explain to an IJ why his life or freedom would be

threatened by removal to a specific third country. *Id.*

38. The request also sought release for urgent humanitarian reasons pursuant to INA § 212(d)(5). *Id.* at 3. INA § 212(d)(5) provides that parole "would generally be justified" for individuals "who have serious medical conditions in which continued detention would not be appropriate." *Id.*; *see* 8 CFR § 212.5(b)(1). Y.T.D. has been detained for more than 14 months and has been isolated from his community during that time. Ex. 2 at 3. Y.T.D.'s teeth were seriously injured during his persecution in Ethiopia, and he continues to experience dental pain, in part because he has not received adequate medical care while in Respondents' custody. *Id.* Moreover, prolonged detention has aggravated the trauma that he endured in his home country in connection with his repeated persecution and torture on the basis of his ethnic background. *Id.* This aggravation of Y.T.D.'s trauma has manifested in serious mental and physical health conditions. *Id.* Y.T.D. has anxiety and, possibly, post-traumatic stress disorder ("PTSD") from the torture he endured in Ethiopia. *Id.* GSA's officials were the same color uniform as Y.T.D.'s torturers, triggering his anxiety and causing regular nightmares, as recounted to GSA's psychologist. *Id.* Counsel relayed studies that show "increased length of imprisonment … directly exerts harm" and that "detention lasting 6 months of longer . . . [results in] even higher rates of poor [health], mental illness, and PTSD." *Id.* In addition to his exacerbated mental health conditions, since arriving in detention, Y.T.D. has experienced increasing digestive issues and pain in his shoulder—which have not been sufficiently treated at GSA. *Id.*

39. On July 30, 2025, the same day as Y.T.D.'s counsel submitted his release request, an ICE officer at GSA told Y.T.D. that he was not being considered for release and that his file was received by ICE headquarters. Ex. 1 at 3. Y.T.D.'s counsel did not receive a response.

40. ICE has not identified any exceptional circumstances warranting Y.T.D.'s continued detention under ICE policy. Nor has ICE charged Y.T.D. as "specially dangerous" under 8 C.F.R. § 241.14.

41. As explained to Respondents, if Y.T.D. is released, he will live with his sponsor uncle who will provide him with all the support he needs. Ex. 1 at 4.

II. Conditions Reported at Golden State Annex Detention Facility

42. Pursuant to California Assembly Bill 103 (2017), the California Department of Justice (Cal DOJ) has regularly reviewed and reported on ICE detention facilities in California. Exhibit 12 (Cal. DOJ ICE Detention Facilities Report). In May 2025, Cal DOJ published their most recent report in which they provided a facility-specific review of Golden State Annex. *Id.* As to GSA, "Cal DOJ's review resulted in the following key findings with respect to mental health care, medical care, and other conditions of confinement:

- The quality of mental health care was impacted by the quality of psychotherapy, inconsistent documentation of psychiatric diagnoses, lack of non-medication interventions, and inadequate medication management.
- Mental health and medical staff did not engage in appropriate treatment planning or multidisciplinary treatment to address detainee needs.
- Suicide prevention and interventions were insufficient due to inconsistent suicide risk assessments, facility related risks, and lack of safety planning. …
- Detainees were over-disciplined, including punishment for making complaints.
- The facility failed to adequately assess the mental health of disciplined detainees before placement in restricted housing."

Id. at 53.

43. On April 18, 2024, DHS's Office of Inspector General issued a report with "Results of an Unannounced Inspection of ICE's Golden State Annex in McFarland, California. Exhibit 13 (DHS OIG Results of an Unannounced Inspection). The government itself found "facility staff did not always provide timely action of medical grievances and did not properly record paper grievances." *Id.* at 5. The government also concluded "Golden State Did Not Comply with Cleanliness and Sanitation Standards." *Id.* at 8.

44. In accord with above, in July and August 2024, more than 60 detainees at Mesa Verde and Golden State Annex ICE Detention Facilities participated in labor and hunger strikes to protest dangerous and neglectful conditions at the facilities. Exhibit 14 (Guardian Article – More than 60 ICE detainees on hunger strike over 'inhumane' living conditions). Detainees at the

facilities reported "medical neglect, poor food quality that they say has resulted in food poisoning, unavailability of water for up to 12 hours, unpalatable tap water, a working wage of $1 a day and unsanitary conditions that have led to people contracting ringworm from the showers." *Id.* at 1.

ARGUMENT

I. Y.T.D.'s Continued Detention Is Unlawful Under *Zadvydas* Because His Removal Is Not Reasonably Foreseeable

a. Y.T.D.'s Removal Is Not Reasonably Foreseeable Under *Zadvydas*

45. Y.T.D.'s detention is governed by 8 U.S.C. § 1231(a)(6) because he has been detained for more than 90 days since he received a final grant of withholding of removal relief. The 90-day removal period began for Y.T.D. on February 6, 2025 when the appeal period expired without either party filing an appeal. *See* 8 U.S.C. § 1231(a)(1)(B)(i); 8 C.F.R. § 1241.1(c). Therefore, the *Zadvydas* framework applies to Y.T.D.'s detention, and he has been detained for more than six months since his removal order became final.

46. Y.T.D. is unlikely to ever be lawfully deported from the United States, let alone in the reasonably foreseeable future. He cannot be deported to his home country of Ethiopia because he has a final grant of withholding of removal. *See* 8 U.S.C. § 1231 (b)(3).

47. Furthermore, it is exceedingly unlikely that ICE will identify an alternative country to which it can remove Y.T.D. First, in 2017, ICE only managed to remove to third countries less than two percent of non-citizens granted withholding relief. *Johnson*, 141 S. Ct. at 2295 (Breyer, J., dissenting). To be sure, the current administration has been attempting to increase that figure and has secured some limited third-country approvals, but it is not clear whether the Government will be successful in substantially increasing that 1.6% figure. For example, Nigeria publicly rebuked the administration's ask for Nigeria to accept deportees from third countries last month. Exhibit 15 (NPR Article – Nigeria Says It Won't Accept Deportees from US).

48. Second, even if the Government secures some commitments from countries to accept some third country deportees from the United States, it is far from certain that will affect individuals situated similarly to Y.T.D., i.e. individuals granted withholding of removal under the INA who also do not have any criminal records. Put differently, Y.T.D. has no criminal record in

the United States or Ethiopia, and the Government has repeatedly said immigrants without criminal records are unlikely to be prioritized for a third-country deportation.

49. The Government has made repeated public statements stating that their third-country deportation initiatives target removable non-citizens with criminal records. On or around June 1, 2025, the Government deported a group of six individuals to third-country South Sudan (without affording due process[3]), justifying the deportations "by arguing the home countries of the men would not accept them because of the crimes they had committed in the U.S., which included murder and sexual assault." Exhibit 8 (NPR Article – The White House Is Deporting People to Countries They're Not From) at 7. In a resulting press conference, ICE Acting Director Todd Lyons said third-country deportations are aimed at individuals whose home countries will not accept their repatriation because of their alleged criminal status: "These are the ones that we prioritize every day." *Id.*

50. On or around June 19, 2025, Tom Homan, the Trump Administration's "Border Czar,"[4] discussed the administration's priorities in a New York Times interview: "We're prioritizing public safety threats and national security threats. That is our priority." Exhibit 9 (New York Times – An Interview With Trump's Border Czar, Tom Homan). When asked if that meant if the administration is prioritizing "everyone who's here illegally . . . without authorization," Homan responded: "No, I'm not saying that. I'm saying we're prioritizing public safety threats. People who have committed crimes in this country or committed crimes in their home country and came here to hide. But we're looking for public safety threats and national security threats. They remain the priority." *Id.* On third-country deportations, Homan said: "If it's a significant public safety threat and their country won't take them back, well, they're not staying here." *Id.*

51. On June 23, 2025, DHS issued a press release: "DHS can finally exercise its

---

[3] *See Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (Sotomayor, J., dissenting) ("In matters of life and death, it is best to proceed with caution. In this case, the Government took the opposite approach. … in clear violation of a court order, it deported six more to South Sudan, a nation the State Department considers too unsafe for all but its most critical personnel.")

[4] "Border Czar is seemingly Tom Homan's official title. In that role he is "in charge of all Deportation of Illegal Aliens." Kaitlan Collins and Colin McCullough, *Trump announces Tom Homan, his former acting ICE director, will be administration's 'border czar'*, CNN, Nov. 11, 2024, https://www.cnn.com/2024/11/10/politics/tom-homan-border-czar-ice-donald-trump.

undisputed authority to deport criminal illegal aliens–who are not wanted in their home country–to third countries that have agreed to accept them." Exhibit 10 (DHS – DHS Releases Statement on Major Victory for Trump Administration). DHS Assistant Secretary Tricia McLaughlin said: "the Trump Administration can exercise its undisputed authority to remove these criminal illegal aliens," explaining she was referring to "aliens who are so uniquely barbaric that their own countries won't take them back, including convicted murderers, child rapists and drug traffickers." *Id.* Against this backdrop of the Government's stated third-country deportation priorities, Respondents cannot merely point to the administration's ongoing efforts to secure third-country acceptances of limited amounts of deportees as evidence that Y.T.D.'s third-country removal is reasonably foreseeable.

52. On July 21, 2025, ICE Acting Director Lyons was asked in an interview: "Is the policy still to prioritize the arrests and deportation of people who are here illegally, but are also violent offenders?" Ex. 11 at 8. Lyons responded: "Yes, that's one thing, and that's one thing I'm extremely focused on since I became the acting director, is the fact that the president and Secretary Noem have made a promise to the American public that ICE is going to focus on the worst of the worst, and that's what we do need to focus our limited resources on. That's one thing I've always said from the start." *Id.* On third-country deportations, Lyons also said: "Prime example, if we had a country that won't take a homicide suspect back, and under the Supreme Court ruling of Zadvydas, we don't hold punitively, so we can only hold someone for six months to effectuate their removal … my main focus, like I said, is the safety and security in the United States. Why would we let child rapists with a propensity of violence back into the community, because their home nation won't take them, when they're not here lawfully, or they have no right to stay here. That's our focus." *Id* at 14.

53. Third, Y.T.D.'s withholding of removal status, and his credible fears of persecution and torture if removed to any of the four countries Respondents have mentioned he could be deported, further render his removal not reasonably foreseeable. Caselaw in the Ninth Circuit law is settled that Y.T.D. must be provided with a meaningful opportunity to apply for protection prior to removal to a third country. *Supra* p. 13; *Andriasian*, 180 F.3d at 1041; *Najjar*, 630 Fed. App'x.

724; *Aden*, 409 F. Supp. 3d at 1010. In the unlikely event that Respondents secured approval of Y.T.D.'s deportation from Benin, Eritrea, Somalia, or Kenya, Y.T.D. would move to re-open his immigration case and apply for protection. Y.T.D. is likely to prevail in securing withholding of removal as to any of those countries.

54. While a deep dive into each country's conditions is beyond the scope of this petition, a quick gloss is illustrative. Take Eritrea for example. The United States Department of State issues Country Reports on Human Rights Practices for various countries. In its most recent report on Eritrea, the State Department determined Eritrea is plagued by "significant human rights issues," including "disappearances; torture or cruel, inhuman, or degrading treatment or punishment; arbitrary arrest or detention." Exhibit 16 (Eritrea Country Report) at 1. The State Department also found Eritrea "did not recognize Ethiopians . . . as refugees," and even if it did, "the government had no established system for providing protection to refugees." *Id* at 13. The situation for Ethiopians is especially fraught because "at any moment, war between Ethiopia and Eritrea could break out" over territorial and ethnic conflict. Exhibit 17 (Al Jazeera Article – Are Ethiopia and Eritrea hurtling towards war) at 8. The State Department made similar human rights abuse findings for Benin, Kenya, and Somalia that evince Y.T.D.'s specific and general fears of persecution and torture if deported to one of those countries. Exhibit 18 (Benin Country Report); Exhibit 19 (Kenya Country Report); Exhibit 20 (Somalia Country Report). Most recently, "Ethiopians living in Somalia have become the subject of physical violence, verbal threats and intimidation since Somaliland consented to give Ethiopia access to its coastline" in 2024. Exhibit 21 (VOA Article – Ethiopian Refugees in Somalia Fear Violence Over Deal With Somaliland) at 1.

55. Further, based on the statements and actions of countries that have recently accepted third-country removals from the United States, Y.T.D. would likely succeed on the claim that these countries would repatriate him to Ethiopia, where he would face torture and/or persecution, in violation of U.S. and international refugee law. Exhibit 22 (NYT Article – African Nation Says It Will Repatriate Migrants Deported by U.S.) at 2 (Eswatini repatriating deportees); Exhibit 23 (Reuters Article – The US said it had no choice but to deport them to a third country. Then it sent them home) at 2 (Libya repatriating deportees).

56. Collectively, Y.T.D. has clearly met his burden of proof under *Zadvydas* to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," shifting the burden to the Government to "respond with evidence sufficient to rebut that showing." 533 U.S. at 701. The "reasonably foreseeable" determination turns on the length of detention. Accordingly, "as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* This means Respondents cannot satisfy their burden by simply establishing "good faith efforts to effectuate . . . deportation continue." *Id.* at 702. The Supreme Court rejected the idea that Y.T.D. would need to show anything like "the absence of any prospect of removal." *Id.* For example, in a recent Central District of California case the Government established it was "pursuing the possibility of removing Petitioner to [third-country] Armenia" and that "ICE now expects to receive an answer from the Armenian consulate within approximately two weeks." *Vaskanyan*, 2025 WL 2014208, at *5. But the Court held that since the petitioner identified potential obstacles to being removed to Armenia, "at best, the government has shown that 'good faith efforts to effectuate … deportation continue," failing to meet its burden on rebuttal. *Id.* (granting habeas petitioner's motion for temporary restraining order). Y.T.D.'s facts are even more favorable given there is no indication Respondents will get a favorable decision from any third country in the near future, and even if they did, Y.T.D. is likely to prevail in moving for withholding of removal.

b. This Court Should Order Y.T.D.'s Immediate Release

57. The "Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693–94 ("Indeed, this Court has held that the Due Process Clause protects an alien subject to a final order of deportation."). Because Y.T.D.'s removal is not reasonably foreseeable, *Zadvydas* requires that he be immediately released. *See Zadvydas*, 533 U.S. at 700–01 (describing release as an appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release "subject to . . . terms of supervision"). Y.T.D.'s civil detention is "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690. There is no "sufficiently strong special justification for indefinite civil detention" under any statute or law. *Id.* To order his immediate release, this Court need only determine that Y.T.D.'s

removal is not reasonably foreseeable under *Zadvydas*; it need not analyze whether he poses a danger to the community or a flight risk. *See id.* at 699–700 ("[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.").

58. *Zadvydas* explicitly held that flight risk is already baked into the reasonable foreseeability analysis, *see id.* at 690 (observing that the "justification . . . [of] preventing flight . . . is weak or nonexistent where removal seems a remote possibility at best"), and that dangerousness cannot unilaterally justify indefinite civil detention barring "special circumstances," which may include the non-citizen being a "suspected terrorist[]" but do not include the non-citizen's "removable status itself." *Id.* at 691; *see also Kansas v. Hendricks*, 521 U.S. 346, 358 (1997) ("A finding of dangerousness, standing alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary [civil detention]."). With respect to Y.T.D.'s detention, ICE has not invoked the regulations governing these "special circumstances" determinations. *See* 8 C.F.R. § 241.14. Nor could it, given his absence of any criminal record.

59. To the extent this Court considers any factors outside of the foreseeability of Y.T.D.'s removal, which it need not do, Y.T.D. has significant equities that warrant release as set forth in his July 30, 2025 request for release, including his serious medical conditions that continue to deteriorate in detention. *Supra* p. 20. The equities especially warrant release because of GSA's inadequate conditions for detention. *Supra*. p. 21.

60. Additionally, this Court or ICE is free to impose conditions on release to mitigate any potential concerns regarding flight risk or danger. *See Zadvydas*, 533 U.S. at 700 ("[T]he [noncitizen]'s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances.").

II. ICE's Continued Detention of Y.T.D. Without Custody Review Consistent with ICE Policy Violates the APA and Due Process

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

706(2)(A), (C).

62. Under the *Accardi* doctrine, which originated in the context of an immigration case and has been developed through subsequent immigration caselaw, agencies are bound to follow their own rules that affect the fundamental rights of individuals, even self-imposed policies and processes that limit otherwise discretionary decisions. *See Accardi*, 347 U.S. at 226 (holding that BIA must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

63. The requirement that an agency follow its own policies is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Even an unpublished policy binds the agency if "an examination of the provision's language, its context, and any available extrinsic evidence" supports the conclusion that it is "mandatory rather than merely precatory." *Doe v. Hampton*, 566 F.2d 265, 281 (D.C. Cir. 1977); *see also Morton*, 415 U.S. at 235–36 (applying *Accardi* to violation of internal agency manual).

64. When agencies fail to adhere to their own policies as required by *Accardi*, courts typically follow one of two courses of action. The first is to frame the violation as arbitrary, capricious, and contrary to law under the APA. *See Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) ("It is clear, moreover, that [*Accardi*] claims may arise under the APA."). The second is to consider it as a due process violation. *See Sameena, Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual's constitutional right to due process.") (internal quotations omitted).

65. Prejudice is generally presumed when an agency violates its own policy. *See Montilla*, 926 F.2d at 167 ("We hold that an alien claiming the INS has failed to adhere to its own regulations . . . is not required to make a showing of prejudice before he is entitled to relief. All that need be shown is that the subject regulations were for the alien's benefit and that the INS failed to adhere to them."); *U.S. v. Heffner*, 420 F.2d 809, 813 (4th Cir. 1969) ("The *Accardi* doctrine

furthermore requires reversal irrespective of whether a new trial will produce the same verdict.").

66. To remedy an *Accardi* violation, a court may direct the agency to properly apply its policy. *See Damus*, 313 F. Supp. 3d at 343 ("[T]his Court is simply ordering that Defendants do what they already admit is required."). Alternatively, a court may apply the policy itself and order relief consistent with the policy. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners' custody under ICE's standards because "it would be particularly unfair to require that petitioners remain detained . . . while ICE attempts to remedy its failure").

67. ICE's long-standing Fear-based Grant Release Policy is to release non-citizens immediately following a grant of withholding or CAT relief absent exceptional circumstances. *See* Ex. 5 at 2 ("In general, it is ICE policy to favor the release [non-citizens] who have been granted protection by an immigration judge, absent exceptional concerns . . ."); *id.* at 4 ("Pursuant to longstanding policy, absent exceptional circumstances . . . noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge *should* be released . . .") (emphasis added). The Policy specifically instructs the local ICE field office to make an individualized determination whether to keep a non-citizen detained based on exceptional circumstances. *See id.* at 3 ("[T]he Field Office Director must approve any decision to keep a[] [non-citizen] who received a grant of [asylum, withholding, or CAT relief] in custody."). The Policy constitutes ICE's interpretation of the statute and regulations governing post-removal order detention. *See* 8 U.S.C. § 1231; 8 C.F.R. §§ 241.4, 241.13, 241.14. To boot, on July 21, 2025, ICE Acting Director Todd Lyons in a public interview reiterated: "under the Supreme Court ruling of *Zadvydas*, we don't hold punitively, so we can only hold someone for six months to effectuate their removal." Ex. 11 at 14.

68. The Policy is precisely the type of rule ICE is obligated to follow under *Accardi*. In *Damus*, the U.S. District Court for the District of Columbia found that a similarly styled ICE directive from 2009 laying out "procedures ICE must undertake to determine whether a given asylum-seeker should be granted parole" fell "squarely within the ambit of those agency actions to which the [*Accardi*] doctrine may attach," in part because it "establish[ed] a set of minimum protections for those seeking asylum" and "was intended—at least in part—to benefit asylum

seekers navigating the parole process." 313 F. Supp. 3d at 324, 337–38; *see also Pasquini v. Morris*, 700 F.2d 658, 663 n.1 (11th Cir. 1983) ("Although the [INS] internal operating instruction confers no substantive rights on the [noncitizen]-applicant, it does confer the procedural right to be considered for such status upon application."). Similarly, the Policy here establishes procedures for reviewing the custody of non-citizens who are granted immigration relief and is clearly intended, at least in part, to benefit those non-citizens. *See* Ex. 5 at 4 (referring to "ICE policy favoring a non-citizen's release").

69. Furthermore, by reiterating the Policy four times over the last two decades and using mandatory language, ICE leadership has clearly indicated that it intends the Policy to be binding on all field offices and officers. *See, e.g.*, Ex. 5 at 2 ("In all cases, the Field Office director *must* . . .") (emphasis added); *id.* at 4 ("I am issuing this reminder to ensure that ICE personnel remain cognizant of and continue to follow this Directive."); *see also Padula v. Webster*, 822 F.2d 97, 100 (D.C. Cir. 1987) ("[A]n agency pronouncement is transformed into a binding norm if so intended by the agency.").

70. In Y.T.D.'s case, Respondents should have reviewed his custody under the Fear-based Grant Release Policy as soon as they decided not to appeal his grant of withholding of removal relief, and then again when it became administratively final. *See* Ex. 5 at 3. Upon information and belief, they did not. There is furthermore no evidence that the San Francisco ICE Field Office Director, Respondent Becerra, who is vested with non-delegable review power under the Fear-based Grant Release Policy, approved Y.T.D.'s continued detention at any point after he was granted relief, as required by the Policy. *See id.* at 2–3.

71. Respondents' failure to promptly review Y.T.D.'s custody in accord with the Fear-based Grant Release Policy's procedure and factors is prejudicial to him. Prejudice can be presumed because the Policy implicates Y.T.D.'s fundamental liberty interests and due process rights. The Policy provides Y.T.D. with a discrete opportunity to win his freedom from detention and that opportunity has thus far been withheld from him. *See Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

72. Even if Respondents conducted the standard 90-day custody review under 8 C.F.R. § 241.4, that would not have sufficed to comply with the Policy. 8 C.F.R. § 241.4, which facially applies to all non-citizens subject to an administratively final order of removal, employs a different standard that places the burden of proof on the non-citizen to justify their release. *See* 8 C.F.R. § 241.4(d)(1) ("[ICE] may release a[] [non-citizen] if the [non-citizen] demonstrates to the satisfaction of [ICE] that his or her release will not pose a danger to the community or to the safety of other person or to property or a significant risk of flight . . .").

73. In contrast, the Policy presumes that non-citizens granted withholding or CAT relief will be released "absent exceptional circumstances, such as when the non-citizen presents a national security threat or a danger to the community." Ex. 5 at 4. If Respondents were to review Y.T.D.'s custody under the Policy, he would very likely be released.

74. Therefore, Y.T.D. has been prejudiced by Respondents' failure to review his custody under the Policy's "exceptional circumstances" standard. According to the *Accardi* doctrine, Respondents' departure from their own policy is arbitrary, capricious, and contrary to law under the APA and violates Y.T.D.'s due process rights.

75. As a remedy, this Court should review Y.T.D.'s custody under the Policy's "exceptional circumstances" standard and order his release accordingly. *See Jimenez*, 317 F. Supp. at 657 ("In these circumstances, it is most appropriate that the court exercise its equitable authority to remedy the violations of petitioners' constitutional rights to due process by promptly deciding itself whether each should be released."). At the very least, this Court should order that Respondents immediately conduct such a review for Y.T.D. pursuant to the Policy. *See Damus*, 313 F. Supp. 3d at 343.

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1231(a)(6)

76. Y.T.D. realleges and incorporates by reference the paragraphs above.

77. 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for "a period reasonably necessary to bring about the alien's removal from the United

States." 533 U.S. at 689, 701.

78. Y.T.D.'s continued detention has become unreasonable because his removal is not reasonably foreseeable. Therefore, his continued detention violates 8 U.S.C. § 1231(a)(6), and he must be immediately released.

COUNT II

ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)

79. Y.T.D. realleges and incorporates by reference the paragraphs above.

80. Courts must "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).

81. ICE has deviated from its own policy in continuing to detain Y.T.D. after he was granted immigration relief, without determining whether exceptional circumstances warrant his continued detention. This is arbitrary, capricious, and contrary to law in violation of the APA.

COUNT III

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

82. Y.T.D. realleges and incorporates by reference the paragraphs above.

83. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Cont. amend. V. To comply with the Due Process Clause, civil detention must "bear[] a reasonable relation to the purpose for which the individual was committed," which for immigration detention is removal from the United States. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690). Furthermore, "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotations omitted).

84. ICE has violated Y.T.D.'s due process rights by continuing to detain him even though his removable is not reasonably foreseeable. Second, ICE has violated Y.T.D.'s due process rights by denying him an individualized custody review to which he is entitled under ICE policy.

Third, if ICE intends to remove Y.T.D. to any third country without affording him the mandated due process, including the opportunity to be heard on a fear claim, that too would violate the Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE, Y.T.D. respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Declare that Y.T.D.'s continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6); the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

c. Order Petitioner's immediate release;

d. Alternatively, review Y.T.D.'s custody under the standard articulated in ICE policy, or order ICE to review Y.T.D.'s custody accordingly;

e. Award Y.T.D. all costs incurred in maintaining this action, including attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412, and on any other basis justified by law; and

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

Respectfully submitted,

Dated: August 29, 2025

/s/ Sean Lai McMahon

Sean Lai McMahon (SBN: 329684)
California Collaborative for Immigrant Justice
1999 Harrison St, Ste. 1800
Oakland, CA 94612
(415) 875-0550
sean@ccijustice.org

Pirzada Ahmad (*pro hac vice* application submitted)
Dontzin, Kolbe & Fleissig LLP
31 E 62nd St, Fl. 7
New York, NY 10065
(212) 717-2900
pahmad@dkfllp.com

Counsel for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242 AND LR 190

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. 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 this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this 29th day of August 2025 in Oakland, CA.

/s/ Sean Lai McMahon

Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure and L.R. 65-1, I hereby certify that on August 29, 2025, this was filed in the Eastern District of California, which effectuates service on the U.S. Attorney's Office.

Respectfully submitted,

Dated: August 29, 2025

/s/ Sean Lai McMahon

Counsel for Petitioner