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10 **IN THE UNITED STATES DISTRICT COURT
11 DISTRICT OF ARIZONA**

12 Khikmatdzhon Iakubov,

13 Petitioner,

14 v.

15 Fred Figueroa, in his official capacity as
16 the Facility Administrator of the Eloy
17 Detention Center;

18 John Cantu, in his official capacity as
19 Phoenix Field Office Director for U.S.
Immigration and Customs Enforcement;

20 Todd Lyons, in his official capacity as
21 Acting Director of U.S. Customs and
22 Immigration Enforcement;

23 Kristi Noem, in her official capacity as
24 Secretary of the Department of
Homeland Security; and

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

27 Respondents.
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Case No.

VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241
AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

INTRODUCTION

1 1. When Tajik police found Khikmatdzhon Iakubov (“Mr. Iakubov”) at an
2 LGBT social gathering with a Pride flag hanging on the wall, they arrested, beat, and
3 tortured him, and then outed him to his family. His family then also beat him, and he was
4 forced to flee to a distant town. But not far enough: his uncle and cousins tracked him
5 down and attacked him one night, bludgeoning and stabbing him and leaving him to die
6 in the street. When he miraculously survived after two weeks in a hospital, he fled to
7 Russia, but it was only escaping the frying pan to wind up in the fire. In Russia, he was
8 arrested while praying in a mosque and tortured by police for five days in an effort to
9 conscript him into the Russian war in Ukraine.

10 2. Mr. Iakubov fled to this country and sought protection from an immigration
11 court. Despite appearing pro se, he won withholding of removal under the Immigration
12 and Nationality Act (INA) to both Tajikistan and Russia, and also won withholding of
13 removal to Russia under the Convention Against Torture (CAT). The immigration judge
14 further found that he would have granted Mr. Iakubov full asylum, were it not for
15 President Biden’s Circumvention of Lawful Pathways rule. *See* ECF No. 1-2 (IJ decision).
16 On February 25, 2025, the Board of Immigration Appeals (BIA) affirmed the immigration
17 judge’s decision and dismissed DHS’s appeal. *See* ECF No. 1-3 (BIA decision).

18 3. Mr. Iakubov has been incarcerated in an ICE detention facility in Eloy,
19 Arizona since January 11, 2024, nearly 600 days ago. Over six months of this detention
20 has been since the BIA decision which put an end to his immigration case and rendered
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1 the IJ's order of removal and withholding of removal final. Because of the immigration
2 court's order, ICE cannot lawfully remove him to either Tajikistan or Russia, and its
3 attempts to find a third country to which to remove him have proven fruitless. In *Zadvydas*
4 *v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that noncitizens cannot be detained
5 indefinitely on the off chance that the government might someday be able to remove them.
6 His continuing and prolonged detention has become unlawful under *Zadvydas*, and his
7 procedural due process rights have further been eroded by ICE's failure to follow its own
8 custody review regulations, as detailed more fully herein.
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10 4. The Supreme Court made clear in *Zadvydas* that the only permissible bases
11 for prolonged detention are an individual's dangerousness and/or a flight risk posed by
12 the person. Here, Mr. Iakubov has no criminal history in the United States or abroad, and
13 there has been no allegation at any time that he poses a danger to anyone. Furthermore,
14 as the Court noted in *Zadvydas*, detaining a noncitizen indefinitely based on flight risk
15 cannot be justified because such justification "is weak or nonexistent where removal
16 seems a remote possibility at best." *Zadvydas*, 533 U.S. at 690. Mr. Iakubov is not a flight
17 risk in any event: he has submitted declarations from his U.S.-citizen sponsor, Marziya
18 Kurbonasenova, a family friend who has promised to ensure Mr. Iakubov has food and
19 housing and has further promised to guarantee his appearance at any necessary ICE
20 appointments. *See* ECF No. 1-4 (letter from sponsor).

21 5. Mr. Iakubov's continued detention violates his due process rights and
22 furthermore serves no legitimate purpose. As detailed herein, the violation of Mr.
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Iakubov's procedural due process rights is only underscored by ICE's failure even to follow its own custody regulations in his case. This Court should grant habeas relief and order his immediate release.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, since this Petition arises under the Constitution and laws of the United States, namely the 7
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detention provisions of the Immigration and Nationality Act, 8 U.S.C. § 1231; the accompanying regulations codified at 8 C.F.R. § 241.4, *et seq*; the habeas corpus statute, 28 U.S.C. § 2241; and the Due Process Clause of the Fifth Amendment.

12. 7. This Court may grant relief pursuant to the Habeas Corpus Act, 28 U.S.C. 13
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§ 2241, *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; and the Court's inherent equitable powers.

19. 8. Federal district courts have jurisdiction to hear habeas claims by 20
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noncitizens challenging the lawfulness of their detention. *Zadvydas*, 533 U.S. at 687.

27. 9. Federal courts also have federal question jurisdiction, through the APA, to 28
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“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 claims are cognizable via habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by “any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus”). The APA affords a right of review to a person who is “adversely affected or aggrieved by

agency action.” 5 U.S.C. § 702. ICE’s continued detention of Mr. Iakubov has adversely and severely affected his liberty.

10. Venue is proper in this district pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because at the time of filing Petitioner was detained in the Eloy Detention Center in Eloy, Arizona, within the jurisdiction of this Court; a substantial part of the events and omissions giving rise to the claim occurred in this district; Respondents Cantu and Figueroa reside in this district; and Respondents are officers of the United States acting in their official capacity.

11. Exhaustion of administrative remedies is not required because it would be futile.

PARTIES

12. Mr. Iakubov is a 30-year-old citizen of Tajikistan and Russia who is being detained by Respondents at the Eloy Detention Center in Eloy, Arizona.

13. Respondent Fred Figueroa is the Facility Administrator of the Eloy Detention Center, which detains individuals suspected of civil immigration violations pursuant to a contract with Immigration and Customs Enforcement (ICE). Respondent Figueroa is the immediate physical custodian responsible for the detention of Petitioner. He is named in his official capacity.

14. Respondent John Cantu is the director of ICE's Phoenix Field Office, which is responsible for ICE activities in Arizona and is responsible for the Eloy Detention Center. Respondent Cantu's place of business is in the District of Arizona, and he is an

1 immediate legal custodian responsible for Petitioner's detention. He is named in his
2 official capacity.

3 15. Respondent Todd Lyons is the Acting Director of ICE. Respondent Lyons
4 is responsible for ICE's policies, practices, and procedures, including those relating to
5 detention of immigrants during the removal process. Respondent Lyons is a legal
6 custodian of Petitioner. He is named in his official capacity.

7 16. Respondent Kristi Noem is the Secretary of the U.S. Department of
8 Homeland Security. She is named in her official capacity. In that capacity, Respondent
9 Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C.
10 § 1103.

11 17. Respondent Pamela J. Bondi is the Attorney General of the United States.
12 She is named in her official capacity.

13 **FACTUAL BACKGROUND**

14 **Events in Tajikistan and Russia**

15 18. When Mr. Iakubov was about 14 or 15 he started to realize he was attracted
16 to males, and by age 16 he identified as LGBT. He did not tell anyone about his sexual
17 orientation because he felt it was unsafe for him to do so and that the police would not
18 protect him.

19 19. When he was 20, Mr. Iakubov attended a birthday party with other members
20 of the LGBT community where there was loud music and an LGBT flag hanging up. The
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1 police raided the party and arrested all the participants, including Mr. Iakubov,
2 transporting him to a police station.

3 20. At the police station, officers cursed and berated Mr. Iakubov for his sexual
4 orientation, beat him for several hours, and also used electric chokers and torture against
5 those arrested at the party. The police also threatened to reveal Mr. Iakubov's sexual
6 orientation publicly, and in fact did so, phoning his family and disclosing the reason he
7 was at the police station.
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9 21. When his relatives came to pick him up at the police station and brought
10 him home, they beat him as well, saying he was a shame to the family.
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12 22. After being beaten by both the police and his own family, Mr. Iakubov fled
13 his home city of Dushanbe to another city, Khujand, around 350-400 kilometers away.
14 Somehow his outraged and homophobic relatives traced him there, for shortly after his
15 arrival in Khujand he was attacked one evening by masked assailants whose voices he
16 recognized as his uncle's and cousins'. During this attack, Mr. Iakubov was bludgeoned
17 with a heavy metal object and stabbed multiple times in the head and back. He lost
18 consciousness and woke up in the hospital, covered in bandages; he spent two weeks
19 recovering from his wounds before being released.
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21 23. Mr. Iakubov reported the attempted murder to the police but was given the
22 runaround and treated with coldness and indifference, such that he felt it would be
23 hopeless to depend on the authorities for any assistance. As soon as he mentioned he was
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1 LGBT, he noticed the police stopped taking any notes and showed no sign of interest in
2 helping him.

3 24. Shortly after the attempted murder, Mr. Iakubov, realizing his life was not
4 safe from his family anywhere in Tajikistan, fled to Russia to live with a friend. He and
5 his friend were involved in an intimate relationship, which led to their being the victims
6 of a homophobic street attack. After that, he carefully hid his sexual orientation while in
7 Russia.

8 25. In November 2023, Mr. Iakubov was in a mosque where people were
9 praying, and Russian police entered and arrested him and other immigrants. The police
10 took Mr. Iakubov to a police station, where they gave him documents to sign, while
11 refusing to tell him what the documents were. The police asked him about his attitude
12 toward the Russian war in Ukraine and he told them repeatedly that he was against the
13 war. Mr. Iakubov did not agree with the war and did not want to kill innocent people.

14 26. When he continued to refuse to sign the papers, the police began to torture
15 him, threatening him and beating him, including painful blows in the area of his liver. He
16 was held in a cell for five days, beaten every day, and not allowed to sleep.

17 27. After five days, a supervisor told Mr. Iakubov he would continue to be
18 tortured every day until he signed a paper volunteering to go to war. He felt he had no
19 choice but to sign the paper. Very shortly after signing the document, Mr. Iakubov fled
20 Russia, traveling to the United States by way of Tajikistan, Turkey, United Arab Emirates,
21 Brazil, and Mexico.

1 28. He entered the United States near San Luis, Arizona on or about January 9,
2 2024 and was taken into ICE custody shortly thereafter. He has remained in custody ever
3 since.

4 **Immigration court proceedings**

5 29. Mr. Iakubov was served with a Notice to Appear on or about January 18,
6 2024, charging him with being a noncitizen present in the United States without being
7 admitted or paroled.

8 30. A merits hearing was held on July 15, 2024, at which the immigration court
9 granted Mr. Iakubov's application for withholding of removal to Tajikistan under the INA
10 because of past persecution he had suffered due to his LGBT identity and further granted
11 his application for withholding of removal to Russia under both the INA and CAT. In its
12 decision, the immigration court stated that it would have granted asylum as to both
13 Tajikistan and Russia, but was prevented from doing so by the Circumvention of Lawful
14 Pathways asylum ban. As a result, the immigration court ordered Mr. Iakubov removed
15 from the United States, but prohibited Respondents from removing him to either
16 Tajikistan or Russia, and the court did not specify an alternate country of removal.

17 31. DHS filed a notice of appeal to the Board of Immigration Appeals on
18 August 14, 2024. On February 25, 2025, the BIA rejected DHS's appeal and affirmed the
19 immigration judge's grant of withholding of removal.

20 **Post-order custody and removal**

21 32. 8 U.S.C. § 1231(a) governs the detention of noncitizens who have been

1 ordered removed from the United States. 8 U.S.C. § 1231(a)(1)(A) provides for a removal
2 period of 90 days. This period begins on “[t]he date the order of removal becomes
3 administratively final,” which in this case was the date of the BIA decision, February 25,
4 2025. 8 U.S.C. § 1231(a)(1)(B)(i).

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6 33. Mr. Iakubov has been detained pursuant to 8 U.S.C. § 1231(a) since
7 February 25, 2025, for a total period that now exceeds six months. His continuing
8 detention at Eloy violates his due process rights as articulated by the Supreme Court in
9 *Zadvydas*.

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11 34. Following the Court’s decision in *Zadvydas*, “DHS promulgated
12 regulations to implement the newly established constitutional constraints.” *Bonitto v.*
13 *Bureau of Immigration and Customs Enforcement*, 547 F. Supp. 2d 747, 752 (S.D. Tex.
14 2008). Those regulations are codified at 8 C.F.R. § 241.4 and provide for reviews of a
15 noncitizen’s continuing detention after 90 days and again after 180 days. *See Bonitto*, 547
16 F. Supp. 2d at 752-53 (describing procedures).

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18 35. The provisions for the 90-day review are set out in 8 C.F.R. § 241.4(h),
19 which provides that the district director or Director of the Detention and Removal Field
20 Office will conduct “a review of the alien’s records and any written information submitted
21 in English to the district director by or on behalf of the alien.” In considering whether to
22 release the noncitizen, the district director is required to consider the factors set out in
23 § 241.4(f), which include the noncitizen’s criminal record, mental health reports, evidence
24 of rehabilitation, prior immigration violations and history, and other factors.
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1 36. On or about May 2, 2025, ICE served on Mr. Iakubov a written notice that
2 it would be conducting his 90-day custody review on or about May 26, 2025. The notice
3 listed nine factors that the Field Office Director could consider in deciding whether to
4 release him: “(1) The nature and seriousness of your criminal convictions; (2) Other
5 criminal history; (3) Sentence(s) imposed and time actually served; (4) History of escapes,
6 failure to appear for judicial or other proceedings, and other defaults; (5) Probation
7 history; (6) Disciplinary problems while incarcerated; (7) Evidence of rehabilitative effort
8 or recidivism; (8) Equities in the United States; (9) Prior immigration violations and
9 history.”

10 37. None of the factors listed in the custody review notice weighed against Mr.
11 Iakubov’s release, since he has no criminal history of any kind. Nor are any of the other
12 factors listed in § 241.4(f) relevant to his case. Furthermore, he submitted documentation
13 from his friend, Marziya Kurbonasenova, a U.S. citizen, who has agreed to act as his
14 sponsor if he is released from custody, indicating that he is not a flight risk.

15 38. On or about June 5, 2025, ICE issued a “Decision to Continue Detention,”
16 stating that, “after [] review, ICE has determined to maintain your custody because: Pose
17 a significant risk of flight pending your removal from the United States. ICE has made
18 such determination based upon: Your illegal entry into the United States shows a disregard
19 to laws and indicates that you are a flight risk.” See ECF No. 1-5 (Decision to Continue
20 Detention).

1 39. The decision to continue Mr. Iakubov's detention does not actually appear
2 to be based on the factors listed in the applicable regulations and instead is merely
3 boilerplate or pretextual. If "illegal entry into the United States" were grounds to deny
4 release to a detained noncitizen, virtually no one would ever be released. *See, e.g.*,
5 *Bonitto*, 547 F. Supp. 2d at 757-58 ("[T]he Court notes the shortcomings in the 90-day
6 POCR ... at present it appears to lack a reasoned basis.... Conclusory statements that
7 removal is 'expected in the reasonably foreseeable future' or that an alien would 'pose a
8 danger to society' if released, with no factual basis or explanation, teeters dangerously
9 close to a perfunctory and superficial pretense instead of a meaningful review sufficient
10 to comport with due process standards.")

11 40. If the district director decides to continue detention after the 90-day removal
12 period, another review is mandated at the 180-day mark, the procedures for which are set
13 out in § 241.4(i). Under these procedures, a "Review Panel" of two members is supposed
14 to review the noncitizen's records and make a recommendation on release; if the Director
15 of the Headquarters Post-Order Detention Unit (HQPDU) does not accept their
16 recommendation, or if the panel does not recommend release, the Review Panel "shall
17 personally interview the detainee." § 241.4(i)(3)(i). Following the interview, the Review
18 Panel "shall issue a written recommendation that the alien be released or remain in
19 custody." § 241.4(i)(5).

20 41. Mr. Iakubov was notified that his 180-day review interview would be held
21 on July 25, 2025, and his counsel at the Florence Immigrant and Refugee Rights Project
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1 submitted evidence in support of his release prior to that interview, including information
2 on his sponsor and other testimonials to his character.

3 42. The 180-day review was not conducted by a Review Panel as envisioned
4 by the regulations, and moreover, no copy of any decision on the 180-day review has been
5 served on Mr. Iakubov, even though over a month has passed, again in violation of
6 regulations. *See* 8 C.F.R. § 241.4(d)(2) (“All notices, decisions, or other documents in
7 connection with the custody reviews conducted under this section by the district director,
8 Director of the Detention and Removal Field Office, or Executive Associate
9 Commissioner shall be served on the alien”).

10 43. 8 C.F.R. § 241.4(f) sets out the factors that may be considered when
11 assessing whether a detainee should be released, including, “[t]he likelihood that the alien
12 is a significant flight risk or may abscond to avoid removal, including history of escapes,
13 failures to appear for immigration or other proceedings, absence without leave from any
14 halfway house or sponsorship program, and other defaults.” 8 C.F.R. § 241.4(f)(7). None
15 of the factors listed in § 241.4(f) supports continued detention in Mr. Iakubov’s case, nor
16 does ICE’s proffered justification that it intends to remove him, given the facts that (1) he
17 has already been detained in excess of the time permitted by *Zadvydas*, and (2) there is
18 no indication that his removal to a third country is imminent or even reasonably
19 foreseeable.

20 44. ICE’s failure to comply with regulations, including, but not limited to, its
21 pretextual reasons for denying release at the 90-day mark, and its failure to complete the
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1 180-day review and serve a decision on Mr. Iakubov, represents another violation of his
2 due process rights. *See, e.g., Bonitto*, 547 F. Supp. 2d at 757-58 (“Bonitto’s procedural
3 due process rights have been violated by DHS’s complete failure to provide the required
4 180-day review.”)

5 **ARGUMENT**

6 **A. Mr. Iakubov has been detained for an unreasonably long period and
7 has shown that his removal is not reasonably foreseeable.**

8 45. 8 U.S.C. § 1231(a) permits ICE to detain noncitizens during the “removal
9 period,” which is defined as the 90-day period during which “the Attorney General shall
10 remove the alien from the United States.” 8 U.S.C. § 1231(a)(1)(A).

11 46. The statute provides that “the removal period begins on the latest of the
12 following:

13 (i) The date the order of removal becomes administratively final.
14 (ii) If the removal order is judicially reviewed and if a court orders a stay of the
15 removal of the alien, the date of the court’s final order.
16 (iii) If the alien is detained or confined (except under an immigration process),
17 the date the alien is released from detention or confinement.” 8 U.S.C.
18 § 1231(a)(1)(B).

19 47. In this case, Mr. Iakubov had an administratively final removal order as of
20 February 25, 2025, the date of the BIA’s final judgment in his case. The 90-day removal
21 period therefore ended on May 26, 2025.

22 48. After the expiration of the 90-day removal period, 8 U.S.C. § 1231(a)(3)
23 provides that ICE may release noncitizens on an order of supervision. Alternatively, a
24 noncitizen “may be detained beyond the removal period” if they meet certain criteria,
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1 such as being inadmissible or deportable under specified statutory categories. 8 U.S.C.

2 § 1231(a)(6). Mr. Iakubov does not fall into any of these categories.

3 49. Constitutional limits on detention beyond the removal period are well
4 established. Government detention violates due process unless it is reasonably related to
5 a legitimate government purpose. *Zadvydas*, 533 U.S. at 701. “[W]here detention’s goal
6 is no longer practically attainable, detention no longer ‘bear[s] [a] reasonable relation to
7 the purpose for which the individual [was] committed.’” *Id.* at 690 (quoting *Jackson v.*
8 *Indiana*, 406 U.S. 715, 738 (1972)). Given that there has been no allegation of any
9 dangerousness in Mr. Iakubov’s case, and no neutral adjudicator has determined that Mr.
10 Iakubov poses a flight risk – indeed, he has provided evidence from his sponsor showing
11 that he will be safely housed with Marziya Kurbonasenova – all constitutional
12 justification for his prolonged detention has now evaporated.

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

18 51. As the Supreme Court explained, where there is no possibility of removal,
19 immigration detention presents due process concerns because the need to detain the
20 noncitizen to ensure the noncitizen’s availability for future removal proceedings is “weak

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1 or nonexistent.” *Zadvydas*, 533 U.S. at 690-92. Detention is lawful only when “necessary
2 to bring about that alien’s removal.” *See id.* at 689.

3 52. To balance these competing interests, the *Zadvydas* Court established a
4 rebuttable presumption regarding what constitutes a “reasonable period of detention” for
5 noncitizens after a removal order. *Id.* at 700-01. The Court determined that six months’
6 detention could be deemed a “presumptively reasonable period of detention,” after which
7 the burden shifts to the government to justify continued detention if the noncitizen
8 provides a “good reason to believe that there is no significant likelihood of removal in the
9 reasonably foreseeable future.” *Id.* at 701.

10 53. Here, Mr. Iakubov has been detained longer than the presumptively
11 reasonable six-month period. His removal period began on February 25, 2025, when the
12 immigration judge’s removal order became final, and he passed six months of post-
13 removal order custody on August 25, 2025.

14 54. Mr. Iakubov has “good reason to believe that there is no significant
15 likelihood of removal in the reasonably foreseeable future.” *Id.*

16 55. By law, Mr. Iakubov cannot be removed to either Tajikistan or Russia, and
17 he does not have citizenship in any other country, nor any ties to any other country.

18 56. Courts have often found that a petitioner in Mr. Iakubov’s position meets
19 his burden of showing that his removal is not significantly likely to occur in the reasonable
20 future if he can show that removal to his home country is impossible. *See, e.g., Palma v.*
21 *Gillis*, 2020 WL 4880158, at *2 (S.D. Miss. July 7, 2020) (“to shift the burden to the
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1 Government, an alien must demonstrate ... barriers to his repatriation to his country of
2 origin"); *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 707-08 (S.D. Tex. 2020)
3 (Pakistani man met burden by showing he could not be removed to Pakistan); *Joseph v.*
4 *Mukasey*, 2009 WL 331558, at *4 (N.D. Fla. Feb. 10, 2009) (dual citizen of Bahamas and
5 Haiti met burden by showing Bahamas would not issue travel documents for him).

7 57. A recent case from the Southern District of Georgia is also on point. In
8 *Ambrosi v. Warden, Folkston ICE Processing Ctr.*, 5:25-cv-00013 (S.D. Ga. Aug. 18,
9 2025) (Dkt. 26), an Ecuadorian national who had been granted withholding of removal to
10 Ecuador filed a petition under *Zadvydas* seeking his release from prolonged detention,
11 and a magistrate judge recommended that the petition be granted because "he cannot be
12 removed to his country of origin (Ecuador) and ICE cannot feasibly remove him to
13 another country ... ICE has attempted to have [him] deported to a third country, but those
14 countries denied the requests and ICE 'does not have an expected timeline for [his]
15 removal to a third country.'" *Id.* at 5-6.

19 58. DHS has made efforts to remove Mr. Iakubov to random "third countries,"
20 but these efforts have been unsuccessful. DHS cannot keep Mr. Iakubov incarcerated
21 indefinitely simply on the off chance that it might one day find a country where it can
22 send him.

24 59. Counsel for Mr. Iakubov is litigating nearly factually identical cases in other
25 districts, and DHS's admissions in those cases are also relevant to this case. In the legally
26 indistinguishable case of a Kyrgyz man granted INA withholding which counsel recently
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1 litigated in the Southern District of Texas, DHS submitted a declaration stating that it had
2 contacted Russia, Mexico, and Costa Rica in an attempt to remove the petitioner; Russia
3 and Mexico did not respond, and Costa Rica declined. In another case counsel is preparing
4 to file in the District of Kansas, in which a Georgian man was granted INA withholding,
5 an ICE deportation officer admitted in an email that “We are submitting acceptance
6 requests to three other countries once a final order takes effect. These are never
7 successful[.]” In short, there is good reason to believe, based on DHS’s current actions
8 (or inaction) in legally indistinguishable cases of noncitizens from the same part of the
9 world, that there is not a third country presently willing to accept Mr. Iakubov.

12 60. Furthermore, Mr. Iakubov would be able to assert a credible fear of removal
13 to a third country if that country had an extradition treaty with Russia or Tajikistan or had
14 demonstrated a history of refoulement of refugees to their home countries. As one district
15 court recently noted, the U.S. has been violating the principle of non-refoulement by
16 deporting refugees to third countries who are not bound by U.S. immigration court orders
17 and which then immediately return the refugees to their homelands, where they face
18 persecution. *See Abrego Garcia v. Noem*, 2025 WL 2062203 (D. Md. July 23, 2025), at
19 *9, n. 15 (citing removal of Guatemalan refugee to Mexico, which then immediately sent
20 him to Guatemala, and case of Venezuelans with pending asylum claims who were sent
21 to El Salvador, which then returned them to Venezuela in a prisoner swap). Similarly, it
22 has been reported in the media that refugees removed to Eswatini will be refouled to their
23 home countries. *See* “5 immigrants deported by the US to Eswatini in Africa are held in
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1 solitary confinement," (July 17, 2025), available at: <https://www.politico.com/news/2025/07/17/5-immigrants-deported-by-the-us-to-eswatini-in-africa-are-held-in-solitary-confinement-00461712>. Because any third country to which Respondents might send Mr. Iakubov could return him to Tajikistan or Russia in violation of the U.S.'s obligations of non-refoulement, Mr. Iakubov would assert a credible fear to such removal and would be entitled to a credible fear hearing before U.S. Citizenship and Immigration Services. *See D.V.D. v. U.S. Dep't of Homeland Security*, -- F. Supp.3d --, 2025 WL 1142968 (D. Mass. April 18, 2025) at *25, n.48.

11 61. Respondents have been legally entitled to remove Mr. Iakubov to a safe
12 third country for more than six months, but have for whatever reason been unable or
13 unwilling to do so; therefore, it appears that there is "good reason" to believe there is no
14 "significant likelihood" of his removal "in the *reasonably* foreseeable future" (emphasis
15 added). At this point, the Government "must respond with evidence sufficient" to indicate
16 that it is *significantly* likely that Mr. Iakubov will, in fact, be removed in a *reasonable*
17 period of time. *Zadvydas*, 533 U.S. at 701.

18 **B. The Government must be required to rebut Mr. Iakubov's showing.**

19 62. Some deference is owed to the government's assessment of the likelihood
20 of removal and the time it will take to execute removal. *Id.* at 700. However, just as pro
21 forma findings of dangerousness do not suffice to justify indefinite detention, pro forma
22 statements that removal is likely should not satisfy the government's burden. The
23 government must rebut a detainee's showing that there is no significant likelihood of
24 removal. *Zadvydas*, 533 U.S. at 701.

1 removal in the reasonably foreseeable future with “evidence of progress . . . in negotiating
2 a petitioner’s repatriation.” *Gebrelibanos v. Wolf*, 2020 WL 5909487 at *3 (S.D. Cal., Oct.
3 6, 2020); *Hassoun v. Sessions*, 2019 WL 78984 at *4 (W.D.N.Y. Jan. 2, 2019) (“[A]s time
4 passes, the mere existence of possible avenues for removal becomes insufficient to justify
5 further detention; some evidence of progress is required”) (collecting cases).

6 63. The longer a noncitizen is detained, the more evidence the Government
7 needs to put forward to justify continued detention. Specifically, “for detention to remain
8 reasonable [once six months of detention have passed], as the period of prior post-removal
9 confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would
10 have to shrink.” *Zadvydas*, 533 U.S. at 701; see also *Alexander v. Att’y Gen. U.S.*, 495 F.
11 App’x 274, 275 (3d Cir. 2012) (“[T]he longer an alien is detained, the less he must put
12 forward to obtain relief”); *Hassoun*, 2019 WL 78984 at *4 (“[T]he government’s burden
13 becomes more onerous the longer an alien is detained, because it must show that removal
14 will be effectuated sooner in the future.”).

15 64. Even if ICE is engaged in ongoing efforts to secure removal, such efforts
16 alone do not mitigate already-prolonged detention, nor do they render removal reasonably
17 foreseeable. *See Shefqet v. Ashcroft*, 2003 WL 1964290 at *5 (N.D. Ill. April 28, 2003)
18 (“Even if [ICE] has been making regular efforts to secure Petitioner’s travel document
19 . . . at this time there must be some concrete evidence of progress. [ICE] cannot rely on
20 good faith efforts alone”). The likelihood of removal “does not turn on the degree of the
21 government’s good faith efforts,” but rather “on whether and to what extent the
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1 government's efforts are likely to bear fruit." *Hassoun*, 2019 WL 78984 at *5. Indeed, the
2 Supreme Court specifically rejected the notion that removal is reasonably foreseeable as
3 long as "good faith efforts" continue, holding that such a standard "would seem to require
4 an alien seeking release to show the absence of any prospect of removal—no matter how
5 unlikely or unforeseeable—which demands more than our reading of the statute can bear."
6

7 *Zadvydas*, 533 U.S. at 701. "[I]f [ICE] has no idea of when it might reasonably expect
8 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is
9 likely to occur—or even that it might occur—in the reasonably foreseeable future."

10 *Palma*, 2020 WL 4880158, at *3 (citing *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102
11 (W.D.N.Y. 2019)).

12 65. Given ICE's total failure to take any meaningful step toward removing Mr.
13 Iakubov in more than six months, this Court should order Mr. Iakubov's immediate
14 release subject to whatever conditions this Court deems appropriate. *See, e.g., Manson v.*
15 *Barr*, 2020 WL 3962235 (M.D. Fla. July 13, 2020), at *3 (ordering immediate release on
16 conditions of supervision pursuant to 8 U.S.C. § 1231(a)(3)).

17 20 **C. ICE has failed to comply with its own regulations with respect to Mr.**
18 **Iakubov's custody.**

21 66. ICE's regulations provide that, by the end of the 90-day removal period that
22 begins upon a noncitizen's removal order becoming final, the local ICE field office with
23 jurisdiction over the noncitizen's detention must conduct a custody review to determine
24 whether the noncitizen should remain detained. *See* 8 C.F.R. § 241.4(c)(1), (h)(1),
25 (k)(1)(i). If the noncitizen is not released following the 90-day custody review,
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1 jurisdiction transfers to ICE Headquarters (“ICE HQ”), § 241.4(c)(2), which must
2 conduct a custody review before or at 180 days. § 241.4(k)(2)(ii). In making these custody
3 determinations, ICE considers several factors, including whether the noncitizen is likely
4 to pose a danger to the community or will be a flight risk if released. § 241.4(e)-(f).
5

6 67. Here, as alleged more fully above, ICE’s 90-day review was merely
7 pretextual and denied Mr. Iakubov release based on boilerplate reasons, instead of the
8 factors required to be considered by the regulations, and ICE failed to serve the decision
9 of a 180-day custody review on Mr. Iakubov at all.

10 68. ICE’s failure to review Mr. Iakubov’s custody appropriately is prejudicial.
11 Prejudice can be presumed because the custody review regulations implicate fundamental
12 liberty interests and due process rights. *See, e.g., Leslie v. Att’y Gen. of U.S.*, 611 F.3d
13 171, 180 (3d Cir. 2010) (“For the sake of emphasis, we repeat: we hold that when an
14 agency promulgates a regulation protecting fundamental statutory or constitutional rights
15 of parties appearing before it, the agency must comply with that regulation. Failure to
16 comply will merit invalidation of the challenged agency action.”). The regulations
17 provide noncitizens with a discrete opportunity to obtain freedom from detention, and
18 that opportunity has thus far been withheld from Mr. Iakubov. *See Zadvydas*, 533 U.S. at
19 690 (“Freedom from imprisonment—from government custody, detention, or other forms
20 of physical restraint—lies at the heart of the liberty that [the Due Process] Clause
21 protects.”).

1 69. A sister district court dealt with a factually similar scenario in *Bonitto v.*
2 *Bureau of Immigr. & Customs Enforcement*, 547 F. Supp. 2d 747 (S.D. Tex. 2008).
3 Relevant to this case, the *Bonitto* court found that the “Respondent’s failure to comply
4 with the review procedures outlined in the applicable regulations violates Petitioner’s
5 procedural due process rights.” *Id.* at 755. As the court pointed out, “it is a denial of
6 procedural due process for any government agency to fail to follow its own regulations
7 providing procedural safeguards to persons involved in adjudicative processes before it.”
8
9 *Id.* (citing *Government of Canal Zone v. Brooks*, 427 F.2d 346, 347 (5th Cir. 1970)). The
10 *Bonitto* court went on to note that, “Where individual interests are implicated, the Due
11 Process clause requires that an executive agency adhere to the standards by which it
12 professes its actions to be judged. The regulations involved here do not merely facilitate
13 internal agency housekeeping, but rather afford important and imperative procedural
14 safeguards to detainees. This Court must insist on DHS’s compliance with the post-order
15 custody regulations if Bonitto’s detention is to remain constitutional.” *Id.* at 756 (internal
16 citations omitted). The court in that case granted habeas relief and ordered DHS to
17 conduct a “meaningful post-removal custody review.”
18

21 70. For the reasons set out above and discussed at length in *Bonitto*, ICE’s non-
22 compliance with its own regulations violates the APA and Mr. Iakubov’s due process
23 rights. As a remedy, this Court should review Mr. Iakubov’s custody under 8 C.F.R.
24 § 241.4 and/or § 241.13, and it should order his release if appropriate under those
25 standards. See *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (“In these
26
27 standards. See *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (“In these
28

1 circumstances, it is most appropriate that the court exercise its equitable authority to
2 remedy the violations of petitioners' constitutional rights to due process by promptly
3 deciding itself whether each should be released.”)

4

5 **D. Due process requires notice and a meaningful opportunity to be heard**
6 **before Mr. Iakubov is removed to a third country not specified in the**
7 **IJ's order.**

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

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

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

8 74. The U.S. District Court for the District of Massachusetts previously issued a
9 nationwide preliminary injunction blocking such third country removals without notice and
10 a meaningful opportunity to apply for relief under CAT, in recognition that the
11 government’s policy violates due process and the United States’ obligations under CAT.
12 *D.V.D. v. U.S. Dep’t of Homeland Security*, 778 F. Supp. 3d 355 (D. Mass. Apr. 18, 2025).

13 The U.S. Supreme Court has since granted the government’s motion to stay the injunction
14 on June 23, 2025, just before the Court issued *Trump v. Casa*, 606 U.S. ____ (2025) (June
15 27, 2025) limiting nationwide injunctions. The government has vehemently argued that 8
16 U.S.C. § 1252(f)(1) precludes nationwide injunctive relief. Thus, the Supreme Court’s
17 order, which is not accompanied by an opinion, signals likely disagreement with the
18 preliminary injunctive relief provided for the nationwide class, as opposed to any
19 disagreement as to the substance of the statutory rights determined by the district court in
20 *D.V.D.*

1 75. Thus, if Mr. Iakubov were to be removed to any third country, it would
2 violate his statutory and due process rights unless he is first provided with constitutionally
3 adequate notice and a meaningful opportunity to apply for protection under the INA and
4 CAT. In the absence of any other injunction, intervention by this Court is necessary to
5 protect those rights.

CLAIMS FOR RELIEF

Count I – Violation of 8 U.S.C. § 1231(a), as interpreted by *Zadvydas*

76. Petitioner re-alleges and incorporates by reference all preceding paragraphs.

77. Mr. Iakubov's prolonged and open-ended detention by Respondents violates 8 U.S.C. § 1231(a), as interpreted by *Zadvydas*. Mr. Iakubov's 90-day statutory removal period and six-month presumptively reasonable removal period for continued removal efforts have passed.

78. Respondents' failure to remove to Mr. Iakubov over a six-month span indicates that Respondents either cannot or will not remove him in the reasonably foreseeable future, particularly given that Respondents are not legally allowed to send him to Tajikistan or Russia and he has no citizenship or ties to any other country.

79. Under *Zadvydas*, Mr. Iakubov's continued detention is unreasonable and not authorized by 8 U.S.C. § 1231.

Count II – Procedural Due Process – Unconstitutionally Indefinite Detention U.S. Const. amend. V

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

81. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty "without due process of law." U.S. Const. amend. V.

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

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

1 the noncitizen's immigration detention is reasonably related to the purposes of ensuring his
2 appearance or protecting the community, *Zadvydas*, 533 U.S. at 699, or require release.

3 84. Under this framework, Petitioner's release is required because his detention
4 violates his due process rights.
5

6 85. Petitioner's detention is unconstitutionally indefinite because he cannot be
7 removed to Tajikistan or Russia and has no ties or citizenship anywhere else. His continued
8 detention without any reasonably foreseeable end point is thus unconstitutionally
9 prolonged in violation of clear Supreme Court precedent. *Zadvydas*, 533 U.S. at 701.
10

11 86. Moreover, because Petitioner poses no danger or flight risk, his detention is
12 not reasonably related to its claimed purpose, and is unlawful.
13

14 **Count III – Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (D)**

15 87. Petitioner realleges and incorporates by reference all preceding paragraphs.

16 88. A "reviewing court shall (1) compel agency action unlawfully withheld or
17 unreasonably delayed; and (2) hold unlawful and set aside agency action, findings, and
18 conclusions found to be – (A) arbitrary, capricious, an abuse of discretion, or otherwise
19 not in accordance with law; [or] (D) without observance of procedure required by law."
20
21 5 U.S.C. § 706.
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23 89. ICE's actions and omissions, including, but not limited to: (1) its failure to
24 provide Mr. Iakubov with the decision of his 180-day custody review; (2) its arbitrary and
25 capricious decision to continue his detention after 90 days based on spurious, pretextual,
26 or boilerplate reasons; and (3) its failure to follow other provisions of the custody review
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process as outlined more fully above, constitute unlawful agency action that is subject to being set aside by this Court.

90. Respondents' continued detention of Mr. Iakubov violates his due process rights by denying him an individualized and meaningful custody review, to which he is entitled under 8 C.F.R. § 241.4.

Count IV - Procedural Due Process
Unconstitutionally Inadequate Procedures Regarding Third Country Removal
(U.S. Const. amend. V)

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

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

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

94. For these reasons, Petitioner's removal to any third country without adequate notice and an opportunity to apply for relief under the Convention Against

1 Torture would violate his due process rights. The only remedy of this violation is for this
2 Court to order that he not be summarily removed to any third country unless and until he
3 is provided constitutionally adequate procedures.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Petitioner respectfully requests that this Court:

6 (a) Assume jurisdiction over this matter;

7 (b) Declare that Petitioner's continued detention violates 8 U.S.C. § 1231, as
8 interpreted by the Supreme Court in *Zadvydas*;

9 (c) Declare that Petitioner's prolonged and indefinite detention violates his rights
10 under the Due Process Clause of the Fifth Amendment;

11 (d) Alternatively, declare that Respondent's continued detention of Petitioner
12 without strict compliance with the procedural requirements of 8 C.F.R. § 241.4
13 violates the Administrative Procedure Act, 5 U.S.C. § 706 and/or the Due
14 Process Clause of the Fifth Amendment;

15 (e) Grant a writ of habeas corpus and order Respondents to release Petitioner from
16 detention forthwith, on an order of supervision pursuant to 8 U.S.C.
17 § 1231(a)(3);

18 (f) Alternatively, review Petitioner's custody under the standards articulated in 8
19 C.F.R. § 241.4 and order his release under that standard, if appropriate;

20 (g) Enjoin Respondents from removing him to a third country without first
21 providing him with 21 days' notice written in a language he can understand and
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1 a meaningful opportunity to contest such removal under the Convention
2 Against Torture, including a reasonable fear interview before a DHS officer;
3 (h) Award Petitioner his reasonable attorneys' fees and costs pursuant to the Equal
4 Access to Justice Act or other applicable law;
5 (i) Grant any other relief that this Court deems just and proper.

6
7
8 Dated: September 2, 2025

Respectfully submitted,

9
10 /s/ James D. Jenkins*
11 James D. Jenkins (WA #63234)
12 P.O. Box 6373
13 Richmond, VA 23230
14 Tel.: (804) 873-8528
15 jjenkins@valancourtbooks.com
16 *Application for pro hac vice admission
17 forthcoming

18 /s/ Laura Belous
19 Laura Belous, 028132
20 Florence Immigrant & Refugee Rights Project
21 P.O. Box 86299
22 Tucson, AZ 85754
23 (520) 934-7257
24 lbelous@firrp.org

25
26
27
28 *Counsel for Petitioner*

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242

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

Dated: September 2, 2025

Respectfully submitted,

/s/ James D. Jenkins
James D. Jenkins