**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| VÍCTOR OMAR BONILLA ÁLVAREZ, Detained at JTF Camp 6/GTMO, Building 2144, Box 25, Naval Station Guantánamo Bay, Cuba, 09593-0001, A# XXX-XX[redacted], *Petitioner,* | |
| vs. | |
| KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity, 245 Murray Lane, SW, Washington, DC 20528, | |
| TODD LYONS, Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement, in his official capacity, 500 12th Street, SW Washington, DC 20536, | No. __-25:____-cv-_______ |
| Unknown WARDEN of JTF Camp 6, Naval Station Guantánamo Bay, Cuba, and | **PETITION FOR WRIT OF HABEAS CORPUS** |
| PETE HEGSETH, Secretary of Defense [War], in his official capacity, 1000 Defense Pentagon, Washington, DC 20301, | |
| *Respondents.* | |

## VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Victor Omar Bonilla Alvarez, ("Petitioner"), by and through undersigned counsel, hereby petitions this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful detention by the U.S. Immigration & Customs Enforcement ("ICE"), an agency of the U.S. Department of Homeland Security ("DHS"), and to enjoin his deportation without due process to a third country of removal. Petitioner has been in ICE custody since November, 2024, including more than six months since an Immigration Judge granted him protection from removal to his native country of El Salvador based on the high likelihood that he would be tortured with the consent or acquiescence of the authorities there. This action is brought pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2241, 5 U.S.C. § 551 *et seq.*, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651, for declaratory and injunctive relief to protect his rights under both the Due Process Clause of the Fifth Amendment to the Constitution and applicable federal law. In support of this petition, Petitioner alleges as follows:[1]

## INTRODUCTION

### A. Parties

**1.** Petitioner (In Custody), Victor Omar Bonilla Alvarez, is a Salvadoran citizen, born in **1993**, A# XXX-XX[redacted]. He has a final order of removal but was granted withholding of removal under the Convention Against Torture by an Immigration Judge. He is subject to the immediate physical control and constructive custody of ICE, located in JTF Camp Six, Naval Station Guantánamo Bay, Cuba.

**2.** Respondent Kristi Noem, is the U.S. Secretary for Homeland Security, who is charged with the enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of DHS. Secretary Noem is a legal custodian of Petitioner.

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[1] Pursuant to LCvR 5.1(e), supporting documentary evidence is not being attached hereto but will be provided in conjunction with any future motions to which it may pertain, at any future hearings, or as may otherwise be ordered.

**3.** Respondent Todd M. Lyons is the Acting Director and Senior Official Performing the Duties of the Director of ICE, who has policy and operational control over all field offices. He is a legal custodian of Petitioner.

**4.** Respondent Unknown Warden is the official in charge of immigrant detainees specifically at JTF Camp Six. It is unknown whether there is another official who serves this function; if so, such other official would be a further Respondent. Unknown Warden is the immediate custodian of Petitioner.

**5.** Respondent Pete Hegseth is the United States Secretary of Defense [War]. In this official capacity, he maintains custody and control over Petitioner, and is a legal custodian of Petitioner.

**B. <u>Jurisdiction</u>**

**6.** The claims in this action implicate a Federal Question under 28 U.S. Code § 1331, as they arise under the Constitution, the Immigration & Nationality Act of 1952, as amended ("INA"), 8 U.S.C. §§ 1101 *et seq.,* and the treaties of the United States including the U.N. Convention Against Torture ("CAT"). Jurisdiction also arises where the United States is a Respondent under 28 U.S.C. § 1346. Jurisdiction in the principal claim herein is proper under 28 U.S.C. § 2241(a), as Petitioner is a civil detainee, but in any event, if considered a prisoner, he would be eligible for habeas under § 2241(c)(1) and (3), in that Petitioner is in the Respondents' custody under or by color of law under the authority of the United States, and in violation of the Constitution or laws of the United States, as more fully set forth below. *See also,* Art. I, § 9, Cl. 2 of the United States Constitution (the

Suspension Clause). Appropriate relief by this Court may also be issued pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, as Mandamus under 28 U.S.C. § 1361, and the Court's inherent equitable powers.

### C. Venue

**7.** Venue under 28 U.S.C. § 1391 and 28 U.S.C. § 2241 lies in this District because Respondents are agencies of the United States or officers of agencies of the United States, they reside in this District, the DHS is headquartered in the District, and a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District. Venue also lies in this District because it has jurisdiction over the Guantánamo Bay Naval Base, where Petitioner is currently detained.

### D. Factual History

**8.** By way of brief summary, the Petitioner fled to the USA the first time in 2010 due to threats by the MS-13 against him and his family. He obtained Special Immigrant Juvenile Status ("SIJS"), but after his father was shot by the MS-13, he rushed home before adjusting status to that of a lawful permanent resident. Back in El Salvador, he was framed by the police and harassed with false charges over a period of about a decade. During multiple years of detention – including arbitrary detention without charge even after being exonerated in court – he was raped and variously tortured by or at the direction of the authorities. After winning a Habeas Corpus lawsuit in the Salvadoran courts and being released in 2024, he returned to the USA in hopes of finding safety. He was technically barred from Asylum and

Withholding but won protection under the CAT and therefore cannot be refouled to El Salvador. Since that final removal order was entered, Petitioner has remained detained and it has now been over 6 months with no prospect of removal to either his country of citizenship, El Salvador (which is barred), nor any third country.

### a. First Trip to the USA, receiving Immigration Relief

**9.** Petitioner's detention relates to his second time fleeing to the United States. However, his first time is crucial to understanding his circumstances. Petitioner, who grew up near Anamoros, El Salvador, along with his family, was in danger due to many reasons, not least of which was his refusal to join the MS-13 (also known as the *Mara Salvatrucha*). He left home fleeing death threats by those gangsters. Petitioner arrived in the USA near Naco, Arizona, on April 2, 2010, when he was just seventeen years old. He crossed the border and presented himself to authorities. As an unaccompanied minor, he was taken to a shelter operated by the Office of Refugee Resettlement, an agency within the U.S. Department of Health and Human Services, and then released to a sponsor.

**10.** While in the USA, he lived with relatives in Virginia and Georgia, and attended high school. A relative named Francisco obtained guardianship over him through state court proceedings. Petitioner filed a Form I-360 petition for SIJS under 8 U.S.C. § 1101(a)(27)(J) on May 5, 2011, and it was approved by the U.S. Citizenship and Immigration Service on October 19, 2011.

**11.** Petitioner had been in removal proceedings, but at the Arlington Immigration Court, an Immigration Judge terminated those proceedings on

January 10, 2012, due to the lawful status (SIJS) that Petitioner had obtained.

**12.** Petitioner then applied to adjust status to that of a lawful permanent resident via Form I-485, filed with USCIS, in August 2012. However, intervening circumstances derailed those plans: the MS-13 attempted to murder his father in El Salvador. Petitioner's father survived but had been shot, and was not doing well. Petitioner, out of a sense of filial responsibility, abandoned his life in the USA and returned to El Salvador to care for him. Petitioner's father suffered disability from being shot in the leg.

**13.** After Petitioner left, his application for permanent residence was deemed abandoned in 2013 for failing to attend a biometrics appointment. However, Petitioner's SIJS was not revoked, and the USCIS did not issue a final denial of his adjustment of status; rather, the Petitioner was explicitly permitted the opportunity to renew his residency application in removal proceedings in the future, but the government did not immediately issue any new Notice to Appear to re-start removal proceedings, leaving matters in limbo.

### b. Return to El Salvador, First Incident of Police Misconduct

**14.** After returning to his home country of El Salvador, however, many harms befell him. Petitioner tried to continue his family's humble life of farming. However, he and his father experienced harassment by law enforcement, escalating to incarceration on false charges, incarceration without charge, and various forms of physical, sexual, and psychological torture. In the context of a country with a history of bloody "iron fist" law enforcement actions trampling civil rights, and which has more recently devolved into a dictatorship under President Nayib Bukele, just being a suspect or being deemed an 'enemy' by the police for any reason can effectively end one's chances at living a normal life.

**15.** Petitioner's father, who wanted to defend himself against the MS-13 who had nearly killed him, obtained a pistol for self-defense after that incident. However, it was not legal for his father to do so.

**16.** The first incident of police misconduct started when police officers raided their home and found the firearm in his father's bedroom. The officers claimed they were doing them a favor by arresting him, rather than his father. Petitioner had never had any criminal history before then, but was very worried for his father. Under duress, Petitioner pleaded guilty to the illegal possession of a firearm and received a suspended sentence. Petitioner complied with his probation, and did not serve further time related to that crime.[2]

### c. <u>Second Incident of Police Misconduct</u>

**17.** Then, around December 2016, Petitioner experienced further harassment when around eight masked police officers raided his home, interrogating his family and searching for him, claiming he was to be arrested. However, it turned out to be a fake arrest warrant. Petitioner sought relief by complaining to the Attorney General's office, but to the best of his knowledge there were no repercussions to the police. It certainly did not deter further misconduct.

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[2] In October 2017, Judge Maritza Venancia Zapata Cañas of the Second Court of Penitentiary Surveillance and Execution of the Sentence of San Miguel in El Salvador declared that conviction to have been expunged or extinguished ("extinguida" in Spanish) and for him to be restored to his prior status.

### d. Third Incident of Police Misconduct

**18.** Around June 2017, police officers again entered his home and claimed to have found an illegal firearm inside a barrel of corn. It was actually planted by the officers. They arrested Petitioner, and he was again prosecuted for the illegal possession of a firearm. But, Petitioner refused to admit guilt and defended himself this time. Expert testimony from a fingerprint analyst showed that the fingerprints on the firearm did not belong to the Petitioner. Furthermore, the weapon itself was registered to another person. The officers who testified were found to be inconsistent and inaccurate. Petitioner was acquitted in September 2017, ruling that the firearm did not belong to him and no credible evidence showed his possession of it at any point.

### e. Fourth Incident of Police Misconduct, Habeas Corpus Proceedings in El Salvador

**19.** Eventually, around 2018-2019, Petitioner got a license to drive heavier trucks and began doing more driving/delivering than farm work. However, transport workers were also lucrative targets for extortion at the time, with gangs running protection rackets for folks on the roads. Making a living as a motorist meant more visibility and unavoidably coming into contact with the criminal organizations that held sway over much of the country.

**20.** Petitioner was again arrested in November 2020, this time for alleged extortion and involvement with terror organizations, i.e., the gang MS-13. In reality, he was one of the victims of this extortion, and the charge of affiliation with the MS-13 was particularly ironic given that he and his father were victims of the gang.

**21.** A certificate from the Ministry of Justice and Public Security dated December 21, 2020, certifies that Petitioner had no prior criminal history

**22.** Petitioner was held in pre-trial detention for about three years.

**23.** Throughout his detention in that facility, he was constantly beaten and abused in various ways. He was even raped by other inmates at the direction of prison authorities.

**24.** In December 2023 he was finally acquitted of the charges in the Second Court against Organized Crime "B" of San Miguel, under his given name and nickname of [redacted] However, by this time, the "State of Exception" in El Salvador had radically changed the civil rights landscape, and people stopped being released from prison, almost regardless of the circumstances.

**25.** An official communique explaining the Petitioner's acquittal and ordering his release, dated December 2023, was sent to the facility where he was being held.

**26.** After the "State of Exception" began in El Salvador, any bare rumor, or simply the pique of anyone in law enforcement, can lead to being labeled a gangster, incarceration, and little to no way of ever achieving judicial review or release. Petitioner was thus ensnared.

**27.** It took a Habeas Corpus lawsuit, by and through his attorney Julio Cesar Guzmán Requeno in San Miguel, to secure Petitioner's release. In September 2024, by the joint order of two Magistrates, Miguel Ángel Umaña Argueta and Roxana Esmeralda Lara Rodríguez, the prison system was ordered to release him, and finally complied.

**28.** In total, Petitioner spent four years of unjustified detention in El Salvador while being heinously mistreated.

**29.** There was a pervasive and lengthy pattern of harassment and discrimination by the Salvadoran law enforcement against the Petitioner. Along with direct threats of further incarceration and violence by aggrieved officials, Petitioner was forced to leave the country permanently.[3]

**30.** After his release, the Petitioner stayed in his sister's house for a short time just to prepare to leave the country, which he did by around the end of September 2024.

### f. Return to the United States and Removal Proceedings

**31.** It took Petitioner about a month to get to the USA. He first travelled across El Salvador to Guatemala, then entered Mexico, and from there the United States. At El Salvador's border with Guatemala, he feared going through customs because of his previous experiences with Salvadoran law enforcement and gangs, but he thankfully made it out of their exit controls. When he made it to the United States border in Mexico, he crossed the border and presented himself to the border patrol, the same way he did before when he was a child. He was completely unaware of the existence of the CBP One app (now defunct) as an alternative, if challenging, method of applying for asylum at a Port of Entry on the border. He was immediately detained after crossing the border and was subject to expedited removal on or about

[redacted]

November 2, 2024.

**32.** During the expedited removal process, Petitioner received and passed a Credible Fear Interview (CFI).[4] He was issued a Notice to Appear and 8 U.S.C. § 1229a (INA § 240) removal proceedings started at Port Isabel Detention Center.

**33.** After a few Master Calendar hearings, Petitioner submitted his I-589 application for asylum, withholding of removal, and protection under CAT. While *pro se* and in ICE detention, Petitioner obtained copies of the Salvadoran court records that proved he had been innocent, and filed those with the Immigration Court, as well, meaning the DOJ and the DHS had from that time onward actual knowledge of Petitioner's innocence.

**34.** Petitioner was scheduled for an individual hearing on the merits of his case, which occurred on March 3, 2025. He presented his case *pro se*. The presiding IJ was Shelly Schools, who appeared via video conference from Ft. Worth.

**35.** Petitioner recounted his mistreatment in El Salvador and fears upon return, substantially as indicated *supra*.

**36.** The DHS Attorney from ICE-OPLA had access to Petitioner's file and the same databases that other officers had, but did not attempt to paint Petitioner as a criminal nor attempt to raise any serious nonpolitical crime bar or similar bar to his asylum claim. DHS did not produce any countervailing evidence nor otherwise impeach the Petitioner's evidence regarding his actual innocence.

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[4] The transcript of the CFI noted that there was a potential serious nonpolitical crime bar in the opinion of the asylum officer conducting the interview. Perhaps the Salvadoran government was providing erroneous information through criminal databases.

**37.** The presiding judge ultimately found Petitioner's story to be consistent and credible based on the evidence, his testimony, and human rights reports from El Salvador.[5]

**38.** Petitioner was denied Asylum on technical grounds, i.e., because of the Circumvention of Lawful Pathways regulation (the validity of which is still subject to litigation). As well, the Judge's finding of no nexus to a particular social group resulted in denial of statutory withholding of removal under 8 U.S.C. § 1231(b)(3).

**39.** However, Petitioner was granted withholding of removal under the CAT pursuant to 8 C.F.R. § 1208.16(c). This meant the IJ found that Petitioner would more likely than not suffer further torture if removed to El Salvador. *See* 8 C.F.R. § 1208.18(a) (defining "Torture").

**40.** Both he and the DHS waived appeal, making the order immediately final.[6]

**41.** The IJ informed Petitioner that she would be signing the order granting him CAT relief, and that he should be released promptly thereafter by ICE.

**42.** Whether it was a cruel ruse or simple ignorance, the IJ's statements at the close of the hearing came completely to naught. Petitioner was not released; rather, he was profoundly confused as he struggled to understand why he had not been released.

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[5] This was before the new 2024 human rights reports came out from the US Department of State that completely whitewashed the report on El Salvador, in conjunction with new BIA decisions also claiming that El Salvador's prisons did not do enough torture to be a basis for CAT protection.

[6] Not strictly relevant here, Counsel has recently also ascertained that Petitioner may still be eligible to continue his adjustment of status application through the immigration court, if that matter were reopened. Counsel would further argue that the removal proceedings were erroneously conducted without assessing eligibility for other forms of relief, and for many other reasons.

**43.** Inasmuch as Petitioner is the subject of an administratively final order of removal, the ICE has been authorized to execute that order at any time, to any third country, since March 5, 2025.

**44.** Petitioner was detained for approximately three months after his removal order was issued at Port Isabel, without ICE formally designating any country for removal or, to the best of Petitioner's knowledge, doing anything to effectuate any removal. *Cf.* 8 U.S.C. § 1231(a)(1)(A).

**45.** At around the 90-day mark when there was supposed to be a Post-Order Custody Review ("POCR"), *see* 8 CFR § 241.4(h), ICE suddenly accused Petitioner of being a gangster of the MS-13 and a weapons trafficker, despite Petitioner having shown his innocence and those counterfactual allegations having not been proven during the immigration court proceedings when the DHS had the chance to do so. Upon information and belief, ICE cited these allegations as the basis for continuing Petitioner's detention beyond the 90-day removal period authorized by statute, without citing any of the positive equities in his case or acknowledging the lack of evidence to support these allegations. However, despite requests, Counsel has never received any contact from the ICE Deportation Officer, nor any ICE documents regarding Petitioner. Counsel has been unable to confirm whether a formal POCR even occurred; if any process occurred, it seemingly was under grave misapprehensions of fact, and without the required interview with Petitioner nor consideration of the Petitioner's equities.

**46.** ICE unilaterally escalated his already-harsh detention conditions by transferring him to a camp at a U.S. Naval base in Cuba in or around June, 2025.

g. **Guantánamo Bay**

**47.** Petitioner's name has been posted to the DHS' website as part of a press release about "the Worst of the Worst." It falsely claims that "Victor Bonilla-Alvarez, an illegal alien from El Salvador, has been convicted of trafficking weapons."[7] Further it describes him falsely as being "high-threat," "violent," "committed heinous crimes," and a "convicted criminal."

**48.** Petitioner is in fact a polite, mild-mannered, and thoughtful person. He has no tattoos. He came from very humble agrarian origins, is committed to his family, and his only conviction in El Salvador was nonviolent and later expunged (and in fact was the result of coercion and desire to protect his father). He has no criminal history in the United States or elsewhere. There is no proof of any of the egregiously defamatory allegations made by the DHS.

**49.** Conditions in Guantánamo have been very poor for Petitioner, giving rise to a reasonable inference that they are intentionally, or at least effectively, punitive.

**50.** Petitioner has had gastric issues for many years, which had been treated adequately at Port Isabel Detention Center through medication and diet.

**51.** However, his medication was changed at Guantánamo, and his diet was also changed, such that he suffers needlessly. The medical facilities provided to detainees appear rudimentary, with many limitations.

**52.** Even if he did not have gastric issues, the food is insufficient in quantity,

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[7] https://www.dhs.gov/news/2025/07/08/dhs-releases-names-worst-worst-convicted-criminal-illegal-aliens-detained

leaving him and many other detainees hungry.

**53.** Phone calls with counsel are not confidential. Guards right outside the door can clearly hear every word that is being said at a normal volume.

**54.** There are no legal resources nor library for detainees to work on their cases. Should a detainee need to research a country he'd never heard of before, there would be no means to find out anything about it.

**55.** During this POCR period, Petitioner has had no meaningful contact with his assigned deportation officer from ICE. The time for his 180-day custody review, during which ICE is required to assess whether there is a "significant likelihood of removal in the reasonably foreseeable future, just passed without action. *See* 8 C.F.R. § 241.13.

**56.** To the best of Petitioner's knowledge, ICE has not designated any third country to which it intends to remove Petitioner, nor requested any action by Petitioner, and so it appears that there has been zero progress toward effectuating his removal since the final order of removal was entered on March 5, 2025.

**57.** Petitioner has three times been beaten while at Guantánamo to the point he needed medical treatment. The worst beating was by guards themselves who were upset about his refusal to eat food that he knew would upset his stomach.

**58.** Every time Petitioner has been beaten and asked to receive medical attention at Guantanamo, he has been refused basic standard of care treatment such as x-rays for suspected fractures. Petitioner was gaslit by medical staff about his injuries, saying it was in his head, despite feeling his own body and seeing the bruises. The medical staff encouraged water and over-the-counter analgesics regardless of his complaints. Their lack of analgesic options that would not irritate his GI issues meant that he effectively had no effective pain relief options.

**59.** The guards cover their faces and name tags. It is almost impossible to determine who anyone is except by estimates of height, race, and stature.

**60.** Moreover, given his past experiences of severe torture while unlawfully detained in El Salvador, Petitioner's current experiences of abuse and unlawful detention at Guantánamo are further trauma.

**61.** It is highly unclear that ICE has the authority to detain Petitioner in Guantánamo at all. There is ongoing litigation regarding the government's authority to detain immigrants who were in the United States at a detention facility outside the United States. *See Luna Gutierrez v. Noem*, No. 1:25-cv-01766-SLS (D.D.C., filed June 4, 2025). In any event, Petitioner's post-order detention presently exceeds six months in duration, and removal to any other country is not reasonably foreseeable in the future.

### E. <u>Background on Third-Country Removals</u>

**62.** Section 1231(b) governs the countries to which DHS is authorized to remove noncitizens. The statute requires DHS to pursue removal to countries in a specific sequence. 8 U.S.C. §§ 1231(b)(1), (2)(A) (noncitizen's designation of a country of removal), § 1231(b)(2)(B) (limitation on designation), § 1231(b)(2)(C) (disregarding designation), § 1231(b)(2)(D) (alternative country), § 1231(b)(2)(E) (additional removal countries).

**63.** For noncitizens with an order of removal, DHS first must attempt removal to the country designated on the noncitizen's order of removal. 8 U.S.C. § 1231(b)(2)(A)-(C); *see also* 8 C.F.R. § 1240.10(f) ("[T]he immigration judge shall notify the respondent that if he or she is finally ordered removed, the country of removal will in the first instance be the country designated by the respondent…"). If this fails, DHS may next seek removal to an alternative country of which the noncitizen is a subject, national, or citizen, followed by other countries to which the noncitizen has more limited connections, such as by birth or prior residence. 8 U.S.C. § 1231(b)(2)(D)-(E). Last, DHS may seek removal to a willing country where the noncitizen has no connections, but this kind of third-country removal is allowed only when removal to all the other categories of countries prioritized by the statute is "impracticable, inadvisable, or impossible." 8 U.S.C. § 1231(b)(2)(E)(vii).

**64.** The provisions under subsection 1231(b) are mandatory and prohibit removal of noncitizens to a country where they would "face persecution or other mistreatment in the country designated." *Jama v. ICE*, 543 U.S. 335, 356-48 (2005); *see also* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2); 8 U.S.C. § 1225(b)(1)(A); 8 C.F.R. § 235.3(b)(4). The statutory and regulatory scheme ensures that individuals receive notice and an opportunity to raise these fear-based claims. An individual in expedited removal proceedings who is found to have a credible fear of return must be placed in full removal proceedings under Section 240. *See* 8 C.F.R. § 208.30(f). In Section 240 proceedings, the immigration judge must notify the person of the designated country of removal and identify all alternative countries.

*See* 8 C.F.R. § 1240.10(f) (providing that the "immigration judge shall notify the respondent" of designated countries of removal) (emphasis added); 8 C.F.R. § 1240.11(c)(1)(i) (providing that the IJ shall "[a]dvise the [noncitizen] that he or she may apply for asylum in the United States or withholding of removal to [the designated countries of removal]").

**65.** These protections also implement international law obligations under the Refugee Convention and Protocol, as codified by the Refugee Act of 1980. *See* United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8 U.S.C. § 1231(b)(3)); *INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting that the Refugee Act of 1980 "amended the language of [the predecessor statute to § 1231(b)(3)], basically conforming it to the language of Article 33 of the United Nations Protocol").

**66.** However, Respondents' current practices surrounding removing individuals to dangerous third countries is now well-known, with swings toward notorious destinations as part of a policy of deterrence. Respondents devised the third-country removal scheme even before the second Trump administration took office. The administration has found – or is pursuing – agreements with dangerous or war-torn countries and repressive regimes, and is working on more agreements. The list changes all the time.

**67.** The practice perhaps most cruelly incarnated in removing Venezuelans to indefinite detention in a supermax prison in El Salvador, where reporting shows deportees were beaten with batons, forced to kneel for nine hours upon arrival, and various other forms of physical and psychological torture, while held incommunicado to the outside world (later a release was negotiated between the Venezuelan and Salvadoran governments). Another group of detainees were sent to war-torn South Sudan. "[D]evices of banishment and exile have throughout history been used as punishment." *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 at 170, n.23.

**68.** The administration openly broadcast that their third- country removal scheme is motivated by an intent to punish immigrants and deter future migration — the traditional aims of punishment. *Kansas v. Hendricks*, 521 U.S. 346, 373 (1997) (Kennedy, J., concurring) ("We should bear in mind that while incapacitation is a goal common to both the criminal and civil systems of confinement, retribution and general deterrence are reserved for the criminal system alone.").

**69.** Secretary of State Marco Rubio stated at a cabinet meeting about the third-country removal process: "We are working with other countries to say, 'We want to send you some of the most despicable human beings to your countries, and will you do that as a favor to us?' And the farther away from America the better, so they can't come back across the border."[8] Reporting further reflects that spokesperson for the U.S. Department of Homeland Security, Tricia McLaughlin,

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[8] Edward Wong, et al., Inside the Global Deal-Making Behind Trump's Mass Deportations, N.Y. Times (Jun. 25, 2025), https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html ("Wong, *et al.*").

added: "If you enter unlawfully, you will be removed—and in a way that makes it far more difficult to try again."[9]

**70.** Secretary Rubio's and Ms. McLaughlin's punitive motivations have been widely shared and celebrated by the administration. On May 9, 2025, President Trump explicitly threatened arbitrary removals of noncitizens as punishment: "Illegal aliens who stay in America face *punishments*, including— sudden deportation, in a place and manner solely of our discretion."[10]

**71.** Petitioner is afraid of being removed without a chance to contest his removal to any such country. The growing pressure on him from hearing stories about removals to random-seeming new countries, some of which he has never even heard of, is emotionally and mentally harmful.

**72.** Threats to deport individuals to places that they literally have never heard of, or have heard of due to reports of things like civil war or genocide, is plainly psychologically harmful, and likely intended as a form of punishment.

**73.** The immigration laws delineate the proper procedures by which a country may be designated for removal. *See* 8 U.S.C. § 1231(b). Removal to third countries is permissible only after the Government tries each and every alternative noted in the statute, and determines they are all "impracticable, inadvisable, or impossible." 8 U.S.C. §§1231(b)(1)(C)(iv), (2)(E)(vii). The laws explicitly prohibit removal to a third country where a person may be persecuted or tortured. *See* 8 U.S.C. § 1231(b)(3)(A).

**74.** These procedures are not demanding. Providing basic due process protections

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[9] Wong, *et al.*
[10] https://x.com/realDonaldTrump/status/1921008311492624867 (emphasis added).

before noncitizens are removed to third countries where they may fear persecution or death is mandated U.S. and international law. The meets and bounds of those issues continue to be litigated. [11]

## CLAIM FOR RELIEF: PETITION FOR WRIT OF HABEAS CORPUS

**75.** Petitioner's current detention is unconstitutional, it is unlawful under federal law, and potential destinations threaten to violate the treaties of the United States and the Constitution. Thus, Petitioner respectfully requests a petition for a Writ of Habeas Corpus for the Petitioner's immediate release from detention, or for this court to take ameliorative actions to prevent and enjoin Respondents from further violations of law. [12]

**76.** The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC cause is issued, the Court must require Respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

**77.** Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England,

[11] Petitioner recognizes that he is a class member under *D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass.), which aims to address the minimum procedural due process to be afforded to individuals facing third-country removals.

[12] It is also highly unclear that ICE has the authority to detain Petitioner in Guantánamo at all. There is ongoing litigation regarding the government's authority to detain immigrants who were in the United States at a detention facility outside the United States. *See Luna Gutierrez v. Noem*, No. 1:25-cv-01766-SLS (D.D.C., filed June 4, 2025).

affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

**COUNT ONE: Violation of the INA**

**78.** Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

**79.** Petitioner's detention is not authorized under 8 U.S.C. § 1231(a)(6) because there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future.

**80.** 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, *v. Davis*, 533 U.S. 678 (2001), authorizes detention only for "a period reasonably necessary to bring about the alien's removal from the United States." *Id.* at 689, 701.

**81.** Petitioner's continued detention has become unreasonable because his removal is not reasonably foreseeable. *See Zadvydas*, 533 U.S. at 699-700 ("[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute."); 8 U.S.C. § 1231(a)(6) (authorizing release "subject to . . . terms of supervision" when removal not reasonably foreseeable).

**82.** Therefore, his continued detention violates 8 U.S.C. § 1231(a)(6), and he must be immediately released, subject to any appropriate terms of supervision.

**COUNT TWO: Violation of Fifth Amendment Due Process Clause**

**83.** Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

**84.** "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." *Zadvydas*, 533 U.S. at 690. The Fifth Amendment guarantees due process protections to all "persons" in the United States, including noncitizens, regardless of immigration status. *Id.* at 693.

**85.** *Zadvydas* authorizes detention only for "a period reasonably necessary to bring about the [noncitizen]'s removal from the United States." 533 U.S. at 689, 701.

**86.** Furthermore, in the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690. A noncitizen may only be detained based on these two justifications. *Id.*

**87.** Petitioner has no unexpunged criminal convictions, no ties to organized crime Petitioner is not a specially dangerous individual as conceived of under *Zadvydas* and is thus eligible for release from any excessive or indefinite civil detention. He has engaged fully in his prior immigration proceedings during both entries to the USA. Such reporting or monitoring requirements as may be appropriate are always available to ameliorate any concerns of flight risk as well.

**88.** Petitioner's continued detention has become unreasonable because his removal to any third country is not reasonably foreseeable. Therefore, his continued detention violates due process, and he must be released.

**COUNT THREE: Petitioner's detention violates ICE's Regulations**

**89.** Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

**90.** ICS is regulatorily required to conduct POCR reviews every 90 days and consider release if removal is not imminent.[13] There is no evidence of any POCR reviews in possession of Counsel, but if there were such reviews, they must not have been timely or conducted in reasonable fashion. ICE is therefore failing to abide by its own regulations and policies.

**91.** Under *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), and its progeny, an agency's failure to abide by its own regulations will not stand.

**92.** There is no evidence to show that the Petitioner meets the regulatory requirements to be maintained in custody.

**93.** A POCR review under 8 CFR § 241.4 would clearly lead any reasonable decisionmaker that the Petitioner is not liable to be removed in the reasonably foreseeable future.

**COUNT FOUR: Wrongful Third Country Removal in Violation of Due Process Clause of Fifth Amendment**

**94.** Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

**95.** The INA, and the Foreign Affairs Reform and Restructuring Act ("FARRA"), and implementing regulations mandate meaningful notice and opportunity to

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[13] Petitioner does not concede that the existing POCR review process would be any substitute for this court's review, nor that the POCR regulations are valid in the first place. However, because Petitioner *should* be released even under ICE's regulations, this issue may not need to be reached.

present a fear-based claim to an immigration judge before DHS deports a person to a third country. *See* 2 Pub. L. No. 105-277, Div. G, Title XXII, 112 Stat. 2681-822 (codified as Note to 8 U.S.C. § 1231).

**96.** Respondents should not be free to designate for removal countries that do not meet at least minimum requirements under domestic and international law. At a minimum, such country should be a CAT signatory, a signatory to the Refugee Convention, would not detain him upon arrival, would provide Petitioner a form of permanent lawful migratory status rather than rendering him effectively stateless and doomed to transience, and will not itself refoul him to El Salvador.

**97.** There is no reason Petitioner would need to be detained during any such processes the DHS may begin upon designating such a country.

**98.** Petitioner has a due process right to meaningful notice, an opportunity to consult with counsel, an opportunity to make claims of fear to DHS, and opportunity to present his fear-based claim to an immigration judge, before DHS removes him to any third country.

**99.** Respondents' policy of removing people to third countries without meaningful notice or opportunity to present a fear-based claim with assistance of counsel violates Petitioner's substantive and procedural due process rights.

## ADDITIONAL REQUEST: WRIT OF HABEAS CORPUS AD TESTIFICANDUM

**100.** In-court testimony is ideal to assess a person's candor, and a person's physical presence may also be necessary to demonstrate injuries and otherwise communicate effectively.

**101.** Petitioner only fluently speaks Spanish, his native language, and with a dialect that is somewhat particular to El Salvador.[14] Good interpretation relies on context, tone, and other aspects of the communication attempts of the native speaker (and it is not sufficient to rely on simple definitions and grammar to produce fluent translations), and is part of the overall communication that occurs within live testimony. Thus, in-person interpretation greatly improves the quality of communication during hearings.

**102.** Petitioner has been beaten by his jailers, medically neglected, and is afraid of further retribution. Petitioner feels particularly unsafe rendering testimony while still physically at Guantánamo due to both potential interference with the testimony, and the possibility of more serious retribution afterwards.

**103.** Thus, Petitioner requests a writ of Habeas Corpus ad Testificandum in the event of any hearings to allow him to be present and freely provide testimony in the most efficacious manner.

## PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

A. Assume jurisdiction over this matter;

B. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days, and if necessary, set a hearing on this Petition within five days of the return, pursuant to 28 U.S.C. § 2243;

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[14] Counsel, whose clientele is largely Central American, does not find Petitioner's dialect to be particularly difficult to understand such that an interpreter with a specific dialect would be of huge import, but it may be helpful.

C. Order Respondents not to transfer out of this judicial district or remove Petitioner to El Salvador or any third country during the pendency of these proceedings without leave of the Court, to preserve jurisdiction, and to enjoin Respondents from removing Petitioner to any third country that would violate his Constitutional rights or the laws and treaties of the United States;

D. Allow Oral Arguments as to any motions or legal issues in dispute;

E. In the event of a hearing on this matter, issue a Writ of Habeas Corpus ad Testificandum to ensure the Petitioner's presence;

F. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA, and Regulations;

G. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;

H. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, 5 U.S. Code § 504, and on any other basis justified under law; and

I. Grant any further relief this Court deems just and proper.

Respectfully submitted, this the 11th day of September, 2025.

THE LAW OFFICE OF DERRICK J. HENSLEY, PLLC

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***Counsel for Petitioner***

## VERIFICATION BY COUNSEL PURSUANT TO 28 U.S.C. § 2242

I hereby solemnly affirm, under penalty of perjury, that I am the attorney for the Petitioner in the foregoing Petition for Writ of Habeas Corpus, and I affirm the truth of the contents contained therein based upon personal knowledge and from the records and decisions of the U.S. Citizenship and Immigration Services, the U.S. Immigration & Customs Enforcement, the Executive Office for Immigration Review, and documentary evidence obtained by my office from other sources including the El Salvadoran courts. I further state that I have reviewed the facts, record, and statements of my client and verbally confirmed the same with him. I further state that based on that review, the facts contained in the foregoing Petition for Writ of Habeas Corpus are true and correct, to the best of my knowledge and belief.

/s/ Derrick J. Hensley — 09/11/2025
Derrick J. Hensley — Date

## VERIFICATION

*Declaration under Penalty of Perjury (28 U.S.C. §1746)*

That I, Víctor Omar Bonilla Álvarez, being aware of the penalties of perjury, hereby solemnly affirm, depose, and say as follows: ***Que yo, Víctor Omar Bonilla Álvarez, consciente de las penas de perjurio, por la presente afirmo, declaro y digo solemnemente lo siguiente:***

That I am the Petitioner named in this Petition. ***Que soy el Peticionario nombrado en esta Petición.***

That the "Factual History" section has been interpreted for me in Spanish, my native and best language. ***Que la sección nombrada como "Historia Fáctica" ha sido interpretada para mí en español, mi mejor y nativo idioma.***

That those facts are all true and accurate to the best of my own knowledge, except as to those matters therein alleged upon information and belief, and as to those matters, I believe them to be true. ***Todos esos hechos son verdaderos y exactos según mi leal saber y entender, excepto aquellos asuntos que en ellos se alegan con base en información y creencia, y en cuanto a esos asuntos, creo que son verdaderos.***

I hereby solemnly affirm, under penalty of perjury of the laws of the United States of America, that the foregoing is complete, true, and correct to the best of my knowledge and belief. ***Por la presente afirmo solemnemente, bajo pena de perjurio de las leyes de los Estados Unidos de América, que lo anterior es completo, verdadero y correcto a mi leal saber y entender.***

This the 7TH day of September, 2025.
*Este es el día 7 de Septiembre del 2025.*

X V.O.B.A
Víctor Omar Bonilla Álvarez
Affiant, Petitioner *(Declarante, Peticionario)*