

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) ██████ n ██████ y ██████ a Valle, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
(1) **Don Jones**, Warden, Kay County )  
Detention Center; )  
(2) **Russell Holt**, Director of Chicago Field )  
Office, U.S. Immigration and Customs )  
Enforcement; )  
(3) **Kristi Noem**, Secretary of the U.S. )  
Department of Homeland Security; and )  
(4) **Pamela Bondi**, )  
Attorney General of the United States, )  
in their official capacities, )  
 )  
Respondents. )  
\_\_\_\_\_ )

Case No. \_\_\_\_\_

**PETITION FOR WRIT OF  
HABEAS CORPUS**

## INTRODUCTION

1. Petitioner, Mr. ██████ ██████ Valle (“██████”) is a ██████ ██████ man with cognitive and intellectual disabilities who has been held in civil immigration custody for over six months with no justification. The government found him *not* to be a flight risk or danger years ago, and an Immigration Judge found he would be persecuted in ██████ and granted him withholding of removal in 2018. Since then, he has lived lawfully in the United States and in compliance with immigration directives. Yet the Department of Homeland Security (“DHS”) unexpectedly re-detained him without notice in February 2025 and has held him in prison-like conditions. Meanwhile, despite having him in custody for over six months, the DHS has still not identified any country to which ██████ could be removed and has put forward no other purpose for his detention. ██████’s detention is unauthorized by statute or regulation, and contrary to Supreme Court precedent and due process.
2. ██████’s continued detention violates 8 U.S.C. § 1231(a), because the DHS did not follow the proper procedure for revocation of his release and because his removal is not reasonably foreseeable. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that § 1231(a) does not permit indefinite detention, but rather allows detention only for the period reasonably necessary to execute a removal order, which is presumptively six months. Yet it has been more than six months since the DHS re-detained ██████ and there is no indication that he will be removed in the foreseeable future. He cannot be deported to his country of origin ██████ because he has been granted a withholding of removal under 8 U.S.C. § 1231(b)(3)(A), and the DHS

has identified no other proper removal country under 8 U.S.C. § 1231(b). Even if DHS were to find a country with which ██████ has no connection willing to take him, he is entitled to notice and the opportunity to seek fear-based protection, the resolution of which could take years. Further, ICE's detention of ██████ without notice of alternate countries to which it is supposedly attempting to remove him and the opportunity to seek protection with regard to this/these country(ies) violates his due process rights.

3. Furthermore, ICE's re-detention of ██████ without proper notice and opportunity to comply with supervision requirements is inconsistent with ICE's own long-standing policy, thereby violating the Administrative Procedure Act (APA) and due process. *See Accardi v. Shaughnessy*, 347 U.S. 260 (1954). To be clear, ██████ has never been ordered removed to any third country or properly notified of such potential removal.
4. ██████ respectfully requests that this Court declare his continued detention unlawful and unconstitutional, and order his immediate release from custody, as other courts across the country have done. *See, e.g., Zavvar v. Scott*, No. 25-2104-TDC, 2025 U.S. Dist. LEXIS 175897 (D. Md. Sep. 8, 2025); *Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 U.S. Dist. LEXIS 164108 (D. Minn. Aug. 25, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 U.S. Dist. LEXIS 148899 (E.D. Tex. Aug. 2, 2025); *Vaskanyan v. Janecka*, No. 5:25-cv-01475-MRA-AS, 2025 U.S. Dist. LEXIS 137846 (C.D. Cal. July 18, 2025).<sup>1</sup>

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<sup>1</sup> *See also Nouri v. Herrera*, No. SA CV 25-1905-JFW(DTB), 2025 U.S. Dist. LEXIS 171809 (C.D. Cal. Sep. 3, 2025); *Zongbo Zhu v. Genalo*, No. 1:25-cv-06523 (JLR), 2025 U.S. Dist. LEXIS 166176 (S.D.N.Y. Aug. 26, 2025); *Orellana v. Baker*, No. 25-1788-

### CUSTODY

5. [REDACTED] is detained in the legal and physical custody of Respondents, their agents, the Department of Homeland Security (“DHS”), and Immigration and Customs Enforcement (“ICE”), at the Kay County Detention Center in Newkirk, Oklahoma.

### JURISDICTION

6. Jurisdiction is proper under 28 U.S.C. §§ 1331, 2241; the Suspension Clause, U.S. Const. art. I, § 9, Clause 2; and 5 U.S.C. § 702.
7. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *See, e.g., Zadvydas*, 533 U.S. at 687.

### VENUE

8. Venue is proper in this District under 28 U.S.C. § 1391(b) because [REDACTED] is detained in the Western District of Oklahoma. In addition, venue before this Court is proper pursuant to 28 U.S.C. § 1391(e) because the Respondents are employees or officers of the United States, acting in their official capacity.

### REQUIREMENTS UNDER 28 U.S.C. § 2243

9. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to the Respondents “forthwith,” unless [REDACTED] is not entitled to relief. 28 U.S.C.

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TDC, 2025 U.S. Dist. LEXIS 164986 (D. Md. Aug. 25, 2025); *Phong Thanh Nguyen v. Scott*, No. 2:25-cv-01398, 2025 U.S. Dist. LEXIS 162859 (W.D. Wash. Aug. 21, 2025); *Garcia-Ayala v. Andrews*, No. 2:25-cv-02070-DJC-JDP, 2025 U.S. Dist. LEXIS 153532 (E.D. Cal. Aug. 8, 2025); *Quoc Chi Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 U.S. Dist. LEXIS 136002 (E.D. Cal. July 16, 2025); *Munoz-Saucedo v. Pittman*, No. 25-2258, 2025 U.S. Dist. LEXIS 120414 (D.N.J. June 24, 2025);

§ 2243. If an order to show 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).

10. 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, 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).

11. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs courts to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted).

#### PARTIES

12. Petitioner, ██████ ██████ ██████ a Valle, is a ██████-year-old ██████ ██████ man with cognitive and intellectual disabilities. He was granted withholding of removal from ██████ ██████ ██████ by an Immigration Judge in 2018. He has been detained by Respondents since February 24, 2025, and is at the Kay County Detention Center in Newkirk, Oklahoma.

13. Respondent Don Jones is the Director of the Kay County Detention Center in Newkirk, Oklahoma, where ██████ ██████ is detained. In his official capacity, he is the immediate physical custodian of ██████ ██████

14. Respondent Russell Holt is the Field Office Director of ICE for the Chicago Field Office. In his official capacity he has legal custody over [REDACTED] because the Chicago Field Office oversees detention facilities in Northern Oklahoma.
15. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. In this capacity, she has authority over the detention and departure of noncitizens in [REDACTED]'s position because she administers and enforces immigration laws pursuant to section 402 of the Homeland Security Act of 2002. 107 Pub. L. 296 (November 25, 2003), *see also* 8 U.S.C. § 1103.
16. Respondent Pamela Bondi is the Attorney General of the United States and as such is responsible for overseeing enforcement of federal immigration laws, including the Executive Office for Immigration Review and the Board of Immigration Appeals. In her official capacity, she is the ultimate legal custodian of [REDACTED].

#### STATEMENT OF FACTS

17. [REDACTED] is a [REDACTED]-year-old man from [REDACTED]. He has never been charged with or convicted of a crime, and he has lived in the United States since 2006. Due to his documented cognitive and intellectual disabilities, [REDACTED] is unable to live on his own. Prior to being detained by ICE in February 2025, he lived with his parents in [REDACTED], [REDACTED]. He was found mentally incompetent by an Immigration Judge (“IJ”) on November 2, 2017.
18. [REDACTED] first came to the United States with a family member around March 26, 2006, fleeing politically-motivated violence against him and his family in [REDACTED]. Soon after, on June 7, 2006, [REDACTED] was ordered removed *in absentia*, when he failed to

appear at a hearing on account of his cognitive difficulties. The IJ designated [REDACTED] [REDACTED] as country of removal and declined to designate an alternate country.

19. Around April 2011, ICE apprehended [REDACTED] at his home in [REDACTED], and deported him to [REDACTED]. Around July 2011, [REDACTED] fled [REDACTED] again with a family member in search for safety. [REDACTED] was apprehended by the DHS around August 9, 2011.
20. On August 10, 2011, the DHS reinstated [REDACTED]'s 2006 removal order. Following a reasonable fear interview, [REDACTED] was found to have a fear of persecution or torture if removed to [REDACTED], and he was referred to withholding-only proceedings before an Immigration Judge pursuant to 8 C.F.R. § 1208.31 for further consideration of his fear-based claims.
21. On or around May 4, 2012, ICE determined that [REDACTED] was not a danger or flight risk such that continued detention was required and set a \$5,000 bond for [REDACTED]'s release. On May 9, 2012, bond was posted and on May 10, 2012, [REDACTED] was released on an I-220B Order of Supervision ("OSUP").
22. On January 22, 2014, [REDACTED] filed an I-589 application for asylum, withholding of removal under § 241(b)(3) of the Immigration and Nationality Act (INA) and/or protection under the Convention Against Torture ("CAT") in Immigration Court.
23. At a hearing on November 2, 2017, an IJ determined that [REDACTED] was mentally incompetent and granted safeguards. On March 22, 2018, the IJ granted withholding of removal under INA § 241(b)(3). The IJ found that [REDACTED] would likely be subject to persecution and granted withholding of removal, prohibiting his removal to [REDACTED]

██████████r. ██████████s removal order and accompanying relief grant became final when both parties waived appeal of the DJ's decision on March 22, 2018. 8 C.F.R. § 1241.1.

On August 21, 2018, ICE cancelled ██████████s Immigration Bond.

24. Since being granted withholding of removal, ██████████n has lived lawfully in the United States and complied with the directives of immigration officials. He continued to report regularly to ICE pursuant to the May 9, 2012, order of supervision. He has never been charged with or convicted of any crime.

25. On February 24, 2025, nearly seven years after he was granted withholding of removal, ██████████n was arrested by the DHS without notice when he appeared at a regularly-scheduled check-in in ██████████as. ██████████n has been detained in DHS custody ever since. ICE issued a Notice of Revocation of Release dated February 24, 2025, stating that "there are changed circumstances in your case." The notice did not state what the changed circumstances were. The notice further indicates, "ICE has determined that you can be expeditiously removed from the United States pursuant to the outstanding order of removal against you. On June 7, 2006, you were ordered removed to ████l ██████████r. You were removed to ██████████r on April 6, 2011. On August 10, 2011, your removal order was reinstated. You were served with your Order of Supervision on May 10, 2012." The notice does not acknowledge that ██████████n was granted withholding of removal from ██████████r, nor does it identify any alternative country to which ICE believes it can remove ██████████h.

26. Upon re-detention of ██████████h, ICE did not offer him any safeguards to protect his rights given his incompetency, nor did they inform him of the reasons for detention. ██████████

counsel has repeatedly informed ICE that ██████n was granted withholding of removal from ██████r and there is no reasonable likelihood of removal in the foreseeable future. On March 26, 2025, ██████s counsel emailed the Assistant Field Office Director overseeing the ██████s ██████y ██████(sub-office) Field Office requesting ██████n be released because there is “no reasonable likelihood of removal in the foreseeable future.” Similarly, after ██████n had been detained nearly 90 days, on May 22, 2025, ██████s counsel again emailed the Assistant Field Office Director overseeing the ██████y Field Office reiterating that there is no legal basis to detain ██████n and there is no reason to believe he would be removed in the foreseeable future. Counsel also requested notice of the 90-day custody review required by the regulations, 8 C.F.R. § 241.4(i)(3). ICE responded that it would not be conducting a 90-day review.

27. ICE has not referred ██████n for a review of the foreseeability of his removal, as required by the regulations, 8 C.F.R. § 241.4(i)(7); 8 C.F.R. 241.13(a).

28. On March 13, 2013, ██████n filed an emergency motion to reopen withholding proceedings and an emergency motion to stay his removal before the IJ for the opportunity to apply for withholding of removal from any country to which DHS tries to remove him. The IJ granted both motions on March 26, 2025. To date, DHS has not identified any country of removal, requested designation of a new country of removal, nor provided any evidence that any country other than ██████r would accept him.

29. ██████s second hearing before the Immigration Court since the IJ reopened proceedings is now scheduled for December 9, 2025. The IJ’s stay of removal remains in place.

30. As of the date of this filing, ██████ has been in ICE custody for 224 days.

██████ LEGAL FRAMEWORK ██████

**I. STATUTORY WITHHOLDING OF REMOVAL**

31. Non-citizens in immigration removal proceedings can seek three main forms of relief based on their fear of returning to their home country: asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”). Non-citizens may be ineligible for asylum for several reasons, including the reinstatement of a prior removal order. *See* 8 C.F.R. § 1241.8(a). There are fewer restrictions on eligibility for withholding of removal. 8 U.S.C. § 1231(b)(3)(B)(iii).

32. To be granted withholding of removal, a non-citizen must show that it is “more likely than not that they will face persecution on account of a protected ground if returned to his country of origin.” 8 C.F.R. § 1208.16(b)(2); *INS v. Stevic*, 467 U.S. 407, 429-430 (1984). An applicant for withholding of removal must show a higher likelihood of persecution than the likelihood an asylum applicant must demonstrate. *See id.*

33. When an Immigration Judge grants a non-citizen withholding of removal, the judge issues a removal order and simultaneously withholds removal with respect to the country or countries for which the non-citizen demonstrated a sufficient risk of persecution. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021). Once withholding of removal is granted, either party has the right to appeal that decision to the BIA within 30 days. *See* 8 C.F.R. § 1003.38(b). If both parties waive appeal or neither party appeals within the 30-day period, the withholding of removal grant and the accompanying removal order become administratively final. *See id.* § 1241.1.

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

35. If ICE identifies an appropriate alternative country of removal, the non-citizen must have notice and an opportunity to seek relief from removal to that country. *See Jama v. ICE*, 543 U.S. 335, 348 (2005) (“If [non-citizens] would face persecution or other mistreatment in the country designated under § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture, *see* 8 CFR §§ 208.16(c)(4), 208.17(a) (2004) . . .”); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (finding that “last minute” designation of alternative country without meaningful opportunity to apply for protection “violate[s] a basic tenet of constitutional due process”); *Chavez v. Hott*, 940 F.3d 867, 879 (4th Cir. 2019) (“if a noncitizen who has been granted withholding as to one country faces removal to an alternative country, then she must be given notice and an opportunity to request withholding of removal to

that particular country”) (citing *Kossov v. INS*, 132 F.3d 405, 409 (7th Cir. 1998)), *rev’d on other grounds*, *Guzman Chavez*, 141 S. Ct. 2271; *see also Bagdassaryan v. Gonzales*, 178 F. App’x 844, 849 (10th Cir. 2006) (noting that if a petitioner was denied asylum, on remand she would “presumably have another opportunity to oppose her removal to any particular country” that ICE attempted to remove her to).

36. The Government itself has repeatedly acknowledged this right to notice and opportunity to seek relief, including just last Term before the U.S. Supreme Court. Transcript of Oral Argument at 33, *Riley v. Bondi*, 23-1270 (2025) (“We would have to give the person notice of the third country and give them the opportunity to raise a reasonable fear of torture or persecution in that third country.”);<sup>2</sup> *see also* Transcript of Oral Argument at 20-21, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021).

## II. DETENTION OF NON-CITIZENS GRANTED STATUTORY WITHHOLDING OF REMOVAL

37. The Constitution establishes due process rights for “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693. All noncitizens, including removable noncitizens, are entitled to be free from detention that is arbitrary or capricious. *Id.* at 721 (Kennedy, J., dissenting). “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. In “our

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<sup>2</sup> Available at: [https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2024/23-1270\\_c0n2.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2024/23-1270_c0n2.pdf).

society, liberty is the norm,” and detention is the “carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).

38. Due process requires “adequate procedural protections” to ensure that the government’s asserted justification for physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted). The Supreme Court has recognized only two valid purposes or governmental interests for civil immigration detention—to mitigate the risks of danger to the community and to prevent flight—and any detention incident to removal proceedings must “bear[] [a] reasonable relationship” to these purposes. *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 690); see also *Ramirez v. Bondi*, No. 25-cv-1002-RMR, 2025 U.S. Dist. LEXIS 85444 (D. Colo. May 5, 2025) (detention must “bear a reasonable relation to the purpose for which the noncitizen was detained”) (internal quotation marks omitted).

39. Within the confines of these constitutional constraints, Congress has enacted several statutes to govern civil immigration detention. The statute relevant to this case, 8 U.S.C. § 1231, authorizes the detention of noncitizens subject to a final order of removal. This statute also governs the detention of non-citizens with a final order of removal that has been withheld or deferred by an IJ due to a substantial risk of persecution or torture in their country of origin. 8 U.S.C. §§ 1231(a)(1)(B)(i), 1231(a)(2).

40. After an order of removal becomes final, there is a 90-day removal period, during which the government “shall” remove the noncitizen. 8 U.S.C. § 1231(a)(1). During that “90–day removal period ... aliens must be held in custody.” *Zadvydas*, 533 U.S. at 683 (citing

8 U.S.C. § 1231(a)(2)). After that 90-day period, “aliens ordered removed ... [as] inadmissible under 8 U.S.C. § 1182,” like ██████, “may be detained beyond the removal period” or “released” under supervision. 8 U.S.C. § 1231(a)(6); *Zadvydas*, 533 U.S. at 683. Thus, detention is mandatory for an initial 90-days, but thereafter is discretionary.

41. In *Zadvydas*, the Supreme Court considered whether § 1231(a)(6) “authorizes the [government] to detain a removable alien indefinitely beyond the removal period or only for a period reasonably necessary to secure the alien’s removal.” *Zadvydas*, 533 U.S. at 682, 688–89. The Court held that § 1231(a)(6) only authorizes detention for a period reasonably necessary to remove the noncitizen, and does not permit indefinite detention. *Id.* at 682 (“[W]e construe the statute to contain an implicit ‘reasonable time’ limitation ... which is subject to federal court review.”). The Court explained that if the statute were construed to allow for indefinite detention, it would “raise a serious question” as to whether the Due Process Clause of the Fifth Amendment would “permit[ ] detention that is indefinite and potentially permanent.” *Id.* at 690–91, 96.

42. *Zadvydas* determined six months of post-removal order detention is a “presumptively reasonable” period, *id.* at 701, after which a noncitizen has to be released unless the government shows that removal is reasonably foreseeable in the near future. See also, *Escalante*, 2025 U.S. Dist. LEXIS 148899, at \* 8-9 (finding that the government bears the burden to show a significant likelihood of removal in the reasonably foreseeable future after the presumptive 6-month period has passed); *Tadros v. Noem*, No. 25CV4108 (EP), 2025 U.S. Dist. LEXIS 113198 (D.N.J., June 13, 2025) (same).

43. DHS regulations provide that, by the end of the 90-day removal period that ensues upon a non-citizen's removal order becoming final, ICE must conduct a custody review to determine whether the non-citizen should remain detained. See 8 C.F.R. § 241.4(c)(1), (k)(1)(i). In making this custody determination, ICE considers several factors, including the availability of travel documents for removal, the absence of dangerousness to the community, and the absence of a significant flight risk. *Id.* § 241.4(e). If the factors in § 241.4 are met, ICE releases the non-citizen under conditions of supervision. 8 C.F.R. § 241.4(j)(2). The order of supervision must specify the conditions. *Id.* § 241.5.
44. Individuals with final orders who are released after a post-order custody review are subject to Form I-220B, Order of Supervision. 8 C.F.R. § 241.4(j). After an individual has been released on an OSUP, ICE cannot revoke such an order without cause or adequate legal process. 8 C.F.R. §§ 241.4(l)(1)-(2); 241.13(i)(2)-(3) (allowing for revocation for violation of the conditions of release or if, on account of changed circumstances, there is a significant likelihood of removal in the reasonably foreseeable future, and requiring an opportunity to respond to the reasons for revocation).
45. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that established "special review procedures" to determine whether detained non-citizens with final removal orders are significantly likely to be removed in the reasonably foreseeable future. See Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56,967 (Nov. 14, 2001). While 8 C.F.R. § 241.4's custody review process remained largely intact, subsection (i)(7) was added to include a supplemental review procedure that ICE HQ must initiate when "the [non-citizen] submits, or the record

contains, information providing a substantial reason to believe that removal of a detained [non-citizen] is not significantly likely in the reasonably foreseeable future.”

Id. § 241.4(i)(7).

46. Under this procedure, ICE HQ evaluates the foreseeability of removal by analyzing factors such as the history of ICE’s removal efforts to five countries. See id. § 241.13(f). If ICE HQ determines that removal is not reasonably foreseeable ICE must generally release the noncitizen. Id. § 241.13(g)(1). If ICE nonetheless seeks to continue detention based on “special circumstances,” it must justify the detention based on narrow grounds such as national security or public health concerns, id. § 241.14(b)-(d), or by demonstrating by clear and convincing evidence before an IJ that the non-citizen is “specially dangerous.” Id. § 241.14(f); see also *Zadvydas*, 533 U.S. at 690-91.

## ARGUMENT

### **I. ██████’S REMOVAL IS NOT REASONABLY FORESEEABLE NOR IS HE A FLIGHT RISK OR A DANGER TO THE COMMUNITY, AND THUS, SUPREME COURT PRECEDENT, THE INA AND THE CONSTITUTION REQUIRE HIS RELEASE FROM DETENTION.**

47. For individuals like ██████, who were ordered removed years ago, detention pursuant to 8 U.S.C. § 1231(a)(6) is authorized beyond the ninety-day removal period only for “a period reasonably necessary to secure removal.” *Zadvydas*, 533 U.S. at 699. “Thus, if removal is not reasonably foreseeable . . . continued detention [is] unreasonable and no longer authorized by statute.” *Id.* at 699-700.

48. Here, given the due process clause, the INA, the Foreign Affairs Reform and Restructuring Act (“FARRA”), and its implementing regulations, ██████’s removal is

not reasonably foreseeable. *See* 8 U.S.C. 24 § 1231(b)(2)(E); 8 U.S.C. § 1231(b)(3)(A); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019); *see also Ortega v. Kaiser*, 2025 U.S. Dist. LEXIS 121997 (N.D. Cal. June 26, 2025) (finding serious questions as to the petitioner’s claims as to whether his detention was reasonably foreseeable). ██████’s previous withholding-only proceedings concluded in May 2018. Removal is not reasonably foreseeable because: 1) ██████ cannot be deported to his home country, ██████; and 2) ICE has not secured travel documents or even identified any alternate countries during the initial removal period, during his supervised release or during his re-detention; and 3) even if ICE identified a third country, ██████ would be entitled to seek fear-based relief from removal to that country, which would require additional, lengthy proceedings.

49. The DHS has provided no formal notice or evidence of any efforts to remove ██████ to a third country. Unlike many cases in the *Zadvydas* progeny, here Respondents have failed to provide notice of any progress that has been made over the past seven months to effectuate his removal. Without any evidence of progress, ██████’s continued detention has become indefinite, with no reasonably foreseeable plan for his removal. Though proceedings in the San Francisco Immigration Court have been reopened to prevent ██████’s illegal removal, to date, the government has not proven that a third country will accept ██████. *See El Himri v. Ashcroft*, 378 F.3d 932, 939 (9th Cir. 2004) (“at the time the government proposes a country of removal pursuant to § 1231(b)(2)(E)(vii), the government must be able to show that the proposed country *will* accept the alien”). This process—which includes administrative and judicial appellate

review—is expected to take, at a minimum, a year to complete, and could take several years. *See* Vincent Dec.; *see also* 8 U.S.C. §§ 1101(a)(47)(B), 1252(a); 8 C.F.R. §§ 1003.6(a), 1240.15. During the past several months, in instances where the federal government has re-detained individuals with withholding or CAT protection—purportedly to remove them to a third country—the government has not made a showing that those individuals can be removed to a third country. *See, e.g.*, Exh. 1 (Vincent Decl.); *Tadros*, 2025 U.S. Dist. LEXIS 113198; *Ortega*, 2025 U.S. Dist. LEXIS 121997. They have languished in detention in the meantime. *See id.*

50. As such, ██████n has sufficiently established that his removal is not reasonably foreseeable and that his detention has exceeded the “period reasonably necessary to secure [his] removal.” *See Zadvydas*, 533 U.S. at 699–700. Under the Supreme Court’s binding precedent in *Zadvydas*, ██████n must be released.

51. Because ██████s removal is not reasonably foreseeable, *Zadvydas* requires that he be immediately released. *See Zadvydas*, 533 U.S. at 700-01 (describing release as an appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release “subject to . . . terms of supervision”). ██████s ongoing civil detention is “nonpunitive in purpose and effect.” *Zadvydas*, 533 U.S. at 690. There is no “sufficiently strong special justification for indefinite civil detention” under any statute or law. *Id.* To order his immediate release, this Court need only determine that ██████s removal is not reasonably foreseeable under *Zadvydas*; it need not analyze whether he poses a danger to the community or a flight risk. *See id.* at 699-700 (“[I]f removal is not reasonably

foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.”).

52. *Zadvydas* explicitly held that flight risk is already baked into the reasonable foreseeability analysis, *see id.* at 690 (observing that the “justification . . . [of] preventing flight . . . is weak or nonexistent where removal seems a remote possibility at best”), and that dangerousness cannot unilaterally justify indefinite civil detention barring “special circumstances,” which may include the non-citizen being a “suspected terrorist[]” but do not include the non-citizen’s “removable status itself.” *Id.* at 691; *see also Kansas v. Hendricks*, 521 U.S. 346, 358 (1997) (“A finding of dangerousness, standing alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary [civil detention].”). With respect to ██████’s detention, ICE has not invoked the regulations governing these “special circumstances” determinations. *See* 8 C.F.R. § 241.14. Nor could it, given that ██████ was never charged with or convicted of a crime in any country.

53. Even if flight risk and dangerousness were to be considered, ██████’s continued detention would be unlawful. Because immigration detention is civil detention, it must “bear[] [a] reasonable relation to the purpose for which the individual was] committed,” *Zadvydas*, 533 U.S. at 690, and not be excessive in relation to that purpose. *Salerno*, 481 U.S. at 747. The Supreme Court has articulated that there are only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the

community. *See id.*<sup>3</sup> As such, ██████'s detention would need to serve those purposes and not be excessive in relation to those purposes.

54. ██████'s conduct for nearly 13 years since his release by ICE proves that his detention is without purpose. *See Ortega*, 2025 U.S. Dist. LEXIS 121997, at \* 5 (enjoining the re-arrest of an individual granted withholding of removal, and finding that his conduct for the past seven years after release on bond supports the conclusion that his detention is not reasonably necessary). ICE determined that ██████ was not a flight risk or danger and released him on bond in May 2012. In the 13 years since his release from custody, ██████ has dutifully checked in with ICE in accordance with his supervised release. Exh. 2 (Order of Supervision). He also attended all his hearings. Exh. 1 (Vincent Decl.). On May 22, 2018, an Immigration Judge granted ██████ withholding of removal under 8 USC section 18 1231(b)(3). Exh. 4 (Order Granting WOR). The DHS then waived its right to appeal that decision. *See id.* ICE subsequently cancelled the bond in August 2018 and returned the bond money.

55. ██████'s conduct proves that he is neither a flight risk nor a danger, and that his civil detention bears no relationship to the two purposes immigration detention is meant to serve. *See Jones v. Blanas*, 393 F.3d 918, 933- 8 (9th Cir. 2004), cert. denied, 546 U.S. 820 (2005) (“[A] civil detainee awaiting adjudication is entitled to conditions of confinement that are not punitive...[and] a restriction is ‘punitive’ where it is intended to punish, or where it is ‘excessive in relation to [its non-punitive] purpose.’”); *see*

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<sup>3</sup> ██████ also acknowledges that the government may detain noncitizens for the brief period necessary to lawfully execute a removal order.

*Ortega*, 2025 U.S. Dist. LEXIS 121997, at \*3-4 (finding serious questions on Mr. Ortega’s claims that his detention would not serve a legitimate purpose). Therefore, ICE’s detention of ██████ bears no “reasonable relationship to the purpose for which [he was] committed,” *Zadvydas*, 533 U.S. at 690, and it must end to comply with constitutional requirements.

## II. ICE’S REVOCATION OF ██████’S RELEASE AND FAILURE TO CONDUCT CUSTODY REVIEWS VIOLATED ITS OWN REGULATIONS.

56. It goes without saying that agencies must follow their own regulations. *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 226 (1954). Under the *Accardi* doctrine, agencies are bound to follow their own rules that affect the fundamental rights of individuals, even self-imposed policies and processes that limit otherwise discretionary decisions. *See id.*; *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.”).

57. ██████ was previously released by Respondents because he did not pose a danger or flight risk. As long as he complied with the conditions of his release, Respondents had authority to revoke release only if circumstances had changed—i.e., if he had violated a condition of release or there was a “significant” likelihood that he would be removed in the reasonably foreseeable future. 8 C.F.R. §§ 241.4(l)(1); 8 C.F.R. § 241.13(i)(1), (2). Neither of these conditions existed when Respondents took ██████ into custody in February 2025, in violation of the DHS’s own regulations. Further, the DHS has not

complied with the procedural requirements of its own regulations to maintain ██████ in custody. He must therefore be released.

**a. ICE Previously Determined that ██████'s Removal Was Not Reasonably Foreseeable and Failed To Provide Him With Notice Of Any Changed Circumstances, in Violation of the Regulations.**

58. On March 22, 2018, an IJ granted ██████ withholding of removal under INA § 241(b)(3) and on August 21, 2018, ICE cancelled his immigration bond. The bond cancellation and ██████'s continued reporting to ICE from 2018 to 2025 after his withholding of removal grant are evidence that ICE had made a determination that there was no reasonably foreseeable removal after the expiration of the removal period. Thus, ██████ was subject to 8 C.F.R. § 241.13. As such, his release could only be revoked for removal if ICE determined that circumstances had changed such that there *was* a significant likelihood of removal. 8 C.F.R. § 241.13(i)(2), (3).

59. However, ICE never served ██████ with a notice of actual changes or afforded him an opportunity to respond to the reasons for revocation, in violation of the regulations. *Id.* at § 241.13(i)(3). On February 24, 2025, ICE issued a Notice of Revocation of Release stating that “there are changed circumstances in your case,” but the notice fails to state what the changed circumstances were. The notice states, “ICE has determined that you can be expeditiously removed from the United States pursuant to the outstanding order of removal against you. On June 7, 2006, you were ordered removed to ██████. You were removed to ██████ on April 6, 2011. On August 10, 2011, your removal order was reinstated. You were served with your Order of Supervision on May 10, 2012.” The notice does not acknowledge that ██████ was granted withholding of

removal from ██████r in 2018, nor does it identify any alternative country to which ICE believes it can remove ██████l.

60. In fact, at the time of the revocation of ██████s release, ICE had not identified any country that was willing to accept ██████h. As such, there were actually no changed circumstances and ██████s re-detention was illegal.

61. ICE's detention of ██████n in February 2025 was also improper under 8 C.F.R. § 241.4(I). ICE has not identified any violation of the conditions of ██████s release justifying re-detention. As stated above, the February 24, 2025 Notice of Revocation of Release fails to identify any actual changed circumstance such as a violation of the condition of release. Again, ICE failed to notify ██████n of the reasons for revocation of his release and an opportunity to respond to the reasons for revocation, as required by 8 C.F.R. § 241.4(I)(1).

**b. Since Re-Detaining ██████h, ICE Has Failed to Conduct Custody Reviews, Further Violating Its Own Regulations.**

62. When release is revoked pursuant to 8 C.F.R. § 241.4(I)(1), the regulations require ICE to conduct a custody review "within approximately three months after release is revoked. That custody review will include a final evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." 8 C.F.R. § 241.4(I)(3).

63. Here, Counsel requested notice of the 90-day custody review required by the regulations, but ICE responded that it would not be conducting a 90-day review. ICE's

failure to conduct a custody review within approximately three months after release is revoked violated the regulations.

64. The regulations further require ICE to initiate a custody review under 8 C.F.R. § 241.13 when a non-citizen “submits, or the record contains, information providing a substantial reason to believe that removal ... is not significantly likely in the reasonably foreseeable future.” 8 C.F.R. § 241.4(i)(7).

65. Despite ██████'s counsel's repeated submissions to ICE that ██████ was not likely to be removed in the reasonably foreseeable future, ICE failed to initiate a custody review under 8 C.F.R. § 241.4(i)(7) and 8 C.F.R. § 241.13. For example, on March 26, 2025, ██████'s counsel emailed ICE requesting that ██████ be released because there is “no reasonable likelihood of removal in the foreseeable future.” Similarly, after ██████ had been detained nearly 90 days, on May 22, 2025, ██████'s counsel again emailed ICE reiterating that there is no legal basis to detain ██████ and there is no reason to believe he would be removed in the foreseeable future. Yet ICE failed to conduct custody reviews, in violation of the regulations.

66. Since re-detaining ██████, ICE still has not identified a country where it can remove ██████, has failed to conduct custody reviews at 90 days, at 180 days or otherwise, despite receiving notice that ██████ is not removable in the foreseeable future. ICE's failure to follow their own rules have affected ██████'s fundamental rights. ICE has now held ██████ in custody for over six months without any justification or identified country of removal and without complying with its own regulations. ██████ must therefore be released.

**CLAIMS FOR RELIEF**

**COUNT I**

**Violation of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231(a) and Implementing Regulations, 8 C.F.R. § 241.4, 241.13**

67. Petitioner realleges and incorporates by reference the paragraphs above.

68. ██████'s detention is governed by 8 U.S.C. § 1231(a) because he was ordered removed.

The 90-day removal period began for ██████ on August 10, 2011, when the DHS reinstated his 2006 removal order. *See* 8 U.S.C. § 1231(a)(1)(B)(i). Therefore, the *Zadvydas* framework applies to ██████'s detention.

69. 8 U.S.C. § 1231(a), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for “a period reasonably necessary to bring about the [non-citizen’s] removal from the United States.” 533 U.S. at 689. Six months is considered a “presumptively reasonable” period, *id.* at 701, after which a noncitizen has to be released unless the government shows that removal is reasonably foreseeable.

70. ██████ cannot be deported to ██████, the only country of which he is a citizen, because he has been found to fear persecution there and has been granted protection from removal there under 8 U.S.C. 1231(b)(3). There is no indication that ICE has identified another country to which he can be feasibly removed. To the extent ICE is pursuing his removal to an alternative country, it has been unable to do so during the initial removal period in 2018 or during ██████'s detention over the last 6 months.

71. If ICE does identify such a country, ICE would be legally obligated to inform Petitioner’s counsel of the identified country. Petitioner would then be given the

opportunity to seek fear-based relief from removal to that country, further prolonging his proceedings and detention by months or years.

72. ██████n will not be removed from the United States in the “reasonably foreseeable future” because 1) he cannot be deported to his home country due to his withholding of removal grant; 2) ICE has historically managed to remove only a tiny fraction of non-citizens granted withholding or CAT to alternative countries; 3) ICE has not been able to secure travel documents to or even identify any alternate countries during ██████s initial removal period and during his detention over the last 6 months; and 4) deporting ██████n to those alternative countries would require additional, lengthy proceedings. As such, ██████s continued detention violates 8 U.S.C. § 1231(a). *Id.* at 701.

73. Because ██████s removal is not reasonably foreseeable, *Zadvydas* requires that he be immediately released. *See* 533 U.S. at 700-01 (describing release as an appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release “subject to . . . terms of supervision”). To order his immediate release, this Court need only determine that ██████s removal is not reasonably foreseeable under *Zadvydas*; it need not analyze whether he poses a danger to the community or a flight risk. *See* 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.”).

74. *Zadvydas* explicitly held that flight risk is already baked into the reasonable foreseeability analysis, *see id.* at 690 (observing that the “justification . . . [of] preventing flight . . . is weak or nonexistent where removal seems a remote possibility at best”), and that dangerousness cannot unilaterally justify indefinite civil detention

barring “special circumstances,” which may include the non-citizen being a “suspected terrorist[.]” but do not include the non-citizen’s “removable status itself.” *Id.* at 691; *see also Kansas v. Hendricks*, 521 U.S. 346, 358 (1997) (“A finding of dangerousness, standing alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary [civil detention].”). With respect to ██████’s detention, ICE has not invoked the regulations governing these “special circumstances” determinations. *See* 8 C.F.R. § 241.14.

## COUNT II

### **Violation of the Administrative Procedures Act (“APA”), 5 U.S.C. § 702 and Regulations, 8 C.F.R. § 241.4, 241.13**

75. Petitioner realleges and incorporates by reference the paragraphs above.
76. Under the *Accardi* doctrine, which originated in the context of an immigration case and has been developed through subsequent immigration caselaw, agencies are bound to follow their own rules that affect the fundamental rights of individuals, even self-imposed policies and processes that limit otherwise discretionary decisions. *See Accardi*, 347 U.S. at 226 (holding that the Board of Immigration Appeals must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.”).
77. When agencies fail to adhere to their own policies as required by *Accardi*, courts typically frame the violation as arbitrary, capricious, and contrary to law under the

APA, 5 U.S.C. § 702, *see Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) (“It is clear, moreover, that [Accardi] claims may arise under the APA”), or as a due process violation, *see Gonzales v. United States HUD*, No. 00-WM-495, 2000 U.S. Dist. LEXIS 18935 (D. Colo. Dec. 1, 2000) (“Informal agency action must be set aside if it fails to meet statutory, procedural or constitutional requirements, or is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law... an agency must adhere to its own procedures in reaching an administrative determination.”) (internal citations omitted).

78. Prejudice is generally presumed when an agency violates its own policy. *See Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991) (“We hold that an alien claiming the INS has failed to adhere to its own regulations . . . is not required to make a showing of prejudice before he is entitled to relief. All that need be shown is that the subject regulations were for the alien’s benefit and that the INS failed to adhere to them.”); *U.S. v. Heffner*, 420 F.2d 809, 813 (4th Cir. 1969) (“The *Accardi* doctrine furthermore requires reversal irrespective of whether a new trial will produce the same verdict.”).

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

80. ICE has clearly flouted the regulations with respect to ██████'s re-detention in violation of *Accardi*. ██████ was on supervised release for nearly 13 years, including seven after being granted withholding of removal. Respondents had authority to revoke his release only if ██████ violated a condition of release or there was a significant likelihood that he would be removed in the reasonably foreseeable future. 8 C.F.R. §§ 241.4(l)(1); 8 C.F.R. § 241.13(i)(1), (2). Neither of these circumstances existed when Respondents took ██████ into custody in February 2025, in violations of the DHS's own regulations.

81. ICE's failure to provide ██████ with a notification of actual changed circumstances and an opportunity to respond to the reasons for revocation is prejudicial to him. Prejudice can be presumed because the regulations implicate ██████'s fundamental liberty interests and due process rights. *See Delgado-Corea v. INS*, 804 F.2d 261, 263 (4th Cir. 1986) (holding that "violation of a regulation can serve to invalidate a deportation order when the regulation serves a purpose to benefit the [non-citizen]" and the violation affected "interests of the [non-citizen] which were protected by the regulation") (internal quotations omitted).

82. Therefore, ██████ has been prejudiced by ICE's failure to comply with the regulations. According to the *Accardi* doctrine, ICE's departure from its own regulations is arbitrary, capricious, and contrary to law under the APA and violates ██████'s due process rights. ██████

83. As a remedy, this Court should enforce the requirements of the regulations and order ██████'s immediate release. *See Jimenez*, 317 F. Supp. at 657 ("In these circumstances,

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

### COUNT III

#### Violation of the Due Process Clause of the Fifth Amendment

84. 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. To comply with the Due Process Clause, civil detention must “bear[] a reasonable relation to the purpose for which the individual was committed,” which for immigration detention is removal from the United States. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690).
85. Here, ██████'s due process rights were violated when ICE detained him without any indication that he poses a danger or flight risk. ██████ has never been charged with or convicted of a crime, so there is no basis for considering that he presents a danger to others. Additionally, ██████ has reported to ICE regularly from 2012 until 2025—almost 13 years. His post-release conduct in the form of full compliance with his check-in requirements confirms that he is not a flight risk and that he is likely to present himself at any future ICE appearances, as he always has done.
86. ██████'s continued detention without providing any evidence that any third country has accepted to receive ██████ or that he can otherwise be removed further violates his due process rights, and his detention is untethered from any permissible purpose.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Declare that Petitioner's continued detention violates the Immigration and Nationality Act, the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- c. Order Petitioner's immediate release from custody;
- d. Order that Respondents refrain from re-detaining Petitioner unless and until he is afforded a hearing at which the government must show by clear and convincing evidence that removal is reasonably foreseeable *and* that Petitioner presents a danger or flight risk requiring further detention;
- e. Award Petitioner reasonable attorneys' fees, costs, and other disbursements as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or by other statute;
- f. Grant any other further relief this Court deems just and proper.

Respectfully submitted this 6<sup>th</sup> day of October, 2025.

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**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 one of the Petitioner's attorneys. As the Petitioner's attorney, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

/S/ Elissa R Stiles

Elissa Stiles

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