IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

MOUAD EL AHRACH, *Petitioner,* *v.* **JUAN BALTAZAR**, Warden of the Aurora Contract Detention Facility owned and operated by GEO Group, Inc.; **ROBERT GUADIAN**, Acting Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary, U.S. Department of Homeland Security; **TODD LYONS** Acting Director of Immigration and Customs Enforcement (ICE); **PAMELA BONDI**, Attorney General, U.S. Department of Justice. *Respondents.*	**Case No.** **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. This case concerns the indefinite—and potentially permanent—civil detention of a young transgender woman and trauma survivor, who has been held for over six months following the issuance of a final removal order at the Immigration and Customs Enforcement (ICE) Denver Contract Detention Facility in Aurora, Colorado.
2. Petitioner Mouad El Ahrach ("Ms. El Ahrach")[1] has never been arrested or convicted of a crime. Nonetheless, the Department of Homeland Security ("DHS," "the Department," "the government") jailed her for being unlawfully present in the United States on or about July 2, 2024, and placed her in removal proceedings.
3. Ms. El Ahrach was subjected to mandatory detention pursuant to 8 U.S.C. § 1225(b) and unable to request a bond hearing before an IJ.
4. On April 7, 2025, the IJ entered a final order of removal against Ms. El Ahrach, which was simultaneously withheld upon her decision to grant Ms. El Ahrach withholding of removal to Morocco ("Withholding"). Exh. A, Order of the IJ. The judge found it "more likely than not" that Ms. El Ahrach will face persecution in Morocco based on her sexual orientation and gender identity. *See id.*; *see also* 8 U.S.C. § 1231(b)(3). Both parties waived their right to appeal. *See,* Exh. A, Order of the IJ.
5. Under the Department's own longstanding policies, Respondents should have released Ms. El Ahrach on an order of supervision given that she has no criminal history whatsoever and lacks

[1] Ms. El Ahrach's sex assigned at birth was male. Ms. El Ahrach is a transgender woman and uses she/her pronouns. Counsel refers to her accordingly.

any "exceptional" circumstances that would justify continued detention. *See* Exh. C, Fear-Based Grant Release Policy.

6. Under 8 U.S.C. § 1231, which governs the detention and removal of noncitizens who have been issued final orders, DHS's alleged purpose for continuing to detain Ms. El Ahrach is to effectuate removal to a third country. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (holding that the government may not detain a noncitizen indefinitely and that post-removal-order detention is limited to the period of time reasonably necessary to facilitate removal). Third country removal alone does not suffice to justify continued detention because Respondents may pursue such action after a noncitizen has been released under supervision.
7. Additionally, the Department's failure to identify a viable third country for removal confirms that Ms. El Ahrach's continued detention no longer serves any legitimate statutory purpose. The Supreme Court in *Zadvydas* made clear that due process is violated where civil detention is no longer related to its purpose. 533 U.S. at 690. Far from authorizing indefinite detention, *Zadvydas* establishes a presumption of release once removal is not reasonably foreseeable. Under this well-established Supreme Court precedent, the government's authority to detain noncitizens pursuant to § 1231 is limited in the absence of a significant likelihood of removal in the reasonably foreseeable future. *Id.* Because that likelihood is nonexistent, Ms. El Ahrach's continued detention is not only unauthorized, but unconstitutional.
8. Moreover, in the more than six months since Ms. El Ahrach was issued a final removal order, DHS has failed to conduct a single custody review, as required by DHS's own policies and federal regulations. *See* 8 C.F.R. § 241.4.
9. The gravity of the matter is heightened by Ms. El Ahrach's placement in a men's dormitory—an arrangement fundamentally at odds with her identity as a woman. Indefinite detention under

these circumstances poses significant and long-lasting threats to her mental health and well-being. It is that same identity that makes it highly improbable that ICE will be able to identify a safe third country for her removal. As a transgender woman, Ms. El Ahrach faces well-documented risks of targeted persecution in many countries such that she would pursue her procedural rights to protection from an identified country further underscoring the indefinite and untenable nature of her continued detention.

10. Where DHS has failed—in over six months—to take the procedural steps written in its own policies, and where the facts suggest that third country removal is unlikely to succeed even if initiated, removal cannot be considered reasonably foreseeable.
11. Accordingly, Ms. El Ahrach respectfully asks this Court to declare that her continued detention by Respondents is unlawful and order her immediate release from custody.
12. Pursuant to 28 U.S.C. § 2243, Ms. El Ahrach respectfully requests an order to show cause be issued within three days.

JURISDICTION AND VENUE

13. Ms. El Ahrach brings this action under Art. I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1651 (the All Writs Act).
14. District courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their civil immigration detention. *See Zadvydas*, 533 U.S. at 678, 687.
15. This Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the laws of the United States.
16. Venue is proper in the District of Colorado because at least one of the Respondents resides in this District and Respondents imprison Ms. El Ahrach in this District. As such, Ms. El Ahrach

is a resident of this District, and a substantial part of the events giving rise to the claims in this action took place within this District. 28 U.S.C. § 1391(b).

PARTIES

Petitioner

17. Mouad El Ahrach is a 25-year-old transgender woman from Morocco who ICE has jailed for over 400 days.

18. Despite being granted withholding by the immigration judge in April, ICE has refused to release her, continuing to hold her for more than 180 days post-final-order without legal justification.

Respondents

19. Juan Baltazar is the Warden of the Aurora Facility where ICE jails Ms. El Ahrach. Accordingly, Juan Baltazar is an employee of the GEO Group—the private, for-profit prison company that operates the facility—and is therefore a legal custodian of Ms. El Ahrach. He is sued in his official capacity.

20. Robert Guadian is the interim Field Office Director of the Denver Field Office of ICE Enforcement and Removal Operations ("ERO"), which has administrative jurisdiction over Ms. El Ahrach's detention and removal. He is a legal custodian of Ms. El Ahrach and is sued in his official capacity

21. Kristi Noem is the Secretary of DHS. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA). She has ultimate custodial authority over Ms. El Ahrach because ICE is a sub-agency of DHS. She is sued in her official capacity.

22. Todd M. Lyons is the Acting Director of ICE. He has the authority to make decisions related

to detaining and removing noncitizens. As such, Mr. Lyons is responsible for Ms. El Ahrach's unlawful detention. He has custodial authority over her and is sued in his official capacity.

23. Pamela Bondi is the Attorney General of the United States. She is responsible for the actions of the Department of Justice (DOJ). The Executive Office for Immigration Review (EOIR) and the immigration court system are a component agency of the DOJ. Ms. Bondi routinely transacts business in the District of Colorado and has custodial authority over Ms. El Ahrach. She is sued in her official capacity.

EXHAUSTION OF REMEDIES

24. Habeas petitions under 28 U.S.C. § 2241 are not subject to statutory exhaustion requirements. *See* 28 U.S.C. § 2241; *see also Brandon v. 30th Judicial Cir. Ct. Of Ky.*, 410 U.S. 484 (1973). Moreover, there is no exhaustion requirement because no administrative agency exists to adjudicate a petitioner's constitutional challenges. *See Matter of C--*, 20 I. & N. Dec. 529, 532 (BIA 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations.").

25. Courts have, however, imposed a prudential exhaustion requirement in which petitioners are generally expected to exhaust administrative remedies before seeking habeas relief. *See McCarthy v. Madigan*, 503 U.S. 140, 144-45 (1992). This requirement is not absolute, however.

26. Because this expectation is judicially created rather than statutorily required, courts retain discretion to excuse exhaustion in certain circumstances, including in the immigration context "when it would be futile. . . or when 'the interests of the individual in retaining prompt access to a federal judicial forum outweigh the interest of the agency in protecting its own authority." *Quintana Casillas v. Sessions*, No. CV 17-01039-DME-CBS, 2017 WL 3088346, at *9 (D.

Colo. July 20, 2017) (citing *Son Vo v. Greene*, 109 F. Supp. 2d 1281, 1282 (D. Colo. 2000) and *Gonzalez-Portillo v. U.S. Attorney Gen., Reno,* No. CIV. A. 00-Z-2080, 2000 WL 33191534, at *4 (D. Colo. Dec. 20, 2000)).

27. Despite the absence of any statutory exhaustion requirement, Ms. El Ahrach has nonetheless made repeated requests for the custody reviews to which she is entitled under § 1231. Since April, she has submitted multiple written requests to the government requesting her release or at minimum, notice of any upcoming review of her custody pursuant to 8 C.F.R. § 241.4, and notice of any country DHS considers for removal. *See* Exh. B(a)-(d). Ms. El Ahrach's persistent efforts demonstrate an attempt to resolve her detention through the processes available to her, further undermining any suggestion that she has failed to exhaust remedies.

28. Rather than conduct the required 90-Day Post-Order Custody Review (POCR), ICE instead transferred Ms. El Ahrach to Natrona County Jail in Casper, Wyoming, without explanation or notice. Exh. B(d), Re: Transfer to WY.

29. Despite the lack of review at the 90-day mark, Ms. El Ahrach again took proactive measures to assert her rights, again contacting ICE through undersigned counsel—her immigration counsel of records—just before the 180-day mark, when ICE was required to conduct a *second* custody review, to request notice of the upcoming review. Exh. B(b), Re: 180-Day POCR. As of the date of this petition, ICE has ignored the request entirely and failed to conduct every mandatory custody review to which she is entitled. *See* 8 C.F.R. § 241.4.

30. Ms. El Ahrach has exhausted all possible remedies available to her. *See, Zadvydas*, 533 U.S. at 685 (noting the Fifth Circuit's reliance on the mere existence of periodic administrative reviews is not sufficient). She is detained under 8 U.S.C. § 1231(a) and thus cannot request a bond hearing before an immigration judge. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578

(2022).

STATEMENT OF THE FACTS

Ms. El Ahrach's Background and Immigration History

31. Ms. El Ahrach was thirteen (13) years old when her family members—speculating that she was gay—began physically abusing her. For the next eleven years, Ms. El Ahrach was habitually beaten by her father, brother, and cousins. It was only after her brother tried to kill her by attacking her with a knife until she lost consciousness, that Ms. El Ahrach—having narrowly escaped death—fled to the United States in search of safety.

32. She has spent nearly her entire time in the United States in ICE custody. Upon entering the country, she was encountered by border patrol and taken into custody on or about July 2, 2024. From detention, Ms. El Ahrach filed a pro se application for asylum, withholding of removal, and protection under the Convention Against Torture.

33. At the conclusion of her merits hearing held on April 7, 2025, IJ Elizabeth McGrail granted Ms. El Ahrach withholding of removal under 8 U.S.C. § 1231(b)(3), INA § 241(b)(3), to Morocco. Judge McGrail found that she would "more likely than not" face persecution in Morocco because of her sexual orientation and gender identity. Exh. A, Order of the IJ; 8 U.S.C. § 1231(b)(3).

34. Neither Ms. El Ahrach nor DHS reserved the right to appeal. Exh. A, Order of the IJ. As such, the immigration judge's order became administratively final that same day.

35. The IJ granted Ms. El Ahrach withholding rather than asylum solely because of the Circumvention of Lawful Pathways Rule, which bars asylum eligibility for noncitizens who enter the United States at the southern border without using a lawful process. *See* 8 C.F.R. § 1208.33. This regulation only applies to noncitizens who entered the country on or after May

11, 2023. *Id.*

DHS Has Failed to Conduct Both Mandatory Post-Order Custody Reviews.

36. DHS has held Ms. El Ahrach in post-final-order detention for over six months without conducting a single custody review, as required by regulation. *See* 8 C.F.R. § 241.4(k).

37. Although removal to Morocco is legally prohibited by the grant of withholding, DHS may still pursue removal to a third country 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16. Under § 1231(a), DHS has 90 days to facilitate removal.

38. Ms. El Ahrach's removal order became administratively final on April 7, 2025, meaning this 90-day period in which DHS was expected to effectuate removal expired on July 6, 2025. *See* Exh. A, Order of the IJ; *see also* Exh. B(a), Re: 90-Day POCR. DHS failed to provide Ms. El Ahrach with the required written notice of an upcoming 90-Day POCR at least 30 days in advance, pursuant to § 241.4(k).

39. On June 30, 2025, counsel for Ms. El Ahrach contacted her Deportation Officer, Raymundo Lascano III, by email to inquire whether the Department had plans to pursue third country removal, noting the imminent expiration of the 90-day removal period and requesting her release. Exh. B(a), Re: 90-Day POCR at ¶ 3.

40. Officer Lascano responded that the removal period would be extended to allow DHS to "exhaust all removal efforts," citing to INA § 241(b)(3)(C), which is codified at 8 U.S.C. § 1231(b)(3)(C). *Id.* at ¶ 2. Counsel requested clarification on the meaning of "exhaust all efforts," as well as the legal basis for continuing to detain Ms. El Ahrach. *Id.* Officer Lascano never responded. *Id.* at ¶ 1.

41. The 90-day removal period expired on July 6, 2025. Neither Ms. El Ahrach nor her counsel received the requested notification from ICE regarding its decision to extend her detention

beyond the removal period. Shortly thereafter, she was abruptly transferred to Natrona County Jail in Casper, Wyoming.

42. On July 18, 2025, counsel received a phone call from Ms. El Ahrach confirming that she had been transferred from Aurora to Natrona County. In Natrona County, she felt a deeper sense of limbo—trapped in an unfamiliar jail and under harsh conditions with no understanding of why she had been suddenly moved or what might come next.

43. On August 23, 2025, counsel received another phone call from Ms. El Ahrach, this time saying that she had been transferred from Wyoming back to the Aurora Facility. Once again, counsel reached out to the Supervising Deportation Officer at the Aurora Facility, requesting to be notified if ICE had identified a third country for removal, as the sudden transfer back to Aurora raised concerns that such preparations might be underway. Exh. B(c), Re: Third Country Removal at ¶ 2.

44. Supervisory Detention and Deportation Officer, Alexander Hall, denied that the transfer was for this purpose and stated that his response should "ease" concerns. *Id.* at ¶ 1.

45. However, ICE's conduct has continued to raise concerns regarding compliance with post-final-order procedures. As of October 7, 2025, Ms. El Ahrach has been in post-final-order custody for six months--or 180 days—yet ICE has failed to notify her of an upcoming 180-Day POCR, as required by regulation. *See* 8 C.F.R. § 241.4(k)(2)(ii).

46. On September 25, 2025, counsel for Ms. El Ahrach wrote once more to the Supervising Deportation Officer at the Aurora Facility to inquire whether ICE had scheduled the 180-Day POCR. Exh. B(b), Re: 180-Day POCR. However, as of the date of this petition neither counsel nor Ms. El Ahrach have received any response to this inquiry.

47. This is not merely an issue of lack of notice. As of the date of this petition, ICE has failed to

conduct the 180-Day POCR to which Ms. El Ahrach is entitled.

LEGAL FRAMEWORK

Constitutional Limits to Post-Final Order Detention

48. The statutes and regulations governing post-final-order detention make it clear that continued detention is meant to serve a single purpose: removal from the United States. *See* 8 U.S.C. § 1231; *see also* 8 C.F.R. § 241.4. And removal is expected to occur within the 90-day removal period. *See* 8 U.S.C. § 1231(a)(1)(A). Although situations in which continued detention beyond this period may be permissible are contemplated, such detention is subjected to constitutional constraints. [2]

49. "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 [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690. Indefinite detention raises a particularly "serious constitutional problem" and directly violates the Due Process Clause. *Id.* at 689-90.

50. Any deprivation of the liberty interests protected by the Due Process Clause must be closely related to a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"). Accordingly, any period of post-final-order detention must be strictly limited to what is necessary to achieve the goal of removal.

51. In *Zadvydas*, the Supreme Court limited post-final-order detention to "a period reasonably

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[2] See *Zadvydas*, 533 U.S. at 678, 690-91 (holding that indefinite detention of a noncitizen ordered removed is unconstitutional where removal is not reasonably foreseeable, but recognizing exceptions for individuals who are "specially dangerous" or pose a risk to national security).

necessary to secure removal." 533 U.S. 678, 699 (2001). Where removal is not reasonably foreseeable, continued detention is deemed unreasonable and "no longer authorized by statute." *Id.* The Court held that a noncitizen may not be held in post-final-order detention beyond six months unless there is a significant likelihood of removability in the reasonably foreseeable future. *Id.* at 699.

52. "[F]or detention to remain reasonable, as the period of post-removal confinement grows, what counts as 'the reasonably foreseeable future' conversely would have to shrink," meaning the longer the noncitizen remains in post-final-order detention, the shorter the window the government has to demonstrate that removal is reasonably foreseeable. *Id.* at 701.

53. Following the six-month period, "once the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to "respond with evidence sufficient to rebut that showing." *Id.*

54. At this stage, if the government cannot present documented confirmation that removal is likely to occur in the reasonably foreseeable future, the noncitizen must be released. *See Zadvydas*, 533 U.S. at 701; *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005). Continued detention would violate both §1231(a)(6) and the Due Process Clause of the Fifth Amendment. *See Zadvydas*, 533 U.S. at 701; *Morales-Fernandez v. INS,* 418 F.3d 1118 (10th Cir. 2005).

DHS's Longstanding Release Practices for Withholding Grantees

55. The Department's longstanding practice is to release noncitizens, like Ms. El Ahrach, following a grant of withholding absent "exceptional circumstances." *See, e.g.*, Exh. C, Fear-Based Grant Release Policy.

56. This longstanding practice is exemplified by the 2004 Fear-Based Grant Release Policy. Id. That document states its purpose is to "reiterate[]" an earlier memorandum from the then

Immigration and Naturalization Service (INS) outlining the government's policy of releasing individuals granted asylum or other fear-based protection relief, such as withholding. *Id.* ("In general, it is ICE policy to favor release of [noncitizens] who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain.").

Third Country Removal

57. Under 8 U.S.C. § 1231, DHS has the authority to remove noncitizens granted withholding to a third country. 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f). The term "third country" refers to one not previously designated by an IJ or DHS during the underlying removal proceedings. *D.V.D. v. Dep't of Homeland Sec.,* No. 1:25-cv-10676, 2025 WL 942948 (D. Mass. Mar. 28, 2025), ECF No. 34.

58. Although the statutory framework for third country removal has long existed, DHS rarely pursued this option in the past. Individuals granted withholding were generally released from detention following the conclusion of their immigration proceedings. *See* Exh. C, Fear-Based Grant Release Policy.

59. Under the current administration, however, DHS has demonstrated a renewed interest in pursuing third country removal. [3] As a result, individuals who would have been released in the past are now being held in ICE custody for extended periods so that DHS may assess the viability of removal to a third country, despite having won on the merits of their fear-based

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[3] *See* Maria Sacchetti, et al, "ICE memo outlines plan to deport migrants to countries where they are not citizens," The Washington Post (July 13, 2025), available at: https://www.washingtonpost.com/immigration/2025/07/12/immigrantsdeportations-trump-ice-memo/; *see also* Ximena Bustillo, "The White House is deporting people to countries they're not from. Why?," National Public Radio, (June 1, 2025), available at: https://www.npr.org/2025/06/01/g-s1-69780/trump-deportations-south-sudan.

claims.

60. To justify such removals, DHS must meet the narrow criteria outlined by 8 U.S.C § 1231(b)(2)(D)-(E). For example, DHS may pursue third country removal to countries in which a noncitizen is a citizen, was born, or resided immediately before entering the United States. *Id.*

61. DHS is legally barred, however, from removing individuals to countries where they have been granted protection under withholding due to the risk of persecution or torture they face in those countries. *Id.* As a result, when removal to an individual's country of origin is not an option, DHS must either release the individual or assess whether removal to a safe third country is legally viable. *See* 8 U.S.C. § 1231(b)(1)(C)(4).

62. On March 30, 2025, DHS issued a memorandum entitled *Guidance Regarding Third Country Removals*, clarifying key procedural elements of third country removal ("March Memo"). Exh. D, March Memo at ¶¶ 1, 2. The March Memo requires DHS to first "determine whether [a] country has provided diplomatic assurances that [noncitizens] removed from the United States will not be persecuted or tortured" in that country before removal may occur. *Id.* at ¶ 1. If the Department is unable to obtain the necessary individualized diplomatic assurances, it must notify the noncitizen of its intent to remove them to that country to ensure the individual has an opportunity to contest removal, seek relief under available immigration laws, or make logistical arrangements. *Id.* at ¶ 2.

63. While these procedures are clearly stated in the March Memo, the extent to which DHS implements them in practice remains of concern, particularly considering the high potential for due process violations. *See D.A. v. Noem*, No. 1:25-cv-03135 (D.D.C. Sept. 12, 2025) (a case challenging failures in DHS's adherence to third country removal procedures, resulting

in due process violations).

64. In the context of third country removal, where the risk of future persecution or torture is significant, the requirements of notice and a meaningful opportunity to respond are not merely procedural technicalities, but fundamental components of due process protections.

65. This principle is at the heart of ongoing litigation challenging the legality of current procedures. In *DHS v. D.V.D.*, the Supreme Court granted the government's request to stay the preliminary injunction that required such procedural protections before removal. No. 24A1153, 606 U.S. ___ (2025). Although the stay allows removal to proceed during the litigation, the district court's ruling underscores the fundamental importance of these due process protections. *See id.*

66. On July 9, 2025, Acting ICE Director Todd M. Lyons issued a memorandum following this development in *D.V.D.* clarifying key procedural requirements and confirming that ICE officers should adhere to the March Memo. Exh. E, Lyons Memo at ¶¶ 1, 2. Among these requirements is the obligation to serve the noncitizen with a Notice of Removal written in a language they can understand that names the third country DHS intends to remove them to. *Id.* at ¶ 1. Without notice and a chance to respond, individuals are at risk of being deported to countries where they face persecution or torture, in direct violation of federal law. These procedural requirements—while they are basic—are essential to protecting the fundamental rights at stake.

67. Although DHS is not required to affirmatively ask whether the noncitizen fears removal to an indicated country, the individual may still raise such fear and contest their removal. *Id.* If fear is expressed, the individual must be screened for eligibility for protection under 8 U.S.C. § 1231(b)(3) and CAT. *Id.* at ¶ 2.

Mandatory Post-Final-Order Custody Reviews

68. The government may not remove a noncitizen to a country where the noncitizen's life or freedom would be threatened in that country because of their race, religion, nationality, membership in a particular social group, or political opinion. *See* 8 U.S.C. § 1231(b)(3).

69. When an IJ determines that a noncitizen has met the criteria of 8 U.S.C. § 1231(b)(3) with respect to a particular country, a removal order is issued and simultaneously withheld with respect to the country for which the noncitizen demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 531-31 (2021). This form of relief is called withholding of removal, a status which allows a noncitizen to legally live and work in the United States, and one that has historically led to release under supervision. *See* Exh. A, Fear-Based Grant Release Policy.

70. Under § 1231(a)(2), the government is given 90 days to carry out the removal. This is known as the "removal period" and it commences once a noncitizen's removal order "becomes administratively final." *See* 8 U.S.C. § 1231(a)(1)(B). During this time, detention is mandatory. *See* 8 U.S.C. § 1231(a)(2)(A).

71. If the removal period lapses before removal occurs, the noncitizen "*may* be detained beyond the removal period" if they are inadmissible or deportable under specified categories. 8 U.S.C. § 1231(a)(6) (emphasis added). The discretionary language of § 1231(a)(6) implies the necessity of an individualized determination on whether a noncitizen meets this specified criteria.

The 90-Day Post-Order Custody Review

72. As is set forth *infra,* the Court in *Zadvydas* found that the presence of a unilateral custody review by Respondents did not cure the Constitutional violation that results when the

government indefinitely detains an individual in civil immigration detention. The continued detention of noncitizens beyond the removal period is also governed by 8 C.F.R. § 241.4, which establishes the procedures DHS must follow with regards to reviewing a noncitizen's custody.

73. Where removal "cannot be accomplished during the period, or is impracticable or contrary to the public interest," 8 C.F.R. § 241.4(k), DHS regulations provide that "prior to the expiration of the removal period" the local ICE field office "shall conduct a custody review" to determine whether a noncitizen should remain detained. *See* 8 C.F.R. §§ 241.4(c)(1), (k)(1)(i).

74. At a 90-day post-order custody review ("90-Day-POCR"), DHS considers multiple factors, including the availability of travel documents for removal. *Id.* §§ 241.4(e)-(f). At this stage, ICE may release the noncitizen under conditions of supervision as it deems appropriate. *Id.* § 241.4(j).

75. DHS is obligated to provide the noncitizen with written notice approximately 30 days before the impending 90-Day POCR so that the noncitizen may submit information in writing to support their release. *See* 8 C.F.R. § 241.4(h)(2).

76. If DHS finds that removal is not reasonably foreseeable yet seeks to extend the removal period of a detained noncitizen based on "special circumstances," it must demonstrate that continued detention is based on narrow circumstances, such as national security or public health concerns, 8 C.F.R. §§ 241.4(b)-(d). Alternatively, the government must demonstrate by clear and convincing evidence before an IJ that the noncitizen is "specially dangerous." Id. § 241.14(f).

77. At the 90-Day POCR, the noncitizen seeking release must convince DHS they are not a flight risk or danger to the community. *See* 8 C.F.R. § 241.4(d)(1). DHS should find release is

appropriate where travel documents are unavailable, making removal "not practicable or not in the public interest." *See* 8 C.F.R. § 241.4(f). Additionally, DHS may weigh factors, such as the person's disciplinary record while in detention, their criminal history and any immigration history indicating a likelihood that they are "a significant flight risk." 8 C.F.R. § 241.4(f).

78. After the 90-Day POCR, DHS must advise the noncitizen in writing whether they are to be released or remain in detention pending removal or further custody review. *See* 8 C.F.R. § 241.4(k)(1)(i).

The 180-Day Post-Order Custody Review

79. In response to *Zadvydas*, DHS issued additional regulations establishing "special review procedures" to determine whether noncitizens in post-final-order detention are likely to be removed in the reasonably foreseeable future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56, 967 (Nov. 14, 2001). Subsection (i)(7) was incorporated to 8 C.F.R. § 241.4's preexisting POCR process to include an additional review procedure that ICE headquarters must initiate when the [noncitizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [noncitizen] is not significantly likely in the reasonably foreseeable future." 8 C.F.R. § 241.4(i)(7).

80. The Supreme Court underscored that post-final-order detention under § 1231(a)(6) is limited to "a period reasonably necessary to bring about a [noncitizen's] removal from the United States." *Zadvydas*, 533 U.S. at 689. The Court considered the purported purpose of post-final-order detention: to "assur[e] the [noncitizen's] presence at the moment of removal," *Id.* at 699, and held that the government interest in preventing flight is "weak or nonexistent where

removal seems a remote possibility at best." *Id.* at 690.

81. Accordingly, in habeas proceedings, if a noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the government must either "respond with evidence sufficient to rebut that showing," or release them from detention under supervision." *Id.* at 701.

82. Three months *after* the lapse of the 90-day removal period, or six months after the issuance of a final order, authority over custody determinations transfers to the Executive Associate Commissioner to conduct an additional custody review on that date or "as soon thereafter as practicable," referred to as the 180-Day Post-Order Custody Review. *See* 8 C.F.R. § 241.4(k)(1)(ii) and (k)(2)(i)-(ii). DHS is again obligated to provide approximately 30 days' written notice to the noncitizen of this review. *Id.*

83. Custody reviews are to be conducted within these specified timeframes or "as soon as possible thereafter, allowing for any unforeseen circumstances or emergent situation." *See* 8 C.F.R. § 241.4(k)(2)(iv). The District Director or HQPDU Director may postpone the custody review process for "good cause," such as a noncitizen's imminent removal, but must document this decision and specify the reasons for the delay in the noncitizen's custody review file or A file. *See* 8 C.F.R. § 241.4(k)(3). As soon as the reason for the delay is remedied, DHS must exercise "[r]easonable care" to ensure that the 180-Day POCR occurs. *Id.*

84. Although the addition of the180-Day POCR was intended to address concerns surrounding indefinite detention of noncitizens for whom there is no significant likelihood of removal in the reasonably foreseeable future, the POCR process itself is inadequate to protect against substantial due process violations. *See* Elizabeth Hannah, *Immigration Detention is Never "Presumptively Reasonable": Strengthening Protections for Immigrants with Final Removal*

Orders, 65 ARIZ. L. REV. 505, 519 (2023).

85. Only when the government determines that a noncitizen's request for release has merit—meaning it agrees there is no significant likelihood of removal in the foreseeable future—will the government refer the request to the State Department for further review. *Id.* The State Department will provide a report to DHS regarding the likelihood of removal; however, DHS is still the ultimate decision maker as to whether removal is likely to occur within the reasonably foreseeable future. *Id.* Thus, the POCR process fails to ensure fair and impartial review. *See id.*

ARGUMENT

Ms. El Ahrach's Removal Is Not Reasonably Foreseeable and As Such Her Continued Detention Violates *Zadvydas*

86. In *Zadvydas*, the Supreme Court held that under 8 U.S.C. § 1231(a)(6), post-final-order detention is presumptively reasonable for a period of six months. 533 U.S. at 678. After the expiration of six months, if removal is not reasonably foreseeable, continued detention is no longer authorized. *Id.* at 699-700. At this stage, the burden shifts to the government to show that there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* at 701.

87. Here, that burden has shifted to the government and it cannot be met. First, Ms. El Ahrach has been detained for more than six months following the IJ's grant of withholding. See Exh. A, IJ Order. Having been granted this form of relief, Ms. El Ahrach cannot be deported to Morocco, the only country to which she is a citizen. 8 U.S.C. § 1231(b)(3). She has no legal status, no ties, and has never resided in any other country.

88. Although third country removal provides DHS with the legal framework to remove noncitizens who have been granted withholding, that purpose cannot justify continued detention where the removal process remains entirely dormant. Upon information and belief,

DHS has taken no steps to initiate—let alone effectuate—removal to a third country. In fact, the record supports the conclusion that DHS has allowed for the removal period to expire without so much as looking for a viable third country. No country has been identified, no assurances sought, and no notice issued. Under DHS's own guidance, this is a clear failure to effectuate third country removal. Exh. D, March Memo.

89. In July, upon hearing from Ms. El Ahrach that she had been transferred from Wyoming back to the Aurora Facility, undersigned counsel contacted the Supervising Deportation Officer at Aurora. Exh. B(c), Re: Third Country Removal at ¶ 2. This time counsel requested notice of any third country ICE had identified for removal, as the abrupt transfer seemed potentially aimed at facilitating such a process. *Id.*

90. Supervisory Detention and Deportation Officer, Alexander Hall, denied any such purpose and remarked that this should "ease" concerns. *Id.* at ¶ 1. This correspondence well past the conclusion of the 90-day removal period DHS had not even begun its exploration into third country removal. Far from easing any concerns, Officer Hall's response confirmed that Ms. El Ahrach is being indefinitely detained without any progress towards removal.

91. Moreover, fact that Ms. El Ahrach is a transgender woman, an identity that significantly increases her risk of facing persecution in many parts of the world, further complicates the viability of third country removal as a legitimate option. An intent to remove her to a third country would require the government to provide advance notice, a meaningful opportunity to respond, and litigation of fear-based protection claims, which would further delay any attempt at removal.

92. When combined, her withholding order, the lack of a viable third country, and Ms. El Ahrach's heightened risk as a transgender woman renders her removal not merely unlikely,

but functionally impossible in the foreseeable future.

93. Under *Zadvydas*, where removal is not reasonably foreseeable, it no longer serves its intended purpose under § 1231(a)(6). Without this Court's intervention, Ms. El Ahrach is at risk of remaining permanently detained.

94. Accordingly, Ms. El Ahrach's detention has exceeded constitutional and statutory limits. Where the government cannot demonstrate the significant likelihood of removal in the reasonably foreseeable future, it must turn to release.

DHS's Has Failed to Even Abide by the Requirement to Conduct a POCR

95. The government has held Ms. El Ahrach in post-final-order detention for more than six months yet has failed to conduct even a single custody review, neither at the 90-day mark nor at the 180-day mark, as required by law. *See* 8 U.S.C. § 1231(a); *see also* 8 C.F.R. § 241.4.

DHS Failed to Conduct a 90-Day Post-Order Custody Review

96. The 90-day removal period expired for Ms. El Ahrach on July 6, 2025. Pursuant to 8 C.F.R. § 241.4(h)(2), DHS should have issued written notice to Ms. El Ahrach of an upcoming 90-Day POCR on or about June 6, 2025.

97. On June 30, 2025, less than a week before the required custody review and having received no notice from DHS, counsel for Ms. El Ahrach contacted her Deportation Officer, Raymundo Lascano III, to request information regarding the Department's plans for her removal, highlighting the imminent expiration of the 90-day removal period and requesting her release. Exh. B(a), Re: 90-Day POCR at ¶ 3.

98. In his one sentence response, Officer Lascano cited INA § 241(b)(3)(C), which is codified at 8 U.S.C. § 1231(b)(3)(C), asserting the removal period would be extended so that DHS could "exhaust all removal efforts." *Id.* at ¶ 2.

99. However, Officer Lascano mischaracterized the statute, directly quoting the first part of the statute which states that "the removal period shall be extended beyond a period of 90 days, and the alien may remain in detention during such extended period." *Id.*

100. The rest of that provision clearly provides that the removal period may be extended, and continued detention may be justified, *only* if the noncitizen "fails or refuses" to timely apply for necessary travel documents or acts in a way to prevent their removal. 8 U.S.C. § 1231(b)(3)(C). Officer Lascano's summary omits this critical statutory language, suggesting an attempt to justify indefinite detention without the legal basis Congress clearly required.

101. The legal grounds set forth in § 241(b)(3)(C) for extending the removal period beyond 90 days do not and *cannot* apply to Ms. El Ahrach. DHS has entirely failed to identify—let alone designate—any prospective country for third country removal. Without notice of DHS' intent to deport her to a specific country, she lacks the baseline information she would need to apply for relevant travel documents. There is no evidence to suggest that Ms. El Ahrach has—at any point in over 400 days—acted in a way as to prevent her own removal or as to disobey or obstruct any DHS policy or procedure.

102. When counsel responded to Officer Lascano's email requesting clarification on the meaning of "exhaust all efforts" and the legal basis for detaining Ms. El Ahrach—a young woman with no criminal history—while those efforts were allegedly ongoing, Officer Lascano did not respond. Exh. B(a) at ¶ 1.

103. The removal period expired without Ms. El Ahrach ever receiving written notice from ICE regarding its decision to extend her detention.

104. Had DHS conducted the required custody review at the 90-day mark, Ms. El Ahrach would have presented evidence in support of her release to demonstrate that she is not a flight risk

nor a danger to the community.

DHS Failed to Conduct a 180-Day Post-Order Custody Review

105. As of October 7, 2025, Ms. El Ahrach has been in post-final-order custody for six months, or 180 days.

106. Pursuant to 8 C.F.R. § 241.4(k)(2)(ii), she should have received written notice of a 180-Day POCR on September 7, 2025.

107. On September 25, 2025, counsel for Ms. El Ahrach wrote to the Supervising Deportation Officer at the Aurora Facility to ask when the 180-Day POCR is scheduled.

108. As of the time of filing, neither counsel nor Ms. El Ahrach have received any response to this inquiry. There is no indication that ICE has taken any steps to schedule or conduct a 180-Day POCR.

109. Given that DHS refused to conduct a 90-Day POCR and has repeatedly ignored requests from counsel to conduct any custody review, it is highly unlikely that DHS has any intention of reviewing Ms. El Ahrach's custody in the reasonably foreseeable future, let alone at the 180-day mark in accordance with federal regulations. Even assuming, *arguendo,* that DHS did conduct a review of Ms. El Ahrach's continued custody, that does not cure the constitutional violation at issue in the case. This violation cannot be resolved by a unilateral review of continued confinement in civil immigration detention by an agency that has made clear it won't release her. Thus, the POCR process does not serve the legitimate purposes that can justify the denial of the right to liberty as explained by the Court in *Zadvydas.*

Removal to a Safe Third Country is Not Viable Due to Ms. El Ahrach's Gender Identity

110. Even if DHS were to assert a legitimate interest in effectuating third country removal, Ms. El Ahrach's gender identity makes it highly unlikely that such removal could legally occur.

Moreover, a legitimate government interest in third country removal does not mean that removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 699.

111. As a transgender woman, Ms. El Ahrach faces significant risk of persecution or torture in the limited list of countries that accept non-nationals deported from the United States[4]. Accordingly, counsel for Ms. El Ahrach is prepared to initiate full litigation to vindicate Ms. El Ahrach's procedural rights to challenge removal to any country DHS could designate, as deportation to a country where transgender women are routinely targeted would constitute a clear violation of federal law, including the protections available under the Convention Against Torture (CAT).

112. Even if DHS attempted to secure diplomatic assurances, their credibility should be questioned.[5] The problematic nature of diplomatic assurances has been exposed in cases such as *D.A. v. Noem*, where individuals granted fear-based relief from various West African countries were removed to Ghana presumably under such assurances and ultimately returned to the same countries where adjudicators had determined they would face persecution, rendering any "assurances" effectively meaningless. No. 1:25-cv-03135, 2025 WL 2646888 (D.D.C. Sept. 12, 2025).

The Appropriate Remedy for this Due Process Violation is Immediate Release.

113. The indefinite nature of Ms. El Ahrach's detention is a grave and ongoing violation of her due

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[4] *See* Edward Wong et al., *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times (Jun. 25, 2025), available at: https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html?smid=url-share).

[5] Letter from Members of Congress to Secretary Kristi Noem, Secretary Marco Rubio, and Secretary Pete Hegseth (Sept. 24, 2025), available at: https://www.warren.senate.gov/imo/media/doc/letter_from_warren_members_of_congress_on_us_citizens_immigration_enforcement_letter.pdf

process rights, and the appropriate remedy is release. Immediate release is contemplated when immigration detention becomes unlawful. *Zadvydas*, 533 U.S. at 701; *Mapp v. Reno,* 241 F.3d 221, 229 (2d Cir. 2001) (recognizing court's inherent power to order release of habeas petitioners from immigrant detention).

CLAIMS FOR RELIEF

COUNT I

Unlawful Post-Final Order Detention Under 8 U.S.C. § 1231(a)(6) and *Zadvydas v. Davis*

114. Ms. El Ahrach realleges and incorporates by reference the paragraphs above.

115. The government detains Ms. El Ahrach pursuant to 8 U.S.C. § 1231(a)(6), which governs the detention of noncitizens who have administratively final orders of removal.

116. In *Zadvydas*, the Supreme Court interpreted section 1231(a)(6) to contain an implicit timeframe, authorizing detention only for "a period reasonably necessary to bring about the [noncitizen's] removal from the United States. 533 U.S. at 589. The Court established a six-month period of post-final-order detention, after which the government must provide evidence that removal is likely in the reasonably foreseeable future. *See id.* at 701.

117. In the more than six months since Ms. El Ahrach's removal order became administratively final, the government has failed to identify a single country for removal—and upon information and belief, has not even begun its search for a third country that would accept Ms. El Ahrach.

118. Ms. El Ahrach cannot be deported to Morocco—the only country where she is a citizen—because she has a final grant of withholding of removal to Morocco. Exh. A, IJ Order. She has no legal status in or connections to any other country.

119. Before initiating removal to any third country, the government must first afford Ms. El Ahrach

notice and the opportunity to raise a fear-based protection claim seeking relief from removal to that country. If Ms. El Ahrach successfully demonstrates reasonable fear, the government must allow her an opportunity to reopen her proceedings. Ms. El Ahrach's identity as a transgender woman makes it highly improbable that DHS would succeed in identifying a country that would be a safe destination for her. Accordingly, Ms. El Ahrach, through undersigned counsel, is prepared to litigate her procedural rights to challenge any country which DHS identifies. Together, these factors render her removal more remote than ever.

120. Because Ms. El Ahrach cannot be removed from the United States in the "reasonably foreseeable future," her continued detention violates 8 U.S.C. § 1231(1). *See* Zadvydas, 533 U.S. at 701.

121. Accordingly, Ms. El Ahrach respectfully requests that this Court order Respondents to immediately release from detention.

COUNT II

Violation of the Procedural Due Process Clause of the Fifth Amendment of the United States Constitution

122. Ms. El Ahrach realleges and incorporates by reference the paragraphs above.

123. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Cont. amend. V. To comply with the Due Process Clause, civil detention must "bear[] a reasonable relation to the purpose for which the individual was committed," which for immigration detention pursuant to § 1231 is removal from the United States. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690).

124. The government's alleged justification for continuing to detain Ms. El Ahrach absent any indication it has even begun the preliminary research that third country removal requires in

the more than six months, violates her procedural due process rights and renders her detention indefinite. Moreover, without notice of the government's intent to deport her to a single country, Ms. El Ahrach cannot have a meaningful opportunity to challenge the viability of her removal, further depriving her of the due process rights to which she is entitled under the United States Constitution.

125. Lastly, the government has failed to conduct any of the mandatory custody reviews required by 8 C.F.R. § 241.4 during this prolonged period of detention, further violating her right to due process.

COUNT III

Violation of the Substantive Due Process Clause of the Fifth Amendment of the United States Constitution

126. Ms. El Ahrach realleges and incorporates by reference the paragraphs above.

127. The Fifth Amendment provides that "No person shall . . . be deprived of life, liberty, or property[] without due process of law." U.S. Const. amend. V. Moreover, "The Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

128. Moreover, the Supreme Court has established that noncitizens in post-final-order detention for more than six months must be released from custody if there is no likelihood that they will be removed in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 699-700.

129. More than six months have lapsed since Ms. El Ahrach was granted withholding, yet she remains confined without any further court proceedings, appellate process, or indication of any plan for removal. Under these circumstances, Ms. El Ahrach's continued detention is completely untethered to any legal basis. *Id.* at 690 ("where detention's goal is no longer practically attainable, detention no longer bears reasonable relation to the purpose for which

the individual was committed."). At this stage, DHS's refusal to release Ms. El Ahrach is "the exercise of power without any reasonable justification" and a violation of due process principles. *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998).

130. The indefinite nature of Ms. El Ahrach's detention under section 1231 violates her substantive due process rights under the Fifth Amendment by depriving her of her "strong liberty interest." *United States v. Salerno*, 481 U.S. 739, 750 (1987).

131. At six months post-final-order and with numerous "good reason[s] to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the government must now carry the burden of justifying Ms. El Ahrach's continued imprisonment. *Zadvydas*, 533 U.S. at 701. With no history of arrests or convictions to point to, the government will be unable to produce evidence that Ms. El Ahrach poses any danger to the community.

132. Moreover, the government interest in "preventing flight [] is weak or nonexistent where removal seems a remote possibility at best." *Id.* at 690.

133. Accordingly, Ms. El Ahrach respectfully requests this Court order Respondents to immediately release her.

PRAYER FOR RELIEF

WHEREFORE Ms. El Ahrach respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Issue an order prohibiting Respondents from transferring Ms. El Ahrach outside of the jurisdiction of the District of Colorado pending the resolution of this case;

c. Issue an order to show cause or order to answer pursuant to 28 U.S.C. § 2243, ordering Respondents to show cause within three days of why the writ should not be granted;

d. Issue an order declaring that Respondents' continued detention of Ms. El Ahrach violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6), and her procedural and substantive due process rights under the Due Process Clause of the Fifth Amendment of the U.S. Constitution;

e. Award Ms. El Ahrach her costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

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

Dated: October 10, 2025

s/ Elizabeth Jordan

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VERIFICATION

I, s/ Elizabeth Jordan, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in Ms. El Ahrach's Petition for Writ of Habeas Corpus are true and correct.

Dated: October 10, 2025

EXHIBITS

A. Order of the Immigration Judge Granting Withholding of Removal (Dated April 7, 2024) ("IJ Order").

B. Email communications with the Supervising Deportation Officer (DO) at the Aurora Facility

   a. Re: 90-Day POCR

   b. Re: 180-Day POCR

   c. Re: Third Country Removal

   d. Re: Transfer to WY

C. ICE Memorandum, Re: Detention Policy Where An Immigration Judge Has Granted Asylum And ICE Has Appealed (Dated February 9, 2004) ("Fear-Based-Grant Release Policy").

D. Department of Homeland Security, U.S. Immigration and Customs Enforcement Memorandum from Kristi Noem titled Guidance on Third Country Removals (Dated March 30, 2025) ("The March Memo").

E. U.S. Immigration and Customs Enforcement Memorandum from Todd Lyons titled, Third Country Removals Following the Supreme Court's Order in Department of Homeland Security v. D.V.D., No 24A1153 (U.S. June 23, 2025) (Dated July 9, 2025) ("The Lyons Memo").