IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

SOTO VILCHEZ, Jorge Luis

Petitioner,

v.

Pamela Bondi, Attorney General, U.S. Department of Justice;

Kristi Noem, Secretary, Department of Homeland Security;

Todd Lyons, Director, Immigration and Customs Enforcement;

Sam Olson, Acting Director of Enforcement and Removal Operations, St. Paul Field Office, Immigration and Customs Enforcement;

Crystal Carter, Warden, FCI Leavenworth;

Respondents.

Civil No.: 25-3234-JWL

PETITION FOR A WRIT OF HABEAS CORPUS

1. Petitioner, Jorge Soto Vilchez ("Petitioner" or "Mr. Soto Vilchez") petitions this Court to issue a Writ of Habeas Corpus or, alternatively, order Respondents to show cause for his continued detention within 3 days, or no later than 10 days, in accordance with 28 U.S.C. § 2243. Mr. Soto Vilchez's continued detention bears no reasonable relation to *any* legitimate government purpose and is therefore

unconstitutional. Because Respondents cannot justify Mr. Vilchez's detention under the U.S. Constitution, he urges this Court to grant his petition and order Respondents to immediately release him from custody. 28 U.S.C. § 2241.

2. The Immigration and Nationality Act (INA)and the U.S. Constitution, do not authorize the Department of Homeland Security (DHS) to continue to detain Mr. Soto Vilchez indefinitely while it searches for a country that would accept a person with no ties to that country, which is likely to be all but futile in Mr. Soto Vilchez's case. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("A statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem.").[1]

STATEMENT OF THE CASE

3. Mr. Soto Vilchez is a Venezuelan citizen who received an administratively final grant of withholding of removal to Venezuela under the INA by an Immigration Judge (IJ) on April 23, 2025. *See* Exh. A, Decision of the Immigration Judge, April 23, 2025; 8 U.S.C. § 1231(b)(3)(A). The IJ designated only Venezuela as the country of removal. Exh. A. That decision became administratively final as of the IJ's decision date when the DHS waived appeal. *See* 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(1)(B), 1101(a)(47)(B)(ii).

4. Withholding of removal is a form of protection that prohibits the government from removing a noncitizen to a country where he has demonstrated that it is more likely than not that he would be persecuted. 8 U.S.C. § 1231(b)(3)(A).

[1] This Petition uses the term "noncitizen" as equivalent to the statutory term "alien."

5. The government later informed Mr. Soto Vilchez that it intended to remove him to Mexico. Exh. B. Mr. Soto Vilchez notified DHS that he fears persecution, torture or refoulement to Venezuela if he is deported to Mexico. Mr. Soto Vilchez then sought, and received, a stay of removal from the immigration court. 8 C.F.R. § 1241.6(b); Exh. C. Thus, Mr. Soto cannot be deported, but he continues to have a final order of removal.
6. DHS detained Mr. Soto Vilchez on or around December 6, 2024, and Mr. Soto Vilchez has remained in DHS custody since then.
7. The IJ designated only Venezuela as the country of removal, ordered Mr. Soto Vilchez removed to Venezuela, and simultaneously granted his application for withholding with respect to Venezuela. Exh. A. As such, Mr. Soto Vilchez does not have a removal order to any country apart from Venezuela. *Id.*
8. Despite waiving appeal, DHS continues to detain Mr. Soto Vilchez in civil immigration detention, without justification, at the Leavenworth Federal Correctional Institution in Leavenworth, Kansas. FCI Leavenworth is primarily a prison for individuals serving federal criminal sentences. Mr. Soto Vilchez has been detained for more than six months, 189 days, after his grant of withholding became administratively final.
9. On March 30, 2025, DHS issued a memo establishing new procedures for third country removals. *See*, DHS, Guidance Regarding Third Country Removals, March

30, 2025 [hereinafter "March ICE Memo"].[2] Under this policy, if a country provides the United States with what DHS believes to be "credible" "assurances that noncitizens removed from the United States will not be persecuted or tortured," then DHS may remove the noncitizen to that country without any process. *Id.* If there are no such "assurances," the policy instructs DHS to "first inform the [noncitizen] of removal to that country" but explicitly prohibits officers from affirmatively inquiring about the noncitizen's fear of removal to said country. *Id.* Only where a noncitizen "states a fear of removal," unprompted, will they be given a "screening" interview, which USCIS will conduct "within 24 hours of referral." *Id.* If USCIS determines that the noncitizen has not established that it is "more likely than not" that they will be "persecuted on a statutorily protected ground or tortured in the country of removal," the policy allows for the noncitizen to be immediately removed without any opportunity to provide evidence or seek judicial review. *Id.*

10. On June 23, 2025, a nationwide preliminary injunction halting DHS from carrying out these illegal third-country removals was stayed by the Supreme Court. *See Dep't of Homeland Security v. D.V.D.*, 145 S. Ct. 2153 (2025). The Supreme Court's decision does not, however, eliminate obligations of DHS under the Immigration and Nationality Act, the U.S. Constitution, and binding treaty obligations, to provide adequate notice and a meaningful opportunity to be heard, nor does it preclude the

[2] https://iptp-production.s3.amazonaws.com/media/documents/2025.03.30_DHS_Guidance_Regarding_Third_Country_Removals.pdf

availability of individual habeas actions challenging unlawful third country removals. *See infra* ¶¶ 67-69.

11. Nevertheless, following the Supreme Court's decision, on July 9, 2025, Immigration and Customs Enforcement (ICE) issued a second memo instructing staff to adhere to its March memo when seeking to remove a noncitizen to a third country. *See* ICE, 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) [hereinafter "July ICE Memo"].[3] In addition, the new memo adds that, where the country of removal has not provided "assurances," ICE will "generally wait at least 24 hours" before removing a noncitizen, but that "[i]n exigent circumstances, [ICE] may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the [noncitizen] is provided reasonable means and opportunity to speak with an attorney prior to removal." *Id.*

12. On information and belief, DHS purports to detain Mr. Soto Vilchez while it seeks to remove him to an alternative country. *See* March ICE Memo; July ICE Memo.

13. Historically, the Government has rarely removed individuals to alternative countries. Mr. Soto Vilchez has no ties to any third country that could plausibly prevent his eventual removal to Venezuela – where an immigration judge has already determined he faces likely persecution. Reports on recent third country removal confirm that individuals deported from the United States to a third country

[3] https://iptp-production.s3.amazonaws.com/media/documents/2025.07.09_ICE_-_Third_Country_Removals_Following_Dept_of_Homeland_Sec._v._D.V.D..pdf

are then suffering illegal repatriation. Exh. K, Evidence in Support of Motion to Reopen; Exh. M, Supplemental Evidence in Support of Motion to Reopen. Despite the unlikelihood of removal to any third country, the Government continues to detain Mr. Soto Vilchez in conditions indistinguishable from criminal confinement.

14. Second, as no other country is currently designated for removal, the Government cannot remove Mr. Soto Vilchez to some other country without properly giving him notice and an opportunity to be heard regarding removal to that country. Even assuming the Government would be allowed by statute to remove him to a third country, and that it could find a country willing to accept him, the Government would be obliged to give him a hearing before removal, which would mean restarting his removal proceedings. The mere possibility of removal after hypothetical future additional proceedings cannot justify continued detention now.

15. Accordingly, because the Government lacks constitutional authority to detain Mr. Soto Vilchez, he asks this Court to order his immediate release from detention via a writ of habeas corpus. Alternatively, this Court should schedule a hearing at the earliest practicable opportunity to hear argument and, if necessary, receive evidence on Mr. Soto Vilchez's Petition.

JURISDICTION AND VENUE

16. This Court has jurisdiction under Art. I, § 9, cl. 2 of the United States Constitution; 28 U.S.C. § 2241 (the general grant of habeas authority to the district courts); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).

17. The district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *See Zadvydas*, 533 U.S. at 687; *Demore v. Kim*, 538 U.S. 510, 516–17 (2003).

18. This action also arises under the Due Process Clause of the Fifth Amendment to the United States Constitution.

19. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; 28 U.S.C. § 2241(a); and Fed. R. Civ. P. 57 and 65.

20. Venue is proper under 28 U.S.C. § 1391(e) because Mr. Soto Vilchez is presently detained at FCI Leavenworth, in Leavenworth, Kansas, within the jurisdiction of the District of Kansas. *See* 28 U.S.C. § 2241(d).

THE PARTIES

21. Petitioner Mr. Soto Vilchez is a 38-year-old citizen of Venezuela. He is currently detained at the Leavenworth Federal Correctional Institution in Leavenworth, Kansas.

22. Respondent Pamela Bondi is named in her official capacity as U.S. Attorney General. Respondent Bondi is a legal custodian of Petitioner.

23. Respondent Kristi Noem is named in her official capacity as Secretary of the Department of Homeland Security. Respondent Noem is responsible for the enforcement of immigration laws and supervises Respondent Olson. She is a legal custodian of Petitioner.

24. Respondent Todd Lyons is named in his official capacity as Director of Immigration and Customs Enforcement. Respondent Lyons is responsible for overseeing immigration detention, supervises Respondent Olson, and is a legal custodian of Petitioner.

25. Respondent Sam Olson is named in his official capacity as the Director of Removal and Enforcement Operations of the Chicago Field Office of U.S. Immigration and Customs Enforcement (ICE), which has administrative jurisdiction over Petitioner's detention and which contracts with the Leavenworth prison where Petitioner is held. Mr. Olson is a legal and immediate custodian of Petitioner with authority to authorize his release.

26. Respondent Crystal Carter, is named in her official capacity as Warden of FCI Leavenworth, where Petitioner is detained. Ms. Carter is an immediate custodian of Petitioner.

FACTS AND PROCEDURAL HISTORY

27. Mr. Soto Vilchez is a 38-year-old Venezuelan citizen. *See* Exh. D, Affidavit filed with request for bond. He was born to a working-class family in Maracaibo, Venezuela. *Id* at ¶ 5. In 2017, Mr. Soto Vilchez joined the Justice First political party, one of the most visible opposition parties in Venezuela. After attending a march, Mr. Soto Vilchez was abducted, beaten, and asphyxiated with a plastic bag by members of the Special Action Force (or FAES) and warned to stop his political

activity. He did not cease that activity and was abducted a second time. After that release, he fled Venezuela and applied for asylum in the United States.

28. In August 2021, Mr. Soto Vilchez entered the United States through Arizona. He traveled through Colombia and Mexico en route to the United States but has no lawful status from either country. Exh. E, Form I-589.

29. Mr. Soto Vilchez settled in Orlando, Florida, and filed his asylum application before the U.S. Citizenship and Immigration Services (USCIS). Exh. E, USCIS Receipt Notice reflecting receipt on July 25, 2022. He obtained a work permit and worked to support his family. *See* Exh. F, Employment Authorization Document; Exh. G, Notice to Appear.

30. Since coming to the United States, Mr. Soto Vilchez has built a life for himself in Orlando with the support of family members including his brother, cousins, and uncles. He also supports his thirteen-year-old daughter, J.A., who lives with her mother in Orlando. Exh. D, Affidavit filed in support of Form I-589.

31. His path to stability and safety in the United States was interrupted when he was arrested for the first and only time while on a vacation in Kentucky. Exh. H, Criminal Disposition. Mr. Soto Vilchez pled guilty to one count of possession of a forged instrument in the second degree in Kenton, Kentucky, under Ky. Rev. Stat § 516.060. *Id.* He was sentenced to five years' probation. *Id.*

32. Upon his release, on or around December 6, 2024, Mr. Soto Vilchez was detained by ICE.

33. On December 11, 2024, DHS served Mr. Soto Vilchez with a Notice to Appear (NTA), alleging that he is a citizen and national of Venezuela. Exh. G, Notice to Appear.

34. On March 14, 2025, through counsel, he filed an amended Form I-589, Application for Asylum, Withholding of Removal, and protection under the Convention Against Torture with the immigration court. Exh. E, Amended I-589 filing.

35. On April 23, 2025, Mr. Soto Vilchez appeared at an individual hearing on the merits of his asylum application before the Chicago Immigration Court. The IJ ordered Mr. Soto Vilchez removed to Venezuela and simultaneously granted his application for withholding of removal under the INA. Exh. A. This approach—issuing a removal order and adjudicating a claim for withholding of removal at the same time—is standard approach for such cases. *See, e.g., Nasrallah v. Barr*, 590 U.S. 573 (2020). The IJ order acknowledges that Venezuela is the only country to which removal has been designated. Exh. A.

36. DHS waived appeal of the IJ's decision. *Id.* Thus, Mr. Soto Vilchez's grant of withholding became administratively final as of the date of the IJ's decision, April 23, 2025. *See* 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(1)(B), 1101(a)(47)(B)(ii).[4]

[4] The removal period begins on the latest of three possible dates. 8 U.S.C. § 1231(a)(1)(B). For Mr. Soto Vilchez, his removal period began as soon as his removal order became "administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). A removal order becomes "final upon … the expiration of the period in which the [noncitizen] is permitted to seek review of" the removal order. 8 U.S.C. § 1101(a)(47)(B). Because both Mr. Soto Vilchez and DHS waived appeal, Mr. Soto Vilchez's removal order became administratively final on April 23, 2025, the date of the immigration judge's decision.

37. Despite this order prohibiting DHS from removing Mr. Soto Vilchez to the only country designated as a country of removal, the Government continues to detain him in conditions that are indistinguishable from penal confinement.

38. On June 24, 2025, DHS informed counsel for Mr. Soto Vilchez that DHS is detaining Mr. Soto Vilchez following the IJ's withholding grant so that it can attempt to remove him to an alternative country. Exh. I. However, Mr. Soto Vilchez has no legal status in any third country and no ties to any third country.

39. On information and belief, on Friday September 12, 2025, Mr. Soto Vilchez was provided with a notice that he would be removed to Mexico. Mr. Soto Vilchez stated he feared deportation to Mexico and requested a fear interview. Exh. I. DHS did not allow Mr. Soto Vilchez to retain a copy of the notice. Exh. I.

40. That same day, counsel for Mr. Soto Vilchez, Olivia Abrecht (Ms. Abrecht), emailed DHS to request a copy of the notice and re-assert Mr. Soto Vilchez's fear of persecution or torture in Mexico. *Id.*

41. On Sunday, September 14, 2025, a DHS employee responded "Yes, ICE is pursuing 3rd part [sic] removal." Exh. I.

42. On Tuesday, September 16, 2025, and the next day, Wednesday, September 17, 2025, Ms. Abrecht emailed again requesting a copy of the notice and confirmation that her client would receive a fear interview as to Mexico. *Id.* As of the date of this filing, ICE has not provided Mr. Soto Vilchez or Ms. Abrecht with the notice Mr. Soto Vilchez was shown on September 12, 2025. *Id*

43. On Wednesday, September 17, 2025, through counsel, Mr. Soto Vilchez filed an emergency motion for a stay of removal from the Chicago immigration court, with supporting evidence. Exh. B. He also filed an emergency motion to reopen to seek withholding of removal or protection under the Convention Against Torture (CAT) from Mexico. Exh. J. Mr. Soto Vilchez also requested leave to supplement the motion with more information at a later date. *Id.*

44. On September 18, 2025, the IJ entered an administrative stay of removal. *See* 8 C.F.R. § 1241.6(b); Exh. C. The IJ also ordered Mr. Soto Vilchez to file any supplement to his motion to reopen by October 9, 2025. *Id.*

45. On September 24, 2025, DHS informed Ms. Abrecht that "It looks like DHS was looking into a third county removal, but you claimed fear on your client's behalf. DHS stopped pursuing a removal to a third county. I do not see a Notice of Removal." Exh. M, Supplemental Evidence in support of Motion to Reopen. On October 9, Mr. Soto Vilchez supplemented his motion to reopen with this new information, requesting that the Court order DHS to provide clarity regarding its efforts to remove Mr. Soto Vilchez to a third country. Exh. L, Supplemental Brief in support of Motion to Reopen; Exh. M. To date, DHS has filed no reply in the matter and the Court has issued no decision.

46. Per regulation, DHS was required to conduct a Post Order Custody Review ("POCR") of Mr. Soto Vilchez's continued detention before July 22, 2025. 8 C.F.R. § 241.4(h)(1). On July 25, 2025, Ms. Abrecht inquired as to the status of the custody review. Exh. I. However, months have passed, and DHS has still not provided any

notice of a decision. 8 C.F.R. § 241.4(d) ("A copy of any decision. . .to release or to detain a [noncitizen] shall be provided to the detained [noncitizen].").

47. During the nearly eleven months that Mr. Soto Vilchez has been in DHS's custody, he has lived in conditions akin to those of penal confinement. For example, he sleeps in a cell with a roommate, has no access to outdoor spaces, has inadequate access to mental health treatment, and is detained in the same facility as individuals serving federal criminal sentences.

48. Upon release, Mr. Soto Vilchez intends to return to his home in Florida, where he lived prior to his detention. Exh. D, Affidavit filed in support of Form I-589. Mr. Soto Vilchez hopes to reunite with his family and resume the stable, law-abiding life he had lived prior to taking a trip to Kentucky. *Id.*

LEGAL BACKGROUND

A. Statutory and Constitutional Limits to Detention.

49. The Due Process Clause provides that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that" the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. The Due Process Clause ensures that "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). That fundamental constitutional protection applies to citizens and noncitizens alike. *See Padilla v.*

ICE, 953 F.3d 1134, 1142 (9th Cir. 2020) ("The Supreme Court has made clear that all persons in the United States—regardless of their citizenship status, means or legality of entry, or length of stay—are entitled to the protections of the Due Process Clause."); *see also Wong Wing v. United States*, 163 U.S. 228, 237–38 (1896); *Landon v. Plasencia*, 459 U.S. 21, 32–34 (1982).

50. When a noncitizen is ordered removed, the government ordinarily must secure the noncitizen's removal from the United States within a period of 90 days, known as the "removal period." 8 U.S.C. § 1231(a)(1)(A). As relevant here, the removal period begins on "[t]he date the order of removal becomes administratively final". *Id.* § 1231(a)(1)(B)(i)-(iii). If not removed within the removal period, the noncitizen is normally to be released under the government's supervision. *Id.* § 1231(a)(3). The Court in *Zadvydas* determined that this statute governing the post-removal period does not authorize the Attorney General to detain a noncitizen indefinitely, but only for the period "reasonably necessary to secure the noncitizen's removal." 533 U.S. at 689. Thus, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

51. Once a six-month period expires, and once the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the government must respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 699. The individual need not show "the absence of any prospect of removal—no matter how unlikely or unforeseeable," but merely that removal is not reasonably foreseeable. *Id.* at 702. The Court also noted

that "as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Zadvydas*, 533 U.S. at 701.

52. Detention beyond the 90-day removal period must comport with a legitimate government purpose. Absent a legitimate government purpose for detention, immigration detention violates a noncitizen's substantive due process rights. *See Zadvydas*, 533 U.S. at 689–90; *see also Hussain v. Mukasey*, 510 F.3d 739, 743 (7th Cir. 2007).

53. The Supreme Court has stated that the purpose of Section 1231 post-final-order detention is to "bring about the [noncitizen's] removal from the United States." *Zadvydas*, 533 U.S. at 689.

54. Although the "basic purpose [of] effectuating [a noncitizen's] removal" is a legitimate government purpose, *Zadvydas*, 533 U.S. at 697, detention for this purpose may only be for a "very limited time." *Demore*, 538 U.S. at 529 n.12; *see also Tijani v. Willis*, 430 F.3d 1241, 1242 (9th Cir. 2005). In *Zadvydas*, the Supreme Court cast doubt on the "constitutionality of detention for more than six months" after a removal order became administratively final. 533 U.S. at 701.

55. Additionally, the Supreme Court has repeatedly affirmed that detention must be constitutional as applied to individuals regardless of what is authorized or even mandated by a detention statute. *Nielsen v. Preap*, 139 S. Ct. 954, 972 (2019) ("Our decision today on the meaning of [section 1226(c)] does not foreclose as-applied

challenges—that is, constitutional challenges to applications of the statute as we have now read it.").

56. Accordingly, if the Government is purporting to detain an individual beyond the 90-day period, it must show a legitimate government purpose; namely, that it is seeking to effectuate the individual's removal and that removal is likely to occur in the "reasonably foreseeable future." *Zadvydas*, 533 U.S. at 700. Further, "for detention to remain reasonable, as the period of [] postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* at 701.

57. Where there is no possibility of removal—or only a small possibility of removal—there are substantive due process concerns in continuing an immigrant's detention.

58. It is incredibly rare for DHS to remove individuals who have been granted protection from removal to their home country. In such circumstances, removal to a third country has historically been highly unlikely. For example, the Supreme Court previously noted that in 2017, only 1.6% of noncitizens who were granted withholding of removal (a form of relief with similar consequences to CAT) were removed to an alternative country. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2286 (2021).

59. Here, the Immigration Court designated only Venezuela for Mr. Soto Vilchez's removal. Exh. A. This was proper as Mr. Soto Vilchez has no legal status in any other country.

60. Since the IJ's grant of withholding, the Government has not so much as sought to designate an alternative country for removal, much less initiate removal proceedings regarding an alternative country. *Supra* at ¶ 41. Furthermore, ICE has not requested that Mr. Soto Vilchez complete any paperwork for another country or meet with consular officials from any alternative country. *Supra* at ¶ 40. And DHS itself has, contrary to the regulations, either failed to conduct a timely POCR or failed to serve Mr. Soto Vilchez with the required notice and decision of a POCR. *Supra* at ¶ 40.

61. Thus, Mr. Soto Vilchez's continued detention is no longer reasonably related to its limited purpose and is therefore unlawful, under both the INA and the Constitution.

62. Additionally, even assuming DHS had the ability to eventually remove Mr. Soto Vilchez to a third country, his continued detention is not reasonably related to its stated purpose when alternative conditions of release could mitigate flight risk. *Bell v. Wolfish*, 441 U.S. 520, 536-39 (1979) (observing that pretrial detention not reasonably related to a legitimate government purpose would constitute punishment in violation of Due Process).

63. DHS regularly utilizes orders of supervision when releasing individuals from its custody when a final order of removal is in place. An order of supervision operates like terms of probation, with the ability to impose "conditions of supervision" on individuals. *See* 8 C.F.R. § 241.5(a). For example, noncitizens released on such orders regularly are prohibited from leaving the state in which they reside without advance permission from an ICE officer. *Id.*(a)(4). They may also be required to report to an ICE officer in person or by telephone on a periodic basis. *See Fernandez*

Aguirre v. Barr, No. 19-CV-7048 (VEC), 2019 WL 4511933, at *5 (S.D.N.Y. Sept. 18, 2019) (listing alternatives to detention, "such as home detention, electronic monitoring, and so forth"); *Mathon v. Searls*, 623 F. Supp. 3d 203, 218 (W.D.N.Y. 2022) ("[T]he form used by ICE to list the terms of supervision (Form I-220B) includes a section for 'other specified conditions', which implies that ICE has flexibility in imposing release terms.").

64. Such conditions of release would be sufficient to ensure Mr. Soto Vilchez's presence in the unlikely event that removal to a third country becomes possible. If released, Mr. Soto Vilchez will have access to housing and be under the supervision of a state court, as required by his probation. Exh. H.

65. Finally, as discussed below, while ICE has attempted to expand its third country removal practices, these practices fail to follow statutory procedures outlined in the INA, the requirements of due process, and binding treaty obligations under the CAT, which ensure an individual has a meaningful notice and an opportunity to make a fear-based claim against removal to that country. Where, as here, the Petitioner has been detained for over six months with a final order of removal, no ICE memo or practice authorizes the noncitizen's indefinite detention while the government endlessly pursues removal to a third country. ICE's efforts to expand third country removals do not displace the Supreme Court's decision in *Zadvydas* nor the requested relief in this case.

B. Procedural Due Process Limits to Detention

66. The Due Process Clause and the INA require the Government to give a noncitizen notice and a hearing where they can present evidence on their behalf to defend against his or her removal. *See* U.S. Const., Amend. V; 8 U.S.C. § 1229a(b)(4) (a noncitizen in removal proceedings "shall have a reasonable opportunity to examine the evidence against the [noncitizen], to present evidence on the [noncitizen's] own behalf, and to cross-examine witnesses presented by the Government"); *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings."); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Mathews v. Eldridge*, 424 U.S. 319, 332–33 (1976).

67. Further, "[n]oncitizens facing removal of any sort are entitled under international and domestic law to raise a claim under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2154 (2025) (Sotomayor, J., dissenting) (citing Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U. N. T. S. 113). "Article 3 of the Convention prohibits returning any person 'to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.'" *Id.* The United States is a party to the Convention and passed the Foreign Affairs Reform and Restructuring Act (FARRA) and subsequent regulations "to implement its commands." *Id.* Regulations implementing the Convention provide,

among other things, that "[a] removal order . . . shall not be executed in circumstances that would violate Article 3 . . . ." 28 C.F.R. § 200.1 (2024).

68. As multiple courts have recognized, due process is required as much for third country removals as for removal to a noncitizen's country of origin. *See Kuhai v. INS*, 199 F.3d 909, 913 (7th Cir. 1999) (holding that a noncitizen must be given the opportunity to brief removal to a third country when there was no indication during removal proceedings that the noncitizen could be removed there); *Mahdejian v. Bradford*, No. 25-cv-00191, 2025 WL 226796 (E.D. Tex. July 3, 2025) (issuing temporary restraining order, where petitioner had been granted withholding of removal as to Iran, prohibiting DHS from removing him to a third country without notice and a meaningful opportunity to establish that his life or freedom would be threatened there); *Ortega v. Kaiser*, No. 25-cv-05259, 2025 U.S. Dist. LEXIS 121997, *7, 2025 WL 1771438, *3 (N.D. Cal. June 26, 2025) (finding that where petitioner was granted CAT relief as to El Salvador, "there are no countries to which [petitioner] could currently be removed without his first being afforded notice and opportunity to be heard on a fear-based claim as to that country, as the Fifth Amendment Due Process Clause requires"); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (W.D. Wash. 2019) ("ICE's authority to remove a noncitizen to a country not specified in the immigration judge's order of removal" comes with "an affirmative obligation to make a determination regarding a noncitizen's claim of fear before deporting him."); *Su Hwa She v. Holder*, 629 F.3d 958, 965 (9th Cir. 2010) ("It follows that a failure to provide notice and, upon request, stay removal or reopen

the case for adjudication of [the noncitizen's] applications as to Burma would constitute a due process violation *if* Burma becomes the proposed country of removal (as opposed to an alternative country of removal).") (superseded by statute on other grounds); *Romero v. Evans*, 280 F. Supp. 3d 835, 847 n.24 (E.D. Va. 2017) ("DHS could not immediately remove petitioners to a third country, as DHS would first need to give petitioners notice and the opportunity to raise any reasonable fear claims.").

69. A fair hearing provides a noncitizen "an adequate opportunity to defend themselves against . . . deportation," including seeking protection from removal to an alternative country. *Kossov v. INS*, 132 F.3d 405, 408 (7th Cir. 1998).

70. Currently, DHS has a policy of removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country. *See* March ICE Memo; July ICE Memo.

71. Both the March and July ICE Memos purport to expand DHS's authority as to third country removals. However, both memos fail to uphold DHS's obligations to provide adequate notice and the opportunity to be heard and are therefore unlawful. For example, the March ICE Memo provides no notice and no opportunity to apply for protection to noncitizens whom DHS seeks to remove to a country that it determines has provided "credible" "diplomatic assurances." *See* March ICE Memo. Meanwhile, the July ICE Memo purports to allow ICE to move forward with a third

country removal with as little as six-hours' notice to the noncitizen. *See* July ICE Memo. As such, DHS' third-country removal policy fails to provide noncitizens with adequate notice and an opportunity to be heard, as is required by the INA, FARRA, and the Due Process Clause.

72. In April 2025, the U.S. District Court for the District of Massachusetts issued a nationwide preliminary injunction blocking such third country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture, in recognition that the government's policy violates due process and the United States' obligations under the Convention Against Torture. *D.V.D. v. Dep't of Homeland Security*, 778 F.Supp.3d 355 (D. Mass. 2025).

73. In June 2025, the U.S. Supreme Court granted the government's motion to stay the district court's nationwide preliminary injunction. *See Dep't of Homeland Security v. D.V.D.*, 145 S. Ct. 2153 (2025). However, the Supreme Court's decision neither precludes the availability of individual habeas actions to challenge illegal third-country removals nor eliminates ICE's existing obligations under binding constitutional, statutory, and international law.

74. The Supreme Court's order in *D.V.D.*, which is not accompanied by an opinion, signals only disagreement with the nature, and not the substance, of the nationwide preliminary injunction.[5] The government's lead argument—that 8 U.S.C. § 1252(f)(1) deprived the district court of jurisdiction to enter class-based relief on

[5] Just days later, the Supreme Court published *Trump v. Casa*, No. 24A884 (U.S. June 27, 2025), in which it limited nationwide injunctions.

a national basis—has no bearing on individual, as-applied habeas claims. *See* Application for a Stay at 19, *Dep't of Homeland Sec. v. D.V.D.*, No. 24A1153 (U.S. May 27, 2025); § 1252(f)(1) (limiting injunctive power "other than with respect to the application of such provisions to an individual [noncitizen]").

75. Moreover, the Supreme Court's stay of the nationwide injunction does not eliminate ICE's obligation to follow the law. Despite ICE's efforts to sidestep its obligations, the Due Process Clause, the INA, and FARRA still require ICE to provide noncitizens with adequate notice and a meaningful opportunity to raise any reasonable fear claims before it can send them to far corners of the planet where they have absolutely no connection whatsoever.

76. Here, Mr. Soto Vilchez has a final grant of withholding of removal as to Venezuela, meaning an IJ found, and DHS did not dispute via appeal, that he will more likely than not be persecuted upon removal to Venezuela. Should Mr. Soto Vilchez be deported to a country to which he has no ties or lawful status, he fears that he would be removed to Venezuela, through a practice called "chain refoulement." Exh. J. (citing examples of chain refoulement in Eswatini and the potential for such in other countries). He further fears persecution or torture by cartels or police in Mexico. Exh. J. As the Seventh Circuit has recognized, "[r]emoval proceedings must be fundamentally fair" meaning a noncitizen must have "a reasonable opportunity to present evidence." *Gjeci v. Gonzales*, 451 F.3d 416, 421 (7th Cir. 2006).

77. Indeed, DHS has now claimed that the process of third-country removal has stopped because of Mr. Soto Vilchez's assertion of fear of persecution or torture. Exh. K.

78. However, a detained noncitizen may not seek protection from any theoretical third country until the Government has affirmatively designated that country for removal. *See Hwa She v. Holder*, 629 F.3d 958, 965 (9th Cir. 2010) ("Under the plain wording of 8 C.F.R. § 1208.16, an applicant is not entitled to adjudication of an application for withholding of removal to a country that nobody is trying to send them to.") (affirming pretermission of applications for asylum, withholding of removal, and CAT relief regarding Burma where the IJ had previously designated Burma and ultimately ordered the respondent removed to Taiwan); *Yakubov v. Att'y Gen.*, 586 F. App'x 86, 87 (3d Cir. 2014) ("Yakubov's claim for [CAT] deferral [to Russia] will not become ripe unless and until the Government's efforts to remove him to Israel prove unsuccessful.").

79. Thus, even in the extraordinary and, in this case, entirely hypothetical circumstance that the Government located a third country willing to accept Mr. Soto Vilchez, and even if Mr. Soto Vilchez's proceedings were reopened to seek protection from that alternative country, the Government would be months if not years away from being able to remove Mr. Soto Vilchez to a third country upon completion of removal proceedings for that country. Absent this Court's intervention, Mr. Soto Vilchez remains detained solely on the pretext of this hypothetical scenario.

80. The appropriate remedy for these violations of Mr. Soto Vilchez's substantive and procedural due process rights is to order the government to immediately release him. *See Malam v. Adducci*, 452 F. Supp. 3d 643, 661 (E.D. Mich. 2020), as amended (Apr. 6, 2020) (*citing Swann v. Charlotte–Mecklenburg Bd. of Educ.*, 402 U.S. 1,

15–16 (1971) ("Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.")).

CLAIMS FOR RELIEF

COUNT ONE

Respondents' Detention of Petitioner Violates the INA

81. Mr. Soto Vilchez realleges and incorporates the allegations of all preceding paragraphs.

82. An Immigration Judge ordered Mr. Soto Vilchez removed to Venezuela but simultaneously granted him deferral of removal to that country under the Convention Against Torture.

83. The Government waived appeal of the Immigration Judge's decision, rendering the Immigration Judge's CAT grant administratively final as of the date it was issued. Thus, Mr. Soto Vilchez has been detained with a final order of removal for longer than the six-month period contemplated by the Supreme Court.

84. The Government is now continuing to detain Mr. Soto Vilchez while it purportedly explores removal to an alternative country.

85. Mr. Soto Vilchez does not have citizenship, legal status, or any connections with another country that might make his removal to an alternative country even remotely likely. *See* 8 U.S.C. § 1231(b)(2)(D)-(E).

86. The Government cannot plausibly show that it will remove Mr. Soto Vilchez to an alternative country in the reasonably foreseeable future.

87. Detention is only lawful when "necessary to bring about that [noncitizen's] removal." *Zadvydas*, 533 U.S. at 689.

88. Mr. Soto Vilchez has presented "good reason to believe that there is no significant likelihood of [his] removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701.

89. The burden is on the government to provide "evidence sufficient to rebut that showing." *Id.*

90. The INA does not permit the government to detain Mr. Soto Vilchez more than 180 days if there is no legitimate government purpose while it endlessly pursues removal to a third country, and such detention violates Mr. Soto Vilchez's statutory rights. *See Zadvydas*, 533 U.S. at 689–90.

91. Additionally, detention is not reasonably related to its purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell*, 441 U.S. at 538. If necessary, an Order of Supervision would mitigate any risk of flight such that, in the highly unlikely event that the Government identifies an alternative country for removal, the Government would be able to effectuate removal.

COUNT TWO

Respondents' Detention of Petitioner Violates His Fifth Amendment Substantive Due Process Rights

92. Mr. Soto Vilchez realleges and incorporates the allegations of all preceding paragraphs.

93. An Immigration Judge ordered Mr. Soto Vilchez removed to Venezuela but simultaneously granted him deferral of removal to that country under the Convention Against Torture.

94. The Government waived appeal of the Immigration Judge's decision, rendering the Immigration Judge's CAT grant administratively final as of the date it was issued.

95. The Government is now continuing to detain Mr. Soto Vilchez while it purportedly explores removal to an alternative country.

96. Mr. Soto Vilchez does not have citizenship, legal status, or any connections with another country that might make his removal to an alternative country even remotely likely. *See* 8 U.S.C. § 1231(b)(2)(D)-(E).

97. The Government cannot plausibly show that it will remove Mr. Soto Vilchez to an alternative country.

98. Detention is only lawful when "necessary to bring about that [noncitizen's] removal." *Zadvydas*, 533 U.S. at 689.

99. The due process clause does not permit the government to detain Mr. Soto Vilchez indefinitely while it endlessly pursues removal to a third country, and such detention violates Mr. Soto Vilchez's substantive due process rights. *See Zadvydas*, 533 U.S. at 689–90.

100. Additionally, detention is not reasonably related to its purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell*, 441 U.S.

at 538. If necessary, an Order of Supervision would mitigate any risk of flight such that, in the highly unlikely event that the Government identifies an alternative country for removal, the Government would be able to effectuate removal.

COUNT THREE

Respondents' Detention of Petitioner Violates His Fifth Amendment Procedural Due Process Rights, the Convention Against Torture and its Implementing Regulations, and the Administrative Procedure Act

101. Mr. Soto Vilchez realleges and incorporates the allegations of all preceding paragraphs.

102. The Government—having failed before now to designate any country other than Venezuela for removal—cannot remove Mr. Soto Vilchez to some other country without providing procedural protections.

103. ICE has detained Mr. Soto Vilchez since December 2024, nearly eleven months, including 189 days after his removal order and grant of withholding of removal. Although the Government is purportedly detaining Mr. Soto Vilchez for the purposes of trying to remove him to another country, the Government has rescinded any notice as to which countries it may be considering. Nor have immigration officers asked him to participate in submitting an application for travel documents to another country or countries.

104. The Due Process Clause, the INA, the Convention Against Torture, and implementing regulations require the Government to give a noncitizen notice and an opportunity to respond to any third country removal in reopened removal proceedings. *See* U.S. Const., Amend. V; 8 U.S.C. § 1229a(b)(4) (an immigrant in

removal proceedings "shall have a reasonable opportunity to examine the evidence against the [noncitizen], to present evidence on the [noncitizen's] own behalf, and to cross-examine witnesses presented by the Government"); *Mathews*, 424 U.S. at 332–33; *see also Kuhai*, 199 F.3d at 913; 28 C.F.R. § 200.1 ("[a] removal order ... shall not be executed in circumstances that would violate Article 3 [of the CAT]"). Respondents' March and July Memos for third country removals violate all of these laws because these policies direct ICE agents to remove individuals to third countries without any notice or process at all where diplomatic assurances are received and, where no diplomatic assurances are received, to provide flagrantly insufficient notice (6-24 hours) and opportunity to respond, in violation of the statute, regulations, and Fifth Amendment.

105. Mr. Soto Vilchez has a fear-based claim against deportation to other countries besides Venezuela. Exh. J. To Mexico, Mr. Soto Vilchez fears that he will be deported to Venezuela, or persecuted or tortured by cartels or the police. Mr. Soto Vilchez may also fear removal to many other countries where he may be refouled to Venezuela or face persecution based on his characteristics. Thus, any possible third country removal would at minimum trigger additional hearings, new removal proceedings, and multiple additional months of detention.

106. Considering the slim likelihood of removal to a third country, the absence of any plausible third country for removal, the Government's failure to identify to Mr. Soto Vilchez any third country or countries currently under consideration, and the

statutory regime created by Congress, procedural due process is offended by Mr. Soto Vilchez's ongoing detention.

107. Where the sole permissible purpose of detention is to effectuate removal, where Mr. Soto Vilchez has already been granted CAT deferral to the only country designated for removal by the Government, and where the Government cannot indicate any plausible alternative country for removal, the likelihood of erroneous deprivation of liberty is at its apex.

108. Further, the Government regularly employs conditions of release by utilizing Orders of Supervision. *See* 8 C.F.R. § 214.15(a). Because the Government could continue investigating potential third country removal, and because the Government would have ongoing access to Mr. Soto Vilchez, as necessary, his release from custody would impose no harm to the Government.

109. By contrast, Mr. Soto Vilchez's ongoing deprivation of liberty in immigration detention imposes an ongoing and very heavy cost on him.

110. The balance of these factors tips strongly in Mr. Soto Vilchez's favor, such that the Government's continued detention of him violates his procedural due process rights.

PRAYER FOR RELIEF

Petitioner prays this Court grant the following relief:

1. Assume jurisdiction over this matter;

2. Pursuant to 28 U.S.C. § 2243, issue an order directing Respondents to show cause within three days why the writ should not be granted;
3. Declare that Mr. Soto Vilchez's continued detention violates the Immigration and Nationality Act because Respondents have not met their burden to demonstrate that removal is significantly likely in the reasonably foreseeable future.
4. Declare that Mr. Soto Vilchez's continued detention is without a legitimate governmental purpose and violates his substantive due process rights because Respondents cannot show any plausibility that Mr. Soto Vilchez will be removed to an alternative country;
5. Declare Mr. Soto Vilchez's continued detention violates his procedural due process rights because Respondents have failed to provide Mr. Soto Vilchez with adequate procedural safeguards to ensure that his continued detention is justified;
6. Declare that, if the Government purports to identify any third country willing to accept Mr. Soto Vilchez, the Government will be required to provide Mr. Soto Vilchez adequate notice and an opportunity to be heard regarding removal to that country;
7. Grant the writ of habeas corpus and order that Respondents release Mr. Soto Vilchez from detention; and
8. Grant any other and further relief that this Court deems just and proper.

Dated: October 29, 2025

Respectfully submitted,

/s/ Melissa Plunkett

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