IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-03475

IRENE FLORES-MENDOZA,

Petitioner-Plaintiff,

v.

JUAN BALTAZAR, in his official capacity
as warden of the Aurora Contract Detention Facility,

ROBERT GUADIAN, in his official capacity
as Field Office Director, Denver, U.S. Immigration and Customs Enforcement,

KRISTI NOEM, in her official capacity
as Secretary, U.S. Department of Homeland Security,

TODD LYONS, in his official capacity
as Acting Director of Immigration and Customs Enforcement,

PAMELA BONDI, in her official capacity
as Attorney General of the United States

Respondents-Defendants.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner-Plaintiff, Irene Flores-Mendoza,[1] is a transgender woman who is currently detained by Immigration and Customs Enforcement ("ICE") at the Aurora Contract

[1] Ms. Flores-Mendoza's sex assigned at birth was male and her legal name, Ricardo Elias Flores-Mendoza, does not reflect her gender identity. Although she has not had the opportunity to legally change her name, Ms. Flores-Mendoza is a transgender woman and uses the name Irene and she/her pronouns. Counsel refers to her accordingly.

Detention Facility ("Aurora Facility") in Aurora, Colorado. She files this petition and accompanying Motion for a Temporary Restraining Order and/or Preliminary Injunction, to prevent Respondents-Defendants, the Department of Homeland Security ("DHS") and ICE, from unlawfully detaining and removing her, in violation of the Fifth Amendment to the U.S. Constitution, 8 U.S.C. § 1231 and its implementing regulations, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq*.

2. Ms. Flores-Mendoza faced past persecution and torture in El Salvador. She fears similar future harm based on being individually targeted in the past and the likelihood of similar future harm as well as due to the overwhelming evidence of widespread, state-sponsored violence perpetrated against transgender women in El Salvador. An immigration judge ("IJ") agreed. On February 26, 2025, an IJ entered a final order of removal against Ms. Flores-Mendoza, which was simultaneously withheld upon the IJ's decision to grant withholding of removal to El Salvador ("Withholding"). Exh. B Order of the IJ. The IJ found it "more likely than not" that Ms. Flores-Mendoza will face persecution in El Salvador based on her sexual orientation and gender identity. *See id.*; *see also* 8 U.S.C. § 1231(b)(3). Neither party appealed, and the order became final on March 28, 2025. Yet, over seven months later, Ms. Flores-Mendoza remains unlawfully detained in ICE custody at the Aurora facility.
3. Ms. Flores-Mendoza is particularly vulnerable to harm in detention because she is living with HIV and experiences post-traumatic stress disorder, depressive disorder, and gender dysphoria. *See* Exh. T at 214-16. While in Respondents' custody Ms.

Flores-Mendoza has been subjected to harassment and threats by guards and men in detention, prolonged solitary confinement allegedly for her own protection; and denial of medications.[2]

4. Ms. Flores-Mendoza's continued detention is unconstitutional because it violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001). There is not a significant likelihood that DHS will be able to carry out her removal in the reasonably foreseeable future and her detention is indefinite.
5. Pursuant to DHS's own long-standing policy, Respondents should have released Ms. Flores-Mendoza on an order of supervision as there is no evidence that she is a danger to the community or national security threat. *See* Exh. R.
6. Given Ms. Flores-Mendoza cannot be lawfully removed to El Salvador, her current detention is presumably linked to a shift in the third-country removal policy ICE began implementing in February 2025,[3] when it first removed several noncitizens with withholding and CAT grants to Guantanamo Bay, Cuba and the CECOT prison

[2] *See* American Immigration Council, National Immigration Project, RMIAN, "Complaint Underscoring Why People Who are Transgender and Nonbinary Should Not Be Detained in Civil Immigration Detention," (Apr. 9, 2024), https://nipnlg.org/sites/default/files/2024-04/CRCL_complaint-transgender-care.pdf (hereinafter "2024 CRCL Complaint"); American Immigration Council, National Immigration Project, RMIAN, "Complaint Detailing Abusive Overuse of Solitary Confinement and Mistreatment that Disproportionately Impacts Persons with Disabilities at the Aurora Contract Detention Facility," (Jul. 13, 2023), https://www.americanimmigrationcouncil.org/sites/default/files/research/misuse_of_solitary_confinement_in_colorado_immigration_detention_center_complaint.pdf.

[3] *See* Feb. 18, 2025 ICE policy, *available at* https://immigrationlitigation.org/wp-content/uploads/2025/03/1-4-Att-C-Feb-18-2025-Directive.pdf

in El Salvador.[4] In recent months, DHS began sending people to additional third countries, including Panama, Costa Rica, Mexico, South Sudan, and Eswatini.[5] Most recently, Ghana accepted people deported from the United States, only to return some of them to countries where, like Ms. Flores-Mendoza, their removal was prohibited under U.S. law pursuant to findings that they would more likely than not be persecuted or tortured.[6]

7. Over seven months ago Respondents informed Ms. Flores-Mendoza they were seeking to remove her to Mexico, Guatemala, or Panama. Since then, Ms. Flores-Mendoza has repeatedly asserted her fear that if DHS removes her to one of these countries she will be tortured and persecuted because of her gender identity and perceived sexual orientation. On May 30, 2025, she asked Respondents to join in her motion seeking to challenge this third country removal in immigration court. Instead of joining the motion, the Agency responded by attempting to unlawfully deport her to Mexico four days later.

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[4] *See* Protected Whistleblower Disclosure of Erez Reuveni Regarding Violation of Laws, Rules & Regulations, Abuse of Authority, and Substantial and Specific Danger to Health and Safety at the Department of Justice at 16-21, *available at* 06-24-2025_-_Protected_Whistleblower_Disclosure_of_Erez_Reuveni_Redacted.pdf

[5] Kristina Cooke and Ted Hesson, *The US said it had no choice but to deport them to a third country. Then it sent them home*, REUTERS, Aug. 2, 2025, https://www.reuters.com/world/americas/us-said-it-had-no-choice-deport-them-third-country-then-it-sent-them-home-2025-08-02/.

[6] PBS News, *Immigrants deported from U.S. to Ghana are sent home, where lawyers say some could face torture*, Sep. 15, 2025, https://www.pbs.org/newshour/world/immigrants-deported-from-u-s-to-ghana-are-sent-home-where-lawyers-say-some-could-face-torture.

8. Ms. Flores-Mendoza's detention is illegal because (1) it is indefinite and violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), given there is not a substantial likelihood that DHS can carry out her removal in the reasonably foreseeable future; (2) Ms. Flores-Mendoza has been afforded insufficient process, in violation of her constitutional, statutory, and regulatory rights under 8 U.S.C. § 1231, 8 C.F.R. § 241.13, and pursuant to the Supreme Court's due process analysis in *Zadvydas*, 533 U.S. 678; and (3) she cannot be removed in the reasonably foreseeable future to a third country because she first must receive notice and a meaningful opportunity to present a claim for fear-based protection.

9. Ms. Flores-Mendoza petitions this Court to issue a writ of habeas corpus, ordering Respondents to show cause within three days, providing their reasons, if any, why her detention is lawful. 28 U.S.C. § 2243. She asks this Court to grant her petition and order her immediate release subject to any conditions this Court believes are appropriate and necessary because her continued detention is unlawful under *Zadvydas*. 533 U.S. 678. In addition, Ms. Flores-Mendoza asks this Court for an interim order prohibiting Respondents from transferring her outside of the District of Colorado or removing her from the United States without prior notice to counsel and an opportunity to raise fear-based claims of removal to a third country as required by law.

JURISDICTION AND VENUE

10. Ms. Flores-Mendoza is currently detained under 8 U.S.C. § 1231(a) in Respondents' custody at the Aurora Facility. This case arises under the Immigration and Nationality

Act ("INA"), 8 U.S.C. § 1101 *et seq.*, the regulations implementing the INA, the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105–277, div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1998) (codified as Note to 8 U.S.C. § 1231), the regulations implementing the FARRA, the Administrative Procedure Act ("APA"), and 5 U.S.C. § 701 *et seq.*

11. This Court has jurisdiction under Art. I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause); 28 U.S.C. § 2241 (habeas authority); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).

12. 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 Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas*, 533 U.S. at 687. This specifically includes jurisdiction to adjudicate "statutory and constitutional challenges to post-removal-period-detention." *Zadvydas,* 533 U.S. at 688.

13. This Court has jurisdiction to grant declaratory and injunctive relief under 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, 65.

14. Venue is proper in the District of Colorado because at least one of the Respondents resides in this District and Respondents imprison Ms. Flores-Mendoza in this District. As a result, Ms. Flores-Mendoza 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

15. Ms. Flores-Mendoza is a 27-year-old citizen of El Salvador who has been granted withholding protection. Ms. Flores-Mendoza was placed into ICE Custody on or around April 5, 2024. On February 26, 2025, Ms. Flores-Mendoza prevailed on a fear-based claim, preventing her removal to El Salvador, because an IJ found it is more likely than not she will face future persecution due to her gender identity and sexual orientation. To date, Ms. Flores-Mendoza has been placed in ICE custody for over a year and a half, including over seven months since her removal became administratively final on March 28, 2025.

Respondents

16. Respondent Juan Baltazar is named in his official capacity as the warden of the Aurora facility, where Ms. Flores-Mendoza is detained, and is therefore her legal custodian.

17. Respondent Robert Guadian is named in his official capacity as the Acting ICE Denver Field Office Director. The Denver Field Office is responsible for carrying out ICE's immigration detention operations at all of Colorado's detention centers. Respondent Guadian is a legal custodian of Ms. Flores-Mendoza.

18. Respondent Kristi Noem is named in her official capacity as the Secretary of the DHS. She is responsible for the administration of U.S. immigration law and is legally responsible for the process of Ms. Flores-Mendoza's detention and removal. As such, she is a legal custodian of Ms. Flores-Mendoza.

19. Respondent Todd Lyons is named in his official capacity as Acting Director of ICE. As the head of ICE, he is responsible for the decisions related to the detention and removal of certain noncitizens, including Ms. Flores-Mendoza. As such, he is a legal custodian of Ms. Flores-Mendoza.

20. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States. She oversees the actions of the Department of Justice ("DOJ"), including its subagency, the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the District of Colorado and is legally responsible for administering Ms. Flores-Mendoza's immigration proceedings as well as the procedural standards used in those proceedings.

EXHAUSTION OF REMEDIES

21. Petitions under 28 U.S.C. § 2241 are not subject to statutory exhaustion requirements. *See* 28 U.S.C. § 2241; *Brandon v. 30th Judicial Cir. Ct. Of Ky.*, 410 U.S. 484 (1973). Courts in this district have ruled that "exhaustion is not required 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)).

22. Although exhaustion is not required, it would be futile in this case because Ms. Flores Mendoza's claims cannot be meaningfully addressed or remedied through the administrative process. Ms. Flores-Mendoza is detained under 8 U.S.C. § 1231(a) and

thus cannot request a custody redetermination hearing before an IJ. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022). Moreover, neither an IJ nor the Board of Immigration Appeals ("BIA") can rule on constitutional claims. *Matter of C--*, 20 I. & N. Dec. 529, 532 (B.I.A. 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.").

23. Despite the absence of any statutory exhaustion requirement, Ms. Flores-Mendoza has nonetheless made repeated requests for the custody reviews to which she is entitled under § 1231; however she has never received meaningful notice regarding the basis for her continued detention.

24. Thus, there are no further remedies to exhaust.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Background

25. Growing up in El Salvador, Ms. Flores-Mendoza was continually targeted for violence and threats by MS-13 gang members because she is transgender and perceived as gay. *See* Exh. A at 3-7. As a young child she was raped by a neighbor, and this man, along with other gang members continued to sexually and physically assault her for years. *See id.*; *see also* Exh. B at 18-19. Later her cousin, an MS-13 gang member, attacked her with a machete. While she was escaping, he warned her if she did not leave the country she would be killed. *See* Exh. A at 6. Later she learned that MS-13 had put out an order to have her killed. *See id.* at 6-7.

26. Ms. Flores-Mendoza fled El Salvador and traveled through Guatemala and Mexico. In these countries she also faced threats and harassment based on her gender identity. *See* Exh. H at 80.

27. Ms. Flores-Mendoza fears return to El Salvador. She also fears being deported to Guatemala, Mexico, Panama or any other country where she would suffer persecution and/or torture as a transgender woman. *See id.*

28. Ms. Flores-Mendoza arrived in the United States between ports of entry on or around September 26, 2019, and was shortly thereafter apprehended by Customs and Border Patrol, a subagency of DHS.

29. Upon release from ICE custody, she struggled to adjust to life in the United States due to her severe trauma, depression and PTSD symptoms. *See* Exh. A at 7; Exh. T at 214-16. Ms. Flores-Mendoza was victimized by men she met online who attacked, drugged, and abused her. *See* Exh. A at 7. During this time, she also learned she was HIV positive. *Id.*

30. In July 2021, Ms. Flores-Mendoza pled guilty to a charge of evading arrest or detention with a vehicle in violation of Texas Penal Code § 38.04. *See* Exh. A at 8. Although the judge initially deferred adjudication of guilt pending completion of a community supervision program, after two shoplifting charges in 2022 this was revoked, and the July 2021 charge was reinstated. *See id.*

31. On or around April 5, 2024, Ms. Flores-Mendoza was transferred from criminal custody into ICE custody. *See* Exh. P. She was then transferred to the Aurora facility. *See* Exh. S.

Ms. Flores-Mendoza is Granted Withholding of Removal

32. On February 27, 2020, Ms. Flores-Mendoza timely filed a petition for asylum. On February 26, 2025, an IJ determined that Ms. Flores-Mendoza's "life and freedom would more likely than not be threatened in El Salvador" on account of her membership in the particular social group of "Salvadoran transgender woman" and "Salvadoran LGBTQ individuals." *See* Exh. B at 20-25. The IJ found Ms. Flores-Mendoza's criminal conviction did not constitute a "particularly serious crime" that would bar her from asylum but nonetheless chose to exercise discretion and deny Ms. Flores-Mendoza's asylum application. *See id.* at 14-18. Instead, the IJ entered an order of removal, which she then withheld based on a grant of withholding of removal under 8 U.S.C. § 1231(b)(3). *See id.* at 24-35.

Counsel Repeatedly Raises Alarm About Third Country Removal as DHS Attempts to Unlawfully Deport Ms. Florez-Mendoza to Mexico

33. On March 28, 2025, Ms. Flores-Mendoza's counsel[7] contacted ICE Enforcement and Removal Operations ("ERO") to request Ms. Flores-Mendoza be released from the Aurora facility now that the removal order was final. Exh. C at 33. The ERO officer informed him, "[a]t this point, ICE is seeing if other countries will accept your client. If they do not, then your client will be released from custody." *Id.* at 32. Counsel was

[7] Attorneys Wesley Brockway and Elizabeth Anglin from the International Rescue Committee have represented Ms. Flores-Mendoza on all proceedings before the immigration court and with ICE/ERO. Mr. Brockway and Ms. Anglin referred Ms. Flores-Mendoza to the undersigned counsel to represent her in this habeas petition.

then told that "[c]ountries solicited for possible removal are Panama, Mexico, and Guatemala." Exh. D at 37.

34. On April 2, 2025, counsel sent ERO officers a letter articulating Ms. Flores-Mendoza's fear of persecution and torture if removed to Panama, Mexico, or Guatemala. Exh. C at 34-35. The letter reminded DHS of its legal obligations to provide notice of any alternate country; to "notify the ICE Office of the Principal Legal Advisor so that it can move to reopen remove proceedings before EOIR in order to designate a new country of removal and allow [Ms. Flores-Mendoza] to present her fear based claim to an immigration judge;" and to "stay [Ms. Flores-Mendoza 's] removal until her fear-based claim is adjudicated by an immigration judge." *Id.* Counsel requested that he be kept "informed of any developments with regard to all pending or future solicitations to countries of possible removal." *Id.*

35. On April 8, 2025, Ms. Flores-Mendoza filed an "Emergency Motion to Reopen Based on DHS's Intent to Deport Respondent to a Nondesignated, Third Country Without An Opportunity to Contest Removal Based on a Fear of Persecution and Torture, And Emergency Motion to Stay Removal Pending Adjudication of Respondent's Fear-based Claims." Exh. E.

36. The IJ denied the motion, stating "[t]his Court has no authority to review a decision by DHS to remove a person to a country other than the one designated by the Court." Exh. F at 50 (citing 8 C.F.R. § 1240.12).

37. On April 23, 2025, Ms. Flores-Mendoza's attorney emailed ERO to ask if there "are any updates or developments in the requests to the governments of Mexico,

Guatemala, and Panama to accept [Ms. Flores-Mendoza] and/or issue her a travel document? Has DHS formally made those requests, and if so, has DHS received any response?" Exh. C at 30. The ERO officers did not reply.

38. On May 28, 2025, counsel again notified ERO that Ms. Flores-Mendoza's detention had now exceeded 90 days, and urged she be released, citing among other reasons her special vulnerabilities as a transgender women living with HIV and PTSD. *See* Exh. C at 28-29. Again, there was no response.

39. On May 30, 2025, counsel for Ms. Flores-Mendoza contacted OPLA attorneys Alisha Hill, Sunika Pawar, and others, asking them to join Petitioner's second motion to reopen her immigration case "so she may put forward evidence supporting her fear of persecution in Guatemala, Mexico, and Panama." Exh. G at 54. Counsel reminded the OPLA attorneys that Ms. Flores-Mendoza had not yet "undergone a CFI/RFI[8] to assess her credible fear of being sent to any of these countries." *Id.* Counsel attached a copy of the motion to her email and stated it would be filed the following Monday, June 2, 2025. *Id.*

40. Accordingly, on June 2, 2025, Ms. Flores-Mendoza filed this second Motion to Reopen and Request for Emergency Stay, based on developments in the case, *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1142968, at *23 (D. Mass. Apr. 18, 2025), in which Ms. Flores-Mendoza is a class member. *See* Exh. H at 56-82. The Judge in that case had issued a preliminary injunction requiring DHS

[8] Counsel is referring to the "Credible Fear Interview" or "Reasonable Fear Interview," which DHS is required to provide after a noncitizen asserts a fear of removal to a designated country.

to provide noncitizens with notice and opportunity to raise fear of torture or persecution before being removed to a third country. No. CV 25-10676-BEM, 2025 WL 1142968, at *46-47 (D. Mass. Apr. 18, 2025). As part of her June 2nd Motion, Ms. Flores-Mendoza also filed an I-589 form for asylum and withholding of removal under the Convention Against Torture ("CAT") seeking protection from removal to Mexico, Guatemala, or Panama. *Id.* at 68-79.

41. On June 2, 2025, IJ McGrail granted Ms. Flores-Mendoza a temporary stay of removal. Exh. I at 84.

42. On June 3, 2025, without warning, Ms. Flores-Mendoza was removed from the Aurora Facility and placed in shackles. *See* Exh. S at 201. Guards said they could not tell her where she was being taken. *Id.* She was put on a plane and seated near a group of people who she learned were being deported to Mexico. *Id.* Terrified that she was also being sent there, Ms. Flores-Mendoza repeatedly asked the guards, "Where are we going?" The guards would not tell her but instead asked her several times "Do you want to go to Mexico? Just sign this paper." *Id.* She protested that she did not want to be sent to Mexico. *Id.*

43. After the plane landed in San Diego, an ICE officer called her name, and she exited the plane. *Id.* She was then led over to a bus and instructed to board it. *Id.* An officer announced that everyone on the plane was being deported to Mexico. *Id.* Ms. Flores-Mendoza raised her hand and was able to speak to an officer who spoke Spanish. *Id.* at 202. She asked him if the bus was really going to Mexico, and he said yes. *Id.* Ms. Flores-Mendoza told the officer she was not from Mexico and did not want to be sent

there. *Id.* She was then allowed to get off and put on a different bus which brought her to the ICE detention facility in Calexico, California. *Id.; see also* Exh. P. On arrival she was placed in solitary confinement, which she was told was for her protection. Exh. S at 202.

44. Knowing only that his client had been transferred to California, Ms. Flores-Mendoza's counsel contacted DHS the next day to request she be transferred back to Aurora. *See* Exh. J at 89. He reminded the ERO officers of the stay of removal entered by IJ McGrail as well as the preliminary injunction in effect from *D.V.D. v. U.S. Dep't of Homeland Sec. See id.*

45. Assistant Chief Council for the Office of the Principal Legal Advisor (OPLA) Alisha Hill responded that she was aware of both orders and assured Ms. Flores-Mendoza's attorney that "[t]he Department will comply with the preliminary injunction issued by the U.S. District Court for the District of Massachusetts on April 18, 2025. . . [which] requires that an alien be provided written notice and given and opportunity to claim fear prior to removing an alien 'to any country not explicitly provided for on the alien's order of removal.'" *Id.* at 87-88 (quoting *D.V.D.*, 2025 WL 1142968).

46. Ms. Flores-Mendoza's attorney requested an update from Ms. Hill on the status of proceedings regarding third country removal as well as Ms. Flores-Mendoza's 90-day custody review. *See id.* at 87. Ms. Hill did not respond.

47. On June 4, 2025, the IJ denied Ms. Flores-Mendoza's second motion. Exh. M at 104.

48. Ms. Flores-Mendoza was transferred back to the Aurora Facility, and on June 26, 2025, received a decision on her 90-day review informing her that the government

would be continuing her detention.[9] *See* Exh. Q at 192. The notice stated: "ICE has determined to maintain your custody because: You have not demonstrated that, if released, you will not: Pose a significant risk of flight pending your removal from the United States. ICE has made such determination based upon your removal order." *Id.* No other explanation was given to justify Ms. Flores-Mendoza's continued incarceration.

49. On July 30, 2025, DHS conducted an interview with Ms. Flores-Mendoza for her 180-day custody review. *See* Exh. N at 107-08.

50. To date, neither Ms. Flores-Mendoza nor her counsel have received any decision regarding her 180-day review, nor any further explanation for her continued detention.

DHS Transfers Ms. Flores-Mendoza again—Jeopardizing her Health and Safety and Limiting her Access to Counsel

51. On or around July 19, 2025, Respondents removed Ms. Flores-Mendoza from the Aurora Facility. *See* Exh. S at 202. Again, she was given no warning and no information on where she was being taken. *See id.* She and other people in detention were shackled, loaded on a bus and driven seven hours without water or access to a bathroom. *See id.*

52. Ms. Flores-Mendoza and the other people on the bus were taken to the Natrona County Jail ("Natrona") in Wyoming. *See id.*, *see also* Exh. N at 109. At Natrona,

[9] This decision was not provided to Ms. Flores-Mendoza's attorney; nor was she provided with a copy in Spanish.

Ms. Flores-Mendoza was subjected to ongoing harassment from male inmates and guards. *See* Exh. S at 202. When she complained, guards placed her in solitary confinement, claiming it was for her own protection. *Id.* For at least a week at Natrona, she was denied access to her medications for HIV and hormone therapy treatment. *Id., see also* Exh. N at 114-15.

53. On or around September 20th or 21st, 2025, Respondents transferred her back to the Aurora Facility.

Ongoing Detention in Aurora Constitutes Significant Hardship

54. ICE created a specialized housing unit for transgender people at the Aurora Facility, often referred to as the "trans pod," where people may be able to avoid being placed in solitary confinement or in the general population of people who had the same sex assigned at birth. Nevertheless, even trans people housed in this unit like Ms. Flores-Mendoza have reported a pattern and practice of abusive and discriminatory treatment at the Aurora Facility.[10]

55. In a psychiatric evaluation dated January 30, 2025, Drs. Elizabeth Joseph, and Ahmad Adi determined that Ms. Flores-Mendoza's "significant history of severe trauma," in both El Salvador and the United States has "resulted in function-impairing symptoms consistent with posttraumatic stress disorder, unspecified depressive disorder, and gender dysphoria." Exh. T at 215. Drs. Joseph and Adi concluded that "[w]ithout careful consideration of treatment going forward and without provision of a

[10] 2024 CRCL Complaint.

supportive psychosocial environment, Ms. Flores Mendoza's emotional health will be negatively impacted." *Id.*

56. Because of her gender identity, Ms. Flores-Mendoza has suffered abuse and harassment repeatedly from guards and other detained people. The only "solution" DHS has applied to address this is to force Ms. Flores-Mendoza to endure long periods of solitary confinement. *See* Exh. S at 202. Both solitary confinement and the abuse and harassment cause further trauma and exacerbate her diagnosed conditions of post-traumatic stress disorder and depressive disorder. Ms. Flores-Mendoza's vulnerability has grown exponentially since DHS's recent rescission of its policy protecting transgender women in detention by guaranteeing continued access to gender-affirming care, ensuring transgender women be housed and permitted to shower in areas matching their gender identities, and establishing committees to oversee treatment of trans people in detention.[11]

57. Despite the challenges of prolonged detention, Ms. Flores-Mendoza has worked hard to rehabilitate herself, strengthening her sobriety and completing multiple courses on topics like substance abuse, alcoholics anonymous, stress management, etc. *See* Exh. N at 161, 165-71. She has also worked on Acceptance and Commitment Therapy (ACT) to process the trauma she has suffered and continues to suffer while incarcerated. *See* Exh. T at 212.

[11] Seth Klamann, *ICE ends Aurora detention center's transgender care, protection policies,* THE FORT MORGAN TIMES (Sept. 16, 2025), *available at https://archive.ph/jsgXv.*

58. Upon her release, Casa Marianella, a non-profit organization in Austin, Texas, has committed to providing Ms. Flores-Mendoza with housing, food, medical, and legal services, and will help ensure she attends all future ICE appointments and complies with any other conditions of release. *See* Exh. N at 173-82.

LEGAL BACKGROUND

59. The government's authority to detain noncitizens, including those like Ms. Flores-Mendoza who are subject to final orders of removal, is subject to constitutional limits. "It is well established that [t]he Due Process Clause applies to all persons within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; *see also Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097, at *2 (Apr. 7, 2025) (per curiam) ("[t]he Fifth Amendment entitles [noncitizens] to due process of law in the context of removal proceedings.").

60. For noncitizens as well as citizens "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690 (2001) (citing *Foucha v. Lousiana*, 504 U.S. 71, 80 (1992).

61. Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the [incarcerated] individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal citation omitted). Civil immigration detention is therefore constitutional only in "certain special and 'narrow' nonpunitive

'circumstances.'" *Id.* at 690 (quoting *Foucha*, 504 U.S. at 80). The Supreme Court identified those limited circumstances as mitigating the risk of danger to the community and preventing flight. *Id.* at 690–91; *see also Demore*, 538 U.S. at 515, 527–28.

62. In addition to Constitutional requirements, for detention to be lawful the government must comply with both the applicable statutory provisions and its agency regulations. *See United States v. Caceres*, 440 U.S. 741, 759-60 (1979).

63. Pursuant to 8 U.S.C. § 1231(a) ICE has authority to detain noncitizens with like Ms. Flores-Mendoza with a final order of removal for 90 days after the removal order becomes final—a time frame known as the "removal period." *See* 8 U.S.C. § 1231(a)(1)(A). When the 90-day period expires the non-citizen may be released under supervision or the government may continue detention if the non-citizen is found to be "a risk to the community or unlikely to comply with the order of removal" or if the order of removal was on specified grounds. *Id.* § 1231(a)(2); (a)(6).

64. To extend detention after the removal period, DHS must follow regulations outlining post custody review procedures intended to provide due process. 8 U.S.C. § 1231(a)(6), 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i) § 241.4(k)(2)(ii). 241.4(j)(2).

65. In addition to these regulatory requirements, the Supreme Court in *Zadvydas* held that the constitution further "limits a [noncitizen]'s post-removal-period detention to a period reasonably necessary to bring about that [noncitizen]'s removal from the United States." *Zadvydas*, 533 U.S. at 689. As the Court explained, post-removal detention "has two regulatory goals: ensuring the appearance of aliens at future

immigration proceedings and preventing danger to the community." *Id.* at 690 (internal quotation marks and citation omitted). Neither purpose, the Court determined, provided grounds sufficient to authorize indefinite detention. *Id.* "[B]y definition the first justification—preventing flight—is weak or nonexistent where removal seems a remote possibility at best . . . [because] where detention's goal is no longer practically attainable, detention no longer 'bear[s] [a] reasonable relation to the purpose for which the individual [was] committed.'" *Id.* at 690 (quotations and ellipses in original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Thus, the Court concluded "once the flight risk justification evaporates, the only special circumstance present is the alien's removal status itself, which bears no relationship to a detainee's dangerousness." *Id.* at 691 (citations omitted).

66. In order to balance the statutory language with constitutional demands, the Supreme Court adopted a "presumptively reasonable period of detention" of six months when reviewing detention during the removal period. *Zadvydas*, 533 U.S. at 701. After six months, if there is "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." *Id.* And "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699 (citation omitted).

67. After *Zadvydas*, DHS added new regulations creating "special review procedures" to determine whether detained noncitizens 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). If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on "special circumstances," it must justify the detention based on narrow grounds such as national security or public health concerns, *id.* § 241.14(b)–(d), or by demonstrating by clear and convincing evidence before an immigration judge that the noncitizen is "specially dangerous."

68. As explained *infra*, Ms. Flores-Mendoza's detention violates both the substantive due process limits of *Zadvydas* and the procedural due process set forth in the Agency's own regulations. The Court should order her immediate release.

Withholding of Removal and Third Country Removal

69. Ms. Flores-Mendoza has been granted withholding of removal from El Salvador. Withholding and deferral of removal under the CAT are both mandatory forms of protection preventing deportation to the country or countries where an immigration judge finds that the individual is more likely than not to be persecuted or tortured. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16–18, 1208.16–18; *see also Moncrieffe v. Holder*, 569 U.S. 184, 187 n.1 (2013). Specifically, the withholding statute implements the United States's obligations under Article 33 of the 1951 United Nations Refugee Convention, incorporated into its 1967 Protocol by which signatory countries may not "expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." *INS v. Aguirre Aguirre*, 526 U.S. 415, 427 (1999).

70. Withholding and deferral of removal do not prevent a noncitizen from being removed from the United States, but rather prohibit removal to the specific country where a noncitizen has established they are likely to be persecuted.

71. Under certain circumstances, noncitizens can be removed to a "third country" that is not their country of citizenship or nationality, provided the foreign government will accept them. 8 U.S.C. § 1231(b)(1)-(3). 8 U.S.C. § 1231(b)(2)(E)(vii). However, "the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231 (b)(3)(A).

72. DHS's long-standing practice has been to release most noncitizens granted withholding or other removal protection. This practice is based on a 2004 policy memo stating: "[i]n general, it is ICE policy to favor release of aliens who have been granted protection relief from an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirements in the law to detain." *See* Exh. R at 196. The 2004 policy memo was re-emphasized and circulated to ICE employees by Agency leadership in 2012 and 2021. *See id.* at 197-99.

73. Until recently, third country removal was not an acute threat. *Johnson v. Guzman Chavez*, 594 U.S. 523, 537 (2021) (acknowledging that alternative country removal is "rare," and discussing data showing in fiscal year 2017 "only 1.6% of [noncitizens] who were granted withholding of removal were actually removed to an alternative

country"). However, the current administration has increasingly focused on deporting people granted withholding of removal from their home country to third countries which were not designated during removal proceedings and where they may be at risk for persecution and torture.[12]

74. In March of 2025, the Secretary of Homeland Security, Kristi Noem, issued a memorandum entitled Guidance Regarding Third Country Removals ("March Guidance"). *D.V.D.*, 2025 WL 1142968, at *23. The March Guidance provided instructions to immigration agencies on how to initiate removal to a third country for individuals granted withholding of removal who are nonetheless subject to a removal order. *Id.* Specifically, per this guidance if the United States has received "diplomatic assurances" that noncitizens removed to that country will not be persecuted or tortured, and these assurances are deemed credible, then noncitizens can be removed to that country with no notice nor any other procedure required. *Id.* For countries that have given no credible assurances that someone deported pursuant to the changed policy will not be tortured or persecuted, the only procedural protection is a requirement that DHS notify the noncitizen where they are being sent prior to removal. *Id.*

[12] *See* DHS Policy Directive on Expedited Removal and Nondetained Docket (Feb. 18, 2025), https://perma.cc/T8TV-GT84 ("February DHS Policy Directive").

75. Pursuant to this policy, in recent months, DHS has deported people to third countries, including Panama, Costa Rica, Mexico, South Sudan, and Eswatini.[13] In some instances, these third countries of removal have indicated an intention to repatriate individuals to their countries of origin,[14] despite orders from U.S. judges prohibiting such an act.

76. The March Guidance is currently being challenged in a class action lawsuit in the U.S. District Court for the District of Massachusetts. *D.V.D.*, 2025 WL 1142968, at *23. The district court judge initially enjoined this policy, finding that "[b]lanket diplomatic assurances do not address DHS's obligation to undertake an individualized assessment as to the sufficiency of the assurances, as required under the statutory and regulatory framework" nor do they offer "protection against either torture by non-state actors or chain refoulement, whereby the third country proceeds to return an individual to his country of origin." *Id.* at *22. However, on June 23, 2025, without providing any reasoning, the Supreme Court stayed the lower court's order, allowing the DHS policy to remain in effect. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025); *see also Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J.,

[13] Kristina Cooke and Ted Hesson, *The US said it had no choice but to deport them to a third country. Then it sent them home*, REUTERS, Aug. 2, 2025, https://www.reuters.com/world/americas/us-said-it-had-no-choice-deport-them-third-country-then-it-sent-them-home-2025-08-02/.

[14] Associated Press, *5 immigrants deported by the US to Eswatini in Africa are held in solitary confinement*, POLITICO, Jul. 17, 2025, https://www.politico.com/news/2025/07/17/5-immigrants-deported-by-the-us-to-eswatini-in-africa-are-held-in-solitary-confinement-00461712 ("The Eswatini government said the men are 'in transit' and will eventually be sent to their home countries.").

concurring) ("[t]he stay order is not a ruling on the merits, but instead simply stays the District Court's injunction pending a ruling on the merits.").

ARGUMENT

77. The Court should grant Ms. Flores-Mendoza's petition and order her immediate release, and also require she receive notice and an opportunity to be heard prior to any removal to a third country.

I. Ms. Flores-Mendoza's Detention Violates the Standard Set by the Supreme Court in *Zadvydas*

78. Ms. Flores-Mendoza has been detained pursuant to 8 U.S.C.§1231 beyond the six-month period the Supreme Court found presumptively reasonable. *Zadvydas*, 533 U.S. at 701. Her removal is not reasonably foreseeable because she cannot be deported to her country of citizenship, has no ties to other countries, and has strong grounds to challenge removal to any third country. Respondents cannot meet their burden to show otherwise.

79. The Supreme Court has instructed that to determine whether post-removal period detention is lawful, a "habeas court must [first] ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Id.* at 699. This assessment is crucial, the Court explained, because indefinite detention under § 1231, or indeed any other statute, "raise[s] a serious constitutional problem." *Id.* at 690. Moreover, "for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* at 701.

80. The six-month period of "presumptively reasonable" detention in Ms. Flores-Mendoza's case expired on September 29, 2025. During this period her attorney repeatedly contacted DHS to request updates on any progress regarding her removal. *See* Exhs. 3, 10, 14. As no one ever responded to counsel's communications, it is unclear what, if any, efforts Respondents have taken to remove her. The only time Ms. Flores-Mendoza was ever asked about travel documents needed for her removal was during the 180-day interview, in which she willingly participated. *See* Exh. N at 107-08. Ms. Flores-Mendoza then provided a copy of her Salvadoran national identity card to Respondents. *See id.* at 143.

81. Respondents have been unable to remove Ms. Flores-Mendoza for over seven months because she has been granted withholding of removal from her home country of El Salvador and cannot legally be removed to a third country where she would likely face persecution and torture on account of her gender identity and sexual orientation. Consequently, there is no significant likelihood of removal in the reasonably foreseeable future.

82. People like Ms. Flores-Mendoza who have been granted removal protection from their country of citizenship are at high risk of indefinite detention. *See Zhuzhiashvili v. Carter*, No. 25-3189-JWL, 2025 WL 2837716, at *3 (D. Kan. Oct. 7, 2025) (ordering that petitioner who had been granted withholding be released after six months because third country removal was not reasonably foreseeable); *Vargas v. Noem*, No. 25-3155-JWL, 2025 WL 2770679, at *2 (D. Kan. Sept. 29, 2025) (explaining that as petitioner "may not presently be removed to his home country of

Columbia, given the deferral order still in effect; and thus, because he can only be removed to a third country that agrees to accept him; his removal may be considered more difficult"); *Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO), 2025 WL 1750346, at *8 (D.N.J. June 24, 2025) (finding that "[petitioner] cannot be deported to his country of origin, Mexico, due to the threat of persecution based on his sexual orientation," which "substantially increases the difficulty of removing him.").

83. The government's difficulty in carrying out third country removals is reflected in statistics and court records showing low rates of success. *Guzman Chavez*, 594 U.S. at 537; *see also Munoz-Saucedo,* 2025 WL 1750346 at *14 (reviewing deportation records from fiscal years 2020 through 2023 "which appear to show that in those years, ICE removed . . . only *five* non-citizens granted withholding or CAT relief to alternative countries." (citation omitted); *see also Zhuzhiashvili*, 2025 WL 2837716, at *2 (highlighting ICE official's statement to petitioner that "[w]e are submitting acceptance requests to three other countries once a final order takes effect. These are never successful").

84. Ms. Flores-Mendoza's removal is not only difficult—but functionally impossible—as Respondents cannot legally deport her to a country where she will face persecution or torture as a transgender woman. 8 U.S.C. § 1231(b)(3). The statute mandates that "the Attorney General may not remove [a noncitizen] to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3). Accordingly, courts repeatedly

have held that individuals cannot be removed to a country that was not properly designated by an IJ if they have a fear of persecution or torture in that country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408–09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf. Protsenko v. U.S. Att'y Gen.*, 149 F. App'x 947, 953 (11th Cir. 2005) (per curiam) (permitting designation of third country where individuals received "ample notice and an opportunity to be heard").

85. As a transgender woman, Ms. Flores-Mendoza has even stronger grounds to challenge her removal than others whose persecution or torture is tied to conditions specific to one country. Violence towards transgender women is not limited to El Salvador, but is similarly prevalent in Mexico, Guatemala, Panama, and indeed, many other countries.[15] *See* Exh. H at 66-67, 80. Thus, Ms. Flores-Mendoza is likely to prevail on a claim for protection against removal to any third country.

86. During Ms. Flores-Mendoza's removal proceedings, the government failed to designate any country for removal other than El Salvador. *See* Exh. B at 13. Only after the appeal period ended and her removal order became final, did Ms. Flores-Mendoza learn that the government was contemplating removing her to Mexico, Guatemala, or Panama. *See* Exh. D at 37. Ms. Flores-Mendoza immediately expressed her fear of persecution and torture if removed to these countries and since

[15] *See e.g.* Rainbow Railroad, *Understanding the State of Global LGBTQI+ Persecution: 2024 Annual Report*, (collecting data on forced displacement of LGBTQI+ individuals worldwide), available at https://docs.google.com/viewer?url=https%3A%2F%2Fwww.rainbowrailroad.org%2Fwp-content%2Fuploads%2F2025%2F06%2F2024ANNUALREPORT-digital-3.pdf (last visited Oct. 30, 2025).

then has exhaustively sought to challenge removal by attempting to reopen immigration proceedings and through ongoing communications with ERO officers. *See* Exhs. C, E, G, H, J, N at 112.

87. In cases like this one, courts have found a noncitizen's intent to challenge alternate country removal is another factor which weighs against the likelihood of removal. *See Manago v. Carter, et. al.*, No. 5:25-cv-03183-JWL, 2025 WL 2841209, at *2 (D. Kan. Oct. 7, 2025) (ordering petitioner released after seven months detention and concluding third country removal was not reasonably foreseeable because, among other things, petitioner has stated "it may be difficult to remove him to a third country in the area of his home country because he would be able to prevent such a removal based on a credible fear that he would nonetheless be returned to his home country"); *Zavvar v. Scott, et. al.*, No. 1:25-cv-02104-TDC, 2025 WL 2592543, at *8 (D. Md. Sept. 8, 2025) ("The fact that [petitioner] likely will have the opportunity to seek further relief from the Immigration Court [to challenge removal to a third country], and then potentially file appeals from any adverse rulings, further demonstrates that removal is not likely in the foreseeable future"); *Villanueva Herrera v. Tate et al.*, No. 4:25-cv-03364 at *26, ECF No. 14 (S.D. Tex. Sept. 26, 2025) (finding detention violates *Zadvydas* and explaining that "any efforts to remove [petitioner] to a third country would likely be delayed by proceedings contesting his removal to the third country identified.") (citations omitted).

88. Indeed, Ms. Flores-Mendoza faces precisely the type of "potentially permanent" detention with "no obvious termination point" found unlawful. *Zadvydas*, 533 U.S. at

701; *see also Morales-Fernandez v. INS*, 418 F.3d 1116, 1124 (10th Cir. 2008) (ordering petitioner's release where "[t]here is no contention that conditions in Cuba have changed so that [the petitioner's] removal to Cuba is reasonably foreseeable") (citing *Clark v. Martinez*, 543 U.S. 371, 386–87 (2005).

89. Because Ms. Flores-Mendoza's detention is no longer authorized by statute, the Court must order her release.

II. DHS Has Violated its Own Regulations, Depriving Ms. Flores-Mendoza of Even Minimal Due Process

90. Ms. Flores-Mendoza's detention not only violates her substantive due process rights, but in failing to follow its own regulations, Respondents have also deprived her of procedural due process.

91. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

92. Crucially for individuals like Ms. Flores-Mendoza, regulations governing post-removal custody reviews "do not merely facilitate internal agency housekeeping but rather afford important and imperative procedural safeguards to detainees." *Bonitto v. Bureau of Immigr. & Customs Enf't* 547 F. Supp. 2d 747, 756 (S.D. Tex. 2008)

(adopting Magistrate Judge's report and recommendation) (citing *United States v. Caceres*, 440 U.S. 741, 760 (1979)). "[T]hese [§ 241.4] regulations are intended to provide due process in that they are fairly construed to be part of a procedural framework 'designed to ensure the fair processing of an action affecting an individual,' such that when they are not followed, prejudice is presumed." *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, at *13 (D. Md. Aug. 25, 2025) (quoting *United States v. Morgan*, 193 F.3d 252, 267 (4th Cir. 1999)) (discussing 8 C.F.R. § 241.4 generally).

93. To continue detention beyond the 90-day removal period, DHS regulations require ICE to conduct a post-order custody review (POCR) before 90 days or "as soon as possible thereafter." 8 C.F.R. § 241.4 (k)(1)(i)-(iv). DHS must then "notify the [noncitizen] in writing that he or she is to be released from custody or that he or she will be continued in detention pending removal or further review of his or her custody status." § 241.4(k)(1)(i) "A decision to retain custody shall briefly set forth the reasons for the continued custody," 8 C.F.R. 241.4 (d), and a copy of "any notice or decision that is being served on the alien" will also be sent to the attorney of record. 8 C.F.R. § 241.4 (d)(3).

94. If the noncitizen is not released following the 90-day custody review, jurisdiction transfers to ICE Headquarters (ICE HQ), *id.* § 241.4(c)(2), which must then conduct a custody review before or at 180 days of post-removal order detention. *Id.* § 241.4(k)(2)(ii). DHS must provide the noncitizen with 30 days' notice prior to this review. § 241.4(k)(2)(ii). As with the 90-day review, the ICE HQ is required to issue

a "written recommendation [that] shall include a brief statement of the factors that the review panel deems material to its recommendation." 8 C.F.R. § 241.4 (i)(5).

95. DHS has violated critical components of these regulations meant to ensure due process for Ms. Flores-Mendoza. First, her 90-day-review decision failed to provide any meaningful information regarding Respondents' decision to keep her in detention. The decision states: "ICE has determined to maintain your custody because: you have not demonstrated that, if released, you will not: [p]ose a significant risk of flight pending your removal from the United States. ICE has made such a determination based upon your removal order." Exh. Q at 192. The decision contains no other explanation and there is no indication that Respondents even contemplated the likelihood of Ms. Flores-Mendoza's removal in the foreseeable future. Second, although over seven months have passed since the removal order became final, DHS has not yet issued a decision on her 180-day review.

96. Respondents have failed to provide Ms. Flores-Mendoza with any individualized reasons for her prolonged detention, thus depriving her of the means to challenge it. "The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Matthews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up); *see also Arostegui Maldonado v. Baltazar*, No. 25-CV-2205-WJM-STV, 2025 WL 2280357, at *13 (D. Colo. Aug. 8, 2025) (critiquing ICE officer's statement concluding, "Petitioner is a flight risk because he has been removed from the United States three times" when no further information was provided); *see also Bonitto* 547 F. Supp. 2d at 757 (explaining that

"conclusory statements . . . with no factual basis or explanation, teeter[] dangerously close to a perfunctory and superficial pretense instead of a meaningful review sufficient to comport with due process standards . . . the POCR process contemplated by the regulations is a meaningful individualized review as the interest involved is the 'most elemental of liberty interests—the interest in being free from physical detention.'") (quoting *Foucha*, 504 U.S. at 80); *Misirbekov v. Vengas et al.*, No. 1:25-cv-00168 at *3, ECF No. 12 (S.D. Tex. Aug. 25, 2025) (finding denial of due process when petitioner's 90-day review was late and reasons for his continued detention were "boilerplate and pretextual" and 180-day review had not yet been completed).

97. Respondents' laissez-faire attitude towards custody review regulations is consistent with evidence showing such reviews are essentially meaningless. In a recent case in this district, Deportation Officer Irma Quinones confirmed that the Agency's current policy is to deny release to everyone. *Arostegui Maldonado v. Baltazar*, No. 25-CV-2205-WJM-STV, 2025 WL 2280357, at *25 (D. Colo. Aug. 8, 2025). Specifically, she testified to the following:

> Q: Are you aware of a policy of the Government that no paroles be granted?
> A: Yes, sir.
> Q: What's the policy?
> A: As of right now, we were told that we would not be granted paroles. *Id.* (quoting TR. 83:19-24).

98. Judge Martinez concluded that Officer Quinones's testimony "virtually confirmed the outcome of the [petitioner's] custody review was preordained in any event." *Id.*

99. In sum, Respondents have provided no meaningful due process throughout the entirety of Ms. Flores-Mendoza's detention. Further—as this blanket denial policy shows—they do not intend to. Thus, the Court should order her release.

III. The Remedy for Ms. Flores-Mendoza's Unlawful Detention is Immediate Release

100. Ms. Flores-Mendoza has been subjected to unlawful indefinite detention without meaningful notice or review for 215 days. The proper remedy is to order her immediate release. *See Mapp v. Reno*, 241 F.3d 221, 229 (2d Cir. 2001) (recognizing the court's inherent power to order release of habeas petitioners from immigration detention).

101. When courts find a noncitizen's removal is not reasonably foreseeable under *Zadvydas*, the remedy provided is release. *See, e.g., Morales-Fernandez*, 418 F.3d at 1124 (ordering petitioner's release where "[t]here is no contention that conditions in Cuba have changed so that [the petitioner's] removal to Cuba is reasonably foreseeable," and therefore he must "be released and paroled into the United States.") (citing *Clark*, 543 U.S. at 386–87); *Nzayikorera v. Fabbricatore*, No. 1:21-CV-02037-RMR, 2021 WL 9385836, at *2 (D. Colo. Sep. 9, 2021). District courts across the country recognize immediate release as the remedy to a *Zadvydas* violation. *Zhuzhiashvili*, 2025 WL 2837716, at *3; *Manago*, 2025 WL 2841209, at *2; *Vargas*, 2025 WL 2770679, at *2; *Zavvar*, 2025 WL 2592543, at *8; *Munoz-Saucedo*, 2025 WL 1750346, at *8; *Tadros v. Noem*, No. 2:25-cv-04108-EP, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025); *see also Tadros v. Noem*, No. 2:25-cv-04108-EP, Order (D.N.J. June 17, 2025), ECF No. 17 (granting habeas petition).

102. The only vague reason Respondents have given for keeping Ms. Flores-Mendoza incarcerated is "risk of flight." Exh. Q at 192. Ms. Flores-Mendoza is not a flight risk, because she has a proven vested interested in maintaining a lawful basis to remain in the United States and comply with any required supervision. Upon release, Casa Marianella, an Austin-based non-profit organization has committed to providing her with housing, food, and medical and legal services. *See* Exh. N at 173-82. This organization will also help ensure she attends all future ICE appointments and complies with all other conditions of release. *See id.*

103. Even assuming Respondent's stated reason for continuing custody was a true concern, the Supreme Court has determined that "preventing flight" is a "weak or nonexistent" justification for detention when removal is not reasonably foreseeable, as is the case here. *Zadvydas* 533 U.S. at 690. Respondents have not—and cannot—point to any other reason for Ms. Flores-Mendoza's ongoing detention. Therefore, the Court should order her release.

IV. Ms. Flores-Mendoza Cannot be Removed in the Reasonably Foreseeable Future Because, even if Her Removal Could be Effectuated to a Third Country, She is Entitled to Adequate Notice and a Meaningful Opportunity to Present a Fear-Based Claim.

104. DHS's assertion that it intends to remove Ms. Flores-Mendoza to a third country is simply a pretext for her indefinite detention. Even if the government were to identify a third country that would accept her, she cannot be lawfully removed in the reasonably foreseeable future because she is entitled to adequate notice, a meaningful opportunity to be heard, and individualized diplomatic assurances before being removed from the United States to a third country. *See Arostegui Maldonado v.*

Baltazar, No. 25-CV-2205-WJM-STV, 2025 WL 2280357, at *13 (D. Colo. Aug. 8, 2025) (granting "an injunction requiring Respondents to adhere to their *non-discretionary* obligation to provide [petitioner] with notice and an opportunity to seek withholding of removal before he is deported to any third country.").

105. "'It is well established that the Fifth Amendment entitles [noncitizens] to due process of law' in the context of removal proceedings." *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Earlier this year, the Supreme Court emphasized this point, explaining that before being spirited away, noncitizens are "entitled to notice and an opportunity to challenge their removal." *Id.*

106. In immigration proceedings addressing fear-based claims for protection, judges are obligated to provide notice of proposed countries of removal. *See* 8 C.F.R. § 1240.10(f) (stating that "immigration judge shall notify the [noncitizen]" of proposed countries of removal); 8 C.F.R. § 1240.11(c)(1)(i) ("If the [noncitizen] expresses fear of persecution or harm upon return to any of the countries to which the [noncitizen] might be removed pursuant to § 1240.10(f) . . . the immigration judge shall . . . [a]dvise [the noncitizen] that he or she may apply for asylum in the United States or withholding of removal to those countries[.]").

107. When charged with the question of whether noncitizens are entitled to notice and a meaningful opportunity to present a fear-based claim, circuit courts have resoundingly sided with the noncitizen. For example, in *Tomas-Ramos v. Garland*, the Fourth Circuit recognized that 8 U.S.C. § 1231 and the CAT's implementing regulations provide noncitizens with a pathway to seek withholding of removal and

CAT protection "to prevent removal to a particular country." *Tomas-Ramos v. Garland*, 24 F.4th 973, 977 (4th Cir. 2022). Likewise, the Ninth Circuit found in an unpublished opinion that "last minute orders of removal to a country may violate due process if an immigrant was not provided an opportunity to address his fear of persecution in that country." *Najjar v. Lunch,* 630 Fed. App'x 724 (9th Cir. 2016).

108. District courts across the country have found similarly. For instance, the Western District of Washington held that "[a] noncitizen must be given sufficient notice of a country of deportation that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation." *Aden,* 409 F. Supp. 3d at 1009 (citing *Mathews,* 424 U.S. at 349; *Kossov,* 132 F.3d at 408); *see, e.g., Santamaria Orellana*, 2025 WL 2444087, at *8; *Mahdejian v. Bradford*, No. 9:25-CV-00191, 2025 WL 2269796, at *4 (E.D. Tex. July 3, 2025) (determining that "[n]oncitizens have a right to meaningful notice and opportunity to be heard before being deported to a third country."); *Vaskanyan v. Janecka,* No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *7 (C.D. Cal. June 25, 2025) (finding that CAT requires "adequate notice and a meaningful opportunity to raise any fear-based claim" before removal); *Tadros*, 2025 WL 1678501, at *3 (petition subsequently granted). Akin to the circumstances presented here, the Northern District of California found that, where CAT deferral to El Salvador was previously granted, "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."

Ortega, 2025 WL 1771438, at *3. Most recently, in the Southern District of Texas, the court explicitly applied the *Mathews* factors in the context of a claim against unlawful removal to a third country, finding that "the cost-benefit analysis weighs in [petitioner's] favor." *Sagastizado Sanchez v. Noem, et al.*, Case 5:25-cv-00104, ECF No. 26 (S.D. Tex., Oct. 2, 2025).

109. Here, the Fifth Amendment Due Process Clause, 8 U.S.C. § 1231, and the CAT's implementing regulations enshrine Ms. Flores-Mendoza's right to notice and opportunity to be heard on a fear-based claim when the government designates a third country for removal. *See, e.g., Aden*, 409 F. Supp. 3d at 1004. She also has a due process right to the implementation of a process or procedure to afford her such protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991). Ms. Flores-Mendoza need not make any additional showing to prevail.

110. Nevertheless, application of the *Mathews* factors leads to the same result—Ms. Flores-Mendoza requires sufficient process. *See Mathews*, 424 U.S. at 335. Under *Mathews*, determining the specific dictates of due process generally requires evaluation of "(1) the private interest that will be affected by the official action, (2) a cost-benefit analysis of the risks of an erroneous deprivation versus the probable value of additional safeguards, and (3) the Government's interest, including the function involved and any fiscal and administrative burdens associated with using different procedural safeguards." *Dusenbery v. United States*, 534 U.S. 161, 167 (2002) (citing *Mathews*, 424 U.S. at 335).

111. First, Ms. Flores Mendoza has a private interest at stake in her right to have her removal withheld from a country where she is more likely than not to be tortured or persecuted. In fact, she has already prevailed on fear-based claim to El Salvador. To date, Ms. Flores-Mendoza has not been provided with notice, a meaningful opportunity to present a fear-based claim to protect against her removal to a third country, or any individualized diplomatic assurances from a prospective third country of removal. Yet she remains detained indefinitely–presumably on this basis. In other words, Ms. Flores-Mendoza's detention and the question of its legality merge with her right to have her removal deferred from a country where it is more likely than not she will face torture. As such, she seeks to raise a claim for asylum, withholding of removal and CAT protection to any country where the government intends to effectuate her removal. 8 U.S.C. § 1231(b)(3) (providing restrictions on removal to a country where a person's life or freedom would be threatened); 8 C.F.R. §§ 208.17–18; 1208.17–18. Given the significance of this interest and the mandatory nature of deferral of removal for noncitizens who qualify, Ms. Flores-Mendoza's private interest weighs heavily in favor of a robust due process requirement.

112. Second, there is a high risk of Respondents' erroneous deprivation of Ms. Flores Mendoza's rights to seek protection and prevent removal to a country where she is more likely than not to be persecuted or tortured. Since first learning of Respondents' plan to try to remove her to Mexico, Guatemala or Panama, she has repeatedly asserted her fear of such a removal to ERO ICE officers, OPLA, and IJs—all of

whom have all dismissed her without meaningful consideration. *See* Exhs. C, E, G, H, and J.

113. More troubling still, shortly after learning Ms. Flores-Mendoza planned to file a second motion to reopen, Respondents tried to unlawfully deport her to the very country from which she sought protection. *See* Exhs. G, S at 201-02.

114. On May 30, 2025, counsel for Ms. Flores-Mendoza sent OPLA attorneys Alisha Hill and Sunika Pawar notice that her client would be filing a second motion to reopen, again seeking to "put forward evidence supporting her fear of persecution in Guatemala, Mexico and Panama." Exh. G at 54. Counsel provided them with a copy of the motion and told them it would be filed on Monday, June 2, 2025. *See id.*

115. Consequently, on June 2, 2025, Ms. Flores-Mendoza filed this second motion in immigration court seeking to pursue claims for asylum, withholding of removal and CAT protection to prevent her removal to Mexico, Guatemala, or Panama. *See* Exh. H. The IJ granted her a temporary stay of removal the same day. *See* Exh. I.

116. Notwithstanding this order, or the preliminary injunction from the district court in *D.V.D. v. U.S. Dep't of Homeland Sec.*, the next day Respondents abruptly transferred Ms. Flores-Mendoza from the Aurora Facility and loaded her onto a bus to be deported to Mexico. *See* Exh. S at 201-02.

117. With ironic timing, the day after Ms. Flores-Mendoza's narrow escape from deportation, OPLA attorney Alisha Hill contacted her lawyer assuring him that "prior to effectuating [third country] removal, the Department will provide [her with]

written notice. . . [and a] meaningful opportunity to raise a fear or return to that country." Exh. J at. 87-88.

118. In addition to Ms. Flores-Mendoza's direct experience of unlawful deportation, this risk is also evidenced by other recent examples of DHS disappearing people, contrary to the rule of law, and particularly fellow citizens of El Salvador. *See, e.g., Abrego Garcia v. Noem*, 604 U.S. ___ (2025) (recognizing the U.S. government's acknowledgment that petitioner's removal to El Salvador violated an immigration judge's order and was illegal).

119. Because Respondents have repeatedly denied Ms. Flores-Mendoza the opportunity to seek protection, a right to which she is entitled, and instead attempted to unlawfully deport her to Mexico, the importance of additional procedural safeguards far outweighs the minimal administrative burden. *See* 8 U.S.C. § 1231(b)(3).

120. Finally, the public interest in preventing unlawful deportation of noncitizens outweighs the government's interest in executing a removal order—particularly where protection has already been afforded. The procedures Ms. Flores-Mendoza requests would create a minimal delay in that process, and she will likely demonstrate she is at risk of harm in any intended country of removal given the risk factors she displays. Thus, pursuant to *Mathews*, due process requires the procedural protections Ms. Flores-Mendoza seeks prior to being unlawfully removed.

121. In addition, the current third country removal policy applied to Ms. Flores-Mendoza violates the APA, as it fails to follow non-discretionary statutory duties

requiring notice and a meaningful opportunity to present a fear-based claim. Under the APA, agency action that violates federal statute is arbitrary and capricious and may be set aside by federal courts. 5 U.S.C. § 702(2)(A), (C) (empowering courts to set aside agency action that is "arbitrary and capricious," "otherwise not in accordance with law," or "short of statutory right"). Federal agencies may not take agency action that violates their own regulations and policies. 5 U.S.C. § 702(2)(A); *see Accardi*, 347 U.S. at 268 (agencies must follow their own internal regulations and policies); *Yellin v. United States*, 374 U.S. 109, 121 (1963) (recognizing that even if the petitioner does not ultimately prevail, he "should at least have the chance given him by the regulations."). Under the *Accardi* doctrine, an agency's failure to provide procedural safeguards delineated in its own regulations undermines the legality of the agency action. *Santamaria Orellana v. Baker, et al.*, No. CV 25-1788-TDC, 2025 WL 2841886, at *10 (D. Md. Oct. 7, 2025) (finding that EOIR's failure to follow the procedures set forth in 8 C.F.R. § 1208.31(g) "is a due process violation under the *Accardi* doctrine.").

122. By failing to implement a process or procedure to afford Ms. Flores-Mendoza meaningful notice and opportunity to present a fear-based claim to an IJ before DHS deports her to a third country, Respondents are failing to adhere to her substantive and procedural due process rights and are not complying with procedures required by the INA, FARRA, and the implementing regulations.

123. At a minimum, Ms. Flores-Mendoza qualifies for injunctive relief pursuant to the Court's All Writs Act authority, prohibiting his unlawful removal from the United

States while these proceedings are pending. *See Arostegui-Maldonado*, 2025 WL 2280357, at *14.

CLAIMS FOR RELIEF

COUNT I
Violation of 8 U.S.C. § 1231 and Fifth Amendment Right to Due Process (Unlawful Indefinite Detention)

1. Ms. Flores-Mendoza realleges and incorporates by reference the paragraphs above.
2. The Due Process Clause of the Fifth Amendment to the U.S. Constitution forbids the government from depriving any person of liberty "without due process of law." *Zadyvdas* authorizes detention only for "a period reasonably necessary to bring about the [noncitizen's] removal from the United States." 533 U.S. at 689, 701. Ms. Flores-Mendoza's continued detention has become unlawful because her removal is not reasonably foreseeable. Therefore, her continued detention violates due process, and she must be immediately released.

COUNT II

Violation of Fifth Amendment Right to Due Process (As-Applied Challenge)

3. Ms. Flores-Mendoza realleges and incorporates by reference the paragraphs above.
4. The Due Process Clause of the Fifth Amendment to the U.S. Constitution guarantees protection to all "persons" in the United States, including noncitizens, regardless of immigration status. *See Zadvydas*, 533 U.S. at 693. It further prohibits the government from depriving any person of liberty without due process of law. U.S. Cont. amend. V.
5. To comport with the due process clause, civil detention must "bear[] a reasonable relation to the purpose for which the individual was committed," which for detention under §1231

is removal from the United States. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas,* 533 U.S. at 690).

6. The indefinite nature of Ms. Flores-Mendoza'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).

7. There is no indication that the government has made any effort towards securing Ms. Flores-Mendoza's removal in the over seven months she has been incarcerated since her removal order became final. This violates her procedural due process rights and renders her detention indefinite.

8. Further, throughout Ms. Flores-Mendoza's detention, the government has failed to adhere to what the Due Process Clause requires for such a significant deprivation of her liberty interest.

9. Ms. Flores-Mendoza's detention is thus unlawful.

COUNT III

Violation of Fifth Amendment Rights to Procedural Due Process and Administrative Procedure Act, 5 U.S.C. § 706(2)
(Adequate Notice and a Meaningful Opportunity to Present a Fear-Based Claim)

10. Ms. Flores-Mendoza realleges and incorporates by reference the paragraphs above.

11. The INA, FARRA, and implementing regulations as well as the Constitution mandate meaningful notice and an opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country.

12. The Administrative Procedure Act empowers courts to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or

"in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C).

13. The APA compels a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

14. Agencies must follow their own policies and procedures, particularly when they impact individual rights. *See Accardi*, 347 U.S. at 268.

15. Ms. Flores-Mendoza has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Ms. Flores-Mendoza respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Enjoin Respondents from transferring Ms. Flores-Mendoza outside of the jurisdiction the District of Colorado pending resolution of this case;

c. Pursuant to 28 U.S.C. § 2243, issue an Order to Show Cause or Order to Answer ordering Respondents to show cause within three days why the writ should not be granted;

d. Declare that Respondents' continued detention of Ms. Flores-Mendoza violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6), and the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

e. Grant a writ of habeas corpus directing Respondents to release Ms. Flores-Mendoza on her own recognizance and enjoining Respondents from removing or attempting to remove Ms. Flores-Mendoza to a third country or a country to which her removal has been withheld in violation of the Constitution as well as statutory and regulatory procedures; Award

Ms. Flores-Mendoza 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 31, 2025

/s/ Anjanette Hamilton
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Pro Bono Attorneys for Petitioner

VERIFICATION

I, Anjanette Hamilton, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petitioner's Petition for Writ of Habeas Corpus are true and correct.

Dated: October 31, 2025

/s/ Anjanette Hamilton
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Laura Lunn, hereby certify that on October 31, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Laura Lunn, hereby certify that I have mailed a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 via U.S. Postal Service certified mail on October 31, 2025.

Kevin Traskos
Chief, Civil Division
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And to:

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And to:

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And to:

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And to:

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/s/ Laura Lunn