UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

HAMID ZIAEI

Petitioner,

v.

MELISSA ORTIZ, Acting Warden, Torrance County Detention Facility; JOEL GARCIA, Field Office Director, El Paso Field Office, United States Immigration and Customs Enforcement; TODD M. LYONS, Acting Director, United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of Homeland Security; PAMELA JO BONDI, United States Attorney General, *in their official capacities*,

Respondents.

Civil Action No.: 1:25-cv-01111

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Hamid Ziaei came to the United States to seek protection after speaking out against the Iranian government and facing persecution as a result.

2. On June 10, 2024, Petitioner was granted withholding of removal under Section 241(b)(3) of the Immigration and Nationality Act ("INA"), prohibiting his removal back to Iran. *See* 8 U.S.C. § 1231(b)(3). Concurrently, the immigration judge issued him an order of removal. A few days later, Immigration and Customs Enforcement ("ICE") released Petitioner from immigration detention on an Order of Supervision ("OSUP").

3. Since his release over a year ago, Petitioner has applied for and received employment authorization from the Department of Homeland Security ("DHS") based on his release on an OSUP. He has also complied with every request, demand, and requirement imposed by Respondents of which Petitioner is aware, including attending his scheduled annual ICE check-ins.

4. Nevertheless, upon attending his scheduled annual ICE check-in on June 26, 2025, Petitioner was detained by ICE.

5. On information and belief, ICE did not re-detain Petitioner based on his personal circumstances or individualized facts. Nor did ICE re-detain Petitioner because Respondents plan to remove him to an identified third country. Instead, Respondents detained Petitioner because of their interpretation of President Trump's order that they "to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History."[1] But Respondents' power to detain remains checked by law, as this country remains "a government of

[1] Pres. Donald Trump, @realDonaldTrump, Truth Social (June 15, 2025, 5:43pm) ("ICE Officers are herewith ordered, by notice of this TRUTH, to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History.").

laws and not of men." *Cooper v. Aaron*, 358 U.S. 1, 23 (1958) (Frankfurter, J. Concurring) (cleaned up).

6. Respondent has now been in immigration detention at the Torrance County Detention Facility ("TCDF") in Estancia, New Mexico, for over four months with no end in sight. Since being detained, Respondents have given Petitioner no indication that they actually intend to seek to remove him to a third country. Petitioner has also had no meaningful opportunity to contest his detention.

7. But Respondents cannot evade the law so easily. Petitioner challenges his re-detention and indefinite detention as a violation of the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, and ICE's own policies.

8. To vindicate Petitioner's rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner asks this Court to find that Respondents' re-detention and indefinite detention of Petitioner is arbitrary and capricious and in violation of the law.

JURISDICTION

9. This action arises under the Constitution of the United States and the Immigration and Nationality Act, 8 U.S.C. § 1101 et. seq.

10. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

11. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

12. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (e)(1) because Petitioner is detained within the District of New Mexico and his immediate physical custodian is located within this District. *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *see* also *United States v. Scott*, 803 F.2d 1095, 1096 (10th Cir. 1986) ("A § 2241 petition for a writ of habeas corpus must be addressed to the federal district court in the district where the prisoner is confined.").

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

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

14. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

15. Petitioner is "in custody" for the purpose of § 2241 because he is detained by Respondents at TCDF, an immigration detention facility, in Estancia, New Mexico. Petitioner is under the direct control of Respondents and their agents.

PARTIES

16. Petitioner **Hamid Ziaei** is currently detained by Respondents at TCDF. He was granted withholding of removal on June 10, 2024, and was released from detention on June 12,

2024 on an Order of Supervision issued pursuant to 8 U.S.C. § 1231(a). Petitioner was re-detained when he reported for his scheduled ICE check-in on June 26, 2025.

17. Respondent **Melissa Ortiz** is the Acting Warden of the Torrance County Detention Facility, where Petitioner is currently detained. She is a legal custodian of Petitioner.

18. Respondent **Joel Garcia** is the Field Office Director for the ICE El Paso Field Office. As Field Office Director, Respondent Garcia oversees ICE's enforcement and removal operations in West Texas and New Mexico. He is a legal custodian of Petitioner.

19. Respondent **Todd Lyons** is Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement. He has authority over the actions of Respondent Garcia and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

20. Respondent **Kristi Noem** is the Secretary of the Department of Homeland Security and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Noem is charged with faithfully administering the immigration laws of the United States and is a legal custodian of Petitioner.

21. Respondent **Pamela Bondi** is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

22. This action is commenced against all Respondents in their official capacities.

LEGAL FRAMEWORK

I. Withholding of Removal under the Immigration and Nationality Act

23. A noncitizen may not be removed to any country where it is more likely than not that they would be persecuted or tortured.

24. Under the INA, the Attorney General or the DHS Secretary may not remove a [noncitizen] to a country" where "the [noncitizen]'s life or freedom would be threatened in that country because of the [noncitizen]'s race, religion, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A). This form of protection is known as "withholding of removal." *See* 8.C.F.R. § 208.16(a). It is mandatory.

25. When an Immigration Judge ("IJ") grants withholding of removal to a noncitizen in removal proceedings, the IJ issues a removal order and simultaneously withholds that order with respect to the country or countries for which the noncitizen has demonstrated the requisite risk of persecution. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021).

26. Once withholding is granted, either party has the right to appeal that decision to the Board of Immigration Appeals ("BIA") within 30 days. *See* 8 C.F.R. § 1003.38(b). If both parties waive appeal or if neither party appeals within the 30-day period, the grant of withholding of removal and the accompanying removal order become administratively final. 8 C.F.R. § 1241.1. If the Respondent reserves appeal and the time allotted for an appeal expires, the order of the immigration judge becomes administratively final "upon the expiration of the time allotted for an appeal." 8 C.F.R. § 1241.1(c).

27. When a noncitizen has a final withholding grant, they cannot be removed to the country or countries for which they demonstrated a sufficient likelihood of persecution. *See* 8 U.S.C. § 1231(b)(3)(A). While ICE is authorized to remove noncitizens granted withholding of removal to alternative countries, the INA specifies restrictive criteria for identifying appropriate countries. *See* 8 U.S.C. § 1231(b)(2)(D)-(E).

28. If ICE identifies an appropriate alternative country of removal, ICE must undergo further proceedings, including giving the noncitizen notice and an opportunity to express fear of

deportation to that country, before ICE may effectuate the noncitizen's removal. *See Jama v. ICE*, 543 U.S. 335, 348 (2005) ("If [noncitizens] would face persecution or other mistreatment in the country designated under § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture, *see* 8 C.F.R. §§ 208.16(c)(4), 208.17(a) (2004)[.]"); *Romero v. Evans,* 280 F. Supp. 3d 835, 848 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."), *rev'd on other grounds, Guzman Chavez*, 141 S. Ct. 2271.

II. Detention and Release of Noncitizens Granted Withholding of Removal

a. Statutory, Regulatory, and Constitutional Framework Limits Detention Beyond 90 Days

29. Section 1231 of Title 8 of the U.S. Code governs the detention of noncitizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)-(6). The "removal period" begins once a noncitizen's removal order "becomes administratively final." 8 U.S.C. § 1231(a)(1)(B).[2] The removal period lasts for 90 days, during which ICE "shall remove the [noncitizen] from the United States" and "shall detain the [noncitizen]" as it effectuates removal. 8 U.S.C. § 1231(a)(1)-(2). Even during the 90-day removal period, ICE may still exercise its discretion to release an individual from custody subject to an Order of Supervision. *See* Memorandum from Bo Cooper, INS General Counsel, Detention and Release During the Removal Period of Aliens Granted Withholding or Deferral of Removal (Apr. 21, 2000) (clarifying that even during the 90-day removal period, "the INS may – but is not required to – detain a non-criminal [non-citizen]").

[2] There are two other events that trigger the start of the removal period, which are not applicable here. *See* 8 U.S.C. § 1231(a)(1)(B)(ii)-(iii).

30. If an individual is not removed within the 90-day removal period, the INA presumes that such individual should be released under conditions of supervision, such as periodic reporting and other reasonable restrictions. *See* 8 U.S.C. § 1231(a)(3) (directing that if a noncitizen is not removed with the removal period, the noncitizen "shall be subject to supervision under regulations prescribed by the Attorney General"). The government may continue to detain certain noncitizens beyond the 90-day removal period only if they meet certain conditions, such as being inadmissible or deportable under specified statutory categories, or if they are determined to be a "risk to the community." 8 U.S.C. § 1231(a)(6).

31. For an individual not removed within the 90-day removal period, federal regulations require that ICE conduct a review of the noncitizen's records and make an individualized custody determination to either grant release or extend their custody. *See* 8 C.F.R. § 241.4(a), (d), (h)(1). ICE must provide notice to the noncitizen "approximately 30 days in advance" of its record review "so that the [noncitizen] may submit information in writing in support of his or her release." 8 C.F.R. § 241.4(h)(2).

32. In making a post-removal period custody determination, qualified officials must consider a number of enumerated factors that speak to the individual's danger to the community and risk of flight, "including ties to the United States." 8 C.F.R. § 241.4(f).

33. In addition to these regulatory restrictions, the Fifth Amendment to U.S. Constitution requires that Respondents may not extend a noncitizen's detention under 8 U.S.C. § 1231 indefinitely beyond the 90-day period; "once removal is no longer foreseeable, continued detention is no longer authorized by statute." *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001) (interpreting § 1231 in light of constitutional constraints). After the expiration of their removal

period, noncitizens who believe their removal is no longer reasonably foreseeable may initiate the special custody review process under 8 C.F.R. § 241.13.

34. If the government seeks to extend a noncitizen's detention beyond six months, it is presumed that continued detention exceeds the "period reasonably necessary to effectuate removal." *Zadvydas*, 533 U.S. at 699-701. "[T]he six-month period runs from the beginning of the removal period, even if the noncitizen is not detained throughout that period." *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *4 (D. Md. Sept. 8, 2025); *see also Tadros v. Noem*, No. 25-4108-EP, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) (similar); *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 500 (S.D.N.Y. 2009) (similar).

35. Where "the detention in question exceeds a period reasonably necessary to secure removal," release is the proper remedy for unconstitutionally prolonged post-removal-order detention. *See Zadvydas*, 533 U.S. at 699-700.

b. ICE Policy Supports Prompt Release of Noncitizens Granted Withholding of Removal

36. Longstanding ICE policy favors the prompt release of noncitizens who have been granted protection, including withholding of removal. This policy was established and extended through multiple memoranda and directives over the past twenty-five years (collectively, the "Withholding Release Policy").[3]

37. In 2004, ICE established a presumption of release for noncitizens who had received a grant of protection: "In general, it is ICE policy to favor release of [noncitizens] who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain.").

[3] These memoranda and directives are available at: https://www.acluva.org/app/uploads/2023/10/all_ice_policies_on_post-relief_release_2000-20211.pdf.

Memorandum from Michael Garcia, ICE Ass't Sec'y, Detention Policy Where an Immigration Judge Has Granted Asylum and ICE Has Appealed (Feb. 9, 2004).

38. In 2012, ICE leadership stated that the 2000 and 2004 memoranda favoring release are "still in effect and should be followed" and underscored that "[t]his policy applies at all times following a grant of protection[.]" Message from Gary Mead, ICE ERO Executive Assoc. Dir., Reminder on Detention Policy Where an Immigration Judge Has Granted Asylum, Withholding of Removal, or CAT (Mar. 6, 2012).

39. Most recently, in 2021, Acting ICE Director Tae Johnson reiterated the agency's position establishing a presumption of release for noncitizens granted protection and the exceptional circumstances standard: "Pursuant to this longstanding policy, absent exceptional circumstances … noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge *should* be released[.]" Message from Tae Johnson, ICE Acting Dir., REMINDER: Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal, or Convention Against Torture Protection, and DHS has Appealed (Jun. 7, 2021) (hereinafter, "2021 ICE Withholding Release Policy Reminder"). Exceptional circumstances include "when the noncitizen presents a national security threat or a danger to the community, or any legal requirement to detain." *Id.* "[I]ndividual facts and circumstances … should be considered in making [an exceptional circumstances] determination." *Id.*

40. On information and belief, the Withholding Release Policy has not been rescinded.

a. Revocation of Release on an Order of Supervision

41. Pursuant to federal regulation, once a noncitizen is released on an OSUP under Section 1231(a)(3), that release may only be revoked by certain government officials and under certain circumstances. *See* 8 C.F.R. § 241.4(*l*)(2).

42. Release on an OSUP may only be revoked by a qualifying official where one of four conditions have been met: "(i) The purposes of release have been served; (ii) The [noncitizen] violates any condition of release; (iii) It is appropriate to enforce a removal order or to commence removal proceedings against a[noncitizen]; or (iv) The conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate." *Id.*

43. Where a noncitizen's release is revoked, the noncitizen must be notified of the reasons for revocation and afforded an opportunity to respond through "an initial informal interview promptly after [their return to] custody." 8 C.F.R. § 241.4*(l)*(1).

44. If a noncitizen is not released from custody following the informal interview, ICE Headquarters is required to schedule an additional custody review process. The noncitizen must be notified of a "records review and scheduling of an interview, which will ordinarily be expected to occur within three months after release is revoked." 8 C.F.R. § 241.4(*l*)(3). "The custody review will include a final evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." *Id.*

FACTUAL BACKGROUND

I. Petitioner's Grant of Withholding of Removal and Release on an Order of Supervision

45. Petitioner is a citizen and national of Iran. As a prominent athlete in Iran, Mr. Ziaei spoke out against the regime in power. Fearing persecution for his beliefs and speech, Mr. Ziaei entered the United States in January 2024 to seek protection.

46. When Mr. Ziaei entered the United States, he was detained by immigration officers and placed in immigration court proceedings before the San Diego Immigration Court. He remained detained throughout these court proceedings.

47. On June 10, 2024, the IJ granted Mr. Ziaei withholding of removal pursuant to 8 U.S.C. § 1231(b)(3), preventing his deportation to Iran because he had established that he was more likely than not to be persecuted in Iran if he were returned. Mr. Ziaei was also simultaneously denied asylum, and a final order of removal was entered against him. The June 10, 2024, order of the immigration judge indicates that Mr. Ziaei waived appeal of the immigration judge's decision.

48. On June 12, 2024, ICE exercised its discretion to release Mr. Ziaei from custody under 8 U.S.C. § 1231 on an OSUP. The terms of Mr. Ziaei's OSUP included that he must: (i) "appear in person at the time and place specified, upon each and every request of the agency, for identification and for deportation or removal;" (ii) "not travel outside California for more than 48 hours" without notice and advance approval from ICE; (iii) provide written notice to ICE of "any changes of residence or employment 48 hours prior to such change;" (iv) report in person on June 26, 2024, at 9:00 AM at the ICE office in Santa Ana, California; and (v) assist ICE "in obtaining any necessary travel documents."

49. Petitioner timely reported to the Santa Clara ICE office on June 26, 2024, where he was scheduled for his next reporting date on June 26, 2025, between 8:00 AM and 10:00 AM.

50. With the help of his immigration attorney, on July 8, 2024, Mr. Ziaei requested that the immigration court reissue its immigration order, on the grounds that his waiver of appeal was not knowing or voluntary. On July 10, 2024, the immigration judge issued an amended order indicating that Mr. Ziaei reserved appeal, and his appeal was due on August 9, 2024. Mr. Ziaei attempted to timely file his appeal to the BIA and submitted a *pro se* Notice of Appeal.

51. In July 2024, Mr. Ziaei applied for work authorization based on his OSUP. On August 13, 2024, DHS granted Petitioner work authorization under the (c)(18) category, valid for a five-year period through August 12, 2029.

52. Following his release from immigration detention in June 2024, Petitioner built his life in Irvine, California, where he lived with his U.S.-citizen cousin. He studied English, took classes at a community college, and worked several jobs, including working as a caregiver for elderly and disabled individuals.

53. To the best of Petitioner's knowledge and understanding, since his release in June 2024 until his re-detention in June 2025, Petitioner complied with all terms of his OSUP.

54. Petitioner has no criminal record in the United States and has never been arrested nor charged with any criminal offense since his release from ICE custody in June 2024.

55. Since Petitioner's release in June 2024, ICE has never requested that Petitioner take any specific actions to obtain a travel document from any third country.

II. Respondents' Detention and Deportation Policies

56. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order ("EO") setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The "Protecting the American People Against Invasion" EO instructs the DHS Secretary "to take all appropriate action to enable" ICE to prioritize civil immigration enforcement procedures including through the use of mass detention.

57. On February 18, 2025, ICE issued a directive instructing ICE officers to review the cases of noncitizens granted withholding of removal "to determine the viability of removal to a third country and accordingly whether the [noncitizen] should be re-detained" and, in the case of those who previously could not be removed because their countries of citizenship were unwilling

to accept them, to "review for re-detention . . . in light of . . . potential for third country removals." In its February 2025 memo, ICE reiterated its regulatory obligations, including regarding the process for revocation of release pursuant to 8 C.F.R. §§ 241.4 and 241.13.

58. In late May 2025, Respondent Secretary Noem and White House Deputy Chief of Staff Stephen Miller met with ICE leadership, setting a new arrest quota of 3,000 arrests per day and reportedly threatening job consequences if officials failed to meet arrest quotas.[4]

59. On May 28, 2025, Miller confirmed that "[u]nder President Trump's leadership, we are looking to set a goal of a minimum of 3,000 arrests for ICE every day, and President Trump is going to keep pushing to get that number up higher each and every single day."[5]

60. Following the directive from Respondent Noem and Miller, ICE agents were instructed in an e-mail to "turn the creativity knob up to 11" and aggressively "push the envelope" in arrests, including by pursuing "collaterals"—individuals who by definition would not have warrants.[6] As another e-mail put it: "If it involves handcuffs on wrists, it's probably worth pursuing."[7]

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[4] Elizabeth Findell, et al., *The White House Marching Orders That Sparked the L.A. Migrant Crackdown*, The Wall Street Journal (June 9, 2025), https://www.wsj.com/us-news/protests-los-angeles-immigrants-trump-f5089877; Julia Ainsley, et al., *A sweeping new ICE operation shows how Trump's focus on immigration is reshaping federal law enforcement*, NBC News (June 4, 2025), https://www.nbcnews.com/politics/justicedepartment/ice-operation-trump-focus-immigration-reshape-federal-lawenforcement-rcna193494; Brittany Gibson & Stef W. Kight, Scoop: Stephen Miller, Noem tell ICE to supercharge immigration arrests, Axios (May 28, 2025), available at https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller.

[5] Hannity, *Stephen Miller says the admin wants to create the strongest immigration system in US History*, Fox News (May 28, 2025), available at https://www.foxnews.com/video/6373591405112 (last visited Aug. 24, 2025).

[6] José Olivares, *US immigration officers ordered to arrest more people even without warrants*, The Guardian (June 4, 2025), https://www.theguardian.com/us-news/2025/jun/04/immigration-officials-increased-detentions-collateral-arrests.

[7] José Olivares, *US immigration officers ordered to arrest more people even without warrants*, The Guardian (June 4, 2025), https://www.theguardian.com/us-news/2025/jun/04/immigration-officials-increased-detentions-collateral-arrests.

61. The overriding message, communicated by and to Respondents, is that agents and officers carrying out immigration operations on the ground must prioritize arrest numbers, regardless of the law. As one ICE official put it earlier this year, all that matters is "numbers, pure numbers, [q]uantity over quality."[8]

62. On June 15, 2025, President Trump ordered ICE officers to "do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History."[9]

III. Petitioner's Arrest and Re-detention at TCDF

63. On June 26, 2025, Petitioner reported to the Santa Ana ICE office as scheduled, to comply with the terms of his OSUP.

64. At his June 26, 2025 check-in, Mr. Ziaei was arrested and detained by ICE agents despite no material changes in his individual circumstances since he was released on an OSUP. At the time of his arrest, Mr. Ziaei told the arresting officers that he had been granted withholding of removal.

65. On information and belief, Petitioner was arrested and detained on June 26, 2025, without consideration of his individual facts or circumstances or a meaningful opportunity to be heard.

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[8] Jennie Taer, *Trump admin's 3,000 ICE arrests per day quota is taking focus off criminals and 'killing morale': insiders warn*, NY Post, June 17, 2025, https://nypost.com/2025/06/17/us-news/trump-admins-3000-ice-arrests-per-day-quota-is-taking-focus-off-criminals-and-killing-morale-insiders/, https://perma.cc/DB9R-MJUC (last visited Oct. 15, 2025) ("The Trump administration's mandate to arrest 3,000 illegal migrants per day is forcing ICE agents to deprioritize going after dangerous criminals and targets with deportation orders, insiders warn. Instead, federal immigration officers are spending more time rounding up people off the streets, sources said. 'All that matters is numbers, pure numbers. Quantity over quality,' one Immigrations and Customs Enforcement insider told The Post.").

[9] Pres. Donald Trump, @realDonaldTrump, Truth Social (June 15, 2025, 5:43pm) ("ICE Officers are herewith ordered, by notice of this TRUTH, to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History.").

66. After his arrest on June 26, 2025, Respondents transferred Petitioner to TCDF in Estancia, New Mexico, where he currently remains detained.

67. In July 2025, while detained at TCDF, Mr. Ziaei learned that his *pro se* appeal to the BIA had previously been rejected because he had made an error in effectuating service to DHS. As a result, without his prior knowledge, his removal order had become administratively final on August 9, 2024.

68. In early August 2025, Petitioner enlisted the support of a law firm that e-mailed the ICE El Paso Field Office to advocate for his release. The law firm shared that Petitioner had been granted withholding of removal, previously released from detention, fears removal to a third country where his life or freedom would be in danger, and had been experiencing "significant health issues." In response, a deportation officer with the ICE El Paso Field Office confirmed that "[a] request for release has been submitted to upper management," which remained pending as of the officer's latest correspondence on September 25, 2025. On information and belief, neither the law firm nor Mr. Ziaei has received further response regarding this request.

69. On September 9, 2025, with the help of an attorney, Petitioner submitted a request for bond to the Otero Immigration Court. On September 22, 2025, an immigration judge denied Mr. Ziaei's bond request due to lack of jurisdiction.

70. Petitioner has now been in Respondents' custody at TCDF for over four months. Petitioner has developed anxiety and persistent respiratory ailments as a result of his re-detention, the symptoms for which have continued to worsen as his detention becomes prolonged.

71. On information and belief, Respondents have identified no third country of removal to which they are actually attempting to remove Petitioner.

72. Neither Petitioner nor his parents have citizenship from any country other than Iran. Petitioner has no legal ties to any country other than Iran and the United States.

73. On information and belief, Petitioner's removal is not likely in the reasonably foreseeable future.

CLAIMS FOR RELIEF

COUNT ONE
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A), the Immigration and Nationality Act, and Federal Regulations Not in Accordance with Law, In Excess of Statutory Authority, Abuse of Discretion (Unlawful Re-detention)

74. Petitioner restates and realleges all paragraphs as if fully set forth here.

75. Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction, authority, or limitations;" or "without observance of procedure required by law". 5 U.S.C. § 706(2)(A)-(D).

76. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

77. The INA provides that Respondents may, as they did in Petitioner's case, release an individual, who is subject to a removal order, on an OSUP if appropriate or statutorily required. 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.4(a). Any person released under such circumstances "shall be released pursuant to an order of supervision." 8 C.F.R. § 241.5(a).

78. Specified ICE officials may revoke supervised release "in the exercise of discretion," but only subject to formal processes and findings. 8 C.F.R. § 241.4(*l*)(1)-(2).

79. The language of 8 C.F.R. § 241.4(*l*) specifically limits the power of anyone who is not the Executive Associate Director to revoke release. For example, it provides that "[a] district director may also revoke release of a [noncitizen] when"—and only when—"in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." Thus, before a district director can revoke release, the district director must make certain findings.

80. A noncitizen's release may be revoked "in the exercise of discretion" when, in the opinion of the revoking official, "[t]he purposes of release have been served," the noncitizen "violates any condition of release;" revocation "is appropriate to enforce a removal order or to commence removal proceedings against [the noncitizen]," or "[t]he conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2).

81. The language of 8 C.F.R. § 241.4(*l*)(1) also requires that upon revocation, a noncitizen "will be notified of the reasons for revocation" and "be afforded an initial informal interview promptly after his or her return to [ ] custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification."

82. On information and belief, Petitioner complied with all of the conditions of his release on an OSUP; indeed, he was reporting to ICE as directed when he was detained. No facts or circumstances changed for Petitioner that would alter Respondents' assessment of his risk of flight or his danger to the community. To the contrary, since his release in June 2024, Petitioner

has was living with his U.S.-citizen cousin and engaging in his local community through employment and schooling.

83. Petitioner has no criminal history, and ICE did not seek his cooperation to obtain travel documents to any third country prior to his re-detention.

84. By arbitrarily re-detaining Petitioner without making the requisite findings and without considering Petitioner's individualized facts and circumstances, Respondents have violated the INA and federal regulations. *See Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at *17 (W.D.N.Y. May 2, 2025) (granting habeas relief after finding ICE violated 8 C.F.R. § 241.4(*l*) when it did not afford petitioner an informal interview or an opportunity to respond to the reasons for revocation); *Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *2 (S.D.N.Y. Oct. 29, 2023) (noting that notwithstanding ICE's discretion to execute a removal order, ICE "cannot remove" a noncitizen—even one subject to a final removal order—"in any manner [it] please[s]"); *Waldron v. I.N.S.*, 17 F.3d 511, 518 (2d Cir. 1993) ("[W]hen a regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute, and [the government] fails to adhere to it, the challenged deportation proceeding is invalid and a remand to the agency is required"—even in the absence of a showing of prejudice.).

85. Respondents' conduct is not in accordance with law and in excess of statutory authority in violation of the APA.

COUNT TWO
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A), the Immigration and Nationality Act – 8 U.S.C. § 1231, and the *Accardi* Doctrine with Respect to the Withholding Release Policy Not in Accordance with Law, In Excess of Statutory Authority, Abuse of Discretion (Unlawful Indefinite Detention)

86. Petitioner restates and realleges all paragraphs as if fully set forth here.

87. Under the APA, a court shall "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]" 5 U.S.C. § 706(2)(A). An agency must also follow its own procedures or regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *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.").

88. First, as interpreted by the Supreme Court, 8 U.S.C. § 1231(a)(6) authorizes detention beyond the 90-day removal period only for a "period reasonably necessary to bring about the [noncitizen's] removal from the United States." *Zadvydas*, 533 U.S. at 701.

89. Here, Petitioner's removal order became administratively final on August 9, 2024, nearly fifteen months ago. On information and belief, within that time, including in Petitioner's more than four months of detention at TCDF, Respondents have made no actual efforts to remove Petitioner to a specifically identified third country.

90. On information and belief, Petitioner has not engaged in any conduct to trigger an extension of the removal period under 8 U.S.C. § 1231(a)(1)(C). Because it has been more than six months since Petitioner's removal order became administratively final, it is presumed that his removal is no longer reasonably foreseeable. *See Zadvydas*, 533 U.S. at 699-701; *see also Zavvar*, 2025 WL 2592543, at *4 ("[T]he six-month period runs from the beginning of the removal period, even if the noncitizen is not detained throughout that period."); *Tadros*, 2025 WL 1678501, at *3 (similar); *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 500 (S.D.N.Y. 2009) (similar).

91. Second, following the 90-day removal period defined in 8 U.S.C. § 1231(a), DHS must follow its regulatory procedures to conduct a review of the noncitizen's records and to make

an individualized custody determination to either grant release or extend their custody. *See* 8 C.F.R. § 241.4(a), (d), (h)(1).

92. Here, during and since Petitioner's arrest in June 2025, Respondents have provided Petitioner with no individualized custody determination as required to justify his detention beyond the 90-day removal period. *See* 8 U.S.C. § 1231(a)(3), (6); 8 C.F.R. §§ 241.4, 241.14. On information and belief, if Respondents conducted such a review, Petitioner would be released from immigration detention.

93. Third, pursuant to the "longstanding" Withholding Release Policy, "absent exceptional circumstances . . . noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge *should* be released[.]" Acting ICE Director Tae Johnson, 2021 ICE Withholding Release Policy Reminder (emphasis added).

94. Here, during and since Petitioner's arrest in June 2025, Respondents have also not conducted an individualized review of Petitioner's detention under the "exceptional circumstances" standard as required by the Withholding Release Policy. On information and belief, if Respondents conducted such a review, Petitioner would be released from immigration detention.

95. By detaining Petitioner beyond his removal period when removal is not reasonably foreseeable, Respondents have violated the APA. Respondents have also independently violated the APA by detaining Petitioner without providing any individualized custody determination under either the regulations or the Withholding Release Policy.

COUNT THREE
Violation of Fifth Amendment Right to Substantive Due Process
(Unlawful Re-detention and Indefinite Detention)

96. Petitioner restates and realleges all paragraphs as if fully set forth here.

97. The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. "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 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

98. Civil immigration detention violates substantive due process if it is not reasonably related to its statutory purpose. *See id*. at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003). (citing *Zadvydas*, 533 U.S. at 690).

99. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risk of flight and to prevent danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 514-15.

100. Petitioner's detention is not reasonably related to the primary statutory purpose of ensuring imminent removal. His prolonged civil detention has extended well beyond the end of the removal period and will continue into the indefinite future.

101. ICE has had nearly fifteen months to effectuate Petitioner's removal. During that time, Respondents have not initiated any process to remove Petitioner to a third country. There is no significant likelihood of his removal in the reasonably foreseeable future. Nor have any other facts or circumstances changed for Petitioner that would change Respondents' assessment of his risk of flight or his danger to the community. To the contrary, since his release in June 2024, Petitioner has developed strong ties to his community in Irvine, California.

102. Mr. Ziaei's continued detention is unrelated to the purposes justifying civil immigration detention as a constitutional matter and contravenes the Substantive Due Process protections of the Fifth Amendment.

COUNT FOUR
Violation of Fifth Amendment Right to Procedural Due Process
(Unlawful Re-detention and Indefinite Detention)

103. Petitioner restates and realleges all paragraphs as if fully set forth here.

104. Basic due process doctrine provides that an individual must be afforded requisite process, including notice and an opportunity to be heard, before being deprived of a liberty interest. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). Prolonged civil detention violates procedural due process unless it is accompanied by strong procedural protections to guard against the erroneous deprivation of liberty. *Zadvydas*, 533 U.S. at 690-91; *Foucha*, 504 U.S. at 81-83; *Kansas v. Hendricks*, 521 U.S. at 346, 364-69 (1997); *United States v. Salerno*, 481 U.S. 739, 750-52 (1987).

105. While the government has discretion to detain individuals under 8 U.S.C. § 1231 and to revoke custody decisions pursuant to the same authority, this discretion is not "unlimited." *See Zadvydas*, 533 U.S. at 698. Additionally, when agencies fail to adhere to their own policies as required by *Accardi*, the result can be a due process violation. *See Sameena, Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own regulations

tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual's constitutional right to due process.") (internal quotations omitted).

106. Here, Mr. Ziaei has been deprived of his liberty without the process due at every stage of his re-detention and now indefinite detention, resulting in several independent violations of his due process rights.

107. First, Respondents have re-detained Petitioner in an arbitrary manner and without the formal processes and findings that are required by statute and regulation in order to revoke his June 2024 OSUP. *See* 8 C.F.R. § 241.4(*l)*(1)-(3). Because no individualized determination for revocation has been made and because Petitioner has not been afforded any notice or an opportunity to respond to the reasons for revocation, Respondents' categorical revocation of Petitioner's release violates Petitioner's right to procedural due process.

108. Second, Respondents have continued to detain Petitioner without affording him the very process required either under its own regulations under 8 C.F.R. § 214.13 or the Withholding Release Policy, in further violation of due process. Despite Petitioner's request for release in August 2025, on information and belief, ICE has not completed *any* post-order custody review, let alone constitutionally adequate review.

109. Petitioner's detention thus violates procedural due process.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) In the event that the Court determines that a genuine dispute of material fact exists, promptly schedule an evidentiary hearing pursuant to 28 U.S.C. § 2243. *See Milton v. Miller,* 744 F.3d 660, (10th Cir. 2014) (holding that an evidentiary hearing is required to resolve factual disputes in a habeas petition); *Beckett v. Hudspeth*, 131 F.2d 195 (10th Cir. 1942); *see also Singh*, 945 F.3d at 1315 ("It is well-established that a court may not decide a habeas corpus petition based on affidavits alone when there are factually contested issues.");

(4) Declare that Petitioner's re-detention violates the APA, the INA, federal regulations, and the Due Process Clause of the Fifth Amendment;

(5) Declare that Petitioner's indefinite detention violates the APA, the INA, federal regulations, the Withholding Release Policy, and the Due Process Clause of the Fifth Amendment;

(6) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;

(7) Alternatively, review Petitioner's custody under the standards articulated in federal statute, regulations, and the Withholding Release Policy, or order ICE to review Petitioner's custody accordingly;

(8) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the Court's approval;

(9) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(10) Grant any further relief this Court deems just and proper.

Dated: November 7, 2025

Respectfully submitted,

By: /s/ *Rachel Landry*

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Counsel for Petitioner

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioners because I am one of Petitioner's attorneys. I have discussed with Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

/s/ Rachel Landry Date: November 7, 2025
Rachel Landry

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2025, I filed the foregoing pleading electronically through the CM/ECF system which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/ Rachel Landry Date: November 7, 2025
Rachel Landry