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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SOL DE LA ROSA GUARIN,

Petitioner,

v.

CHRISTOPHER J. LAROSE, Warden, Otay Mesa Detention Center; PATRICK DIVVER, Field Office Director, San Diego 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.: '25CV3085 DMS VET

PETITION FOR WRIT OF HABEAS CORPUS

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

I. INTRODUCTION

1. Sol De La Rosa Guarin (Petitioner) is currently unlawfully detained in the custody of Respondents in violation of his constitutional and statutory rights. He is a bisexual man of Roma ethnicity who fled persecution in Spain and Mexico. The Immigration Judge granted him relief from removal to Spain and Mexico over five months ago, yet Respondents refuse to release him, and they have failed to observe procedural protections related to his detention as required by law.
2. Respondents have held Petitioner in prolonged, indefinite detention for 489 days without, to Petitioner's knowledge, conducting the necessary custody reviews and without providing him requisite notice of any such reviews or notice of their decisions around his custody.
3. Petitioner is detained by Respondents at Otay Mesa Detention Center in San Diego, California.
4. The Immigration Judge granted Petitioner Withholding of Removal (WOR) from both Spain and Mexico under the Immigration and Nationality Act § 241(b)(3), 8 U.S.C. § 1231(b)(3) on May 22, 2025. Neither Petitioner nor the Department of Homeland Security (DHS) appealed this WOR grant.
5. Petitioner has been detained in Immigration and Customs Enforcement (ICE) custody since July 9, 2024 — 489 days as of the date of this filing. He has been detained with no ongoing removal proceedings in connection with his detention for 172 of those days, or over 5 months.
6. Petitioner's prolonged detention is not reasonably related to 8 U.S.C. § 1231(a)(6)'s primary purpose of ensuring his removal, because his removal is not reasonably foreseeable where it has been withheld to both Spain and Mexico.
7. The processes ICE has observed in the course of Petitioner's detention do not meet the minimum procedural safeguards that due process requires. *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001).

8. A grant of WOR presupposes an order of removal. *Johnson v. Guzman Chavez*, 594 U.S. 523, 539 (2021). As such, under 8 U.S.C. § 1231, Petitioner was entitled to a custody review prior to the expiration of the 90-day removal period after the WOR grant. *See also* 8 CFR § 241.4. Petitioner was further entitled to written notice approximately 30 days in advance of the pending records review "so that the alien may submit information in writing in support of his or her release." 8 CFR § 241.4(h)(2). Subsequent to the custody review, the "district director or Director of the Detention and Removal Field Office will notify the alien in writing that he or she will be released from custody, or that he or she will be continued in detention…" 8 CFR § 241.4(k)(1)(i).

9. Petitioner never received his 90-day custody review and has otherwise not been provided legally sufficient justification for his prolonged detention.

10. Thus, Petitioner challenges his detention as a violation of 8 U.S.C. § 1231(a)(6), the substantive and procedural guarantees of the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act (APA).

11. Petitioner respectfully requests that this Court grant the Petition and issue a Writ of Habeas Corpus and order Respondents to release him from custody. Petitioner seeks habeas relief under 28 U.S.C. § 2241, which is the proper vehicle for challenging civil immigration detention. *See Soberanes v. Comfort,* 388 F.3d 1305, 1310 (10th Cir. 2004) ("Challenges to immigration detention are properly brought directly through habeas") (citing *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001)).

CUSTODY

12. Petitioner has remained in the physical custody of Respondents for 16 months, since July 2024. Petitioner is imprisoned at Otay Mesa Detention Center, an immigration detention facility in San Diego, California. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

13. This Court has jurisdiction to entertain this habeas petition under 28 U.S.C. § 1331; 28 U.S.C. § 2241; the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V; and the Suspension Clause, U.S. Const. art. I, § 2.

VENUE

14. Venue is proper in this District under 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because at least one Respondent is in this District, Petitioner is detained in this District, Petitioner's immediate physical custodian is located in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) ("the proper respondent to a habeas petition is 'the person who has custody over the petitioner'") (citing 28 U.S.C. 2242) (cleaned up).

PARTIES

15. Petitioner De La Rosa Guarin is currently detained by Respondents at Otay Mesa Detention Center after having been granted Withholding of Removal, and pending the government's attempts to remove him to a country other than Spain and Mexico.
16. Respondent Christopher J. LaRose is the Warden of Otay Mesa Detention Center, where Petitioner is currently detained. He is a legal custodian of Petitioner and is named in his official capacity.
17. Respondent Patrick Divver is the Field Office Director responsible for the San Diego Field Office of ICE with administrative jurisdiction over Petitioner's immigration case. He is a legal custodian of Petitioner and is named in his official capacity.
18. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security (DHS). She is a legal custodian of Petitioner and is named in her official capacity.
19. Respondent Pamela Jo Bondi is the Attorney General of the United States Department of Justice. She is a legal custodian of Petitioner and is named in her official capacity.

STATEMENT OF FACTS

20. Petitioner is a bisexual man of Roma ethnicity. He was born in Spain, where most Roma are Muslim. Petitioner is Christian, and his family was beaten, their house burned to the ground, when they attempted to start a Christian church. He was also ridiculed and assaulted by the Roma community for his sexual orientation. He was forced to flee Spain for Mexico at a young age, and eventually gained permanent residence in Mexico.

21. In Mexico, Petitioner became an addiction counselor at a drug rehabilitation clinic. One of his clients discovered Petitioner carried a Spanish passport and asked him to use that passport to transport drugs internationally. When he refused, his house was broken into, he was kidnapped, and he was beaten for over two days. After leaving the hospital where Petitioner sought treatment for his injuries, he was again forced to seek sanctuary in another country—this time, the United States.

22. On July 9, 2024, Petitioner arrived at the San Ysidro Port of Entry Ped East Pedestrian Lane in San Ysidro, California with his Spanish passport and claimed fear of return to his home country and to Mexico. He had previously applied to enter the country through the Visa Waiver Program, but could not wait to receive his pending decision on that application due to the immediate threat on his life. ICE took petitioner into custody at Otay Mesa Detention Center. He has remained in custody ever since.

23. As a child and young adult, Petitioner was granted entry to the United States through the Visa Waiver Program as a citizen of Spain. He visited the country a handful of times. On one such visit in November 2007, he landed in the Philadelphia airport and received a Notice to Remove for overstaying his visa, and promptly left the United States without ever leaving the airport. Petitioner contends he never overstayed his visa, and an officer made a mistake in not recording his exit prior to 2007, when he visited with his parents a child of 15 years old. Regardless of this error, Petitioner left the United States and did not enter or attempt to enter until over 15

years later, when he fled for his life. Outside of this apparent mishap in which Petitioner contends he was not at fault, Petitioner has followed all immigration laws, complied with all requests from ICE while detained, and appeared at every hearing at the immigration court.

24. Petitioner requested a custody redetermination on November 11, 2024. The Immigration Judge denied the Petitioner's request for lack of jurisdiction pursuant to his entry as a Visa Waiver Program applicant.[1]

25. On May 22, 2025, the Immigration Judge granted Petitioner Withholding of Removal (WOR) under the Immigration and Nationality Act § 241(b)(3), 8 U.S.C. § 1231(b)(3), from both Spain and Mexico. Neither Petitioner nor DHS counsel appealed this decision.

26. On August 26, 2025, counsel for Petitioner emailed Petitioner's assigned Deportation Officer and two Deportation Officers formerly assigned to Petitioner, notifying them that Petitioner was overdue for his 90-day custody review, as required by 8 CFR § 241.4, and included documents demonstrating that Petitioner is not a danger to the community and does not present a flight risk. Counsel for Petitioner also notified his assigned Deportation Officer of the same information over a phone call on August 27. The Deportation Officer never responded to the email and did not communicate with counsel for Petitioner after the phone conversation on August 27.

27. On September 4, 2025, counsel for Petitioner again emailed the request for custody review pursuant to 8 CFR § 241.4 to the following email addresses, which counsel understands to be the contact for all ICE officers in San Diego: sandiego.outreach@ice.dhs.gov, omdc-

[1] *See Matter of A-W-*, 25 I&N Dec. 45 (BIA 2009) (finding a noncitizen admitted to the United States pursuant to the Visa Waiver Program who has not been served with a Notice to Appear pursuant to 8 C.F.R. Part 1240 is not entitled to a custody hearing before an Immigration Judge under 8 C.F.R. § 1236.1(d)).

g28@ice.dhs.gov, OMDC-Detained@ice.dhs.gov, omdcdetainedunit@ice.dhs.gov. No one responded.

28. That same day, Counsel spoke on the phone with another Deportation Officer to request a custody review. Officer Barroga told Counsel that she would check with her supervisor on the case. On September 8, 2025, Officer Barroga informed Counsel over a phone call that she had referred the case to management. Counsel has not heard from Officer Barroga since then.

29. On October 1, 2025, counsel for Petitioner contacted an Assistant U.S. Attorney (AUSA) for the Southern District of California to notify their office of Petitioner's unlawful detention. AUSA Janet Cabral responded promptly, indicating that she would contact ICE regarding Petitioner's status. On October 2, the AUSA wrote, "ICE has informed me that it plans to conduct a Post-Order Custody Review shortly."

30. On Friday, October 3, 2025, ICE Deportation Officers approached Petitioner and pressured him to sign a back-dated document indicating, in English, that he had received notice on June 9, 2025, that his custody status would be reviewed on or about August 18, 2025. Counsel for Petitioner was not contacted. Neither counsel nor Petitioner had received this documentation prior to October 3, 2025. Spanish-speaking Petitioner refused to sign this document, written in English, without interpretation and the presence or advice of counsel.

31. That same day, counsel for Petitioner contacted the AUSA to inform her that ICE had pressured Petitioner to sign backdated documents and without the presence of counsel.

32. On Monday, October 6, 2025, ICE presented Petitioner with updated documents indicating that Petitioner would receive his first Post-Order Custody Review on November 5, 2025—a whopping 167 days after Petitioner won WOR. Again, Petitioner was approached without counsel and refused to sign without the presence or advice of his attorney.

33. On October 15, another ICE deportation officer approached Petitioner and again pressured him to sign documents written in English without providing translation and without presence of

counsel. Petitioner asked the officer to contact his attorney so that he could sign the documents. When the officer did not contact Petitioner's attorney, again, he refused to sign without the presence or advice of his attorney.

34. The October 15 documents indicate that ICE decided to continue Petitioner's detention pursuant to their custody review based on documents that Petitioner submitted to ICE on June 24, 2025, due to the following: "You have not demonstrated that, if released, you will not: pose a risk to public safety. You have not established to ICE's satisfaction that you are not a danger to the community or U.S. security. Pose a significant risk of flight. An imposition of a bond or other conditions of parole would not ensure, to ICE's satisfaction, your appearance at required immigration hearings pending the outcome of your case. ICE has made such determination based upon: You are a native and a citizen of Spain who last entered the United States unlawfully at the San Ysidro, CA Port of Entry (U.S.) on July 9, 2024. On May 23[sic], 2025, an Immigration Judge in San Diego, CA granted you withholding of removal."

35. Neither Petitioner nor Petioner's counsel was aware of any custody review taking place prior to October 15, 2025, and the notice does not indicate the date that Petitioner's custody was reviewed and resulted in a denial of release. Further, Petitioner did not submit documents for review on June 24, 2025; the notice provides no reasoning specific to the Petitioner as to why the Petitioner was determined to present risks to public safety, a danger to the community or U.S. security, or pose a significant risk of flight, especially in light of the fact that he has no ongoing removal proceedings; and the notice indicates an incorrect date when Petitioner was granted WOR.

36. As aforementioned, Petitioner received a document notifying him that he would undergo a custody review on November 5, 2025. ICE Documents. Neither Petitioner nor Petitioner's counsel is aware of any custody review taking place that day.

37. To this date, Petitioner has not received a custody review that comports with the regulatory requirements under 8 CFR § 241.4. He has been detained by ICE since July 9, 2024 — 489 days. He has been detained with no ongoing removal proceedings in connection with his detention for 172 of those days.

38. Petitioner has no criminal history in the United States, and he has never missed a court hearing or received a write-up in over a year detained in ICE custody. He has been provided a blue jumpsuit to wear while in detention, indicating he has no criminal history.

39. Petitioner has no residency or ties to any country other than those to which his removal has been withheld. Petitioner's half-brother is a U.S. citizen who lives in Miami, Florida and is waiting to receive him upon release from detention.

LEGAL FRAMEWORK

Relevant Border Procedures

40. "An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible." 8 U.S.C. § 1182(a)(6)(A)(i). Ordinarily, if an immigration officer at a port-of-entry determines that a noncitizen arriving to the United States is inadmissible, the officer "shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i). In that case, they are referred for an interview by an asylum officer. § 1225(b)(1)(A)(ii). If the asylum officer determines that the noncitizen has a credible fear of persecution, they are referred to § 1229a Removal Proceedings with an immigration judge, where the immigration judge has jurisdiction to consider the noncitizen's admissibility, deportability, eligibility for waivers, and eligibility for various forms of relief, including asylum and WOR, among others. § 1229a.

41. The process is different for individuals, like Petitioner, who seek to enter pursuant to the Visa Waiver Program. For some noncitizens from designated countries, including Spain, DHS is authorized to waive a noncitizen's inadmissibility and allow them to enter the United States for 90 days or less as a tourist under the Visa Waiver Program (VWP). 8 U.S.C. § 1187. In order to enter the United States under the VWP, noncitizens must first provide biographical information, and the Secretary of Homeland Security must then make a determination based on this information that the noncitizen is eligible to travel under the VWP, in addition to various other criteria. § 1187(a)(11).

42. Applicants for admission pursuant to the VWP who claim fear of return are ineligible for full removal proceedings before an immigration judge under 8 U.S.C. § 1229a. Instead, they are placed in limited proceedings before an immigration judge in which they may only apply for asylum, WOR under 8 U.S.C. § 1231(b)(3), and deferral of removal under the Convention Against Torture. 8 C.F.R. § 1208.2(c)(3)(i) (these limited proceedings are known as "asylum-only proceedings"). 8 C.F.R. § 1208.2(c)(1).

Withholding of Removal

43. Under the WOR statute, there is a mandatory prohibition against DHS removing a noncitizen to any country where "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); *see also Popova v. INS*, 273 F.3d 1251 (9th Cir. 2001).

44. In order to qualify for WOR, a noncitizen must either establish that he suffered past persecution, or that it is more likely than not that he will be persecuted on account of one of the five protected grounds if returned to his country. Withholding of removal may not be granted without first entering a removal order, but DHS may not remove them to that country if granted. *Matter of I-S- & C-S-*, 24 I&N Dec. 432 (BIA 2008).

45. A grant of WOR presupposes an order of removal. *Johnson v. Guzman Chavez*, 594 U.S. 523, 539 (2021).

46. DHS has 90 days to remove noncitizen with an administratively final removal order, 8 U.S.C. 1231(a), unless that period is extended for a reasonable period of time to affect the noncitizen's removal because the noncitizen conspired or acted to prevent their removal, 8 C.F.R. § 241.4(g)(1)(ii). In the case of the detained person's noncompliance, DHS "shall serve the alien with a Notice of Failure to Comply" advising the noncitizen of the provisions indicated in § 241.4(g)(5)(ii) and "an explanation or the necessary steps that the alien must take in order to comply with the statutory requirements." *Id.*

47. After the 90-day removal period, detention becomes discretionary, and the Government "may" continue to detain the noncitizen, subject to various review periods, or release the noncitizen under supervision. § 1231(a)(6).

48. The immigration judge's ruling does not preclude ICE from removing the noncitizen to a country besides the country where they were granted WOR. However, importantly, the noncitizen also has the right to claim fear of removal to a third country—not the United States or the country from which they won WOR—where the noncitizen may be removed if they fear for their life or freedom in the third country. 8 U.S.C. § 1231. In the case of fear of removal to a third country, the WOR grantee has the right to request to reopen the proceedings against them. *Id.*[2]

49. If a noncitizen is not released or removed within the removal period, in order to determine whether the noncitizen's ongoing detention remains justified, ICE is required to conduct post-

[2] *See also* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."); 28 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18; *Andriasian v. INS*, 180 F.3d 1033 (9th Cir. 1999).

order custody reviews (POCR) pursuant to 8 C.F.R. § 241.4. The initial POCR "will consist of a review of the alien's records and any written information submitted in English to the district director by or on behalf of the alien." 8 C.F.R. § 241.4(h)(1). "The District Director or Director of the Detention and Removal Field Office will provide written notice to the detainee approximately 30 days in advance of the pending records review…" to enable the noncitizen to submit information in writing arguing for their release and the noncitizen may be "assisted by a person of his or her choice…in preparing or submitting information…". 8 C.F.R. § 241.4(h)(2). Under 8 C.F.R. § 241.4(d), "a copy of any decision by the District Director, Director of the Detention and Removal Filed Office, or Executive Associate Commissioner to release or to detain an alien shall be provided to the detained alien. A decision to retain custody shall briefly set forth the reasons for the continued detention." *Id.*

50. If the noncitizen is not released or detained within the 90-day removal period, the "district director or Director of the Detention and Removal Field Office in his or her discretion may retain responsibility for custody determinations for up to three months" and may release the noncitizen if they are not removed within the three-month period or refer to Headquarters Post-Order Detention Unit (HQPDU). 241.4(k)(1)(ii). "The initial HQPDU review will ordinarily be conducted at the expiration of the three-month period after the 90-day review or as soon thereafter as practicable" and DHS will again provide the non-citizen with 30-day notice of the pending review "which will ordinarily be conducted by the expiration of the removal period or as soon thereafter as practicable." *Id.*

51. After the first two reviews have passed, generally within 180 days, the non-citizen may submit a written request to the HQPDU for release "not more than once every three months…" and the HQPDU "shall respond to the alien's request in writing within approximately 90 days." 241.4(k)(2)(iii).

52. For 25 years, it has been ICE's internal policy that the agency "favor[s] release" of noncitizens with final orders of removal who have been granted WOR, or deferral of removal under the Convention against Torture, absent exceptional circumstances such as national security issues. Indeed, Field Office Directors had to explicitly approve the ongoing detention of a noncitizen granted the aforementioned protections, or else the assumption was in favor of release.[3]

Post-Order Immigration Detention

53. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risk of flight and prevent danger to the community. *Demore v. Kim*, 538 U.S. 510 at 528 (2003). 8 U.S.C. § 1231 permits post-order detention for a 90-day period following a removal order for the purpose of removal of the noncitizen, and detention beyond the removal period if the noncitizen is "a risk to the community or unlikely to comply with the order of removal…" 8 U.S.C. § 1231(a)(6).

54. In *Zadvydas*, the Supreme Court was clear that "a statute permitting indefinite detention of an alien would present a serious constitutional question." *Zadvydas v. Davis*, 533 U.S. 678 at 690 (2001). "If removal is not reasonably foreseeable, the court should hold continued detention

[3] Memorandum from Bo Cooper, Gen. Couns., U.S. Dep't of Just. to Reg'l Couns. for Distrib. to Dist. and Sector Couns. On Detention and Release during the Removal Period of Aliens Granted Withholding or Deferral of Removal (Apr. 21, 2000), available at https://nipnlg.org/sites/default/files/2024-07/all_ice_policies_on_post-relief_release.pdf; Memorandum from Michael J. Garcia, Asst. Secy., Dep't of Homeland Sec. to Anthony Tangeman, Dpty. Exec. Assoc. Comm'r, Detention Policy Where an Immigration Judge has Granted Asylum and ICE has Appealed (Feb. 9, 2004), available at https://nipnlg.org/sites/default/files/2024-07/all_ice_policies_on_post-relief_release.pdf; Email from Gary Mead, Exec. Assoc. Dir., Enf't and Rem. Ops, Dep't of Homeland Sec. to Asst. Dirs., Field Off. Dirs., Dep. Field Off. Dirs., and Asst. Field Off. Dirs., Reminder on Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal or CAT (Mar. 6, 2012), available at https://nipnlg.org/sites/default/files/2024-07/all_ice_policies_on_post-relief_release.pdf; Email from Tae D. Johnson, Actg. Dir., U.S. Immigr. and Cust. Enf't to All ICE Employees, REMINDER: Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal, or Convention Against Torture Protection, and DHS has Appealed (Jun. 4, 2021), available at https://nipnlg.org/sites/default/files/2024-07/all_ice_policies_on_post-relief_release.pdf.

unreasonable and no longer authorized by statute." *Id.* 533 U.S. at 699-700. The Court construed § 1231 to limit "an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. It does not permit indefinite detention." *Id.* 533 U.S. at 678. The Court found an implicit temporal limitation of six months. *Id.*

55. The six-month grace period is only "*presumptively* reasonable." *Zadvydas*, 533 U.S. at 701 (emphasis added). Several courts have concluded that an immigrant may rebut that presumption with sufficiently compelling evidence that his removal is not foreseeable. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases).

56. After the six-month grace period, courts must use a burden-shifting framework to decide whether detention remains authorized. First, the noncitizen must make a *prima facie* case for relief: they must prove that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. If they do so, the burden shifts to "the Government [to] respond with evidence sufficient to rebut that showing." *Id.* Ultimately, then, the burden of proof rests with the government: The government must prove that there is a "significant likelihood of removal in the reasonably foreseeable future," or the noncitizen must be released. *Id.*

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

Substantive Due Process

57. Petitioner realleges and incorporates by reference each and every allegation contained above.

58. The Due Process Clause of the Fifth Amendment prohibits 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)).

59. Civil immigration detention violates due process if it is not reasonably related to its statutory purpose. *See id.* (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risk of flight and prevent danger to the community. *Demore v. Kim*, 538 U.S. 510 at 528 (2003). Where removal is not likely, the flight risk justification is weak or nonexistent, and detention no longer bears a reasonable relationship to its purpose. *Zadvydas*, 533 U.S. at 690-692.

60. Petitioner has been detained for over a year, and for over 5 months after his WOR grant. The passage of time without any progress is sufficient to show there is no significant likelihood of removal in the reasonably foreseeable future. Because there is no reason to think Petitioner is significantly likely to be removed in the reasonably foreseeable future, and because Petitioner does not pose a danger to the community, Petitioner's detention bears no reasonable relationship to its purpose. *Zadvydas*, 533 U.S. at 701. As such, Petitioner's detention violates his substantive due process rights.

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

Procedural Due Process

61. Prolonged civil detention also violates due process unless it is accompanied by strong procedural protections to guard against the erroneous deprivation of liberty. *Zadvydas* 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, 750-752 (1987).

62. Under *Mathews v. Eldrige,* 424 U.S. 319 (1976), procedural due process must be evaluated by balancing 1) the private interest affected; 2) the risk of erroneous deprivation of such interest; and 3) the government's interest. *Id.* at 335. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333.

63. Petitioner unequivocally has a private interest in his liberty where "[f]reedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects. *Zadvydas*, 533 U.S. at 690. The risk of erroneous deprivation is great where, as here, the absence of safeguards has subjected Petitioner to prolonged unjustified confinement after he *won* relief from removal. The government's interest in keeping Petitioner confined is outweighed where Petitioner poses no danger to the community, and where any flight risk justification is undermined by the unlikelihood of his removal.

64. ICE's failure to observe the procedural safeguards afforded to Petitioner under 8 C.F.R. § 241.4—the right to a 90-day custody review, the right to receive written notice of the review 30 days prior to the review, the right to submit information in writing to support release and to be assisted by any individual of his choosing in preparing or submitting information in response to the notice—has further exacerbated the risk of erroneous deprivation.

65. Thus, Respondents have violated Petitioner's procedural due process rights.

COUNT THREE

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

8 U.S.C. § 1231

66. Petitioner realleges and incorporates by reference each and every allegation contained above.

67. Petitioner is detained pursuant to the discretionary, post-removal period detention provision, Section 1231(a)(6), because more than ninety days of detention have elapsed since his removal order became administratively final. *See* 8 U.S.C. § 1231(a)(1)(A) & (B); 8 C.F.R. § 1241.1.

68. In *Zadvydas*, the Supreme Court found "[i]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* 533 U.S. at 699-700. The Court construed § 1231 to limit "an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. It does not permit indefinite detention." *Id.* 533 U.S. at 678.

69. Petitioner's detention under §1231 is not presumptively reasonable. He has been detained for almost six months despite having been granted WOR, and for 16 months in total. The government has given no indication that a fourth country will accept the Petitioner, and there is otherwise no reason to believe that Petitioner is removable to any other country. Furthermore, Petitioner has the right to contest removal to a fourth country if he feels his life or freedom would be threatened there. 8 U.S.C. § 1231. Thus, his removal is not reasonably foreseeable and does not serve any legitimate purpose authorized by statute.

70. For the foregoing reasons, Petitioner's detention violates §1231, and he is entitled to immediate release from custody.

COUNT FOUR

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT (APA) – 5 U.S.C. § 706(2)

71. Petitioner realleges and incorporates by reference each and every allegation contained above.

72. Under the Administrative Procedure Act, a "final agency action for which there is no other adequate remedy in a court [is] subject to judicial review." 5 U.S.C. § 704. Courts must "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).

73. Petitioner's continued imprisonment after the 90-day removal period constitutes an agency action because Respondents "failed to take a *discrete* agency action that it is required to take" by statute, namely, they failed to conduct a timely custody review under 8 C.F.R. § 241.4(k)(1)(i), which included the proper factors for consideration, such as Petitioner's lack of

criminal convictions and ties to the United States, under § 241.4(k)(1)(i). *See Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004) (emphasis original). Respondents additionally issued a definitive statement of its position that determines Petitioner's rights by issuing him a "Decision to Continue Detention" on October 15, 2025, which amounts to final agency action.

74. The Supreme Court has provided that if an agency has issued a definitive statement of its position, determining the rights and obligations of the parties, the agency's action is final notwithstanding the possibility of further proceedings in the agency on related issues, so long as judicial review at the time would not disrupt the administrative process. *Bell v. New Jersey*, 461 U.S. 773, 779-80 (1983).

75. Subsequent custody reviews at additional 90-day intervals will not present adequate alternative remedies to judicial review under § 704 because the remedy offers only "doubtful and limited relief," especially considering the same regulatory considerations apply in these subsequent reviews that DHS did not follow in the first instance. *Bowen v. Massachusetts*, 487 U.S. 879, 901 (1988) (finding Judicial review of administrative actions "should not be construed to defeat the central purpose of providing a broad spectrum of judicial review of agency action" and any alternative remedy advanced by the agency will not be adequate under § 704 where the remedy offers only "doubtful and limited relief.")

76. Courts must "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). Courts may set aside as arbitrary and capricious agency actions that fail to comport with their own regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 226 (1954) (holding that BIA must follow its own regulations in its exercise of discretion).

77. Under the *Accardi* doctrine, agencies are bound to follow their own rules affecting the fundamental rights of individuals, and when the agency fails to do so, a court may apply the rule itself and order relief consistent with the agency's policy. *See United States ex rel. Accardi*

v. Shaughnessy, 347 U.S. 260, 226 (1954) (holding that BIA must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

78. Respondents' actions with respect to Petitioner's ongoing detention violate the *Accardi* doctrine because they do not comport with 8 C.F.R. § 241.4, including:

(a) § 241.4(h)(2): "The District Director or Director of the Detention and Removal Field Office will provide written notice to the detainee approximately 30 days in advance of the pending records review…" to enable the noncitizen to submit information in writing arguing for their release and the noncitizen may be "assisted by a person of his or her choice…in preparing or submitting information…"

(b) § 241.4(k)(1)(i): "Prior to the expiration of the removal period, the district director or Director of the Detention and Removal Field Office shall conduct a custody review for an alien described in paragraphs (a) and (b)(1) of this section where the alien's removal, while proper, cannot be accomplished during the period or is impracticable or contrary to the public interest."

(c) § 241.4(h)(1): The initial POCR "will consist of a review of the alien's records and any written information submitted in English to the district director by or on behalf of the alien."

(d) § 241.4(d): "A copy of any decision by the District Director, Director of the Detention and Removal Filed Office, or Executive Associate Commissioner to release or to detain an alien shall be provided to the detained alien. A decision to retain custody shall briefly set forth the reasons for the continued detention." *Id.*

(e) § 241.4(d)(3): "The Service will forward by regular mail a copy of any notice or decision that is being served on the alien only to the attorney or representative of record."

79. Furthermore, ICE has abandoned its policy of presumptively releasing individuals like Petitioner who have been granted WOR without providing any justification for the abandonment.

80. Respondents' failure to follow their own regulations and policy, which affect one of Petitioner's most fundamental rights: liberty, is arbitrary and capricious, and accordingly violates the APA. 5 U.S.C. §706(2).

COUNT FIVE

8 U.S.C. § 1231

81. Petitioner realleges and incorporates by reference each and every allegation contained above.

82. Under 8 U.S.C. § 1231(b)(3)(A), The government "may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion." *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16. This is known as withholding of removal. WOR is a mandatory protection.

83. Similarly, Congress codified protections enshrined in the Convention Against Torture prohibiting the government from removing a person to a country where they would be tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."); 28 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

84. If a noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek WOR and relief under CAT before an immigration judge in reopened removal proceedings. The amount and type of notice must be "sufficient" to ensure that "given [a noncitizen's] 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 v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the government to move to reopen the noncitizen's immigration proceedings if the individual demonstrates "reasonable fear" and to provide "a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings" if the noncitizen is found to not have demonstrated "reasonable fear"); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a respondent to file a motion to reopen and seek relief).

85. "[L]ast minute" notice of the country of removal will not suffice, *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App'x 724 (9th Cir. 2016), and for good reason: to have a meaningful opportunity to apply for fear-based protection from removal, immigrants must have time to prepare and present relevant arguments and evidence. Merely telling a person where they may be sent, without giving them a chance to look into country conditions, does not give them a meaningful chance to determine whether and why they have a credible fear.

86. As such, any attempts by Respondents to remove Petitioner to a fourth country— to which Petitioner has no ties and that was not designated for removal by the immigration judge—would violate 8 U.S.C. § 1231 unless Respondents first provide Petitioner adequate notice and an opportunity to be heard as required by law .[4]

[4] Litigation regarding the process due to noncitizens at risk of third-country removal is ongoing in *D.V.D. v. U.S. Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, 3 (D. Mass. Apr. 18, 2025). However, Petitioner is seeking relief that is not available through the current litigation. At the time of writing, the Petitioner cannot obtain injunctive relief through *D.V.D.* because the Supreme Court has stayed the preliminary injunction; thus, the Petitioner would be removed before a decision in *D.V.D.* Further, the complaint in *D.V.D.* does not seek preliminary or permanent classwide injunctive relief on the basis of DHS failing to provide a meaningful opportunity to seek withholding of removal prior to third country removal, as is the case here. *Id.*

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. §2243;
3. Enjoin the Respondents from transferring Petitioner away from the jurisdiction of this District pending these proceedings;
4. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;
5. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention or re-detention of Petitioner;
6. Enjoin Respondents from removing Petitioner to any fourth country without first giving Petitioner adequate notice and a meaningful opportunity to raise a fear-based claim and seek protection from removal to that country;
7. Declare that Petitioner's detention violates the Immigration and Nationality Act;
8. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
9. Declare that Petitioner's detention violates the APA;
10. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. 504 and 28 U.S.C. 2412; and
11. Grant such further relief as this Court deems just and proper.

Dated: November 10, 2025

Respectfully submitted,

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