IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

Leobardo Oviedo Olguin,

Petitioner,

v.

Dale J. Schmidt, Sheriff, Dodge County Detention Facility;

Sam Olson, Deputy Field Office Director, Chicago Field Office, Immigration and Customs Enforcement;

Kristi Noem, Secretary, Department of Homeland Security;

Todd Lyons, Acting Director, Immigration and Customs Enforcement;

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

Respondents.

Civil No.: 2:25-cv-1822

PETITION FOR A WRIT OF HABEAS CORPUS

1. Petitioner, Leobardo Oviedo Olguin ("Petitioner" or "Mr. Oviedo") petitions this Court to issue a Writ of Habeas Corpus or, alternatively, order Respondents to show cause for his continued detention within 3 days, or no later than 10 days, in accordance with 28 U.S.C. § 2243. Mr. Oviedo's continued detention bears no reasonable relation to any legitimate government purpose and is therefore unconstitutional. Because Respondents cannot justify

Mr. Oviedo's detention under the U.S. Constitution, he urges this Court to grant his petition and order Respondents to immediately release him from custody. 28 U.S.C. § 2241.

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

STATEMENT OF THE CASE

3. Mr. Oviedo is a Mexican national who received an administratively final grant of withholding of removal by an Immigration Judge (IJ) on April 28, 2025. *See* Exh. A, Decision of the Immigration Judge, April 28, 2025. That decision became administratively final as of the IJ's decision date when the Department of Homeland Security (DHS) waived appeal. *See id.*; 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(1)(B), 1101(a)(47)(B)(ii).

4. Withholding of removal is a form of protection that prohibits the government from removing a noncitizen to his home country where he has demonstrated that it is "more likely than not" that he will be persecuted on account of a protected ground if removed. 8 U.S.C. § 1231(b)(3); *INS v. Stevic*, 467 U.S. 407, 430 (1984); *INS v. Cadroza-Fonseca*, 40 U.S. 421, 443- 44 (1987); *Firmansjah v. Gonzales*, 424 F.3d 598, 604-05 (7th Cir. 2005).

5. Mr. Oviedo has been detained in ICE custody since March 2024, while he pursued his claims to relief before the IJ. At no point during proceedings did DHS indicate it intended to remove Mr. Oviedo to any other country besides Mexico, and Mr. Oviedo does not have a removal order to any country apart from Mexico. Exh. A.

6. Despite waiving appeal, DHS continues to detain Mr. Oviedo in civil immigration detention, without justification, at the Dodge County Detention Facility in Juneau, Wisconsin. Mr. Oviedo has been detained for more than six months since his grant of withholding of removal became administratively final on April 28, 2025.

7. On March 30, 2025, DHS issued a memo establishing new procedures for third country removals. *See*, DHS, Guidance Regarding Third Country Removals, March 30, 2025 [hereinafter "March ICE Memo"].[1] Under this policy, if a country provides the United States with what DHS believes to be "credible" "assurances that noncitizens removed from the United States will not be persecuted or tortured," then DHS may remove the noncitizen to that country without any process. *Id.* If there are no such "assurances," the policy instructs DHS to "first inform the [noncitizen] of removal to that country" but explicitly prohibits officers from affirmatively inquiring about the noncitizen's fear of removal to said country. *Id.* Only where a noncitizen "states a fear of removal" unprompted will they be given a "screening" interview, which USCIS will conduct "within 24 hours of referral." *Id.* If USCIS determines that the noncitizen has not established that it is "more likely than not" that they will be "persecuted on a statutorily protected ground or tortured in the country of removal," the policy allows for the noncitizen to be immediately removed without any opportunity to provide evidence or seek judicial review. *Id.*

8. On June 23, 2025, a nationwide preliminary injunction halting DHS from carrying out these illegal third-country removals was stayed by the Supreme Court. *See Dep't of Homeland Security v. D.V.D.*, 145 S. Ct. 2153 (2025). The Supreme Court's unexplained emergency

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

decision staying preliminary class-wide relief does not address, much less eliminate, DHS' obligations under the Immigration and Nationality Act (INA), U.S. Constitution, and binding treaty obligations, to provide adequate notice and a meaningful opportunity to be heard, nor does it preclude the availability of individual habeas actions challenging unlawful third country removals. *See infra* ¶¶ 66-68.

9. Nevertheless, emboldened by the Supreme Court's decision, on July 9, 2025, ICE issued a second memo instructing staff to adhere to its March memo when seeking to remove a noncitizen to a third country. *See*, ICE, Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025) [hereinafter "July ICE Memo"].[2] In addition, the July ICE Memo adds that, where the country of removal has not provided "assurances," ICE will "generally wait at least 24 hours" before removing a noncitizen, but that "[i]n exigent circumstances, [ICE] may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the [noncitizen] is provided reasonable means and opportunity to speak with an attorney prior to removal." *Id.* Following the Supreme Court's decision in *D.V.D.* and pursuant to the March and July ICE memos, DHS swiftly resumed removals to third countries, including removals to countries with a record of human rights violations.[3]

10. On information and belief, DHS purports to detain Mr. Oviedo while it seeks to remove him to an alternate country. *See* March ICE Memo; July ICE Memo.

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

[3] *See generally* The New York Times, *Inside the Global Deal-Making Behind Trump's Mass Deportations* (June 25, 2025), https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html; Rolling Stone, *ICE is Deporting People to Africa on Nearly Un-Trackable Military Flights* (Sept. 21, 2025), https://www.rollingstone.com/politics/politics-features/ice-deporting-africa-military-flights-1235431848/.

11. Historically, the Government has rarely removed individuals to alternate countries. Mr. Oviedo has no ties to any third country and cannot be removed to Mexico, the only country designated for removal. Despite having taken no steps to remove Mr. Oviedo to a third country in over six months, and the unlikelihood of eventual removal to any third country, the Government continues to detain Mr. Oviedo in conditions indistinguishable from criminal confinement. The mere possibility of removal to a third country cannot justify continued detention now.

12. Further, having never designated any other country, the Government cannot lawfully remove Mr. Oviedo to some other country without properly giving him notice and an opportunity to be heard regarding removal to that country. Even assuming the Government would be allowed by statute to remove him to a third country, and that it could find a country willing to accept him, the Government would be obliged to give him a hearing before removal, which would mean restarting his removal proceedings. ICE's current policies unlawfully deny noncitizens this process prior to removal to a third country, permitting removal without any proceedings or even any *notice* in some cases.

13. Accordingly, because the Government lacks constitutional authority to detain Mr. Oviedo, he asks this Court to order his immediate release from detention via a writ of habeas corpus.

14. Mr. Oviedo also seeks to enjoin the Government from removing him to a third country without the notice and opportunity to be heard that is required by the constitution and federal law.

15. Alternatively, this Court should schedule a hearing at the earliest practicable opportunity to hear argument and, if necessary, receive evidence on Mr. Oviedo's Petition.

JURISDICTION AND VENUE

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

17. The district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *See Zadvydas*, 533 U.S. at 687; *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Hussain v. Mukasey*, 510 F.3d 739, 742–43 (7th Cir. 2007).

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

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

20. Venue is proper under 28 U.S.C. § 1391(e) because Mr. Oviedo is presently detained at the Dodge County Detention Facility in Juneau, Wisconsin, within the jurisdiction of the Eastern District of Wisconsin. *See* 28 U.S.C. § 2241(d).

THE PARTIES

21. Mr. Oviedo is a 31-year-old Mexican national. He has been in ICE custody since March 2024 and is currently detained at the Dodge Country Detention Facility in Juneau, Wisconsin.

22. Respondent Dale J. Schmidt is sued in his official capacity as Sheriff of Dodge County Detention Facility, where Mr. Oviedo is detained. Sheriff Schmidt is the immediate

custodian of Mr. Oviedo.

23. Respondent Samuel Olson is sued in his official capacity as the Chicago Field Office Director of U.S. ICE, which has administrative jurisdiction over Mr. Oviedo's detention and which contracts with the Dodge County Detention Facility where Mr. Oviedo is held. Mr. Olson is the legal custodian of Mr. Oviedo with authority to authorize his release.

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

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

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

FACTS AND PROCEDURAL HISTORY

27. Mr. Oviedo is a 31-year-old Mexican national. Exh. B, Psychological Evaluation. He grew up in Guanajuato, Mexico with his mother and several siblings. *Id.* He came to the United States as a young man and was deported in 2019. *Id.* Shortly after returning to Guanajuato, he began a brief romantic relationship with a woman who, unbeknownst to him, was [redacted]. *Id.* Unhappy with his affiliation to this woman [redacted]

28. Fearing for his life, Mr. Oviedo re-entered the United States in 2020. Exh. B. Upon return, he resumed the work he had done for many years in roofing. *Id.*

29. In August 2021, Mr. Oviedo fell two stories in a roofing accident and suffered a traumatic brain injury, as well as serious injury to his wrist. Exh. B. His extensive injuries prevented him from returning to work and required care at home. *Id.* In the years after the accident, Mr. Oviedo's behavior changed drastically. He has struggled with mood swings, confusion, paranoia, frequent head pain, and has had significant memory problems. *Id.* In April 2025, he was diagnosed with mixed impaired cognition as a result of the injuries he sustained in the roofing accident. *Id.* He was also diagnosed with Post Traumatic Stress Disorder (PTSD) and depression. *Id.*

30. In November 2023, Mr. Oviedo was arrested and charged with resisting arrest under WI § 946.41(1). In February 2024, he was convicted on the resisting arrest charge and sentenced to 90 days in jail. Exh. F, Criminal History Chart. He was given credit for time served and after completing the rest of his sentence, Mr. Oviedo was transferred to ICE custody at the Dodge County Detention Facility. Exh. C, Declaration of Colleen Ward. DHS placed him in reinstatement proceedings due to his 2019 removal order. *Id.* Mr. Oviedo expressed a fear of return to Mexico and was referred for a reasonable fear interview. *Id.* DHS issued a negative reasonable fear determination; however, that decision was reversed by an IJ and Mr. Oviedo was subsequently placed in withholding-only proceedings pursuant to 8 C.F.R. § 1208.31(g)(2). *Id.*

31. At no point during proceedings did DHS name another country to which it would try to remove Mr. Oviedo if removal to Mexico was not possible. Exh. A.

32. Mr. Oviedo initially appeared *pro se* in his removal proceedings before the IJ. Exh. C. In September 2024, he appeared for an individual merits hearing on his applications for withholding of removal and relief under the Convention Against Torture. *Id.* After brief

questioning, the IJ found Mr. Oviedo incompetent to represent himself. *Id.* The National Immigrant Justice Center (NIJC) was subsequently appointed as a Qualified Representative to represent him in his removal proceedings. *Id.*

33. On April 28, 2025, Mr. Oviedo, with counsel, appeared for a second individual merits hearing before the IJ. Exh. C. Mr. Oviedo claimed a fear of return to Mexico based on his severe mental illness and the risk that he will be institutionalized and tortured if returned, as well as [redacted] *Id.*

34. After brief testimony from Mr. Oviedo, DHS stipulated to relief. Exh. C. The IJ ordered Mr. Oviedo removed to Mexico and simultaneously granted his application for withholding of removal under 8 U.S.C. § 1231(b)(3). Exh. A. This approach–issuing a removal order and adjudicating a claim for withholding of removal at the same time–is the standard approach for such cases. *See, e.g. Nasrallah v. Barr*, 590 U.S. 573 (2020).

35. DHS waived appeal of the IJ's decision. Exh. A.

36. Because no appeal has been pursued, Mr. Oviedo's grant of withholding of removal became administratively final as of the date of the IJ decision, April 28, 2025. *See* 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(1)(B), 1101(a)(47)(B)(ii).[4]

37. Despite this order prohibiting DHS from removing Mr. Oviedo to the only country to which he has ties, the Government continues to detain him in conditions that are indistinguishable from penal confinement. *See, e.g.* Exh. C.

[4] The removal period begins on the latest of three possible dates. 8 U.S.C. § 1231(a)(1)(B). For Mr. Oviedo, his removal period began as soon as his removal order became "administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). A removal order becomes "final upon … the expiration of the period in which the [noncitizen] is permitted to seek review of" the removal order. 8 U.S.C. § 1101(a)(47)(B). Because DHS waived appeal, Mr. Oviedo's removal order became administratively final on April 28, 2025, the date of the immigration judge's decision.

38. Upon information and belief, DHS is detaining Mr. Oviedo following the IJ's withholding grant so that it can attempt to remove him to a third country. However, Mr. Oviedo has no lawful status or ties to any third country. Exh. C. DHS has not requested that Mr. Oviedo fill out applications for travel documents to any country, nor speak to any consulate. *Id.*

39. Further, over six months after the IJ's decision and over nineteen months since his withholding-only proceedings were initiated, the Government has not even indicated any countries to which it is purportedly pursuing removal. Exh. C. Due to his mental illness, including his cognitive disability, Mr. Oviedo would likely have a fear of return to any country the Government may seek to designate and has a right to notice and an opportunity to be heard in regards to any such third country designation.

40. On May 5, 2025, counsel for Mr. Oviedo emailed his ICE deportation officer, expressing opposition to any third country removal and requesting notice and an opportunity to be heard as to any potential third country ICE may identify. Exh. D, Email Communications with ICE. Counsel also requested that ICE release Mr. Oviedo, particularly given his brain injury and mental health diagnoses. *Id.* In response, ICE stated that the request was forwarded to ICE headquarters and that they "do not have a timeline for their response." *Id.* To date, no response has been issued.

41. During the 19 months that Mr. Oviedo has been in the DHS's custody, he has struggled to gain access to adequate medical and mental health care, including additional cognitive testing and counseling services that were recommended at the time of his psychological evaluation. Exh. B; Exh. C.

42. Upon release, Mr. Oviedo plans to live with his brother in Wisconsin. Exh. E, Letters of Support. Mr. Oviedo will also have the support of several siblings and family members

who live in Wisconsin. *Id.* He will also have access to primary and mental health care services through the Partnership Community Health Center in Greenville, Wisconsin. *Id.*

LEGAL BACKGROUND

A. Statutory and Constitutional Limits to Detention.

43. The Due Process Clause provides that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that" the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. The Due Process Clause ensures that "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). That fundamental constitutional protection applies to citizens and noncitizens alike. *See Padilla v. ICE*, 953 F.3d 1134, 1142 (9th Cir. 2020) ("The Supreme Court has made clear that all persons in the United States—regardless of their citizenship status, means or legality of entry, or length of stay—are entitled to the protections of the Due Process Clause."); *see also Wong Wing v. United States*, 163 U.S. 228, 237–38 (1896); *Landon v. Plasencia*, 459 U.S. 21, 32–34 (1982).

44. When a noncitizen is ordered removed, the government ordinarily must secure the noncitizen's removal from the United States within a period of 90 days, known as the "removal period." 8 U.S.C. § 1231(a)(1)(A). As relevant here, the removal period begins on "[t]he date the order of removal becomes administratively final." *Id.* § 1231 (a)(1)(B)(i)-(iii). If not removed within the removal period, the noncitizen is normally to be released under the government's supervision. *Id.* § 1231(a)(3).

45. The Supreme Court in *Zadvydas* determined that this statute governing the post-removal period does not authorize the Attorney General to detain a noncitizen indefinitely, but only for the period "reasonably necessary to secure the noncitizen's removal." 533 U.S. at 689; *see also id.* at 682 (noting that indefinite detention "would raise serious constitutional concerns"). Thus, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699. Further, the Court held that the presumptive reasonableness of detention under § 1231 expires once detention has reached six months after a removal order became administratively final. 533 U.S. at 701.

46. Once the six-month period expires, and once the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the government must respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 699; *Gilali v. Warden of McHenry Cnty. Jail*, No. 19-CV-837, 2019 WL 5191251, at *4 (E.D. Wis. Oct. 15, 2019).

47. The individual need not show "the absence of any prospect of removal—no matter how unlikely or unforeseeable," but merely that removal is not reasonably foreseeable. *Id.* at 702.

48. Absent a legitimate government purpose for detention, immigration detention violates a noncitizen's substantive due process rights. *See Zadvydas*, 533 U.S. at 689–90; *see also Hussain v. Mukasey*, 510 F.3d 739, 743 (7th Cir. 2007).

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

50. As discussed, although the "basic purpose [of] effectuating [a noncitizen's] removal" is a legitimate government purpose, *Zadvydas*, 533 U.S. at 697, detention for this purpose may only be for a "very limited time." *Demore*, 538 U.S. at 529 n.12; *Tijani v. Willis*, 430 F.3d 1241, 1242 (9th Cir. 2005).

51. Additionally, the Supreme Court has repeatedly affirmed that detention must be constitutional as-applied to individuals regardless of what is authorized, or even mandated by a detention statute. *Jennings v. Rodriguez*, 138 S. Ct. 830, 851 (2018) (explicitly declining to reach "constitutional arguments on their merits" after finding no statutory limit on the length of mandatory immigration detention under 8 U.S.C. § 1226(c)); *see also Nielsen v. Preap*, 139 S. Ct. 954, 972 (2019) ("Our decision today on the meaning of [section 1226(c)] does not foreclose as-applied challenges—that is, constitutional challenges to applications of the statute as we have now read it."); *Gilali* 2019 WL 5191251, at *5.

52. Accordingly, if the Government is purporting to detain an individual beyond the 90-day period, it must show that it is seeking to effectuate the individual's removal and that removal is likely to occur in the "reasonably foreseeable future". *Zadvydas*, 533 U.S. at 699. Further, "for detention to remain reasonable, as the period of [] postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* at 701; *Gilali* 2019 WL 5191251, at *3.

53. For Mr. Oviedo, the presumptively reasonable 6-month period of post-removal-order detention has already expired with no steps whatsoever taken by the Government to effectuate his removal.

54. Where there is no significant likelihood of removal in the reasonably foreseeable future, continued detention violates the constitution. *See Zadvydas*, 533 U.S. at 689–90

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

56. Here, the Immigration Court did not designate an alternate country for Mr. Oviedo's removal, nor does Mr. Oviedo have legal residence (or any other immigration status) in an alternate country. Exh. C. Nor has the Government so much as sought to designate an alternate country for removal, much less initiate removal proceedings regarding an alternate country. *Id.* Finally, ICE has not requested that Mr. Oviedo complete any paperwork or meet with consular officials from any third country. *Id.* In short, there is no evidence that DHS has ever intended to try to remove Mr. Oviedo to any other country, much less that there is a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 699.

57. As such, Mr. Oviedo's continued detention is no longer reasonably related to its limited purpose and is therefore unlawful, under both the INA and the Constitution.

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

59. DHS regularly utilizes orders of supervision when releasing individuals from its custody when a final order of removal is in place. An order of supervision operates like terms of probation, with the ability to impose "conditions of supervision" on individuals. *See* 8 C.F.R. § 214.15(a). For example, noncitizens released on such orders regularly are prohibited from leaving the state in which they reside without advance permission from an ICE officer. *Id.*(a)(4). They may also be required to report to an ICE officer in person or by telephone on a periodic basis. *See Fernandez Aguirre v. Barr*, No. 19-CV-7048 (VEC), 2019 WL 4511933, at *5 (S.D.N.Y. Sept. 18, 2019) (listing alternatives to detention, "such as home detention, electronic monitoring, and so forth"); *Mathon v. Searls*, 623 F. Supp. 3d 203, 218 (W.D.N.Y. 2022) ("[T]he form used by ICE to list the terms of supervision (Form I-220B) includes a section for 'other specified conditions', which implies that ICE has flexibility in imposing release terms.").

60. Such conditions of release would be sufficient to ensure Mr. Oviedo's presence in the unlikely event that removal to a third country becomes possible.

61. Finally, as discussed below, while ICE has attempted to expand its third country removal practices, these practices violate the INA, due process, and binding treaty obligations under the CAT, which ensure an individual has a meaningful opportunity to make a fear-based claim against removal to that country. Where, as here, the Petitioner has been detained for over six months with a final order of removal, and the Government has taken no steps toward his removal to a third country lawfully or otherwise, the mere existence of ICE's *unlawful* policies expanding third country removals does not displace the Supreme Court's decision in *Zadvydas* nor the requested relief in this case.

B. Procedural Due Process Limits to Detention

62. The Due Process Clause and the INA require the Government to give a noncitizen notice and a hearing where the immigrant can present evidence on his behalf in defense of removal. *See* U.S. Const., Amend. V; 8 U.S.C. § 1229a(b)(4) (an immigrant in removal proceedings "shall have a reasonable opportunity to examine the evidence against the [noncitizen], to present evidence on the [noncitizen's] own behalf, and to cross-examine witnesses presented by the Government"); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Mathews v. Eldridge*, 424 U.S. 319, 332–33 (1976).

63. Further, "[n]oncitizens facing removal of any sort are entitled under international and domestic law to raise a claim under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2154 (2025) (Sotomayor, J., dissenting) (citing Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U. N. T. S. 113). "Article 3 of the Convention prohibits returning any person 'to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.'" *Id.* The United States is a party to the Convention and passed the Foreign Affairs Reform and Restructuring Act (FARRA) and subsequent regulations "to implement its commands." *Id.* Regulations implementing the Convention provide, among other things, that "[a] removal order ... shall not be executed in circumstances that would violate Article 3." 28 C.F.R. § 200.1 (2024).

64. Multiple courts have held—including in the context of purported removals to third countries—that "affirming a deportation order without a fair hearing concerning that deportation violates due process." *Kuhai v. INS*, 199 F.3d 909, 913 (7th Cir. 1999) (holding that the noncitizen must be given the opportunity to brief removal to a third country when

there was no indication during removal proceedings that she could be removed there); *Mahdejian v. Bradford*, Case No. 25-cv-00191 (E.D. Tex. July 3, 2025) (where petitioner had been granted withholding of removal as to Iran, court issued injunction prohibiting DHS from removing him to a third country without notice and a meaningful opportunity to establish that his life or freedom would be threatened there); *Ortega v. Kaiser*, 2025 U.S. Dist. LEXIS 121997, *7, 2025 WL 1771438 (N.D. Cal. June 26, 2025) (where petitioner was granted CAT relief as to El Salvador, "there are no countries to which Ortega 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"); *Su Hwa She v. Holder*, 629 F.3d 958, 965 (9th Cir. 2010) ("It follows that a failure to provide notice and, upon request, stay removal or reopen the case for adjudication of [the noncitizen's] applications as to Burma would constitute a due process violation *if* Burma becomes the proposed country of removal."); *Romero v. Evans*, 280 F. Supp. 3d 835, 847 n.24 (E.D. Va. 2017) ("DHS could not immediately remove petitioner to a third country, as DHS would first need to give petitioner notice and the opportunity to raise any reasonable fear claims.").

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

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

67. Both the March and the July ICE Memos purport to expand their authority as to third country removals. However, both memos violate noncitizens' rights and DHS' obligations to provide adequate notice and the opportunity to be heard and are therefore unlawful. For example, the March ICE Memo provides *no* notice and *no* opportunity to apply for protection to noncitizens whom DHS seeks to remove to a country that it determines has provided "credible" "diplomatic assurances" that noncitizens (allegedly) will not be persecuted or tortured. *See* March ICE Memo. Meanwhile, the July ICE Memo purports to allow ICE to move forward with a third country removal – to a country that has *not* provided any such assurances – with as little as six-hours' notice to the noncitizen. *See* July ICE Memo. As such, DHS' third-country removal policy fails to provide noncitizens with adequate notice and an opportunity to be heard, as required by the INA, FARRA, and the Due Process Clause.

68. In April 2025, the U.S. District Court for the District of Massachusetts issued a nationwide preliminary injunction blocking such third country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture, in recognition that the government's policy violates due process and the United States' obligations under the Convention Against Torture. *D.V.D. v. Dep't of Homeland Security*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025).

69. In June 2025, the U.S. Supreme Court granted the government's emergency motion to stay the district court's nationwide preliminary injunction pending appeal at the First Circuit. *See Dep't of Homeland Security v. D.V.D.*, 145 S. Ct. 2153 (2025). However, the Supreme Court's decision – which was unexplained, arose in a distinguishable procedural context, and did not address the merits – neither precludes the availability of individual habeas

actions to challenge illegal third-country removals nor eliminates Mr. Oviedo's rights and DHS's existing obligations under binding constitutional, statutory, and international law.

70. The Supreme Court's order in *D.V.D.*, which is not accompanied by an opinion, signals only disagreement with the nature, and not the substance, of the nationwide preliminary injunction.[5] The government's lead argument—that 8 U.S.C. § 1252(f)(1) deprived the district court of jurisdiction to enter class-based relief on a national basis—has no bearing on individual, as-applied habeas claims. *See* Application for a Stay at 19, *Dep't of Homeland Sec. v. D.V.D.*, No. 24A1153 (U.S. May 27, 2025); § 1252(f)(1) (limiting injunctive power "other than with respect to the application of such provisions to an individual [noncitizen]").

71. The Supreme Court's unexplained stay of the nationwide injunction without any discussion of the merits does not eliminate Mr. Oviedo's rights or DHS's obligation to follow the law. Despite ICE's efforts to sidestep its obligations, the Due Process Clause, the INA, and FARRA require ICE to provide Mr. Oviedo with adequate notice and a meaningful opportunity to raise any reasonable fear claims before it can send him to far corners of the planet where he has no connection whatsoever and where he may face persecution or torture.

72. ICE's third country removal policies also ignore the risk that Mr. Oviedo may be unlawfully removed to Mexico following his removal to a third country. Mr. Oviedo has a final grant of withholding of removal as to Mexico, meaning an IJ found, and DHS did not appeal, that he will more likely than not be persecuted upon removal to Mexico. Should Mr. Oviedo be deported to a country to which he has no ties or lawful status, he fears that

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

he would be removed to Mexico through a practice called "chain refoulement."[6] As the Seventh Circuit has recognized, "[r]emoval proceedings must be fundamentally fair" meaning a noncitizen must have "a reasonable opportunity to present evidence." *Gjeci v. Gonzales*, 451 F.3d 416, 421 (7th Cir. 2006).

73. A detained noncitizen may not seek protection from any theoretical third country until the Government has affirmatively designated that country for removal. *See Hwa She,* 629 F.3d at 965 ("Under the plain wording of 8 C.F.R. § 1208.16, an applicant is not entitled to adjudication of an application for withholding of removal to a country that nobody is trying to send them to."); *Yakubov v. Att'y Gen.*, 586 F. App'x 86, 87 (3d Cir. 2013) ("Yakubov's claim for deferral [to Russia] will not become ripe unless and until the Government's efforts to remove him to Israel prove unsuccessful.").

74. Thus, even in the entirely hypothetical circumstance that the Government located a third country willing to accept Mr. Oviedo, and even if Mr. Oviedo's proceedings were reopened to seek protection from that alternative country, the Government would be months if not years away from being able to lawfully remove Mr. Oviedo to a third country upon completion of removal proceedings for that country. This is particularly true here, where Mr. Oviedo suffers from serious mental illnesses that would likely give rise to protection claims as to any potential third country. Absent this Court's intervention, Mr. Oviedo

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[6] *See e.g.*, CNN, *Eswatini receives 10 third-country deportees from US*, Oct. 6, 2025, https://www.cnn.com/2025/10/06/africa/eswatini-deportees-united-states-intl-latam (describing how the Eswatini government is keeping noncitizens removed there from the United States "in correctional facilities until they could be repatriated to their home countries"); Inter-American Commission on Human Rights, *IACHR and United Nations Experts: States Must Protect the Rights of Persons in Human Mobility*, Sept. 18, 2025, https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2025/190.asp&utm_term=class-dc.

remains detained solely on the pretext of this hypothetical scenario, towards which the Government has not even taken the first step.

75. This scenario is doubly hypothetical as the Government's current policies contemplate *unlawful* procedures for the removal of noncitizens like Mr. Oviedo to third countries in violation of due process, the INA and binding treaty obligations.

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76. In sum, Mr. Oviedo's post-removal-order detention has already exceeded six months, and therefore is not presumptively reasonable. There is also no significant likelihood that Mr. Oviedo will be lawfully removed to a third country in the reasonably foreseeable future. The appropriate remedy for these violations of Mr. Oviedo's due process rights is to order the government to immediately release him. *See Nguyen v. Scott*, 2025 WL 2419288, at *23 (W.D.Wash., 2025); *Delkash v. Noem*, No. 5:25-CV-01675-HDV-AGR, 2025 WL 2683988, at *6 (C.D. Cal. Aug. 28, 2025).

77. Additionally, because the Government's current policies contemplate unlawful procedures for removing a noncitizen like Mr. Oviedo to a third country without due process, Mr. Oviedo seeks to enjoin the Government from removing him to a third country without adequate notice and an opportunity to be heard as required by the constitution and federal law.

CLAIMS FOR RELIEF

COUNT ONE

Respondents' Detention of Petitioner Violates the INA

78. Mr. Oviedo realleges and incorporates the allegations of all preceding paragraphs.

79. An Immigration Judge ordered Mr. Oviedo removed to Mexico but simultaneously granted him withholding of removal to that country.

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

81. The Government is now continuing to detain Mr. Oviedo while it purportedly explores removal to an alternate country.

82. Mr. Oviedo does not have citizenship, legal status, or any connections with another country that might make his removal to an alternate country even remotely likely. *See* 8 U.S.C. § 1231(b)(2)(D)-(E). Nor has the U.S. Government alleged any such connections.

83. Here, the Government cannot plausibly show that it will remove Mr. Oviedo to an alternate country.

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

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

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

87. The INA does not permit the government to detain Mr. Oviedo more than 180 days while it endlessly pursues removal to a third country, and such detention violates Mr. Oviedo's statutory rights. *See Zadvydas*, 533 U.S. at 689–90.

88. Additionally, detention is not reasonably related to its purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell*, 441 U.S. at 538. If necessary, an Order of Supervision would mitigate any risk of flight such that, in the highly

unlikely event that the Government identifies an alternative country for removal, the Government would be able to effectuate removal.

COUNT TWO

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

89. Mr. Oviedo realleges and incorporates the allegations of all preceding paragraphs.

90. An Immigration Judge ordered Mr. Oviedo removed to Mexico but simultaneously granted him withholding of removal to that country.

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

92. The Government is now continuing to detain Mr. Oviedo while it purportedly explores removal to an alternate country.

93. Mr. Oviedo does not have citizenship, legal status, or any connections with another country that might make his removal to an alternate country even remotely likely. *See* 8 U.S.C. § 1231(b)(2)(D)-(E). Nor has the U.S. Government alleged any such connections.

94. Here, the Government cannot plausibly show that it will remove Mr. Oviedo to an alternate country.

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

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

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

COUNT THREE

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

98. Mr. Oviedo realleges and incorporates the allegations of all preceding paragraphs.

99. The Government—having never designated any country other than Mexico for removal—cannot remove Mr. Oviedo to some other country without providing procedural protections.

100. Although the Government is purportedly detaining Mr. Oviedo for the purposes of trying to remove him to another country, Mr. Oviedo has received no notice as to which countries the Government may be considering and no opportunity to challenge those efforts. Nor have immigration officers asked him to participate in submitting an application for travel documents to another country or countries.

101. The Due Process Clause, the INA, the Convention Against Torture, and implementing regulations require the Government to give a noncitizen notice and an opportunity to respond to any third country removal in reopened removal proceedings. *See* U.S. Const., Amend. V; 8 U.S.C. § 1229a(b)(4) (an immigrant in removal proceedings "shall have a reasonable opportunity to examine the evidence against the [noncitizen], to present evidence on the [noncitizen's] own behalf, and to cross-examine witnesses

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

102. ICE has detained Mr. Oviedo since March 2024, more than 19 months, including more than six months after his removal order and grant of withholding of removal.

103. The Government could not, consistent with procedural due process and statutory obligations, deport him to any third country without telling him where he will be removed and giving him at least an opportunity to file a protection-based claim. *See Kossov*, 132 F.3d at 408 (a fair hearing provides a noncitizen "an adequate opportunity to defend themselves against that deportation," including seeking protection from the alternate country).

104. Mr. Oviedo fears deportation to other countries besides Mexico. Exh. C. In particular, his fear of removal to Mexico was based in large part on his severe mental illness and the increased likelihood that he will be institutionalized and tortured if removed. Thus, any lawful third country removal would at minimum trigger additional hearings, new removal proceedings, and multiple additional months of detention.

105. Considering the slim likelihood of lawful removal to a third country, the Government's failure to designate any third country in removal proceedings, the absence

of any plausible third country for removal, the Government's failure to identify to Mr. Oviedo any third country or countries under consideration, and the statutory regime created by Congress, procedural due process is offended by Mr. Oviedo's ongoing detention.

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

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

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

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

PRAYER FOR RELIEF

Petitioner prays this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Pursuant to 28 U.S.C. § 2243, issue an order directing Respondents to show cause within three days why the writ should not be granted;

3. Declare that Mr. Oviedo's continued detention violates the Immigration and Nationality Act because Respondents have not met their burden to demonstrate that there is a significant likelihood that Mr. Oviedo will be removed in the reasonably foreseeable future.
4. Declare that Mr. Oviedo's continued detention is without a legitimate governmental purpose and violates his substantive due process rights because Respondents cannot show any plausibility that Petitioner will be removed to an alternate country.
5. Declare Mr. Oviedo's continued detention violates his procedural due process rights because Respondents have failed to provide Mr. Oviedo with adequate procedural safeguards to ensure that his continued detention is justified;
6. Declare that, if the Government purports to identify any third country willing to accept Mr. Oviedo, that the Government be required to provide Mr. Oviedo adequate notice and an opportunity to be heard regarding removal to that country;
7. Enjoin the Government from removing Mr. Oviedo to a third country without adequate notice and an opportunity to be heard regarding removal to that country;
8. Grant the writ of habeas corpus and order that Respondents release Mr. Oviedo from detention; and
9. Grant any other and further relief that this Court deems just and proper.

Dated: November 18, 2025

s/ Colleen Cowgill
Colleen Cowgill
NATIONAL IMMIGRANT JUSTICE CENTER
111 W. Jackson Blvd., Suite 800
Chicago, IL 60604
CCowgill@immigrantjustice.org
312-235-4774

Counsel for Petitioner