**THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF WASHINGTON**
**SEATTLE, WASHINGTON**

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|---|---|
| Jose Jair MOSQUERA CAMACHO,<br><br>Petitioner,<br><br>v.<br><br>Laura HERMOSILLO, Acting Field Office Director of Enforcement and Removal Operations, Seattle Field Office, Immigration and Customs Enforcement (ICE); Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; Bruce SCOTT, Warden of Northwest ICE Processing Center,<br><br>Respondents. | Case No.: 3:25-cv-6087<br><br>VERIFIED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241<br><br>Agency File No: [redacted] |



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## INTRODUCTION

1. This case challenges the unlawful detention of J.M.C., a citizen and national of Colombia. He entered the United States in March 2023 to seek asylum and has since been granted protection against being deported to Colombia. Customs and Border Protection (CBP) apprehended J.M.C shortly after his entry, and released him under an order of recognizance to continue with his removal proceedings in a non-detained setting.

2. The government did not file the formal document (known as a Notice to Appear) to begin J.M.C's removal proceedings with the immigration court until August 8, 2024, more than one year after J.M.C.'s entry into the United States.

3. In the meantime, J.M.C. had affirmatively filed his Form I-589, application for asylum and related relief with United States Citizenship and Immigration Services (USCIS) on May 8, 2024.

4. Once his removal proceedings formally began on August 8, 2024, J.M.C. refiled his asylum application with the Immigration Court on November 26, 2024.

5. Immigration and Customs Enforcement (ICE) detained J.M.C. on June 6, 2025, after he accidentally drove too close to the Canadian-Washington border. J.M.C. has been detained at the Northwest ICE Processing Center (NWIPC) since then. The venue for J.M.C.'s removal proceedings were then transferred from the Seattle Immigration Court to the detained docket at the Tacoma Immigration Court.

6. Prior to re-detaining J.M.C., Respondents did not provide J.M.C. a hearing before a neutral decisionmaker where ICE was required to justify the basis for J.M.C.'s detention or explain why J.M.C. is a flight risk or danger to the community.



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7. On September 3, 2025, the Immigration Judge granted withholding of removal, finding that J.M.C. had a clear likelihood of persecution in Colombia. Being granted withholding of removal bars the government from deporting J.M.C. to Colombia. The Department of Homeland Security (DHS), who represents the government in removal proceedings, waived appeal. However, the government continues to detain J.M.C.

8. Respondents now seek to summarily remove J.M.C. to another country. This prerogative, however, is not without limits. The INA provides a hierarchal list of countries to which a person may be removed. In most cases, the INA commands that a person be removed to the place they choose, or some other country to which they have a close connection. See id. § 1231(b)(2). Only if removal to one of these countries is "impracticable, inadvisable, or impossible" may the Department of Homeland Security (DHS) remove a person to some other, third country—a country that is not designated in the removal order. Id. § 1231(b)(2)(E)(vii).

9. On December 2, 2025, DHS presented J.M.C. with a slip of paper informing J.M.C. that they intend to remove him to Honduras. J.M.C. refused to sign the document because he is afraid of being removed to Honduras on account of [redacted]

10. The INA, the Foreign Affairs Reform Restructuring Act of 1998 (FARRA), and their implementing regulations ensure that prior to any removal, Respondents must provide J.M.C. an opportunity to present a claim of fear of torture or persecution as to the third country. Specifically, pursuant to 8 U.S.C. § 1231(b)(3), Respondents may not remove persons who are more likely than not to face persecution if removed. And pursuant to the Convention Against Torture (CAT), which is codified as a statutory note to § 1231, Respondents may not remove persons to a country where they are likely to face torture.



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11. The Due Process Clause of the Fifth Amendment also requires that, prior to a third-country removal, J.M.C. receive meaningful notice and opportunity to access these mandatory statutory protections. As the Supreme Court recently held in *A.A.R.P. v. Trump*, this means a person "must receive notice" that "they are subject to removal" (here, to a third country), and such notice must be provided "within a reasonable time and in such a manner as will allow the[] [noncitizen] to actually seek . . . relief." 605 U.S. 91, 95 (2025) (per curiam) (quoting Trump v. J.G.G., 604 U.S. 670, 673 (2025)).

12. Respondents have not provided any meaningful notice or opportunity for J.M.C. to present a fear-based claim in this case. On December 2, 2025, more than three months after the IJ issued the final order of removal and grant of INA withholding, a DHS officer handed J.M.C. a written notice of removal to Honduras, which failed to provide adequate notice as to when he would be removed or the proper mechanism to raise his statutory rights for protections. The DHS officer informed J.M.C. that Mexico had not responded to its request to accept J.M.C., that DHS was now seeking to remove J.M.C. to Honduras, and that DHS would find a different country for removal if Honduras declined to accept J.M.C. J.M.C. did not feel adequately informed.

13. Accordingly, J.M.C. seeks an order that employs existing DHS screening mechanisms and requires Respondents (1) to inform him and counsel in writing of any planned removal to Honduras (or any other third country) at least ten days prior to removal, (2) to provide a reasonable fear interview (RFI) given J.M.C.'s expressed fear of removal, and (3) if the RFI is denied, to provide fifteen days to file a motion to reopen with the immigration court.



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**JURISDICTION**

14. J.M.C. is in the physical custody of Respondents. J.M.C. is detained at the NWIPC in Tacoma, Washington.

15. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

16. Nothing in 8 U.S.C. § 1252 deprives this Court of jurisdiction.

17. Specifically, § 1252(a)(5) and (b)(9) do not apply here. J.M.C. does not seek "judicial review of an order of removal entered or issued," 8 U.S.C. § 1252(a)(5), because J.M.C.'s final removal order here designates a country different than the one to which Respondents now seek to remove him. The challenged action and planned removal here arise after removal proceedings were complete. See *Ibarra-Perez v. United States*, No. 24-631, --- F. 4th ----, 2025 WL 2461663, at *9–10 (9th Cir. Aug. 27, 2025).

18. Similarly, § 1252(b)(9) "consolidates" a "noncitizen's various challenges arising from the removal proceeding" into "a petition for review [before] the courts of appeals." *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (quoting INS v. St. Cyr, 533 U.S. 289, 313 n. 37 (2001)). Here, J.M.C. challenges only Respondents' actions to seek removal to a new, third country after removal proceedings were completed. Such an action cannot be challenged via a petition for review, because there is no final removal order designating the third country for removal that a court of appeals could review. *Ibarra-Perez*, 2025 WL 2461663, at *9–10.

19. Subsection 1252(g), which bars claims that challenge DHS's decision to "execute [a] removal order[]," also does not prevent relief. This "narrow" subsection, *DHS v. Regents of*



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*the Univ. of Calif.*, 591 U.S. 1, 19 (2020), does not "sweep in any claim that can technically be said to 'arise from' the three listed actions" in § 1252(g), *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). Rather than encompass "*all* deportation-related cases," *Reno v. Am.-Arab Anti-Discrimination Comm. (AADC)*, 525 U.S. 471, 478 (1999), § 1252(g) was "designed to give some measure of protection to 'no deferred action' decisions and similar discretionary determinations," *id.* at 485. Here, J.M.C. does not challenge any exercise of discretion by Respondents. Instead, J.M.C. seeks an order requiring Respondents to comply with their mandatory duties to afford protection procedures pursuant to 8 U.S.C. § 1231(b)(3) and the Convention Against Torture. *See Ibarra-Perez*, 2025 WL 2461663, at *6–8.

20. Nothing in FARRA bars this case. Section 2242(d) of FARRA limits review of "regulations adopted to implement [CAT]." Here, however, J.M.C. does not challenge the CAT regulations. Instead, he seeks only an order that requires Respondents to provide him with a process to access withholding and CAT, as federal law requires.

21. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, the Suspension Clause, and the Court's inherent equitable powers.

**VENUE**

22. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue lies in the United States District Court for the Western District of Washington, the judicial district in which J.M.C. is currently in custody.

23. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in this district.



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**REQUIREMENTS OF 28 U.S.C. § 2243**

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

25. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added) (citation omitted). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); see also *Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954) (habeas corpus is "a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination").

**PARTIES**

26. J.M.C. is a citizen of Colombia. On September 3, 2025, an Immigration Judge granted J.M.C. withholding of removal, which protects him from being deported to Colombia.

27. Respondent Laura Hermosillo is the Acting Field Office Director for the Seattle Field Office of ICE's Enforcement and Removal Operations (ERO) division. As such, Respondent Hermosillo is J.M.C.'s immediate custodian and is responsible for J.M.C.'s detention and removal. She is named in her official capacity.

28. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees



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ICE, which is responsible for J.M.C.'s detention. Ms. Noem has ultimate custodial authority over J.M.C. and is sued in her official capacity.

29. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

30. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

31. Respondent Bruce Scott is employed by the private corporation The GEO Group, Inc., as Warden of the NWIPC, where J.M.C. is detained. He has immediate physical custody of J.M.C.. He is sued in his official capacity

## LEGAL FRAMEWORK

**<u>The INA's Scheme for Determining the Country of Removal</u>**

32. Most noncitizens facing removal are placed into removal proceedings under 8 U.S.C. § 1229a.

33. Typically, at the outset of such a removal proceeding, the parties or the immigration judge designates a country of removal. *See* Imm. Ct. Prac. Manual § 4.15(i).

34. As relevant here, the INA "provides four consecutive removal commands" about where to remove a noncitizen. *Jama v. ICE*, 543 U.S. 335, 341 (2005).

35. First, in most cases, the noncitizen must be provided the opportunity to "designate one country to which the [noncitizen] wants to be removed." 8 U.S.C. § 1231(b)(2)(A)(i).



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36. Second, if the noncitizen declines to designate a country—which often occurs where the noncitizen fears return to their country of origin—DHS then designates the "country of which the [noncitizen] is a subject, national, or citizen" for removal, as required by statute. *Id.* § 1231(B)(2)(D). The statute requires DHS to attempt removal to these countries before seeking alternatives. *See id.* § 1231(b)(1), (b)(2)(A), (D) (repeatedly instructing where DHS "shall" remove someone by order of priority).

37. Third, if DHS is unable to remove the individual to either the country of their designation or the country of which they are a subject, national, or citizen, then the government is required to remove them to any of the following options: (1) "[t]he country from which the [noncitizen] was admitted to the United States;" (2) "[t]he country in which is located the foreign port from which the [noncitizen] left for the United States or for a foreign territory contiguous to the United States;" (3) "[a] country in which the [noncitizen] resided before [they] entered the country from which [they] entered the United States;" (4) "[t]he country in which the [noncitizen] was born;" (5) "[t]he country that had sovereignty over the [noncitizen's] birthplace when the [noncitizen] was born;" or (6) "the country in which the [noncitizen's] birthplace is located when the [noncitizen] is ordered removed." *Id.* § 1231(b)(2)(E).

38. Finally, only where it is "impracticable, inadvisable, or impossible to remove the [noncitizen] to each country described" above may DHS seek removal to some other alternative country. *See id.* § 1231(b)(2)(E)(vii).

**Withholding of Removal and the Convention Against Torture**

39. U.S. immigration law affords noncitizens in the United States three forms of protection from persecution and/or torture: asylum, withholding of removal, and protection under the Convention Against Torture (CAT).



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40. Asylum typically provides full protection against deportation to any country. *See* 8 U.S.C. § 1158(c). This means the person cannot be deported not only to their country of origin, but also any other country. Asylum also provide a host of other benefits, including a pathway to citizenship.

41. Individuals who are not eligible for asylum, e.g., because they did not apply within one year of entering the country, *see id.* § 1158(a)(2)(B), may qualify for withholding of removal, *id.* § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a "mandatory" protection that prohibits removal to a designated country where a noncitizen establishes that they are more likely than not to face persecution. *INS. v. Aguirre-Aguirre*, 526 U.S. 415, 419 (1999). Withholding of removal also contains exceptions for, inter alia, individuals who have committed certain serious crimes. *See* 8 U.S.C. § 1231(b)(3)(B).

42. Finally, pursuant to FARRA, Congress instructed that the U.S. government may not "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." Pub. L. 105-277 Div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1999) (codified as statutory note to § 1231). This mandate applies to all persons and contains no exceptions.

43. DHS has implemented withholding and CAT protections via regulation. *See generally* 8 C.F.R. §§ 208.16–208.18, 1208.16–1208.18.

44. Individuals can appeal the denial of an application for withholding of removal or CAT protection to the Board of Immigration Appeals (BIA) and later to the courts of appeals. *See* 8 U.S.C. § 1252(a); 8 C.F.R. §§ 208.31(e), 1208.31(e), (g)(2)(ii), 1240.15; *Nasrallah*, 590 U.S. at 575.



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45. No matter where DHS seeks to remove a person, the INA's protections against removal to a country where a person may face persecution and FARRA's protections against removal to a country where a person may face torture apply.

46. Removals pursuant to § 1231(b) are "subject to paragraph (3)," which, as noted, provides the framework for withholding of removal. *See* 8 U.S.C. § 1231(b); *see also, e.g.*, *Jama*, 543 U.S. at 348.

47. Similarly, FARRA and the regulations implementing CAT prohibit deportation to a country where the noncitizen will face torture. *See* FARRA § 2242(b); 8 C.F.R. §§ 208.16(c)–208.18, 1208.16(c)–1208.18.

## FACTUAL ALLEGATIONS

**The Litigation in *D.V.D. v. Department of Homeland Security (D. Mass.)***

48. Until June 23, 2025, individuals like J.M.C. were entitled to receive notice and an opportunity to apply for CAT relief prior to removal due to a temporary restraining order, and later, a preliminary injunction, in *D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass.).

49. The *D.V.D.* litigation challenges, inter alia, DHS's failure to provide certain noncitizens with final orders of removal the statutory and constitutional process they are entitled to receive pursuant to 8 U.S.C. § 1231(b)(3), FARRA, and the Due Process Clause.

50. On April 18, 2025, the district court in *D.V.D.* certified a nationwide class of noncitizens with final removal orders entered in removal proceedings under 8 U.S.C. § 1229a and certain other administrative removal processes. *D.V.D. v. DHS*, 778 F. Supp. 3d 355, 378, 394 (D. Mass. 2025).

51. At the same time, the court issued a classwide injunction that required the government to undertake certain procedures before removing a person to a third country. *Id.* at



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392–93. Specifically, the court ordered that prior to any third-country removal, noncitizens and their counsel, if any, must receive written notice of the country of removal in a language the noncitizen understands and a meaningful opportunity to assert a claim for CAT protection related to that third country. Id. at 392. The court's framework adopted DHS's existing process of scheduling RFIs to screen people for a fear, and then provided those did not pass the interview a window of fifteen days to move to reopen their removal cases. Id. at 392–93.

52. On May 21, 2025, after the government violated the preliminary injunction order, the district court clarified that noncitizens must receive at least ten days' notice prior to removal to a third country. *D.V.D. v. DHS.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025). The *D.V.D.* defendants subsequently sought a stay of the preliminary injunction with the U.S. Supreme Court. Their application for a stay emphasized, inter alia, that the district court lacked jurisdiction to provide classwide injunctive relief because of 8 U.S.C. § 1252(f)(1). *See* App. for a Stay, *DHS v. D.V.D.*, No. 24A1153, at 19–22 (U.S. May 27, 2025). On June 23, 2025, the Court granted the stay application without providing any reasoning. *See DHS v. D.V.D.*, 145 S. Ct. 2153 (2025).

**Respondents' Policy as to Third-Country Removals**

53. On March 30, 2025, after the Plaintiffs in *D.V.D.* filed their case, DHS issued a new memo entitled "Guidance Regarding Third Country Removals," which the *D.V.D.* defendants claimed satisfies the INA, FARRA, and due process. *See D.V.D.,* No. CV 25-10676-BEM, ECF No. 43-1 (D. Mass. Mar. 30, 2025); *see also* Ex. A.1

54. Pursuant to the memo, Respondents do not need to provide any notice or process whatsoever to a noncitizen prior to their removal if the United States has received "diplomatic



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assurances [from the country of removal] that [noncitizens] removed from the United States will not be persecuted or tortured." Ex. A at 1

55. If the United States has not received such assurances, then the memo simply provides that a deportation officer must "inform the [noncitizen] of removal to [the third] country." *Id.* at 2. "Immigration officers will not affirmatively ask whether the [noncitizen] is afraid of being removed to that country." *Id.*

56. If a noncitizen states a fear, then U.S. Citizenship and Immigration Services (USCIS) must screen the noncitizen "within 24 hours of referral from the immigration officer." *Id.* At the screening, the noncitizen must prove that it is "more likely than not" they will be persecuted or tortured upon removal.

57. This process differs dramatically from the typical RFI process, where USCIS assesses only if there is a "reasonable possibility" the noncitizen could establish they are likely to face persecution or torture if provided the opportunity to present their full case to an immigration judge. *See* 8 C.F.R. § 208.31(c) (outlining reasonable fear interview procedure for other persons with final removal orders, like those with reinstatement orders or administrative removal orders).

58. A "reasonable possibility" is a lower standard of proof than the "more likely than not" standard required to win a grant of withholding of removal or CAT protection. *Dominguez Ojeda v. Garland*, 112 F.4th 1241, 1245 n.1 (9th Cir. 2024) (explaining that the "reasonable possibility" standard "has been defined to require a ten percent chance" of persecution or torture (citation omitted)).

59. On July 9, 2025, following the Supreme Court's stay of the *D.V.D.* preliminary injunction, ICE issued guidance regarding how to implement DHS's now-operative March 30



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Memo. *See D.V.D.*, No. CV 25-10676-BEM, ECF No. 190-1 (D. Mass. July 15, 2025); *see also* Ex. B.

60. The July 9 Guidance is identical to the March 30 Memo except that, in cases where diplomatic assurances do not exist, it provides that an officer will serve a "Notice of Removal" with interpretation. *Id.* at 1.

61. DHS may effectuate removal 24 hours after serving notice; however, "[i]n exigent circumstances," with approval from chief counsel of DHS or ICE, DHS may execute removal to the third country with a mere six hours' notice if ICE provides the noncitizen "means and opportunity to speak with an attorney." *Id.*

62. Respondents' March 30 memo, July 9 guidance, and their practice as to other third-country removals demonstrate that DHS's policy permits the government to provide a slip of paper listing the country of removal mere hours before a planned third-country of removal.

63. In fact, in the *D.V.D.* litigation, DHS has taken the position that the law does not require them to provide any notice whatsoever:

> THE COURT: In this posture, where it is the discretionary decision of the department that's changing the [country] designation, does the person who's going to be deported have a right to be informed and be given an opportunity to be heard as to the dangerousness of that third country designation?
>
> [DHS COUNSEL]: DHS's position is no.
>
> THE COURT: They don't have to be told anything and given no opportunity to be heard?
>
> DHS COUNSEL]: DHS's position is no.

Tr. at 10-11, No. 1:25-cv-10676-BEM, ECF No. 44 (D. Mass. Mar. 28, 2025).

64. Respondents' extreme position has been born out in several instances. First, on May 7, 2025, the *D.V.D.* defendants attempted to remove several *D.V.D.* class members to Libya—a country torn apart by active armed conflict—after providing them at most only hours'



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notice of removal. *See* Declarations of Johnny Sinodis and Tin Thanh Nguyen, *D.V.D.*, No. 1:25-cv-10676-BEM, ECF No. 99-2 & 99-3 (D. Mass. May 14, 2025).

65. Second, on May 21, 2025, "several class members were [placed on a plane] to South Sudan after having received less than 24 hours' notice of their impending deportations." *D.V.D.*, 145 S. Ct. at 2157 (Sotomayor, J., dissenting). South Sudan, like Libya, is the subject of grave U.S. Department of State warnings against travel and is similarly on the verge of open armed conflict.

66. These examples, which occurred despite the *D.V.D.* court's preliminary injunction, reflect that Respondents seek to remove individuals to third countries with only hours' notice of removal.

67. Other examples since the *D.V.D.* injunction was lifted continue to reflect the Respondents' extreme position. For example, recently, five members of the *D.V.D.* certified class were removed to Ghana, notwithstanding the fact that all five had won withholding of removal as to their countries of origin. *See* Order, *D.A. v. Noem*, No. 1:25-cv-03135-TSC (D.D.C. Sept. 15, 2025), Dkt. 41 at 2. They were put on a U.S. military plane to Ghana without any notice or opportunity to challenge removal to that country. *Id.* Upon arrival there, one *D.V.D.* class member was removed almost immediately to their country of origin, notwithstanding the withholding order from a U.S. immigration judge. *Id.* at 3. The examples of these *D.V.D.* class members show how Respondents are also using third country removals to facilitate the return of people like J.M.C. to their country of origin, in direct violation of the withholding orders such people have received.



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68. Even where notice is provided, DHS's policy is to provide not more than 24 hours following referral to USCIS for a person to prepare their entire defense against removal to that third country.

69. In typical withholding and CAT cases, individuals have months to prepare and often submit applications with hundreds of pages of supporting evidence, including testimony, expert witness declarations, and country conditions evidence to explain why a person fears persecution or torture.

**J.M.C.'s Individual Factual Allegations**

70. J.M.C. is a 24-year-old citizen of Colombia.

71. He entered the United States on or around March 25, 2023, to seek asylum.

72. He was subsequently apprehended by Border Patrol, issued a Notice to Appear, and released from custody on his own recognizance.

73. Following his release on recognizance, J.M.C. relocated to Washington State. He lived in Lynden, Washington from March 2023 until his eventual detention in June of 2025.

74. During that time J.M.C. did not commit any crimes, attempt to abscond, or miss any of his scheduled immigration hearings.

75. On or about August 8, 2024, DHS filed a Notice to Appear (NTA) with the Seattle Immigration Court formally initiating removal proceedings, approximately 17 months after J.M.C.'s entry into the United States.

76. J.M.C. filed his asylum application with the Immigration Court on November 26, 2024. He appeared for his first Master Calendar Hearing (MCH) on November 27, 2024. An immigration judge scheduled J.M.C.'s Individual Calendar Hearing (ICH)—a bench trial to adjudicate J.M.C.'s Form I-589— for 2029.



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77. On June 6, 2025, J.M.C. traveled to Blaine, Washington to meet a friend. J.M.C. unknowingly attempted to purchase water from a convenience store, but got too close to the Canadian-Washington border and was apprehended by CBP officers. He was held in CBP custody to review him and his case. Despite not violating any of the conditions of his release, and having a final hearing date pending with the Seattle Immigration Court, CBP officers detained him without a warrant, and transported him to the NWIPC.

78. Respondents did not provide any justification or official basis for J.M.C.'s detention, nor did Respondents assess whether J.M.C. presented a flight risk or a danger to the community, prior to re-detaining him. J.M.C. was not provided a hearing before a neutral decision maker to determine whether he was a flight risk or a danger to his community.

79. J.M.C. pursued his form I-589, application for asylum and related relief the Immigration Court in Tacoma, Washington.

80. On September 3, 2025, an IJ ordered J.M.C. granted withholding of removal, protecting him against deportation to Colombia. All parties waived appeal and the IJ's decision became final on that day.

81. Respondents are attempting to summarily deport J.M.C. to a third country without notice or an opportunity to Respondent. On or about November 18, 2025, Respondents told J.M.C. that he was going to be deported to Mexico. However, that was ultimately unsuccessful because Mexico did not agree to take J.M.C.. On or about December 2, 2025, more than three months after the IJ granted withholding of removal, ICE officers told J.M.C. that they were now going to try to deport him to Honduras.

82. The notice did not contain sufficient information regarding DHS's intention to remove Mosquera Camacho to Honduras, including an expected date of removal.



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83. The notice did not contain sufficient additional information of J.M.C.'s right to seek protection from removal to Honduras or how to seek that protection.

84. J.M.C. refused to sign the form, and later sought to inform the officer that he was afraid of being removed to Honduras on account of [redacted] ICE has not provided J.M.C. with any additional information regarding its plans to remove him to Honduras or any other third country.

85. Respondents have not scheduled J.M.C. for a fear screening despite being aware of his fear of deportation.

86. J.M.C. remains detained. On December 3, 2025, his detention will have reached 180 days.

87. [redacted]



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[redacted]

## LEGAL ARGUMENT

**Removal to a third country**

90. The INA, FARRA, and the Due Process Clause demand far more than Respondents' policy requires.

91. For the INA's and FARRA's statutory protections against persecution and torture to be meaningful, there must be a means of accessing those procedures. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). Thus, "no person shall be removed from the United States without opportunity, at some time, to be heard." *A.A.R.P.*, 605 U.S. at 94 (citation modified). The Supreme Court has long applied this principle to people facing removal. *See Yamataya v. Fisher*, 189 U.S. 86, 99–101 (1903) (holding that, even though what Congress provided as to exclusion was "due process of law," the statute must be interpreted to provide



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"notice and . . . an opportunity to be heard" as to whether a person is in the United States "in violation of law").

92. Earlier this year, the Supreme Court explained that for these due process rights to be meaningful, a person must actually receive notice of their planned removal with sufficient time before it occurs so that the person has a genuine chance to seek relief from that removal. *A.A.R.P.*, 605 U.S. at 94–95. "[N]otice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster." *Id.* at 95.

93. These principles are well established in the Ninth Circuit in the context of third-country removals. See *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) ("Failing to notify individuals who are subject to deportation that they have the right to apply for . . . withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process."); *Ibarra-Perez v. United States*, --- F.4th ----, No. 24-631, 2025 WL 2461663, at *5 (9th Cir. Aug. 27, 2025) (affirming "there are restrictions on DHS's removal authority" and DHS "violates [noncitizens'] constitutional right to due process" where it fails to notify them of their right to apply for withholding of removal to the country of removal); see also Nguyen v. Scott, No. 2:25-CV-01398, 2025 WL 2419288, at *18 (W.D. Wash. Aug. 21, 2025) (listing cases).

94. Respondents' policy does not comport with these instructions in any meaningful way.

95. As detailed above, Respondents seek to bypass the process entirely as to many claimants via diplomatic assurances.



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96. As to all others, Respondents' "notice" provides no information about a planned date of removal or about a person's right to apply for protection from that removal. The notice can also be provided mere hours before placement on a plane. Due process demands far more.

97. Respondents' notice also does not require notice to counsel, which DHS is *required* to provide "[w]henever a person is required" by the immigration regulations to receive notice. 8 C.F.R. §§ 292.5(a), 1292.5(a)

98. Due process also demands that the government "ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with § 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said]." *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019).

99. Respondents' policy is also deficient in other ways. The withholding statute, FARRA, and their implementing regulations envision *individualized* consideration of feared persecution or torture. *See* 8 U.S.C. § 1231(b)(3); *id.* (note); 8 C.F.R. §§ 208.31, 1208.16-1208.18. Yet Respondents' policy authorizes the agency to deem all claims invalid simply if a country provides a categorical diplomatic assurance to the United States that no persecution or torture will occur as to all noncitizens removed to it.

100. Importantly, the regulations concerning withholding of removal do not even permit diplomatic assurances *at all* to satisfy the mandatory withholding protections in the INA. As for CAT claims, the regulations allow diplomatic assurances, but only in *individual* cases. *See* 8 C.F.R. § 1208.18(c)(1); *see also* Regulations Concerning the Convention Against Torture, 64 Fed. Reg. 8478, 8484 (Feb. 19, 1999) (noting that cases of assurances are meant to be "rare").



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101. In addition, Respondents' diplomatic assurances do not protect against chain refoulment, which ultimately results in the removal of a noncitizen to their country of origin, despite an immigration judge order that the person not be returned to their country of origin.

102. Similarly, Respondents' policy does nothing to safeguard against persecution or torture by non-state actors. By definition, diplomatic assurances are meaningless where there are *non*-state actors responsible.

103. Finally, requiring a person to demonstrate full entitlement to withholding or CAT protection in a screening hours after receiving the initial notice about removal to a third country does not provide a meaningful opportunity to be heard. As noted above, in standard § 1229a proceedings or in "withholding-only" proceedings before the immigration court, the evidence often includes hundreds of pages of documentation that detail the noncitizen's own testimony, the testimony of witnesses, expert reports, and other country conditions. Expecting a noncitizen to produce such an application mere hours or a day or two after finding out about the new country to which DHS plans to remove them does not provide a person with "sufficient time and information to reasonably be able to contact counsel, file . . . , and pursue appropriate relief." *A.A.R.P.*, 605 U.S. at 95.

**Petitioner's unlawful re-detention without due process**

104. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). As this Court recently recognized, this is the "the most elemental of liberty interests." E.A. T.-B., 2025 WL 2402130, at *3 (citation modified); see



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also Ramirez Tesara, 2025 WL 2637663, at *3 (stating that the petitioner had "an exceptionally strong interest in freedom from physical confinement").

105. Due process thus guarantees notice and an individualized hearing before a neutral decisionmaker to assess danger or flight risk before the revocation of an individual's release. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) ("The fundamental requisite of due process of law is the opportunity to be heard . . . . at a meaningful time in a meaningful manner." (citation modified)); *see also, e.g., Morrissey*, 408 U.S. at 485 (requiring "preliminary hearing to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed . . . a violation of parole conditions" and that such determination be made "by someone not directly involved in the case" (citation modified)).

106. The Immigration and Nationality Act (INA) envisions three basic forms of detention for noncitizens in removal proceedings. First is detention for noncitizens in regular, non-expedited removal proceedings. See 8 U.S.C. § 1226(a), (c). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, while noncitizens who have committed certain crimes are subject to mandatory detention. See id. § 1226(c).

107. The INA also provides for mandatory detention for noncitizens in expedited removal proceedings, 8 U.S.C. § 1225(b)(1), and detention for noncitizens whose immigration cases are completed, id. § 1231(a)(6). *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111-13 (W.D. Wash. 2019) (providing overview of INA's detention authorities).

108. Since the Supreme Court's *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) decision, the Ninth Circuit has expressed "grave doubt" that "any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our



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democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

109. To guarantee against such arbitrary detention and to guarantee the right to liberty, due process requires "adequate procedural protections" that ensure the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

110. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen based on any other justification.

111. As a result, where the government detains a noncitizen for a prolonged period or where the noncitizen pursues a substantial defense to removal or claim to relief, due process requires an individualized hearing before a neutral decisionmaker to determine whether detention remains reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (stating that an "individualized determination as to [a noncitizen's] risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); cf. *Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) (noting that "lesser safeguards may be appropriate" for "short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards").



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112. Courts have found that automatic detention pending appeal "after a judicial officer has determined that release [] is appropriate," where the government has made no "showing of dangerousness or flight risk," "renders the continued detention arbitrary" and "raises a substantial Fifth Amendment claim." *Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 895 (D. Minn. 2025). Although this case arises in the context of a grant of withholding of removal under the INA, the same reasoning applies: "… no special justification exists that outweighs the individual's constitutionally protected interest in avoiding physical restraint . . ." *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1077 (N.D. Cal. 2004).

113. Courts that apply a reasonableness test have considered three main factors in determining whether prolonged detention is reasonable. First, courts have evaluated whether the noncitizen has raised a "good faith" challenge to removal—that is, the challenge is "legitimately raised" and presents "real issues." *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015). Second, reasonableness is a "function of the length of the detention," with detention presumptively unreasonable if it lasts six months to a year. Id. at 477-78; accord Sopo, 825 F.3d at 1217-18. Third, courts consider the likelihood that detention will continue pending future proceedings. *Chavez-Alvarez,* 783 F.3d at 478 (finding detention unreasonable after ninth months of detention, when the parties could "have reasonably predicted that Chavez-Alvarez's appeal would take a substantial amount of time, making his already lengthy detention considerably longer"); *Sopo*, 825 F.3d at 128; Reid, 819 F.3d at 500.

114. To justify immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. See *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). The same is true for other contexts in which the Supreme Court has permitted civil detention; in those cases, the Court has relied on the fact that



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the government bore the burden of proof at least by clear and convincing evidence. See United *States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pretrial detention where the detainee was afforded a "full-blown adversary hearing," requiring "clear and convincing evidence" before a "neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient because, inter alia, they placed burden on detainee); *see also Padilla v. Immigration & Customs Enf't*, 379 F. Supp. 3d 1170 (W.D. Wash. 2019) (requiring the government to bear the burden of proof for class members who receive bond hearings after being found to have a credible fear of persecution or torture); *Banda v. McAleenan*, 385 F. Supp. 3d 1120-21 (in case of arriving asylum seeker, government must bear burden of proof to justify continued detention after noncitizen had been detained for more than 18 months).

115. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). 38. First, incarceration deprives noncitizens of a "profound" liberty interest—one that always requires some form of procedural protections. Diouf, 634 F.3d at 1091- 92; *see also Foucha*, 504 U.S. at 80 ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)).

116. Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 762-63 (1982) (requiring clear and convincing evidence at parental termination proceedings because "numerous factors combine to



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magnify the risk of erroneous factfinding" including that "parents subject to termination proceedings are often poor, uneducated, or members of minority groups" and "[t]he State's attorney usually will be expert on the issues contested"). Moreover, Respondents detain noncitizens in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing. *See infra*.

117. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen's immigration records and other information that it can use to make its case for continued detention.

118. In light of these considerations, "[t]he overwhelming majority of courts to consider the question . . . have concluded that imposing a clear and convincing standard would be most consistent with due process." *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted).

119. Under the three-part test of Mathews, 424 U.S., the balance overwhelmingly favors Petitioner. His interest in liberty and family unity is paramount; the Immigration Judges' interpretation of bond jurisdiction and the subsequent blanket detention policy under Yajure Hurtado creates an extreme risk of erroneous deprivation by denying him any opportunity to demonstrate eligibility for release; and the Government has no further interest in ensuring appearance because he was granted INA withholding and DHS waived appeal. Accordingly, due process requires release. Respondents cannot show that the continued detention of petitioner is reasonably related to the original purpose.

120. J.M.C.'s continued detention also violates the Immigration and Nationality Act (INA) and is therefore unlawful. Under INA § 236(a), "[A]n alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." INA § 236(a).



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By its plain text, the statute authorizes detention only up until the moment a decision is made. Once a decision is rendered, detention authority ends. The adjacent statutory provision governing removal proceedings confirms what qualifies as a "decision": "At the conclusion of the proceeding the immigration judge shall decide whether an alien is removable from the United States." INA § 240(c)(1) (emphasis added). Furthermore, neighboring provisions, including INA § 240(c)(3) mandates that "[n]o decision on deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence." And under 8 C.F.R. § 1240.12(a), "the decision shall be concluded with the order of the immigration judge." Taken together, these provisions leave no doubt: once an Immigration Judge concludes proceedings and issues a ruling that a respondent is not to be removed, DHS's detention authority under § 236(a) is extinguished.

121. The statutory language is clear, and where "a statute's language is plain, the sole function of the courts is to enforce it according to its terms." *Owner–Operator Indep. Drivers v. United Van Lines*, 556 F.3d 690, 693 (8th Cir. 2009). Moreover, courts do not defer to agency interpretation when the text is unambiguous. As the Supreme Court recently confirmed, "[c]ourts, not agencies, will decide 'all relevant questions of law' arising on review of agency action." *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2247 (2024). Here, the statutory command is straightforward: once an IJ has decided the respondent is not to be removed, detention under § 236(a) is no longer authorized. While 8 C.F.R. § 1236.1(b) suggests that the government may detain a respondent "up to the time removal proceedings are completed," that regulation is inconsistent with the statute. It attempts to define the end of proceedings by reference to the entry of a final order of deportation under INA § 101(a)(47)(B)(i), rather than the issuance of a "decision" under INA § 240(c). But that is not how Congress drafted § 236(a). The statute references a "decision," not a final order. When Congress includes particular



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language in one section of a statute and omits it in another, it is presumed to have done so intentionally. *Kucana v. Holder*, 558 U.S. 233, 249 (2010).

122. By contrast, INA § 101(a)(47)(B)(i) defines when an "order of deportation" becomes final — namely, "upon… a determination by the Board of Immigration Appeals affirming such order." But § 236(a) does not incorporate that standard. Instead, Congress used a different, earlier marker: the decision of the immigration judge. Thus, even if the BIA were to later reverse the IJ's termination order, that possibility does not revive DHS's detention authority under § 236(a). Statutory authority cannot be preserved through mere speculation about a future administrative reversal. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

123. Similarly, courts have ruled that automatically stayed release from detention is a violation of the Fifth Amendment. *See Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 895 (D. Minn. 2025) (finding that it "does not require any showing of dangerousness or flight risk. Nor is it subject to immediate review by an immigration judge. It operates by fiat and has the effect of prolonging detention even after a judicial officer has determined that release on bond is appropriate. That mechanism's operation here—in the absence of any individualized justification—renders the continued detention arbitrary as applied. Cf. *Zadvydas*, 533 U.S. at 699–700, 121 S.Ct. 2491 (recognizing that removal must be reasonably foreseeable for continued post-removal detention to remain reasonable); *Bridges*, 326 U.S. 135, 152–53, 65 S.Ct. 1443 (administrative rules are designed to afford due process and to serve as "safeguards against essentially unfair procedures"). Without introducing evidence, the Government has wholly deprived Petitioner of notice and the chance to rebut its case for continued detention. *Mathews*, 424 U.S. at 348–49, 96 S.Ct. 893 ("The essence of due process is the requirement that a person



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in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it."). 8 USC 1225 v 1226.

124. Full removal proceedings under 8 U.S.C. § 1229a are "the standard mechanism for removing inadmissible noncitizens." *Make the Rd. N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025 WL 2494908, at *2 (D.D.C. Aug. 29, 2025); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020) ("The usual removal process involves an evidentiary hearing before an immigration judge, and at that hearing an alien may attempt to show that he or she should not be removed."). These proceedings are initiated by serving the noncitizen with a Form I-862 "notice to appear" in immigration court. 8 U.S.C. § 1229(a)(1).

125. Full removal proceedings "take place before an [immigration judge ("IJ")], an employee of the Department of Justice (DOJ) who must be a licensed attorney and has a duty to develop the record in cases before them." *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-cv-872 (JMC), — F.Supp.3d —, —, 2025 WL 2192986, at *3 (D.D.C. Aug. 1, 2025) (citing 8 U.S.C. § 1229a(a)(1), (b)(1)).

126. In full removal proceedings, noncitizens have rights to hire counsel, to a reasonable opportunity to examine evidence against them, to present evidence on their own behalf, and to cross-examine any government witnesses. 8 U.S.C. § 1229a(b)(4)(A)–(B). "[D]ue to the built in procedures," full removal proceedings "typically take[ ] place over the course of multiple hearings," which "allows time for noncitizens to both gather evidence in support of petitions for relief available in immigration court ... and seek collateral relief from other components of [the Department of Homeland Security ("DHS")]." *Coal. for Humane Immigrant Rts.*, — F.Supp.3d at —, 2025 WL 2192986, at *3.



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127. Accordingly, "[w]hen a person is apprehended under § 1226(a), an ICE officer makes the initial custody determination." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citing 8 C.F.R. § 236.1(c)(8)). If the detainee disagrees with the officer's determination, they "may request a bond hearing before an IJ at any time before a removal order becomes final." *Id.* at 1197 (citing 8 C.F.R. §§ 236.1(d)(1), 1003.19). The procedural posture progresses and the detainee must then "establish to the satisfaction of the Immigration Judge . . . that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight." *Hernandez v. Sessions*, 872 F.3d 976, 982 (9th Cir. 2017) (quoting In re Guerra, 24 I. & N. Dec. 37, 38 (B.I.A. 2006)). Appeal on an adverse decision is available with the BIA. Id. at 983 (citing § 236.1(d)(3)).

128. By contrast, expedited removal proceedings are a "more streamlined ... form of proceeding applicable only to certain noncitizens," whereby removal orders are "usually issued within a few days, if not hours." *Id.* (citation omitted). In expedited removal proceedings, the initial fact finder is an immigration officer, not an IJ. 8 C.F.R. § 235.3(b)(2)(i). The immigration officer asks the noncitizen a series of questions regarding (1) their "identity, alienage, and inadmissibility," and (2) their "intention to apply for asylum" or potential fear of persecution, torture, or return to their country. *Id.* at § 235.3(b)(2)(i), (b)(4). During this questioning, noncitizens do not have a right to counsel. *Id.* at § 235.3(b)(2)(i). If the immigration officer determines that the noncitizen is inadmissible under §1182(a)(6)(C) or 1182(a)(7), "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 under section 1158 ... or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i).



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129. 8 U.S.C. § 1225 enumerates the procedures allowing the government to detain (mandatory detention) certain "applicants for admission." Under § 1225, an "applicant for admission" is a noncitizen "present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1). INA § 1225(b)(1) authorizes expedited removal for certain "applicants for admission" in two categories. First, noncitizens "arriving in the United States" that are determined by an immigration officer to be inadmissible due to misrepresentation or failure to meet documents requirements. *Id.* at § 1225(b)(1)(A)(i); see also id. at § 1182(a)(6)(C), (a)(7).

130. Second, noncitizens that (a) are inadmissible because of misrepresentation or failure to meet documents requirements; (b) have not "been admitted or paroled into the United States"; (c) have not "affirmatively shown, to the satisfaction of an immigration officer, that [they have] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility"; and (d) have been designated by the Attorney General for expedited removal. Id. at § 1225(b)(1)(A)(iii). 57. 8 U.S.C. § 1226 "provides the general process for arresting and detaining aliens who are present in the United States and eligible for removal." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022). The provision "distinguishes between two different categories" of noncitizens. *Jennings*, 583 U.S. at 297.

131. These two categories of noncitizens subject to § 1225(b)(1) are subject to mandatory detention "until certain proceedings have concluded." *Jennings*, 583 U.S. at 297. Individuals that fall into § 1225(b)(1) are "normally ordered removed 'without further hearing or review' pursuant to an expedited removal process" unless claiming asylum or a fear of



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persecution. Jennings, 53 U.S. at 287 (first quoting § 1225(b)(1)(A)(i); then citing § 1225(b)(1)(A)(ii)).

132. Noncitizens who are "seeking admission" and not covered by the expedited removal provisions in § 1225(b)(1) are subject to § 1225(b)(2). *See id.* At 287. This category would include, for example, noncitizens who are arriving in the United States, seek admission, and are inadmissible for some reason other than misrepresentation or failure to meet documents requirements. See 8 U.S.C. § 1182(a)(2)–(3). Subject to limited exceptions, the § provides that such noncitizens "shall be detained" for full removal proceedings under § 1229a "if the examining immigration officer determines" that the noncitizen "is not clearly and beyond a doubt entitled to be admitted." Id. at § 1225(b)(2)(A).

133. Under § 1226(a), the "default rule," id., a noncitizen "may be arrested and detained" "[o]n a warrant issued by the Attorney General" if their removal proceedings are pending, 8 U.S.C. § 1226(a). Detention pursuant to § 1226(a) is not mandatory. If the noncitizen was not charged with, arrested for, or convicted of certain criminal offenses enumerated in § 1226(c), the government has discretion to release them on "bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or ... conditional parole." Id. at § 1226(a)(2)(A)–(B).

134. Until this year, DHS has applied § 1226(a) and its discretionary release and review of detention "to the vast majority of noncitizens allegedly in this country without valid documentation"—a practice codified by regulation. *Salcedo Aceros*, 2025 WL 2737503, at *3.

135. The Government now contends that mandatory detention under § 1225 is the appropriate detention authority for noncitizens, such as petitioner, who have not been admitted or paroled. See *Rodriguez Vasquez v. Bostock*, et al. 3:25-CV-05240-TMC, 2025 WL 2782499



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(W.D. Wash. Sept. 30, 2025) (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). In recent weeks, several district courts have held that the Government's new, and more expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect on the basis that this reading of the statute would render 1226(c) inoperable or moot. See, e.g., *Rodriguez Vasquez v. Bostock*, et al. 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025).

136. The same framework and principles apply here and compel J.M.C.'s immediate release.

**CLAIMS FOR RELIEF**

**Count I**

**Writ of Habeas Corpus – Violation of the INA**

137. J.M.C. repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

138. 8 U.S.C. § 1231(b)(3) prevents removal to a country where a noncitizen is more likely than not to face persecution.

139. Notwithstanding this statutory mandate, Respondents seek to remove J.M.C. to a third country - Honduras) without providing J.M.C. the opportunity to access the protections required pursuant to 8 U.S.C. § 1231(b)(3) and its implementing regulations.

140. Accordingly, J.M.C.'s planned third country removal to Honduras is unlawful.

**Count II**

**Writ of Habeas Corpus – Violation of FARRA**

141. J.M.C. repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein..



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142. FARRA prevents removal to a country where a noncitizen is more likely than not to face torture.

143. Notwithstanding this statutory mandate, Respondents seek to remove J.M.C. to a third country without providing J.M.C. the opportunity to access the protections required pursuant to FARRA and CAT.

144. Accordingly, J.M.C.'s planned third country removal is unlawful.

**Count III**

**Writ of Habeas Corpus – Violation of the Due Process Clause**

145. J.M.C. repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein..

146. The Due Process Clause requires Respondents to provide J.M.C. meaningful notice and a meaningful opportunity to be heard regarding the statutory protections to which J.M.C. is entitled.

147. Respondents seek to remove J.M.C. to a third country without providing meaningful notice or a meaningful opportunity to seek protection under the mandatory provisions of 8 U.S.C. § 1231(b)(3) and FARRA's provisions with respect to CAT.

148. Accordingly, J.M.C.'s planned third country removal is unlawful.

**Count IV**

**Writ of Habeas Corpus - Violation of Fifth Amendment Right to Due Process**
**Procedural Due Process**

149. J.M.C. restates and realleges all the prior paragraphs as if fully set forth herein.

150. Due process does not permit the government to re-detain J.M.C. and strip him of his liberty without written notice and a pre-deprivation hearing before a neutral



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decisionmaker to determine whether re-detention is warranted based on danger or flight risk. *See Morrissey*, 408 U.S. at 487–88. Such written notice and a hearing must occur *prior* to any re-detention.

151. Respondents revoked J.M.C.'s release and deprived him of liberty without providing him written notice and a meaningful opportunity to be heard by a neutral decisionmaker prior to his re-detention.

152. Accordingly, J.M.C.'s re-detention violates the Due Process Clause of the Fifth Amendment.



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**PRAYER FOR RELIEF**

WHEREFORE, J.M.C .prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Enjoin J.M.C.'s removal until Respondents provide him access to his statutory rights to protection and due process of law:

i. With respect to any removal to Honduras, Respondents must provide J.M.C. with a reasonable fear interview and provide him at least ten days' notice of such interview to allow him to prepare for it, and notice must be provided in J.M.C.'s native language;

ii. If J.M.C.is found to have a reasonable fear of removal, then Respondents must move to reopen J.M.C.'s removal proceedings to allow J.M.C. to present a full claim for relief under § 1231(b)(3) and FARRA;

iii. If J.M.C. is not found to have such a fear, then Respondents must allow a further fifteen days for J.M.C. to file a motion to reopen with the immigration court or Board of Immigration Appeals, as appropriate;

iv. With respect to removal to any other third country (any country other than Colombia), Respondents must provide written notice of removal to that country at least ten days prior to the removal, and notice to J.M.C. must be in J.M.C.'s native language;

v. If, after inquiring whether J.M.C. has a fear of removal to that third country, J.M.C. express such a fear, then Respondents must provide a reasonable fear interview to screen for J.M.C.'s fear of persecution and torture, consistent with § 208.31;



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vi. If J.M.C. is found to have a reasonable fear of removal, then Respondents must move to reopen J.M.C.'s removal proceedings to allow J.M.C. to present a full claim for relief under § 1231(b)(3) and FARRA;

vii. If J.M.C. is not found to have such a fear, then Respondents must allow a further fifteen days for J.M.C. to file a motion to reopen with the immigration court or Board of Immigration Appeals, as appropriate;

viii. Issue a Writ of Habeas Corpus ordering Respondents to release J.M.C. from custody immediately and permanently enjoining his re-detention absent written notice and a hearing prior to re-detention where Respondents must prove by clear and convincing evidence that he is a flight risk or danger to the community and that no alternatives to detention would mitigate those risks;

ix. Declare that J.M.C.'s re-detention without first providing an individualized determination before a neutral decisionmaker violates the Due Process Clause of the Fifth Amendment;

c. Award J.M.C. attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

d. Grant any other and further relief that this Court deems just and proper.

DATED this 3rd of December, 2025.

/s/ STEPHEN ROBBINS
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**28 U.S.C. § 2242 VERIFICATION STATEMENT**

I represent Petitioner, Jose Jair Mosquera Camacho, and submit this verification on his behalf. I hereby verify under penalty of perjury that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED: December 3, 2025

/s/ STEPHEN ROBBINS
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