UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

OMAR "PINKY" MONTEZANO MARTINEZ,

Petitioner,

v.

PAUL PERRY, in his official capacity as Warden of the Caroline Detention Facility;

RUSSELL HOTT, in his official capacity as the Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Washington Field Office;

TODD LYONS, in his official capacity as the acting director of U.S. Immigration and Customs Enforcement;

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

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

Respondents.

Case No. _____

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

OMAR "PINKY" MONTEZANO MARTINEZ, by and through her counsel, respectfully petitions this Court for a writ of habeas corpus to remedy and enjoin her continuing unlawful detention by Respondents. In support of this Petition, Ms. Montezano alleges as follows:

PRELIMINARY STATEMENT

1. U.S. Immigration and Customs Enforcement ("ICE") has detained Omar "Pinky" Montezano Martinez for more than nineteen months—with no end in sight. An immigration judge granted Ms. Montezano a deferral of removal that became final nine months ago. But ICE still has not reviewed her continued custody, as it must, leaving her indefinitely detained. Ms. Montezano's ongoing detention far exceeds the presumptively reasonable six-month period a noncitizen can be detained pending removal. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). This Petition seeks her release.

2. In 2022, Ms. Montezano, a transgender woman, fled Mexico to the United States to escape violence she experienced due to her gender identity. Within days, she was arrested and incarcerated for violating a prior removal order. She has been in ICE custody since March 25, 2024.

3. On January 28, 2025, an immigration judge granted Ms. Montezano a deferral of removal under the Foreign Affairs Reform and Restructuring Act of 1998 and the Convention Against Torture ("CAT") (the "Deferral Order"). The Deferral Order recognized that Ms. Montezano is more likely than not to be tortured if she were to return to Mexico. After the Department of Homeland Security ("DHS") did not timely appeal the Deferral Order, it became final on February 28, 2025. *See* 8 C.F.R. §§ 1003.38(b), 1003.39. As a result of the Deferral Order, ICE is prohibited from removing Ms. Montezano to Mexico. *See* 8 C.F.R. § 1208.17(a).

4. Now, over nine months since the Deferral Order became final, ICE has failed to conduct the custody reviews required under the Immigration and Naturalization Act ("INA"), 8 U.S.C. § 1101 *et seq.*, and DHS regulations, or, given that her removal is not reasonably foreseeable, to release her. Indeed, ICE has been unable to provide *any* meaningful response to Ms. Montezano's and her counsel's repeated requests for information about her ongoing detention.

5. Ms. Montezano's predicament has become all the more urgent. Although she is a transgender woman, she has been detained in the male unit of Caroline Detention Facility. In June, a male detainee attempted to sexually assault Ms. Montezano. She remains at heightened risk of assault or injury based on her gender identity.

6. As set forth below, ICE's continued detention of Ms. Montezano and failure to conduct mandatory custody reviews violates the INA, as well as substantive and procedural due process and the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

7. Courts routinely grant habeas petitions and order the release of individuals who, like Ms. Montezano, have received relief under the CAT yet remain in ICE custody past the presumptive six-month limit set forth in *Zadvydas*. *See, e.g.*, *Vargas v. Noem*, No. 25-3155-JWL, 2025 WL 2770679 (D. Kan. Sep. 29, 2025) (additional cases cited *infra*). Ms. Montezano respectfully submits that she is likewise entitled to immediate release.

CUSTODY

8. Ms. Montezano has been in ICE custody since March 25, 2024. Since that date, she has been held continuously at Caroline Detention Facility in Bowling Green, Virginia. Caroline Detention Facility is a Caroline County-operated jail contracted by ICE Enforcement and

Removal Operations ("ERO"); it falls within the area of responsibility of ICE ERO's Washington Field Office, located in Chantilly, Virginia.[1]

JURISDICTION

9. This Court has jurisdiction pursuant to the United States Constitution, Article I, § 9, cl. 2 (Suspension Clause); 28 U.S.C. § 2241 (power to grant writ); 28 U.S.C. § 1331 (federal question); and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act). Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See, e.g.*, *Zadvydas*, 533 U.S. at 687.

10. This action arises under the Constitution of the United States; the INA; and the Administrative Procedure Act, 5 U.S.C. §§ 701, 706(2)(A) (stating that federal courts have federal question jurisdiction to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law").

11. Ms. Montezano is currently in custody under color of the authority of the United States, and such custody violates the Constitution, laws, or treaties of the United States. *See Zadvydas*, 533 U.S. at 687; *see also, e.g.*, *Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018) (U.S. district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE); *Suri v. Trump*, 785 F. Supp. 3d 128, 137 (E.D. Va. 2025) ("Section 2241 broadly grants federal courts the power to award habeas corpus relief to petitioners who are in custody in violation of federal law.").

12. This Court may grant relief pursuant to 28 U.S.C. § 2241; 5 U.S.C. § 702; 28 U.S.C. § 2201; and the All Writs Act, 28 U.S.C. § 1651.

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[1] *See* Office of Inspector General, "Results of an Unannounced Inspection of ICE's Caroline Detention Facility in Bowling Green, Virginia," DEPARTMENT OF HOMELAND SECURITY (Sep. 15, 2023), at 1, 10.

VENUE

13. Venue lies in the Eastern District of Virginia because (i) Ms. Montezano is currently in the custody and control of Respondents in the Eastern District of Virginia at Caroline Detention Facility, 11093 S.W. Lewis Memorial Dr, Bowling Green, VA 22427; (ii) a substantial part of the events or omissions giving rise to Ms. Montezano's claims occurred at Caroline Detention Facility and at the ICE ERO Washington Field Office, 14797 Murdock Street, Chantilly, VA 20598; and (iii) one or more Respondents reside in their official capacity in the Eastern District of Virginia. 28 U.S.C. §§ 1391, 2241(c), 2242, 2243. For the same reasons, venue is proper in the Alexandria Division of the Eastern District of Virginia. L. Civ. R. 3(C) (incorporating the venue rules from 18 U.S.C. § 1391 *et seq.*).

PARTIES

14. Petitioner Omar Josue "Pinky" Montezano Martinez is a native and citizen of Mexico. She is subject to an order of removal that became administratively final on June 16, 2016. She was granted deferral of removal under the CAT on January 28, 2025. Ms. Montezano has been in ICE custody at Caroline Detention Facility since March 25, 2024.

15. Respondent Paul Perry is the Warden of Caroline Detention Facility, a county jail that contracts with ICE to detain noncitizens. He is responsible for overseeing Caroline Detention Facility's administration and management. Respondent Perry is the immediate custodian of Ms. Montezano and has direct control over her. He is named in his official capacity.

16. Respondent Russell Hott is the Field Office Director of ICE Enforcement and Removal Operations, Washington Field Office, located at 14797 Murdock Street, Chantilly, VA 20598, and is the federal agent charged with overseeing all ICE detention centers in Virginia,

including Caroline Detention Facility. Mr. Hott is a legal custodian of Ms. Montezano. He is named in his official capacity.

17. Todd Lyons is the acting director of ICE, headquartered at 500 12th St SW, Washington, DC 20536. He is a custodian of Ms. Montezano. He is named in his official capacity.

18. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security, located at 301 7th St SW, Washington, DC 20407. DHS oversees ICE, which is responsible for administering and enforcing the immigration laws, including the INA. She is a custodian of Ms. Montezano. She is named in her official capacity.

19. Pamela Bondi is the Attorney General of the United States. She is located at the United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530. She oversees the immigration court system, which is housed within the Executive Office for Immigration Review and includes all immigration judges and the Board of Immigration Appeals. She is named in her official capacity.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

20. There is no statutory requirement to exhaust administrative remedies where a noncitizen challenges the lawfulness of detention. *See Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022) (stating that exhaustion of administrative remedies is not required when a petitioner challenges the constitutionality of detention procedures); *Reese v. Garland*, 66 F.4th 530, 535 (5th Cir. 2023) ("[Noncitizens] are entitled to due process of law in removal proceedings. . . . Due process claims that relate to matters other than purely procedural errors do not require exhaustion before the [Board of Immigration Appeals]."); *Galvez v. Lewis*, 56 F. Supp. 2d 637, 644 (E.D. Va. 1999) ("Under the immigration laws, exhaustion of administrative remedies is statutorily required *only* on appeals to final orders of removal." (emphasis added)).

21. Although not statutorily required, Ms. Montezano has repeatedly sought her release from custody. Through counsel, she submitted a formal written request for immediate release on April 3, 2025, a little over a month after her Deferral Order became final. Ms. Montezano renewed the request on June 18, 2025, after a male detainee attempted to sexually assault her while in ICE custody. Counsel has made ongoing inquiries about her status, including requests for information on whether ICE has conducted the custody reviews mandated by statute and DHS regulations, and requests for any related documentation. Ms. Montezano has made further, informal requests for information. Ms. Montezano remains in ICE custody.

22. Ms. Montezano has thus exhausted any reasonable alternative or administrative remedies to the extent required by law. This Petition is her only remaining remedy.

LEGAL FRAMEWORK

I. RELIEF UNDER THE CONVENTION AGAINST TORTURE

23. When a noncitizen has a final grant of deferral of removal under the CAT, the government may not remove that person to the country or countries for which protection was granted. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.17(a). Although ICE has the option of seeking removal to an alternative country, the removal statute imposes narrow criteria for selecting qualifying destinations. *See* 8 U.S.C. § 1231(b), 8 C.F.R. § 1208.16(b)(2). Those include, for example, the country of which the noncitizen is a citizen, subject, or national; the country of birth; or the country of prior residence immediately before entering the United States. *See* 8 U.S.C. § 1231(b)(2)(D)–(E).

24. If ICE identifies a qualifying alternative country, it must undertake further proceedings in immigration court to effectuate removal to that country. *See Guzman Chavez v. Hott*, 940 F.3d 867, 871 (4th Cir. 2019), rev'd on other grounds sub nom. *Johnson v. Guzman*

Chavez, 594 U.S. 523 (2021). Detainees must have an opportunity to raise reasonable fear claims, if any, before removal to that country. *See id*; *Kossov v. INS*, 132 F.3d 405, 409 (7th Cir. 1998). No such proceedings have been scheduled, held, or even proposed in Ms. Montezano's case.

25. As a practical matter, these requirements impose significant constraints on ICE, which is rarely successful in effectuating removal to an alternative country.[2]

II. DETENTION OF NONCITIZENS GRANTED RELIEF UNDER THE CONVENTION AGAINST TORTURE

A. Statutory Framework

26. The INA does not authorize the indefinite detention of a noncitizen who, like Ms. Montezano, cannot be removed in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 699–700.

27. Instead, the statute directs ICE to remove noncitizens within 90 days of receiving an administratively final order of removal (the "Removal Period"). 8 U.S.C. § 1231(a)(1). The Removal Period begins to run from the later of: (1) the date of the removal order, (2) the date the noncitizen was released from imprisonment, (3) or the date a judicial order staying removal became final. *Id.* § 1231(a)(1)(B). If ICE does not remove the noncitizen within the 90-day removal period, the noncitizen "*may* be detained beyond the removal period"—but not indefinitely. *Id.* § 1231(a)(6) (emphasis added).

28. To avoid condemning a noncitizen to "indefinite detention," which would raise "serious constitutional concerns," the Supreme Court in *Zadvydas* construed Section 1231(a)(6) to

[2] *See Johnson v. Guzman Chavez*, 594 U.S. at 552-53 (Breyer, J., dissenting) (in FY 2017, only 1.6% of noncitizens granted withholding-only relief were actually removed to an alternative country); Austin Rose, "Continued Detention of Noncitizens Who Win Immigration Relief: How to Stop ICE's Arbitrary Practice," AMICA CENTER FOR IMMIGRANT RIGHTS (Feb. 13, 2024), at 2 (in FY 2019 through FY 2020, ICE data reflects that only 3.3% of noncitizens granted CAT relief were removed to an alternative country).

contain an implicit time limit. 533 U.S. at 682. After six months of detention, if there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts from the noncitizen to the government to justify continued detention or release the noncitizen. *Id.* at 701. Courts routinely grant habeas petitions where the government does not satisfy its burden. *See, e.g.*, *Balza v. Barr*, No. 6:20-CV-00866, 2020 WL 6143643, at *5 (W.D. La. Sep. 17, 2020), *report and recommendation adopted*, No. 6:20-CV-00866, 2020 WL 6064881 (W.D. La. Oct. 14, 2020) ("[A] theoretical possibility of eventually being removed does not satisfy the government's burden").

29. Where, as here, an individual has been detained for more than six months after being granted CAT relief and removal is not reasonably foreseeable, the appropriate remedy is immediate release from ICE custody. *See, e.g.*, Order Granting Petition for Habeas Corpus, *Alababseh v. Perry*, No. 1:25-cv-01973 (E.D. Va. Nov. 21, 2025), Dkt. No. 22 (ordering release of individual detained eight months past their withholding of removal grant); *Vargas*, 2025 WL 2770679, at *3 (ordering release of individual detained nine months past their CAT deferral grant); *Conchas-Valdez v. Casey*, No. 25-CV-02469-DMS-JLB, 2025 WL 2884822, at *3 (S.D. Cal. Oct. 6, 2025) (ordering release of individual detained for seven months past their CAT deferral grant); *Zhuzhiashvili v. Carter*, No. 25-3189-JWL, 2025 WL 2837716, at *3 (D. Kan. Oct. 7, 2025) (ordering release of individual detained for seven months after their withholding of removal grant); *see also Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 400 (D.N.J. 2025) (ordering release of ICE detainee granted a stay of removal even prior to six-month mark because his removal was not reasonably foreseeable); *Trejo v. Warden of ERO El Paso E. Montana*, No. EP-25-CV-401-KC, 2025 WL 2992187, at *11 (W.D. Tex. Oct. 24, 2025) (ordering government to either hold a bond

hearing for or to release individual who had been detained in excess of the six-month mark and who had a deferral of removal under CAT to El Salvador).

B. Regulatory Requirements for Detention and Release

30. DHS regulations require the local ICE field office with jurisdiction over the noncitizen's detention to conduct a custody review before the 90-day removal period ends. 8 C.F.R. § 241.4(c)(1). The review considers whether continued detention is warranted. *See id.* § 241.4(c)(1), (h)(1), (k)(1)(i). If the noncitizen is not released after the 90-day review, ICE Headquarters ("ICE HQ") must conduct a subsequent custody review by day 180. *Id.* § 241.4(c)(2), (k)(2)(ii). In making these determinations, ICE considers whether the noncitizen poses a danger to the community or a flight risk if released. *Id.* § 241.4(e). If the noncitizen poses neither a danger to the community nor a flight risk, ICE must release the noncitizen under conditions of supervision. *Id.* § 241.4(j)(2).

31. In response to *Zadvydas*, DHS promulgated additional regulations in 2001 establishing "special review procedures" to assess whether detained noncitizens with final removal orders are likely to be removed in the reasonably foreseeable future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56, 967 (Nov. 14, 2001). In addition to the 90- and 180-day custody reviews, DHS now requires ICE HQ to initiate a supplemental review whenever the noncitizen submits, or the record otherwise reflects, substantial reason to believe removal is not significantly likely in the reasonably foreseeable future. *See* 8 C.F.R. § 241.4(i)(7).

32. Under this supplemental process, ICE HQ evaluates the foreseeability of removal by considering factors that include the history and results of efforts to secure the detainee's removal to third countries. *See* 8 C.F.R. § 241.13(f). If ICE HQ concludes that removal is not reasonably foreseeable but nonetheless seeks continued detention based on "special

circumstances," it must justify that detention on narrow grounds such as national security or public health, *id.* § 241.14(b)–(d), or by proving before an immigration judge, by clear and convincing evidence, that the noncitizen is "specially dangerous," *id.* § 241.14(f).

33. Additionally, longstanding ICE policy favors the prompt release of noncitizens who have been granted CAT relief. A 2004 ICE memorandum states that "it is ICE policy to favor the release of [noncitizens] who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain." Memorandum from Michael Garcia, ICE Ass't Sec'y, Detention Policy Where an Immigration Judge Has Granted Asylum and ICE Has Appealed (Feb. 9, 2004). This position has been reiterated several times since, and as recently as 2021. *See* Message from Tae Johnson, ICE Acting Dir., REMINDER: Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal, or Convention Against Torture Protection, and DHS has Appealed (Jun. 7, 2021). This memorandum, circulated to all ICE employees, reminds them of the "longstanding policy" that "absent exceptional circumstances . . . noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge *should be released* pending the outcome of any DHS appeal of that decision." *Id.* at 3 (emphasis added). Director Johnson clarified that "[i]n considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat of danger to the community." *Id.*

STATEMENT OF FACTS[3]

I. MS. MONTEZANO FLED TO THE UNITED STATES TO ESCAPE DISCRIMINATION AND VIOLENCE SHE SUFFERED IN MEXICO DUE TO HER IDENTITY AS A TRANSGENDER WOMAN

34. Ms. Montezano is a forty-four-year-old transgender woman. She was born in [redacted] in Veracruz, Mexico. Around 1996, Ms. Montezano, her parents, and her four siblings fled to the United States to escape the threat of organized violence. Around 1996, Ms. Montezano, her parents, and her four siblings fled to the United States to escape the threat of organized violence. Ms. Montezano graduated from high school in Georgia in 1999 and worked at two restaurants from 1998 to 2012, rising from a busser to a managerial role.

35. In February 2014, while living in Georgia, Ms. Montezano pleaded guilty to and was convicted of unlawful possession with intent to distribute a controlled substance in violation of the Georgia Controlled Substances Act. This conviction was an isolated incident: since 2014, she has not been arrested for, charged with, or convicted of any crime except for illegal reentry (see *infra*), and she has never been arrested for, charged with, or convicted of any crime of violence. Over the past decade, Ms. Montezano has made meaningful strides toward rehabilitating herself, including by taking advantage of vocational opportunities while incarcerated for the drug conviction and by maintaining lawful employment as a painter and maintenance worker in Mexico.

36. After serving her sentence, in July 2016, she was deported to Mexico. Ms. Montezano went to live with her maternal aunt, the only family there willing to take her in because she is transgender. This was the first time that Ms. Montezano had lived in Mexico while identifying and presenting as a woman.

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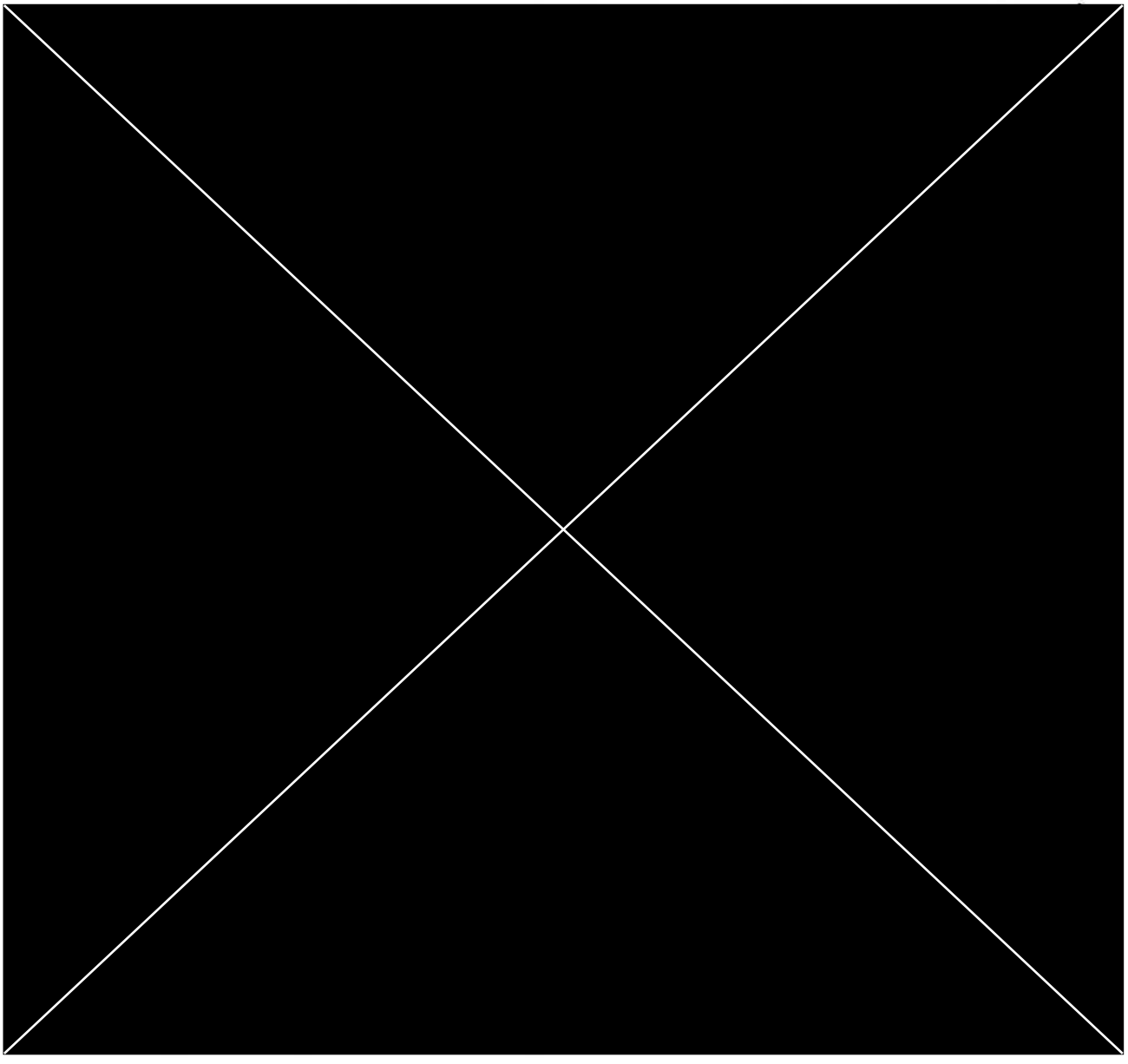
[3] Many of the facts summarized in this petition are set forth in a Declaration Ms. Montezano submitted in connection with her application for deferral under the Convention Against Torture. *See* Ex. 1, Declaration of Omar Josue ("Pinky") Montezano Martinez (Oct. 1, 2024).

37. After her return to Mexico, Ms. Montezano suffered two brutal attacks due to her gender identity. [redacted]



39. Ms. Montezano fled to the United States, for fear that someone would again kidnap, attack, or try to kill her. In September 2022, Ms. Montezano left Mexico to seek asylum in the United States. A few days after entering the United States, she was arrested by U.S. Customs and Border Patrol.

II. ICE CONTINUES TO DETAIN MS. MONTEZANO WITHOUT ANY APPARENT PLAN TO REMOVE OR RELEASE HER

40. On November 30, 2022, Ms. Montezano pleaded guilty to illegal reentry and was sentenced to twenty-one months in the custody of the Federal Bureau of Prisons. At the end of her sentence, on March 25, 2024, she was transferred into ICE custody. ICE placed Ms. Montezano in Caroline Detention Facility.

41. On July 29, 2024, Ms. Montezano applied for withholding of removal under the CAT, as she fears she will again suffer torture, kidnap, and rape, and possibly be killed, if she returns to Mexico. Ex. 2, I-589 Application (July 29, 2024). Her fear is based not only on [redacted]

42. An immigration judge granted Ms. Montezano's application for deferral of removal under the CAT on January 28, 2025. Ex. 3, IJ Decision Granting CAT Relief. This Deferral Order became final on February 28, 2025, when DHS did not appeal the grant of relief to Ms. Montezano. *See* 8 C.F.R. § 1003.38(b), 1003.39

43. Ms. Montezano's Removal Period thus expired no later than May 29, 2025—90 days after February 28, 2025. *See* 8 U.S.C. § 1231(a)(1)(B)(ii) (providing that "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien," the removal period begins on "the date of the court's final order").

44. Under the INA, if the government does not remove a noncitizen before the Removal Period expires, continued detention is limited to what is reasonably necessary to bring about the noncitizen's removal. *Id.* § 1231(a)(6); *Zadvydas*, 533 U.S. at 689. Further, to avoid the "serious constitutional concerns" that would arise from indefinite detention, continued detention is no

longer presumptively reasonable once six months have elapsed (including the Removal Period), and the burden shifts to the government to establish the reasonableness of ongoing detention. *Zadvydas*, 533 U.S. at 682, 690, 701.

45. This six-month period elapsed no later than August 28, 2025, six months after Ms. Montezano's Deferral Order became final.

46. There is "no significant likelihood of [Ms. Montezano's] removal in the reasonably foreseeable future," *id.* at 701, because Ms. Montezano has ties to no other country besides the United States and Mexico, because of ICE's longstanding general inability to remove similarly situated noncitizens to third countries, and because, in Ms. Montezano's case, ICE has made no apparent progress or even effort to do so.

47. Ms. Montezano's ongoing detention is made all the more egregious by ICE's evident unwillingness or inability to provide any information regarding her release or removal, or even to inform Ms. Montezano if it has conducted or intends to conduct any of the mandatory custody reviews since her deferral—let alone the outcome of any such reviews—despite repeated inquiries by Ms. Montezano and counsel. Ex. 4, Correspondence with Deportation Officers at 5-10, 13-14. *See also* 8 C.F.R § 241.4(c)(1), (c)(2), (h), (k); *see also Zadvydas*, 533 U.S. at 683–84.

48. On April 3, 2025, Ms. Montezano, through counsel, submitted a formal request for her immediate release based on the final grant of CAT relief and the lack of prospective third country removal. Ex. 5, Letter Requesting Immediate Release (Apr. 3, 2025). Counsel repeatedly wrote to request a response to Ms. Montezano's request for release and for months, ICE only replied that the request was pending. Ex. 4 at 6-7.

49. On June 5, 2025, Ms. Montezano, through counsel, wrote to ask whether she would receive a custody review. *Id.* at 8. Ms. Montezano's deportation officer replied that the review

would occur on June 20, 2025—approximately a month after the end of her Removal Period and over a year since she first entered ICE custody. *Id.* at 5-6. When Ms. Montezano's counsel asked to attend, counsel initially received no response, and was later told the proceeding merely involved a review of certain documents pertaining to her case. *Id.* at 7-8. Counsel requested to receive and review these documents in advance of the custody review and received no response until the date originally scheduled for the custody review, when Ms. Montezano's deportation officer replied that the custody review "is conducted by ICE HQs" and that he would follow up with them. *Id.* at 5-6. Counsel never received the requested documents.

50. Three days later, when Ms. Montezano's counsel requested information on the outcome of the custody review, the deportation officer was unable to provide any, stating that he was "waiting to hear back." *Id.* at 5. Two and a half weeks later, in mid-August, Ms. Montezano's counsel once again requested an update on the custody review. The deportation officer responded that he did "not have a timeline on when [it] will be" and that ICE was "currently exploring other removal options for your client." *Id.* at 13. In other words, ICE apparently never conducted the scheduled custody review, or if it had, Ms. Montezano was not going to be removed "in the reasonably foreseeable future." *See Zadvydas*, 533 U.S. at 699–700.

51. Neither Ms. Montezano nor her attorneys have received further information about a custody review or her release. Ms. Montezano requested an update of her custody status as recently as October 2025, with no substantive response.

52. In any event, it is clear that Ms. Montezano will not be removed "in the reasonably foreseeable future." Ms. Montezano is protected from removal to Mexico by the Deferral Order. *See* 8 U.S.C. § 1231 ("It shall be the policy of the United States not to . . . extradite . . . any person to a country in which there are substantial grounds for believing the person would be in danger of

being subjected to torture."); *see also Abrego Garcia v. Noem*, 777 F. Supp. 3d 501, 507 (D. Md. 2025) (holding that deporting a person with a final withholding of removal to the country specified in the CAT order would be a "grievous error"). Because Ms. Montezano cannot be removed to Mexico, officials must find a qualifying third country that is willing to accept her, and officials have made no progress toward her removal or even identified a destination. *See, e.g.*, *Vargas*, 2025 WL 2770679, at *2–*3 (ordering respondents to release the petitioner because he had been detained well beyond the six-month period, he could not be removed to his home country, and officials had not been able to identify a possible third country for his removal).

53. Ms. Montezano's continued detention places her in danger. [redacted]

[redacted]

As a transgender woman, Ms. Montezano is particularly vulnerable to sexual harassment and violence while being held in a male unit. A 2013 study by the Department of Justice estimated that transgender people were sexually assaulted at nearly ten times the rate of the general incarcerated population. U.S. Dep't of Justice Off. of Justice Programs, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12*, NCJ No. 241399, Supplemental Table 1 (2013).[4]

54. Yet ICE continues to hold Ms. Montezano without any plausible basis for—or even purporting to assert—any of the limited, enumerated "special circumstances" that would permit continued detention past six months. 8 C.F.R. § 241.14(a). Without redress, ICE will keep her both in custody, and in the dark, indefinitely, in violation of the INA and constitutional due process.

[4] *Compare* Table 1 (noting a 39.9% sexual victimization rate for transgender people from 2011 to 2012) from the supplemental tables available at https://bjs.ojp.gov/content/pub/pdf/svpjri1112_st.pdf, *with* the full report at 6 (reflecting a 4.0% rate of sexual victimization in the general prison population from 2011 to 2012), available at https://bjs.ojp.gov/content/pub/pdf/svpjri1112.pdf.

* * *

55. Ms. Montezano's family provides her with a strong support network in the United States. Upon release, Ms. Montezano will live with her parents and older brother in Delaware. Ms. Montezano's family has a spare bedroom set aside in anticipation of her arrival. Ms. Montezano's parents and brother are law-abiding members of their community with long-term employment. Ms. Montezano's family is prepared to financially support Ms. Montezano upon her release from detention. Nor is Ms. Montezano a flight risk, as she has no ties to any country other than the United States or Mexico, the country from which she sought fear-based relief.

56. Because Ms. Montezano's removal to a third country is not reasonably foreseeable, and because Respondents have not established any "special circumstances" warranting continued detention, *see* 8 C.F.R. § 241.14(a), ICE cannot lawfully keep Ms. Montezano in custody and must release her.

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1231(a)(6)

57. Petitioner realleges and incorporates by reference the paragraphs above as if set forth here in full.

58. As the Supreme Court has held, 8 U.S.C. § 1231(a)(6) authorizes detention only for "a period reasonably necessary to bring about the [noncitizen's] removal from the United States." *Zadvydas*, 533 U.S. at 689. That presumptively reasonable period lasts only six months, after which the government must either establish the reasonableness of ongoing detention—*i.e.*, the "significant likelihood of removal in the reasonably foreseeable future" or a specified basis to

continue detention—or release the noncitizen. *Id.* at 682, 690, 701; 8 C.F.R. § 241.14. As set forth above, Respondents have not made and cannot make such a showing.

59. Further, DHS regulations require ICE to conduct a custody review before the noncitizen has spent 90 days in detention, 8 C.F.R. § 241.4(c)(1), and again after 180 days, *id.* § 241.4(c)(2), (k)(2)(ii). DHS also requires supplemental review whenever the noncitizen submits, or the record otherwise reflects, substantial reason to believe removal is not significantly likely in the reasonably foreseeable future. *See* 8 C.F.R. § 241.4(i)(7). Yet in the time since Ms. Montezano's Deferral Order became final, she has not received her mandatory custody reviews. ICE has not provided any basis to believe it is attempting or intends to effectuate Ms. Montezano's removal consistent with the terms of the INA and her Deferral Order.

60. Ms. Montezano's continued detention has become unreasonable because her removal is not reasonably foreseeable, and thus violates 8 U.S.C. § 1231(a)(6). Accordingly, she must be immediately released.

COUNT II

UNREASONABLE CIVIL DETENTION IN VIOLATION OF SUBSTANTIVE DUE PROCESS, U.S. Const. amend. V

61. Petitioner realleges and incorporates by reference the paragraphs above as if set forth here in full.

62. The Due Process Clause of United States Constitution requires that the deprivation of Ms. Montezano's liberty be narrowly tailored to serve a compelling government interest. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. Ms.

Montezano's continued detention violates her right to substantive due process by depriving her of her core liberty interest to be free from arbitrary bodily restraint.

63. While Respondents may have a compelling interest in detaining noncitizens for a limited period of time for the purpose of executing their final orders of removal, that interest is outweighed when, as here, there is no significant likelihood that the noncitizen will be removed in the reasonably foreseeable future. *Zadvydas* thus interpreted 8 U.S.C. § 1231(a)(6) to allow post-order detention only for a period reasonably necessary to secure the noncitizen's removal. After six months, detention is no longer presumptively reasonable. 533 U.S. at 701.

64. Ms. Montezano has been detained for much longer than six months. She is detained in jail-like conditions that are not meaningfully different from criminal punishment. Her detention is likely to continue because of delays that are not attributable to her—and indeed, have not been explained at all.

65. The Court should find that Ms. Montezano's continued detention violates her substantive due process rights under the United States Constitution, and order her immediate release.

COUNT III

UNREASONABLE CIVIL DETENTION IN VIOLATION OF PROCEDURAL DUE PROCESS, U.S. Const. amend. V

66. Petitioner realleges and incorporates by reference the paragraphs above as if set forth here in full.

67. Under the Due Process Clause of the United States Constitution, Ms. Montezano is entitled to a timely and meaningful opportunity to demonstrate that she should not be detained. Though ICE apparently scheduled a custody review in June, there is no evidence the review ever

occurred. In the time since Ms. Montezano was granted CAT relief, ICE has failed to provide Ms. Montezano with the 90-day and 180-day custody reviews mandated under its own regulations. Almost four months have passed since the date originally scheduled for Ms. Montezano's custody review, yet Ms. Montezano and counsel have received no information about plans for a custody review in the future.

68. Ms. Montezano has been deprived of an opportunity to challenge the reasonableness of her detention. There is no administrative mechanism in place for Ms. Montezano to demand an adequate response to her requests for release from ICE, to ensure that ICE will ever review the propriety of her ongoing detention, or to challenge an explicit or implicit custody decision by ICE that violates the INA, the regulations, and the Constitution.

69. The Court should find that Ms. Montezano's continued detention violates her procedural due process rights under the Fifth Amendment to the Constitution and order her immediate release. In the alternative, at minimum, the Court should hold a hearing at which the government bears the burden to show that continued detention is warranted.

COUNT IV

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

70. Petitioner realleges and incorporates by reference the paragraphs above as if set forth here in full.

71. Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2).

72. The INA directs ICE to remove noncitizens within 90 days of receiving an administratively final order of removal. 8 U.S.C. § 1231 (a)(1). Though the noncitizen "*may* be

detained beyond the removal period," *id.* § 1231(a)(6) (emphasis added), the burden after six months shifts to the government to justify continued detention. *Zadvydas*, 533 U.S. at 701.

73. Additionally, DHS regulations require ICE to conduct a custody review before the 90-day removal period ends, 8 C.F.R. § 241.4(c)(1), and again by day 180, *id.* § 241.4(c)(2), (k)(2)(ii). In making these determinations, ICE considers whether the noncitizen poses a danger to the community or a flight risk if released. *Id.* § 241.4(c).

74. Finally, longstanding ICE policy favors the prompt release of noncitizens who have been granted CAT relief. Memorandum from Michael Garcia, ICE Ass't Sec'y, Detention Policy Where an Immigration Judge Has Granted Asylum and ICE Has Appealed (Feb. 9, 2004) ("[I]t is ICE policy to favor the release of [noncitizens] who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain.").

75. ICE has deviated from the INA, DHS regulations, and its own policy in continuing to detain Ms. Montezano for more than six months after she was granted CAT relief, without determining whether exceptional circumstances warrant her continued detention. Such detention is arbitrary, capricious, and contrary to law in violation of the Administrative Procedure Act.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;
2) Declare that Ms. Montezano's continued detention violates the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment of the United States Constitution, and the Administrative Procedure Act;
3) Order Ms. Montezano's immediate release;

4) In the alternative, this Court should hold a custody hearing, at which Respondents shall bear the burden to establish a lawful basis for Ms. Montezano's continued detention;

5) Award Petitioner costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statute; and

6) Grant such relief as the Court deems just and proper.

Dated: December 5, 2025

Respectfully submitted,

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