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ATTORNEY FOR PETITIONER

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

YUNXIANG QIAO and XIAOHONG HE

Case No.:

Plaintiff and Petitioner,

Hon:

vs.

**PETITION FOR A WRIT OF  
HABEAS CORPUS AND  
REQUEST FOR EX PARTE  
TEMPORARY RESTRAINING  
ORDER**

JAMES JANECKA, Warden of the Adelanto  
Detention Center; ERNESTO SANTACRUZ,  
Director of the Los Angeles Field Office,  
United States Immigration and Customs  
Enforcement; PAM BONDI, Attorney  
General, United States Department of Justice;  
KRISTI NOEM, Secretary, United States  
Department of Homeland Security; TODD  
LYONS, Acting Director of United States  
Immigration and Customs Enforcement; and  
DOES 1-5

Defendants-Respondents

## INTRODUCTION

1  
2  
3 1. This case challenges the unlawful and punitive detention of Plaintiff-Petitioner  
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5 XiaoHong He and YunXiang Qiao (hereinafter 'Petitioners') who are both currently in  
6  
7 the custody of Immigration and Customs Enforcement ("ICE") at the Adelanto  
8  
9 Detention Center, Adelanto, California. Neither Petitioner is a flight risk nor a danger  
10  
11 to the community. Each Petitioner was granted withholding of removal by an  
12  
13 Immigration Judge but they are both now in imminent danger of refoulment without  
14  
15 any due process.

16  
17 2. Unless the Court order Petitioners' immediate release, Ms. He and Ms. Quao  
18  
19 will continue to be subjected to unlawful and punitive detention and would likely be  
20  
21 sent to a place where they faces real and foreseeable risk of persecution and/or torture,  
22

23 3. Plaintiffs-Petitioners are not challenging or seeking judicial review of the  
24  
25 initiation of removal proceedings, the way their respective removal proceedings were  
26  
27 or are conducted, the grant or denial of immigration relief by the EOIR or USCIS, or  
28  
review of their final orders of removal.

4. Through their uniform practices Respondents violate the rights of Petitioners  
under the due process and equal protection guarantees of the U.S. Constitution, the  
INA and its regulations, and the Administrative Procedure Act.

## JURISDICTION AND VENUE

5. This action arises under the Constitution of the United States: the Immigration  
and Nationality Act, 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration  
Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208,

1 110 Stat. 1570 [hereinafter 'INA']; and Administrative Procedure Act, 5 U.S.C. §§ 701  
2  
3 *et seq* [hereinafter "APA"].

4  
5 6. This Court has further jurisdiction under 28 U.S.C. § 2241, 2243, art. I § 9,  
6  
7 cl. 2 of the United States Constitution ("Suspension Clause"), and 28 U.S.C. §  
8  
9 1331, as each Petitioner is presently in custody under color of the authority of the  
10  
11 United States based on final order of removal and such custody is in violation of  
12  
13 the Constitution, laws, or treaties of the United States.

14  
15 7. This Court also may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. §  
16  
17 702, and the All Writs Act, 28 U.S.C. § 1651.

18  
19 8. This court has further remedial authority pursuant to the Declaratory  
20  
21 Judgment Act, 28 U.S.C. § 2201 *et seq.*,

22  
23 9. The use of the Writ of Habeas Corpus to challenge detention by ICE is not  
24  
25 foreclosed by the REAL ID Act. The REAL ID Act of 2005, Pub. L. 109-13, 119  
26  
27 Stat. 231 (May 11, 2005), Title I, Section 106(e), amending INA §§ 242(a)(2)(A),  
28  
(B), (C) and § 242(g), only deprives the district court of habeas jurisdiction to  
review orders of removal, not challenges to detention or the denial of constitutional  
rights. *See INS v. St. Cyr*, 533 U.S. 289, 364-65 (2001) ("The writ of habeas corpus  
has always been available to review the legality of executive detention.").

10. This Court could enjoin federal officials pursuant to *Ex Parte Young*, 209  
U.S. 123 (1908). *See Philadelphia Co. v. Stimson*, 223 U.S. 605, 619-21 (1912)  
(applying *Ex Parte Young* to federal official); *Goltra v. Weeks*, 271 U.S. 536, 545  
(1926) (same).

1 11. Plaintiffs-Petitioners have exhausted all administrative remedies to the  
2  
3 extent available and required by law.

4  
5 12. Venue properly lies within the Central District of California, because each  
6  
7 named Defendant-Respondent is present in this district and a substantial part of the  
8  
9 events or omissions giving rise to this action occurred and continue to occur in this  
10  
11 District. *See* 28 U.S.C. §1391(b). Both Petitioners are also currently detained  
12  
13 within this district to wit, at the Adelanto Detention Facility located at 10400  
14  
15 Rancho Road, Adelanto, CA 92301. Accordingly, the “restraint complained of” is  
16  
17 occurring within the Court’s territorial jurisdiction. *See* 28 U.S.C. § 2241(a)

18  
19 13. No petition for habeas corpus has previously been filed in any court to  
20  
21 review these Plaintiffs-Petitioners’ detention.

#### 22 **PARTIES AND FACTS**

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24  
25 14. Petitioner XiaoHong He is a national and citizen of the Peoples Republic of  
26  
27 China who was apprehended shortly after entering the United States without  
28  
inspection and placed in section 240 Removal Proceedings. See Exhibit A. On 4  
September 2018 an Immigration Judge sustained the charge of removability,  
ordered her removed to China but granted Withholding of Removal. See Exhibit B.  
Petitioner was arrested on her 2 July 2025 regularly scheduled ICE check-in  
reporting date without a notice of violation of conditions of release, an opportunity  
to contest or respond, and to be heard before a neutral adjudicator prior to  
detention and while Respondents had made no efforts to secure either a consent  
from a Safe Third Country or travel documents.

15. Petitioner YunXiang Qiao is a national and citizen of the Peoples Republic  
of China who entered the United States without inspection approximately two

1  
2 years ago, Exhibit F. She was apprehended by Border Patrol agents, placed in  
3 section 240 Removal Proceedings, and release on recognizance under section  
4 1226(a). See Exhibit F and G. On 4 December 2024 an Immigration Judge ordered  
5 her removed to China and granted withholding of removal. See Exhibit H.  
6  
7

8 16. The U.S. Department of Homeland Security (“DHS”) is a cabinet  
9 department of the United States federal government with the primary mission of  
10 securing the United States.  
11  
12

13 17. ICE is an agency within DHS with the primary mission of arresting,  
14 detaining, and removing non-citizens physically present within the territory of the  
15 United States. ICE is also responsible for the custody and care of all detained non-  
16 citizens awaiting resolution of their immigration cases or removal after a final  
17 order of removal had been entered.  
18  
19

20 18. Defendant Kristi Noem is the Secretary for DHS. In this capacity, Ms. Noem  
21 has responsibility for the administration of immigration laws pursuant to 8 U.S.C.  
22 §1103(a), has authority over ICE and its field offices, and has authority to order the  
23 release of Plaintiff-Petitioner. At all times relevant to this Complaint, Defendant  
24 Noem was acting within the scope and course of her position as the Secretary for  
25 DHS. Defendant Noem is sued in her official capacity.  
26  
27

28 19. Defendant-Respondent Todd Lyons is the Acting Director and Senior  
Official Performing the Duties of the Director of ICE. Defendant Lyons is  
responsible for the implementation of all ICE’s policies, practices, and procedures,  
including those relating to detention of non-citizens. Defendant Lyons is a legal  
and immediate custodian of Plaintiff. At all times relevant to this Complaint,  
Defendant Lyons was acting within the scope and course of his position as an ICE  
official. He is sued in his official capacity.

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20. Defendant-Respondent Ernesto Santaacruz is the Acting Director of the Los Angeles Field Office of ICE, which has immediate custody of Plaintiff-Petitioner. He is sued in his official capacity.

21. Defendant James Janecka is the warden of the Adelanto Detention Facility in San Bernardino County, where Plaintiff-Petitioner is currently detained. Defendant Janecka is the immediate, physical custodian of Plaintiff. He is named in his official capacity.

22. The true names or capacities, whether individual, corporate, associate or otherwise, of the Defendants-Respondents named herein as Does 1 through 5 are unknown to Plaintiff-Petitioner, who therefore sues said Respondents by such fictitious names, and Plaintiff will amend this Complaint to show their true names and capacities when ascertained. Does 1 through 5 are the immediate, physical custodians of Plaintiff

### FACTS RELEVANT TO ALL CAUSES OF ACTIONS

23. Petitioner **XiaoHong He** is a national and citizen of the Peoples Republic of China who was apprehended shortly after entering the United States without inspection and placed in section 240 Removal Proceedings. See Exhibit A.

24. She was released from custody on order of recognizance and required to report regularly to ICE. *Id.*

25. On 4 September 2018 an Immigration Judge sustained the charge of removability, ordered her removed to China but granted withholding of removal. See Exhibit B. Because to party filed an appeal the removal order became final on 4 October 2018, 30 days after issuance. See 8 U.S.C. 1§01(a)(47) (An order of removal “shall become final upon the earlier of-- (i) a determination by the Board

1 of Immigration Appeals affirming such order; or (ii) the expiration of the period in  
2 which the alien is permitted to seek review of such order by the Board of  
3 Immigration Appeals.”).

4  
5  
6 26. Since her initial release Petitioner has complied with all conditions of release  
7 and had appeared at all scheduled ICE appointments. *Id.*

8  
9  
10 27. Respondents did not take Petitioner in custody when her removal order  
11 became final. The mandatory removal period expired on 2 January 2019.

12  
13 28. Petitioner was arrested on her 2 July 2025 regularly scheduled ICE check-in  
14 reporting date – more than 6 years after the mandatory removal period – without a  
15 notice of violation of conditions of release, an opportunity to contest or respond,  
16 and to be heard before a neutral adjudicator prior to detention.

17  
18  
19 29. On the same day a deportation officer summarily revoked her order of  
20 recognizance without a notice of violation, an opportunity to be heard, a notice of  
21 intent to remove her to a third country, or a non-refoulement examination before a  
22 neutral adjudicator. The deportation officer simply told her that because “she [had  
23 a] removal order” she will be arrested and detained.

24  
25  
26 30. While in detention Petitioner was told that she will be sent to a third country  
27 but Petitioner asserted a fear claim and declined to sign paperwork in English  
28 presented to her to sign without translation or an opportunity to consult with her  
immigration counsel.

31. No circumstances have changed that make Petitioner a flight risk or danger  
to the community.

32. Petitioner’s custody status was not reviewed at the expiration of the removal  
period, instead Respondents summarily detained Petitioner and never served her  
with written decision ordering her detention. Respondents also did not place

1 Petitioner on an order of supervision as required by the INA and implementing  
2 regulations despite the expiration of the mandatory removal period.

3  
4  
5 33. Petitioner He has comorbidities that have worsened severely while in  
6 detention and because of Respondents' failure to provide needed medical care. She  
7 suffers from "breathing problem and my heart was not feeling well", Exhibit A at  
8 ¶16, requiring hospitalization for 4 days, *id.* Petitioner also is experiencing vaginal  
9 bleeding because of diagnosed uterine fibroids but has received no care. *Id.*

10  
11  
12 34. Petitioner is denied medication and no access to examination by a physician  
13 unless taken to a hospital which could take months at a time to schedule. *Id.* at ¶16-  
14 20.

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17 35. No country has formally agreed to accept Petitioner He and her removal and  
18 repatriation is not reasonably foreseeable.

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21 36. Petitioner believes and hereby alleges that Respondents have not secured  
22 travel documents nor consent for her repatriation.

23  
24  
25 37. Petitioner has cooperated fully with all efforts by ICE to remove Petitioner  
26 from the United States as ordered by the Immigration Judge.

27  
28 38. Petitioner fears that she will be removed imminently to Mexico, Honduras,  
or Uganda without compliance by Respondents with their non-refoulement  
obligations. Petitioner has affirmatively and preemptively stated a claim of fear of  
persecution and torture in all three countries.

39. Petitioner **YunXiang Qiao** is a national and citizen of the Peoples Republic  
of China who entered the United States without inspection approximately two  
years ago. Exhibit F.

1 40. She was apprehended by Border Patrol agents, placed in section 240  
2 Removal Proceedings, and release on recognizance under section 1226(a). See  
3 Exhibit F and G.  
4

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6  
7 41. On 4 December 2024 an Immigration Judge ordered her removed to China  
8 and granted withholding of removal. See Exhibit H.  
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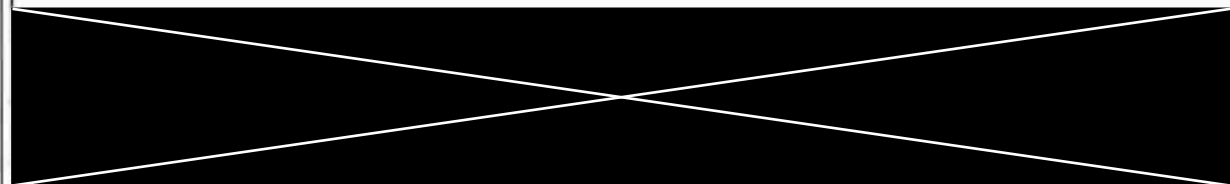
10 42. Since her initial release Petitioner has complied with all conditions of release  
11 and had appeared at all scheduled ICE appointments. *Id.*  
12

13 43. Respondents did not take Petitioner in custody when her removal order  
14 became final. The mandatory removal period expired on 4 April 2025.  
15

16  
17 44. At her scheduled 5 December 2025 ICE check-in appointment a deportation  
18 officer summarily revoked her order of recognizance without a notice of violation,  
19 an opportunity to be heard, a notice of intent to remove her to a third country, or a  
20 non-refoulement examination before a neutral adjudicator. The deportation officer  
21 simply told her that because she had a removal order she will be arrested and is  
22 subject to mandatory detention.  
23  
24  
25

26 45. No circumstances have changed that make Petitioner a flight risk or danger  
27 to the community.  
28

46. Neither Petitioner's custody status was not reviewed at the expiration of the  
removal period yet Respondents summarily detained each Petitioner and never  
served either with written decision ordering her detention. Respondents did not  
place either Petitioner on an order of supervision as required by the INA and  
implementing regulations.



1  
2 48. No country has formally agreed to accept the named Petitioners and both  
3 Petitioners' removal and repatriation is not reasonably foreseeable.

4  
5 49. Petitioners believe and hereby allege that Respondents have not secured  
6 travel documents nor consent for either of their repatriation.

7  
8 50. Instead, Respondents have attempted to pressure Petitioners to accept a  
9 voluntary removal to Mexico where each Petitioner fears for her life and safety.

10  
11 51. Petitioners has cooperated fully with all efforts by ICE to remove the named  
12 Petitioner from the United States as ordered by the Immigration Judge.

13  
14 52. Each Petitioner fears that she will be removed imminently to Mexico,  
15 Honduras, or Uganda in violation of Respondents' non-refoulement obligations.  
16 Each Petitioner has affirmatively and preemptively stated a claim of fear of  
17 persecution and torture in the three countries.

18  
19 53. The Respondents have refused to and continue to refuse to release  
20 Petitioners from custody and on order of supervision as required by section 123  
21 while at the same time making no efforts to secure their repatriation to a safe  
22 third country.  
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## RELEVANT IMMIGRATION STATUTORY SCHEME

### Withholding of Removal.

54. Noncitizens who like Petitioners He and Qiao who are placed in section 240 removal proceedings can seek three main forms of relief based on their fear of returning to their home country: asylum, withholding of removal, and protection under the CAT. Noncitizens may be ineligible for asylum for several reasons, including failure to apply within one year of entering the United States, see 8 U.S.C. § 1158(a)(2), or failure to use the CBP One App when entering the United

1 States, *see* 88 Federal Register 3134 (issued May 16, 2023), or because an IJ  
2  
3 decline to exercise favorable discretion. While statutes and regulations place  
4  
5 certain restrictions on eligibility to seek asylum and withholding of removal, *see*  
6  
7 e.g. 8 U.S.C. § 1158(c)(2), 8 U.S.C. § 1231(b)(3)(B), there are no restrictions on  
8  
9 eligibility to apply for CAT deferral of removal. *See* Foreign Affairs 11 Reform  
10  
11 Restructuring Act of 1998 (FARRA) (codified as Note to 8 U.S.C. § 1231); 8  
12  
13 C.F.R. §§ 208.16(c), 208.17(a), 1208.16(c), 1208.17(a); 28 C.F.R. § 200.1.

14  
15 **55.** Withholding of removal under 8 U.S.C. § 1231(b)(3) and CAT protection  
16  
17 are both mandatory and country-specific. *Id.* Section 1231(b)(3) prohibits removal  
18  
19 to any country where there is a substantial risk of persecution and once the  
20  
21 applicant meet the eligibility requirements the grant of relief is not subject to  
22  
23 discretion.

24  
25 **56.** When an Immigration Judge (IJ) grants a noncitizen withholding or CAT  
26  
27 relief, the IJ issues a removal order and simultaneously withholds or defers that  
28  
order with respect to the country or countries for which the noncitizen  
demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman*  
*Chavez*, 594 U.S. 523, 531–32 (2021).

**57.** Here Petitioners He and Qiao were granted withholding of removal from  
China and no alternative country of removal was designated. *See* Exhibits B & H.

### **Immigration Detention**

**58.** The INA governs the use of immigration detention both pre- and post-final

1 removal Petitioners He and Qiao were each detained and released under section  
2  
3 1226(a).

4  
5 *Detention Pursuant 8 U.S.C. §1231*

6  
7 63. 8 U.S.C. § 1231 governs the detention of noncitizens “during” and “beyond”  
8  
9 the “removal period.” 8 U.S.C. §§ 1231(a)(2)-(6). The “removal period” begins  
10  
11 once a noncitizen’s removal order “becomes administratively final.” 8 U.S.C. §  
12  
13 1231(a)(1)(B). The removal period lasts for 90 days, during which ICE “shall  
14  
15 remove the [noncitizen] from the United States” and “shall detain the [noncitizen]”  
16  
17 as it carries out the removal. 8 U.S.C. §§ 1231(a)(1)-(2). Here the removal period  
18  
19 ended in 2019 for Petitioner He and In March 2025 for Petitioner Qiao and  
20  
21 Respondents did not seek to detain either Petitioner during the “mandatory”  
22  
23 detention period.

24  
25 64. If ICE does not remove the noncitizen within the 90-day removal period, the  
26  
27 noncitizen “may be detained beyond the removal period” if they meet certain  
28  
criteria, such as being inadmissible or deportable under specified statutory  
categories. 8 U.S.C. § 1231(a)(6). No bar applies to the named Petitioners.

65. To avoid “indefinite detention” that would raise “serious constitutional  
concerns,” the Supreme Court in *Zadvydas* construed § 1231 to contain an implicit  
time limit. 533 U.S. at 682. *Zadvydas* dealt with two noncitizens who could not be  
removed to their home country or country of citizenship due to bureaucratic and  
diplomatic barriers. The Court held that § 1231 authorizes detention only for “a  
period reasonably necessary to bring about the [noncitizen]’s removal from the  
United States.” *Id.* at 689. Six months of post-removal order detention is

1 considered “presumptively reasonable.” *Id.* at 701, 42. The Court underscored that  
2  
3 civil detention is thus only constitutionally permissible in “special and narrow  
4  
5 nonpunitive circumstances, where a special justification . . . outweighs the  
6  
7 individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at  
8  
9 690 (citations omitted) (internal quotations omitted). The Court thus concluded  
10  
11 that, “[a] statute permitting indefinite detention of [a noncitizen] would raise a  
12  
13 serious constitutional problem.” *Id.*; *see id.* at 701 (“We do have reason to believe,  
14  
15 however, that Congress previously doubted the constitutionality of detention for  
16  
17 more than six months.”).

18  
19 66. DHS regulations provide that, by the end of the 90-day removal period the  
20  
21 local ICE field office director with jurisdiction over the noncitizen’s detention  
22  
23 must conduct a custody review to determine whether the noncitizen should remain  
24  
25 detained. *See* 8 C.F.R. §§ 241.4(c)(1), (k)(1)(i) (“Prior to the expiration of the  
26  
27 removal period, the district director . . . shall conduct a custody review . . .”). The  
28  
Field Office Director, or their specifically designated delegates, makes the final  
custody decision based on recommendations offered by lower-level officers. In  
making this custody determination, ICE considers several factors, including the  
availability of travel documents for removal. *Id.* §§ 241.4(e)-(f). If there is a  
decision to release, ICE must release the noncitizen under conditions of  
supervision as it considers appropriate. *Id.* § 241.4(j).

67. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that  
established “special review procedures” to determine whether detained noncitizens  
with final removal orders are likely to be removed in the reasonably foreseeable

1 future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66  
2 Fed. Reg. 56,967 (Nov. 14, 2001). While 8 C.F.R. § 241.4's custody review  
3 process remained largely intact, subsection (i)(7) was added to include a  
4 supplemental review procedure that ICE HQ must initiate when "the [noncitizen]  
5 submits, or the record contains, information providing a substantial reason to  
6 believe that removal of a detained [noncitizen] is not significantly likely in the  
7 reasonably foreseeable future." *Id.* § 241.4(i)(7). Under this procedure, ICE HQ  
8 evaluates the foreseeability of removal by analyzing factors such as the history of  
9 ICE's removal efforts to third countries. *See id.* § 241.13(f). If ICE HQ determines  
10 that removal is not reasonably foreseeable but nonetheless seeks to continue  
11 detention based on "special circumstances," it must justify the detention based on  
12 narrow grounds such as national security or public health concerns, *id.* §§  
13 241.14(b)-(d), or by demonstrating by clear and convincing evidence before an IJ  
14 that the noncitizen is "specially dangerous." *Id.* § 241.14(f). 46. The Supreme  
15 Court has held that post-removal order detention is limited to "a period reasonably  
16 necessary to bring about that [noncitizen's] removal from the United States."  
17 *Zadvydas*, 533 U.S. at 689. This is because the primary purpose of post-order  
18 detention is to "assure[e] the [noncitizen's] presence at the moment of removal."  
19 *Id.* at 699. This government interest in "preventing flight," however, "is weak or  
20 nonexistent where removal seems a remote possibility at best." *Id.* at 690.

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68. Respondents refused to place and release Petitioners He and Qiao on an  
order of supervision without a good cause or justification. Neither Petitioner has  
criminal record of any kind. Each is not a danger to herself or anyone else and was  
PETITION FOR A WRIT OF HABEAS CORPUS AND REQUEST FOR EX PARTE  
TEMPORARY RESTRAINING ORDER - 15

1 gainfully employed prior to re-detention. See Exhibit A & Exhibit F. Petitioner He  
2  
3 has resided in the United States for over 7 years; Petitioner Qiao has resided in the  
4  
5 US for over two years. Neither has prior immigration record, history of non-  
6  
7 compliance with court or ICE orders, or other derogatory factors. Each Petitioner  
8  
9 was granted withholding of removal by an Immigration Judge and Respondents  
10  
11 elected not to appeal. Both Petitioners suffer from severe medical problems that  
12  
13 require immediate and specialized care. *Id.*

14  
15 69. The Supreme Court has instructed that the passage of time while a  
16  
17 noncitizen is detained, particularly delay in the absence of any steps being taken to  
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19 effectuate or even advance the process of removal, itself is important evidence  
20  
21 relevant to whether continued detention is statutorily authorized. In *Zadvydas*, the  
22  
23 Supreme Court explained that a “habeas court,” in “ask[ing] whether the detention  
24  
25 in question exceeds a period reasonably necessary to secure removal . . . should  
26  
27 measure reasonableness primarily in terms of the statute’s basic purpose, namely,  
28  
assuring the alien’s presence at the moment of removal.” *Zadvydas*, 533 U.S. at  
699.

70. “A deportation proceeding is a purely civil action to determine eligibility to  
remain in this country, not to punish an unlawful entry[.]” *INS v. Lopez-Mendoza*,  
468 U.S. 1032, 1038 (1984). “[I]mmigration proceedings are ‘civil, not criminal,  
and . . . nonpunitive in purpose and effect.’” *Jarpa v. Mumford*, 211 F. Supp. 3d

1 706, 713 (D. Md. 2016) (alteration in original) (quoting *Zadvydas v. Davis*, 533  
2 U.S. 678, 690 (2001)).  
3  
4

5  
6 71. As the Supreme Court explained civil detention may not “become a  
7  
8 ‘mechanism for retribution or general deterrence’—functions properly those of  
9  
10 criminal law, not civil commitment.” *Kansas v. Crane*, 534 U.S. 407, 412 (2002)  
11 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 372–74 (1997) (Kennedy, J.,  
12  
13 concurring)); see also *Hendricks*, 521 U.S. at 373 (Kennedy, J., concurring)  
14  
15 (“[W]hile incapacitation is a goal common to both the criminal and civil systems of  
16  
17 confinement, retribution and general deterrence are reserved for the criminal  
18  
19 system alone.”); *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 189–90 (D.D.C. 2015).  
20  
21  
22  
23

24 **DHS Longstanding ‘Mandatory Relief Granted’ Release Policy**  
25

26  
27 72. In 2000, the then-Immigration and Naturalization Service (“INS”) General  
28  
Counsel issued a memorandum clarifying that 8 U.S.C. § 1231 authorizes but does  
not require the detention of noncitizens granted withholding of removal or CAT  
relief. Exhibit J at 1.

73. A 2004 ICE memorandum turned this acknowledgement of authority into a  
presumption, stating 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

1 any requirement under law to detain.” *Id.* at 3. Further, this memorandum states  
2  
3 that “in all cases, the Field Office Director must approve a decision to keep a  
4  
5 [noncitizen] granted protection relief in custody.  
6

7  
8 74. In 2012 ICE leadership subsequently reiterated this policy clarifying that the  
9  
10 2000 and 2004 ICE memorandums are “still in effect and should be followed” and  
11  
12 that “[t]his policy applies at all times following a grant of protection, including  
13  
14 during any appellate proceedings and throughout the removal period.” *Id.* at 3.  
15  
16

17 75. In 2021, in turn, Acting ICE Director Tae Johnson circulated a memorandum  
18  
19 to all ICE employees reminding them of the “longstanding policy” that “absent  
20  
21 exceptional circumstances... [noncitizens] granted asylum, withholding of  
22  
23 removal, or CAT protection by an immigration judge should be released...” *Id.* at 4  
24  
25 (emphasis added). Director Johnson clarified that “in considering whether  
26  
27 exceptional circumstances exist, prior convictions alone do not necessarily indicate  
28  
a public safety threat of danger to the community. Rather, the individual facts and  
circumstances of the case, including extensiveness, seriousness, and recency of the  
criminal activity, along with any evidence of rehabilitation, should be considered  
in making such determination.” *Id.*

### **Third Country Removal Procedures**

1 76. When a noncitizen has a final withholding or CAT relief grant, they cannot  
2  
3 be removed to the country or countries for which they demonstrated a sufficient  
4  
5 likelihood of persecution or torture. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §  
6  
7 1208.17(b)(2). While ICE is authorized to remove noncitizens who were granted  
8  
9 withholding or CAT relief to alternative countries, *see* 8 U.S.C. § 1231(b); 8  
10  
11 C.F.R. § 1208.16(f), the removal statute specifies restrictive criteria for identifying  
12  
13 appropriate countries. Noncitizens can be removed, for instance, to the country “of  
14  
15 which the [noncitizen] is a citizen, subject, or national,” the country “in which the  
16  
17 [noncitizen] was born,” or the country “in which the [noncitizen] resided”  
18  
19 immediately before entering the United States. 8 U.S.C. §§ 1231(b)(2)(D)–(E).  
20  
21 Here the only designated country of removal is China and China is the only  
22  
23 country under 8 U.S.C. §§ 1231(b)(2)(D)–(E).  
24  
25  
26  
27  
28

77. If ICE identifies an appropriate alternative country of removal, the  
noncitizen must have notice and an opportunity to seek relief from removal to that  
country. *See Jama*, 543 U.S. at 348 (“If [noncitizens] would face persecution or  
other mistreatment in the country designated under § 1231(b)(2), they have a  
number of available remedies: asylum, § 1158(b)(1); withholding of removal, §  
1231(b)(3)(A); [and] relief under an international agreement prohibiting torture,  
*see* 8 CFR §§ 208.16(c)(4), 208.17(a) (2004) . . .”); *Andriasian v. INS*, 180 F.3d

1 1033, 1041 (9th Cir. 1999) (finding that “last minute” designation of alternative  
2  
3 country without meaningful opportunity to apply for protection “violate[s] a basic  
4  
5 tenet of constitutional due process”); *Romero v. Evans*, 280 F. Supp. 3d 835, 848  
6  
7 n.24 (E.D. Va. 2017) (“DHS could not immediately remove petitioners to a third  
8  
9 country, as DHS would first need to give petitioners notice and the opportunity to  
10  
11 raise any reasonable fear claims.”), rev’d on other grounds, *Guzman Chavez*, 594  
12  
13 U.S. 523; cf. *Protsenko v. U.S. Att’y Gen.*, 149 F. App’x 947, 953 (11th Cir. 2005)  
14  
15 (per curiam) (permitting designation of third country where individuals received  
16  
17 “ample notice and an opportunity to be heard”).  
18  
19

20  
21  
22 78. The statute and regulations implement Congress’ designation scheme in a  
23  
24 way that ensures that noncitizens receive meaningful notice and an opportunity to  
25  
26 present a fear-based claim. In removal proceeding under 8 U.S.C. § 1229(a)  
27  
28 (commonly referred to as “Section 240” proceedings), individuals receive notice of  
all countries to which they may be deported. The regulations mandate that the IJ  
“shall notify” the individual of the designated country of removal and “shall  
identify for the record” all alternative countries to which the person may be  
removed. 8 C.F.R. § 1240.10(f). Here there are no alternative countries designated  
by the IJ. *See* Exhibit B & H.

1 79. If the government seeks to remove an individual granted withholding or  
2  
3 CAT to a different country—a country not designated by the removal order—the  
4  
5 INA and due process principles require that the noncitizen have a meaningful  
6  
7 opportunity seek fear-based protection from removal to that country. Specifically,  
8  
9 if ICE were to attempt to remove a noncitizen to a country not designated on their  
10  
11 removal order, the noncitizen’s removal proceedings would have to be reopened  
12  
13 for the IJ to designate the alternative country of removal and for the noncitizen to  
14  
15 apply for any fear-based relief in withholding-only proceedings. *See Aden v.*  
16  
17 *Nielsen*, 409 F. Supp. 3d 998, 1006–10 (W.D. Wash. 2019); accord 8 U.S.C. §  
18  
19 1231(b)(3)(A); 8 C.F.R. §§ 1240.10(f), 1240.11(c)(1)(i).  
20  
21  
22  
23

24 80. Notice is only meaningful if it is presented sufficiently in advance of the  
25  
26 deportation to stop the deportation, is in a language the person understands, and  
27  
28 provides for an automatic stay of removal for a time period sufficient to permit the  
filing of a motion to reopen removal proceedings so that a third country for  
removal may be designated as required under the regulations and the noncitizen  
may present a fear-based claim. *Andriasian*, 180 F.3d at 1041; *Aden*, 409 F. Supp.  
3d at 1009 (“A noncitizen must be given sufficient notice of a country of  
deportation [such] that, given his capacities and circumstances, he would have a

1 reasonable opportunity to raise and pursue his claim for withholding of  
2  
3 deportation.”),  
4

5  
6 81. Furthermore, an opportunity to present a fear-based claim is only meaningful  
7  
8 if the noncitizen is not deported before removal proceedings are reopened. *See*  
9  
10 *Aden*, 409 F. Supp. 3d at 1010 (holding that merely giving petitioner an  
11  
12 opportunity to file a discretionary motion to reopen “is not an adequate substitute  
13  
14 for the process that is due in these circumstances” and ordering reopening);  
15  
16 *Dzyuba v. Mukasey*, 540 F.3d 955, 957 (9th Cir. 2008) (remanding to BIA to  
17  
18 determinate whether designation is appropriate).  
19  
20

21  
22 82. Providing such notice and opportunity to present a fear-based claim prior to  
23  
24 deportation also implements the United States’ non-refoulement obligations under  
25  
26 international law. *See* United Nations Convention Relating to the Status of  
27  
28 Refugees, July 28, 1951, 189 U.N.T.S. 150; United Nations Protocol Relating to  
the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Refugee  
Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8  
U.S.C. § 1231(b)(3)); *see also INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting that  
the Refugee Act of 1980 “amended the language of [the predecessor statute to §  
1231(b)(3)], basically conforming it to the language of Article 33 of the United  
Nations Protocol”).

1 83. Meaningful notice and opportunity to present a fear-based claim prior to  
2  
3 deportation to a country where a person fears persecution or torture are also  
4  
5 fundamental due process protections under the Fifth Amendment. *See, e.g.*,  
6  
7 *Andriasian*, 180 F.3d at 1041. The federal government has repeatedly  
8  
9 acknowledged these obligations in model notices of removal to other than  
10  
11 designated countries. And, consistent with the above authorities and practices, at  
12  
13 oral argument in *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), the Assistant to  
14  
15 the Solicitor General represented that the government must provide a noncitizen  
16  
17 with notice and an opportunity to present fear-based claims, including claims for  
18  
19 mandatory CAT protection, before that noncitizen can be deported to a non-  
20  
21 designated third country. *See* Transcript of Oral Argument at 20-21, *Johnson v.*  
22  
23 *Guzman Chavez*, 594 U.S. 523 (2021); *see also* Transcript of Oral Argument at 33,  
24  
25 *Riley v. Bondi*, 23-1270 (2025) (“We would have to give the person notice of the  
26  
27 third country and give them the opportunity to raise a reasonable fear of torture or  
28  
persecution in that third country.”).

84. On or about 18 February 2025 ICE issued a secretive directive instructing officers to review cases for third country deportations and summarily re-detain previously released individuals, including individuals granted withholding or removal or CAT protection and individuals previously released because removal

1 was not reasonably foreseeable. The directive was not officially published or noted  
2  
3 as a regulatory measure or regulation.  
4

5  
6 85. On 6 March 2025 Reuters published a copy of the February 18, 2025,  
7  
8 directive. *See Ted Hesson and Kristina Cooke, Trump Weighs Revoking Legal*  
9  
10 *Status of Ukrainians as US Steps Up Deportations*, Reuters (Mar. 6, 2025). The  
11  
12 article links to the directive (Exhibit K):  
13  
14 [https://fingfx.thomsonreuters.com/gfx/legaldocs/gkpljxxoqpb/ICE\\_email\\_Reuters.](https://fingfx.thomsonreuters.com/gfx/legaldocs/gkpljxxoqpb/ICE_email_Reuters.pdf)  
15  
16 [pdf](https://fingfx.thomsonreuters.com/gfx/legaldocs/gkpljxxoqpb/ICE_email_Reuters.pdf) (last visited on 23 November 2025). The directive expressly instructs officers  
17  
18 to review the cases of noncitizens granted withholding of removal or protection  
19  
20 under CAT “to determine the viability of removal to a third country and  
21  
22 accordingly whether the [noncitizen] should be re-detained” and, in the case of  
23  
24 those who previously could not be removed because their countries of citizenship  
25  
26 were unwilling to accept them, to “review for re-detention . . . in light of . . .  
27  
28 potential for third country removals.”

86. DHS has no policy to provide notice or an opportunity to apply for  
protection regarding removal to a third country that is not designated in an IJ’s  
order.

## COUNT ONE

### **Detention in Violation of the Fifth Amendment (substantive due process)**

**Against all Defendants**

1  
2  
3  
4 87. Petitioners repeat and incorporate by reference all allegations in paragraphs  
5 to 86 above.

6  
7 88. The Fifth Amendment guarantees that no person shall be deprived of liberty  
8 without due process of law. U.S. Const. Amend. V, “Freedom from  
9 imprisonment—from government custody, detention, or other forms of physical  
10 restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*,  
11 533 U.S. 678, 690 (2001).

12  
13  
14  
15  
16  
17 89. “Government detention violates the Due Process Clause unless it is ordered  
18 in a criminal proceeding with adequate procedural safeguards, or in certain special  
19 and non-punitive circumstances ‘where a special justification, . . . outweighs the  
20 individual’s constitutionally protected interest in avoiding physical restraint.’”  
21 *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004) (quoting *Kansas v.*  
22 *Hendricks*, 521 U.S. 346, 356 (1997)).

23  
24  
25  
26  
27  
28 90. The U.S. Supreme Court in *Zadvydas* interpreted 8 U.S.C. §1231(a) to allow  
continued detention only for a period reasonably necessary to secure the person’s  
removal, because any other reading would go beyond the government’s articulated  
interest—to effect the non-citizen’s removal. *See Kay v. Reno*, 94 F.Supp.2d. 546,  
551 (M.D. Pa. 2000) (granting writ of habeas corpus, because petitioner’s  
substantive due process rights were violated, and noting that “If deportation can  
never occur, the government’s primary legitimate purpose in detention—executing  
removal—is nonsensical.”)

1 91. Respondents cannot show any “special justification” or compelling  
2 governmental interest which would outweigh Petitioners’ constitutional liberty.  
3  
4 Here the detention is punitive in purpose and effect, and thus violates the Due  
5  
6 Process Clause.  
7

8  
9 92. Petitioners’ continued detention pending supposed prospective third country  
10 removal efforts, without notice of whether and to which countries ICE is actually  
11 attempting to remove each Petitioner, so that she may contest such removal,  
12 violates his procedural due process rights. *See, e.g., Vaskanyan*, 2025 U.S. Dist.  
13 LEXIS 137846 at \*16 n.1 (noting that “[a]ny efforts to remove [p]etitioner to a  
14 third country must comport with due process. As [r]espondents admitted . . . . ICE  
15 is required as a matter of law and protocol to afford [p]etitioner a meaningful  
16 opportunity to contest his removal to a third country on the basis of fear of  
17 persecution or torture”).  
18  
19

20  
21 93. Respondents’ ongoing failure to disclose purported third countries of  
22 removal to Petitioners would transform Petitioners’ detention into potentially  
23 indefinite detention.  
24  
25

26  
27  
28  
**COUNT TWO**  
**Procedural Due Process Claim**

94. Petitioners repeat and incorporate by reference all allegations in paragraphs  
to 86 above.

95. Petitioners’ continued detention is a violation of his Constitutional  
procedural due process rights.

1 96. Under the Due Process Clause non-citizens like Petitioners are entitled to a  
2 timely and meaningful opportunity to demonstrate that they should not be detained.  
3  
4  
5 Petitioner in this case has been denied that opportunity. Respondents have an  
6  
7 uniform policy and practice of not making decisions concerning custody status at  
8  
9 the expiration of the statutory removal period and/or where formal request are made;  
10  
11 and when decisions are made they are not made in a neutral and impartial manner.  
12  
13 The failure of Respondents to provide a neutral decision-maker to review the  
14  
15 decision to detain and then the continued custody of Petitioners violates  
16  
17 Petitioners' respective right to procedural due process. There is no administrative  
18  
19 mechanism in place for the Petitioner to demand a decision, ensure that a decision  
20  
21 is made or appeal a custody decision that violates *Zadvydas*.

22  
23 97. Petitioners' private interests affected by Respondents' actions are profound –  
24  
25 her physical liberty. The risk of erroneous deprivation of liberty is high, because  
26  
27 Petitioners are neither flight risk nor danger to the community but faces a real and  
28  
substantial risks of persecution and/or torture if removed to a third country without  
an opportunity to present a fear claim and receive a decision by a neutral decision  
maker.

98. The government's interest in Petitioners' continued punitive administrative  
detention is minimal.

99. The deprivation of Petitioners' liberty interests far outweighs the  
government's interest in arrests and continued detention where there is no  
reasonable foreseeable chance of repatriation.

1 100. The burden on the Government for the additional process requested by  
2  
3 Petitioners, to wit, a notice of continued detention and denial of release, an  
4  
5 opportunity to respond, and be heard would be minimal.  
6

7 101. Petitioners have no other judicial venue to challenge the legality of their  
8  
9 respective detention.  
10

11 102. Not affording Petitioners a judicial forum to challenge the legality of each  
12  
13 Petitioner's detention though this habeas corpus proceedings would also violate the  
14  
15 Suspension Clause of the U.S. Constitution.  
16

17 103. Respondents' refusal to release Petitioners on an order of supervision was  
18  
19 contrary to the agency's constitutional power and obligations under the Fifth  
20  
21 Amendment's Due Process Clause, as explained above.  
22

23 104. Petitioners' continued detention is also not in accordance with the INA and  
24  
25 implementing regulations as cited and discussed above.  
26  
27  
28

**COUNT THREE**  
**Statutory Violation**

105. Petitioners repeat and incorporate by reference all allegations in paragraphs  
1 to 86 above.

106. Petitioners' continued detention by Respondents is unlawful and contravenes  
8 U.S.C. § 1231 as interpreted by the U.S. Supreme Court in *Zadvydas* as  
implemented by longstanding agency practice until 2025. The mandatory removal  
period has long expired for the named Petitioners. Respondents re-detained each

1 Petitioner without a notice or an opportunity to be heard rather than place each on  
2  
3 order of supervision as required by the INA.  
4

#### 5 6 **COUNT FOUR**

#### 7 **RESPONDENTS' NEW AND SECRETIVE REPEAL OF THE RELIEF** 8 **GRANTED RELEASE POLICY VIOLATES THE ADMINISTRATIVE** 9 **PROCEDURE ACT AND THE ACCARDI DOCTRINE**

10 107. Petitioners repeat and incorporate by reference all allegations in paragraphs  
11  
12 to 86 above.  
13

14 108. The Administrative Procedure Act allows courts to set aside agency action  
15  
16 that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance  
17  
18 with law," or "in excess of statutory jurisdiction, authority, or limitations, or short  
19  
20 of statutory right." 5 U.S.C. § 706(2)(A), (C).  
21

22 109. Under the Accardi doctrine, agencies are bound to follow their own rules  
23  
24 that affect the fundamental rights of individuals, even self-imposed policies and  
25  
26 processes that limit otherwise discretionary decisions. *See Accardi*, 347 U.S. at 260  
27  
28 (holding that the BIA must follow its own regulations in its exercise of discretion);  
*Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are  
affected, it is incumbent upon agencies to follow their own procedures... even  
where the internal procedures are possibly more rigorous than otherwise would be  
required.").

110. The requirement that an agency follow its own policies is not "limited to  
rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167  
(2d, 1991). Even an unpublished policy binds the agency if "an examination of the  
provision's language, its context, and any available extrinsic evidence" supports the

1 conclusion that it is mandatory, *Doe v. Hampton*, 566 F.2d 265, 281 (D.C. Cir.  
2 1977); *see also Morton*, 415 U.S. at 235-36 (applying *Accardi* to a violation of  
3 internal agency manual).  
4

5  
6  
7 111. When agencies fail to adhere to their own policies as required by *Accardi*,  
8 courts typically follow one of two courses of action. The first is to frame the  
9 violation as arbitrary, capricious, and contrary to law under the APA. *See Damus v.*  
10 *Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) (“It is clear, moreover, that  
11 [Accardi] claims may arise under the APA”). The second is to consider it a due  
12 process violation. *See Sameena Inc. v. United States Air Force*, 147 F.3d 1148,  
13 1153 (9th Cir. 1998) (“An agency’s failure to follow its own regulations tends to  
14 cause unjust discrimination and deny adequate notice and consequently may result  
15 in a violation of an individual’s constitutional right to due process.”) (internal  
16 quotes omitted).  
17  
18  
19  
20  
21  
22  
23  
24  
25

26  
27 112. Prejudice is generally presumed when an agency violates its own policy. *See*  
28 *Montilla*, 926 F.2d at 167 (“We hold that a [noncitizen] claiming the INS has failed  
to adhere to its own regulations... is not required to make a showing of prejudice  
before [they are] entitled to relief. All that need be shown is that the subject  
regulations were for the [noncitizen’s] benefit and that the INS failed to adhere to  
them.”); *Heffner*, 420 F.2d at 813 (“The *Accardi* doctrine furthermore requires  
reversal irrespective of whether a new trial will produce the same verdict.”).

113. To remedy an *Accardi* violation, a court may direct the agency to properly  
apply its policy. *See Damus*, 313 F. Supp. 3d at 343 (“[T]his Court is simply  
ordering that Defendants do what they already admit is required.”). Or a court may

1 apply the policy itself and order relief consistent with the policy. *See Jimenez v.*  
2  
3 *Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to  
4  
5 review petitioners' custody under ICE's standards because "it would be particularly  
6  
7 unfair to require that petitioners remain detained... while ICE attempts to remedy  
8  
9 its failure.").

10  
11 114. Prior to the 2025 secretive 'Detain all' directive Petitioners was eligible for  
12  
13 release pursuant to ICE's longstanding policy and practice of releasing non-citizens  
14  
15 granted withholding of removal. In fact, in this case during the mandatory removal  
16  
17 period Respondents elected not to detain each Petitioner.

18  
19 115. The decision to re-detain at the last check-in was arbitrary and capricious  
20  
21 and without any process.

22  
23 116. The Respondents change in policy as to mandatory detention of all non-  
24  
25 citizens granted fear based relief is not rational, based on consideration of the  
26  
27 relevant factors, and/or within the scope of the authority delegated to the agency by  
28  
statute.

**COUNT FIVE**  
**(Violation of the Rehabilitation Act – Failure to Provide Reasonable**  
**Accommodation to Persons with Disabilities)**  
**Against All Defendants**

117. Petitioners repeat and incorporate by reference all allegations in paragraphs  
1 to 86 above.

118. Section 504 of the Rehabilitation Act requires federal agencies to provide  
"reasonable accommodations" to individuals with disabilities so they can fully  
participate in benefits administered by these agencies. (29 U.S.C. § 794(a)).

1 119. DHS regulations implementing the Rehabilitation Act mandate that “[n]o  
2 qualified individual with a disability in the United States, shall, by reason of his or  
3 her disability, be excluded from participation in, be denied benefits of, or otherwise  
4 be subjected to discrimination under any program or activity conducted by the  
5 Department.” (6 C.F.R. § 15.30; see also 29 U.S.C. § 794(a).  
6  
7  
8  
9

10 120. The regulations implementing Section 504 prohibit entities receiving federal  
11 financial assistance from utilizing “criteria or methods of administration (i) that  
12 have the effect of subjecting qualified handicapped persons to discrimination on  
13 the basis of handicap, (ii) that have the purpose or effect of defeating or  
14 substantially impairing the accomplishment of the objectives of the recipient’s  
15 program or activity with respect to handicapped persons.” (34 C.F.R. §  
16 104.4(b)(4).)  
17  
18  
19  
20  
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23

24 121. Petitioner He has asthma like respiratory condition and uterine fibroids that  
25 causes her suffers from debilitating pain, vaginal bleedings, dizziness and anxiety.  
26 See Exhibit A. She is on pain medication prior to her re-detention.. Petitioner’s  
27 medical conditions qualify as disabilities under the Rehabilitation Act and they  
28 affect her daily life functions such as walking, reading, stooping, bending, sleeping,  
and working.

123. Each Petitioner has been denied access to medical care, prescription medications, sufficient hygiene materials, food appropriate for comorbidities, and preventive care.

1 124. The removal proceedings as codified in the INA are a benefit or program  
2  
3 administered by Respondents and each Petitioners is entitled to participate in the  
4  
5 removal process pre and post order of removal issues. The services, programs, and  
6  
7 activities within the detention centers where DHS detains non-citizens receive  
8  
9 substantial federal financial assistance.

10  
11 125. Medical care as promulgated and mandated by ICE National Detention  
12  
13 Standards (NDS) 2019 and/or the Performance-Based National Detention Standards  
14  
15 2011 (amended 2016) is a benefit or program administered by Respondents and  
16  
17 each Petitioner is entitled to participate and receive the benefits of said program.

18  
19 126. Petitioners' underlying medical conditions qualify as disabilities for  
20  
21 purposes of the Rehabilitation Act. (29 U.S.C. §705(2)(B); 42 U.S.C. § 12102).

22  
23 127. Each Petitioner has requested a reasonable accommodation but has been  
24  
25 denied said, including requests for doctor's visit for examination, diagnostics, and  
26  
27 monitoring of severe and abnormal bleeding and release.

28  
**REQUEST FOR EX PARTE TEMPORARY RESTRAINING ORDER**

128. A party seeking a TRO or a preliminary injunction "must establish that [she] is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Petitioners readily satisfies these requirements.

129. As shown above each Petitioner is likely to prevail on the merits of her claim because (1) her detention violates the statute authorizing detention, 8 U.S.C. § 1231, and *Zadvydas v. Davis*, 533 U.S. 678 (2001), which holds that certain immigrants

1  
2 must be placed on Order of Supervised release upon the expiration of the mandatory  
3 removal period, and be released if there is 'no significant likelihood of removal in the  
4 reasonably foreseeable future''; and (2) ICE may not remove either Petitioner to a  
5 third country without adequate notice and an opportunity to be heard pursuant to the  
6 Fifth Amendment's Due Process Clause, the Convention Against Torture, and  
7 implementing regulations.  
8  
9

10  
11  
12 130. The remaining factors weight heavily in favor of granting a temporary  
13 restraining order. Unlawful detention constitutes "a loss of liberty that is . . .  
14 irreparable." *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash.  
15 2020, aff'd in part, vacated in part on other grounds, remanded sub nom. *Moreno*  
16 *Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022); cf. *Rodriguez v. Robbins*, 715 F.3d  
17 1127, 1145 (9th Cir. 2013) (irreparable harm is met where "preliminary injunction is  
18 necessary to ensure that individuals . . . are not needlessly detained" because they are  
19 neither a danger nor a flight risk). This is particularly true here, where Petitioners'  
20 continued detention also violates the Constitution. "Civil immigration detention  
21 violates due process outside of certain special and narrow nonpunitive circumstances."  
22 *Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018) (citation modified). As detailed  
23 above, Petitioner's detention is outside of those "special and narrow nonpunitive  
24 circumstances," as the Due Process Clause forbids his detention without a pre  
25 deprivation hearing. These constitutional concerns also counsel in favor of finding  
26 demonstrated irreparable harm. *See Baird v. Bonta*, 81 F.4th 1036, 1048 (9th Cir.  
27 2023) (declaring that "in cases involving a constitutional claim, a likelihood of  
28 success on the merits usually establishes irreparable harm"). Absent a TRO,  
Petitioners have no hope of being reunited with spouse, children, friends, and  
community. Such "separation from family members" is an important irreparable harm

1 factor. *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (per curiam)  
2 (citation omitted). Moreover, “a post deprivation hearing cannot serve as an adequate  
3 procedural safeguard because it is after the fact and cannot prevent an erroneous  
4 deprivation of liberty.” *E.A. T.-B.*, 2025 WL 2402130, at \*6. In other words,  
5 Petitioner’s unlawful detention without a proper pre-deprivation hearing is already  
6 occurring, and only immediate release remedies that issue.  
7  
8  
9  
10  
11

12 Moreover, a TRO would serve the public interest: Permitting continued  
13 violations of federal law would serve “neither equity nor the public interest.”  
14 *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022). Thus, the public interest  
15 weighs in favor of the Petitioners because continued detention without the legal  
16 protections afforded under § 1231 potentially violates the Petitioners’ due process  
17 and statutory rights. *See Xuyue Zhang v. Barr*, 612 F.Supp.3d 1005, 1017 (C.D.  
18 Cal. 2019) (“Generally, public interest concerns are implicated when a  
19 constitutional right has been violated, because all citizens have a stake in  
20 upholding the Constitution.”).  
21  
22  
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28

### PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Grant a TRO and order each Petitioner’s release pending adjudication on the merits or *in the alternative*, order Respondents to afford each Petitioner a proper custodial determination before a neutral decision maker;
- (3) Issue a Writ of Habeas Corpus on the ground that each Petitioner’s continued detention violates the Due Process Clause and order each Petitioner’s immediate release under reasonably conditions of supervision;

