



be tortured if deported to her home country of Colombia. Immigration and Customs Enforcement (ICE) refused to release Cala-Villamil, claiming that it is looking for alternative countries of removal despite knowing that she lacks citizenship in or a connection to any other country. Cala-Villamil's continued detention is arbitrary and unlawful, and she requests that this Court order her immediate release from ICE custody.

2. Cala-Villamil is detained pursuant to 8 U.S.C. §1231, which governs the detention of non-citizens with a final order of removal that has been withheld or deferred by an IJ due to a substantial risk of persecution or torture in their home country. 8 U.S.C. §1231(a)(1)(B)(i). Cala-Villamil's removal order and accompanying relief grant became final when ICE failed to timely appeal her relief grant. 8 C.F.R. §1241.1.

3. Cala-Villamil's continued detention violates 8 U.S.C. §1231(a)(6), as interpreted by the Supreme Court in *Zadvyda v. Davis*, 533 U.S. 678 (2001), because her removal is not reasonably foreseeable. She cannot be deported to her home country of Colombia because she was granted protection under the Convention Against Torture (CAT) with respect to that country. 8 C.F.R. §1208.17. ICE's half-hearted attempts to remove Cala-Villamil to a random collection of unspecified alternative countries—to which she has no ties, and which have no policy or history of accepting non-citizen deportees—are speculative and futile.

4. Furthermore, the ICE El Paso's Field Office's across-the board detention of Cala-Villamil and similarly situated individuals for at least 90 days past their grant of relief without prompt, individualized determinations of whether they should remain detained is inconsistent with ICE's own long-standing policy, thereby violating the Administrative Procedure Act (APA) and due process. See *Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

## **II. PARTIES**

5. Cala-Villamil is a native and citizen of Colombia who was granted CAT deferral of removal on April 30, 2025. She is currently detained at the El Paso Immigration Service Processing Center in El Paso, Texas.
6. Kristi Noem is Secretary of U.S. Department of Homeland Security (“DHS”). DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity.
7. Pamela Bondi is the Attorney General of the United States. She oversees the immigration court system, which is housed within the Executive Office for Immigration Review (EOIR) and includes all IJs and The Board of Immigration Appeals (BIA). She is sued in her official capacity.
8. Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. He is responsible for ICE’s policies, practices, and procedures, including those relating to the detention of noncitizens. He is legal custodian of Petitioner. He is sued in his official capacity.
9. Mary De Anda-Ybarra is the Field Office Director for the El Paso Field office of U.S. Immigration and Customs Enforcement, a component of DHS and maintains her office in El Paso, Texas within this judicial district. The El Paso Field Office is responsible for carrying out ICE’s immigration detention operations at the El Paso Immigration Processing Service Center. Respondent De Anda-Ybarra is a legal custodian of Petitioner. She is sued in her official capacity.

10. Angel Garite is the Assistant Field Office Director of the El Paso Field Office. He performs the duties typically performed by a warden for the El Paso Service Processing Center. Mr. Garite is the legal custodian of Petitioner and is sued in his official capacity.

### **III. JURISDICTION AND VENUE**

11. This Court has jurisdiction pursuant to 28 U.S.C. §2241 (the general grant of habeas authority to the district court); Art. I §9, cl. 2 of the U.S. Constitution (“Suspension Clause”); 28 U.S.C. §1331 (Federal Question) and 28 U.S.C. §2201, 2202 (Declaratory Judgment Act), as civil action arising under the Constitution of the United States. Mandamus jurisdiction is conferred by 28 U.S.C. §1361. This Court also has jurisdiction pursuant to the Administrative Procedures Act, 5 U.S.C. § 701 et seq.

12. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *See, e.g., Zadvydas*, 533 U.S. at 687.

13. Federal courts also have federal question jurisdiction, through the APA, to “hold unlawful and set aside agency action” that is “arbitrary, capricious, and an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. §703 (providing that judicial review of agency action under the APA may proceed by “any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus”). The APA affords a right of review to a person who “adversely affected or aggrieved by agency action.” 5 U.S.C. §702. Respondent’s continued detention of Petitioner up to and past the 90-day removal period has adversely and severely affected Petitioner’s liberty and freedom.

14. Venue is proper in this judicial district of Texas pursuant to 28 U.S.C. §2241(c)(3) and 28 U.S.C. §1391(b)(2) and (e)(1),(c(1) because Petitioner is detained within this district at the El Paso Process Service Center and the United States government is a defendant.

#### **IV. LEGAL FRAMEWORK**

##### **Withholding of Removal and Relief Under the Convention Against Torture**

15. Non-citizens in immigration removal proceedings can seek three main forms of relief based on their fear of returning to their home country: asylum, withholding of removal, and CAT relief. Non-citizens may be ineligible for asylum for several reasons, including the failure to apply within one year of entering the United States. *See* 8 U.S.C. §1158(a)(2). There are fewer restrictions on eligibility for withholding of removal. *Id.* §1231(b)(3)(B)(iii), and no restrictions on eligibility for CAT deferral of removal. 8 C.F.R. §1208.16.

16. To be granted CAT relief, a non-citizen must show that “it is more likely than not that he or she would be tortured if removed to the proposed country of removal.” 8 C.F.R. §1208.16(c)(2). An applicant for CAT relief must show a higher likelihood of torture than the likelihood of persecution an asylum applicant must demonstrate. *See id.*

17. When an IJ grants a non-citizen withholding or CAT relief, the IJ issues a removal order and simultaneously withholds or defers that order with respect to the country or countries for which the non-citizen demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021). Once withholding or CAT relief is granted, either party has the right to appeal that decision to the BIA within 30 days. *See* 8 C.F.R. §1003.38(b). If both parties waive appeal or neither party appeals within 30-day period, the withholding or CAT relief grant and the accompanying removal order become administratively final. *See id.* §1241.1.

18. When a non-citizen has a final withholding or CAT relief grant, they cannot be removed to the country or countries for which they demonstrated a sufficient likelihood of persecution or torture. *See* 8 U.S.C. §1231(b)(3)(A); 8 C.F.R. §1208.17(b)(2). While ICE is authorized to remove non-citizens who were granted withholding or CAT relief to alternative countries, *see* 8 U.S.C. §1231(b); 8 C.F.R. §1208.16(f), the removal statute specifies restrictive criteria for identifying appropriate countries. Non-citizens can be removed, for instance, to the country “of which the [non-citizen] is a citizen, subject, or national,” the country “in which the [non-citizen] was born,” or the country “in which the [non-citizen] resided” immediately before entering the United States. 8 U.S.C. §1231(B)(2)(D)-(E).

19. If ICE identifies an appropriate alternative country of removal, ICE must undergo further proceedings in immigration court to effectuate removal to that country. *See Jama v. ICE*, 543 U.S. 335, 348 (2005) (“If [non-citizens] 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)...”; *Romero v. Evans*, 280 F. Supp. 3d 835, 848, n.24 (E.D. VA 2017) (“DHS could not immediately remove petitioners to a third country, as DHS would first need to give petitioners notice and opportunity to raise any reasonable fear claims.”) *rev’d on other grounds, Guzman Chavez*, 141 S. Ct. 2271.

20. As a result of these restrictions and procedures, “only 1.6% of noncitizens granted withholding-only relief actually removed to an alternative country” in FY 2017. *Guzman Chavez*, 141 S. Ct. at 2295 (Breyer, J., dissenting). Removal to an alternative country is miniscule at best.

*Detention of Non-Citizens Granted Withholding of Removal or Relief Under the Convention Against Torture*

*i. statutory framework*

21. 8 U.S.C. §1231 “governs the detention of non-citizens “during” and “beyond” the “removal period.” 8 U.S.C. §1231(a)(2)-(6). The “removal period” begins once a non-citizen’s removal order “becomes administratively final.” 8 U.S.C. §1231(a)(1)(B).<sup>1</sup> The removal period lasts for 90 days, during which ICE “shall remove the [non-citizen] from the United States” and “shall detain the [non-citizen]” as it carries out the removal. 8 U.S.C. §1231(a)(1)-(2). If ICE does not remove the non-citizen within the 90-day removal period, the non-citizen “*may* be detained beyond the removal period” if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. §1231(a)(6) (*own emphasis added*).

22. To avoid “indefinite detention” that would raise “serious constitutional concerns,” the Supreme Court in *Zadvydas* construed §1231(a)(6) to contain an implicit time limit. 533 U.S. at 682. *Zadvydas* dealt with two non-citizens who could not be removed to their home country or country of citizenship due to bureaucratic and diplomatic barriers. The Court held that §1231(a)(6) authorized detention only for “a period reasonably necessary to bring about the [non-citizen]’s removal from the United States.” *Id.* at 689. Six Months of post-removal order of detention is considered “presumptively reasonable.” *Id.* at 701.

23. But the “*Zadvydas* Court did not say that the presumption is irrebutable, and there is nothing inherent in the operation of the presumption itself that requires it to be irrebuttable.” *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008). “Within the six-month window,”

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<sup>1</sup> There are two other events that trigger the start of the removal period, which are not applicable here. *See* 8 U.S.C. §1231(a)(1)(B)(ii)-(iii).

the non-citizen bears the burden of “proving the unreasonableness of detention.” *Id.* After six months of detention, if there is “good reason to believe that there is no significant likelihood of removal in the reasonable foreseeable future,” the burden shifts to the Government to justify continued detention. *Zadvydas*, 533 U.S. at 701; *See also Cesar*, 542 F. Supp. 2d at 903 (“[T]he presumption scheme merely suggests that the burden the detainee must carry withing the first six months of [post-order] detention is heavier than after six months has elapsed.”).

### *ii. Regulations*

24. DHS regulations provide that, before the end of the 90-day removal period that ensues upon a non-citizen’s removal order becoming final, the local ICE field office with jurisdiction over the non-citizen’s detention must conduct a custody review to determine whether the non-citizen should remain detained. *See* 8 C.F.R. §241.4(c)(1), h(1), K(1)(i). If the non-citizen is not released following the 90 -day custody review, jurisdiction transfers to ICE Headquarters (ICE HQ), *id.* §241.4(c)(2), which must conduct a custody review before or at 180 days. *Id.* §241.4(k)(2)(ii). In making these custody determinations, ICE considers several factors, including whether the non-citizen is likely to pose a danger to the community or flight risk if released. *Id.* §241.4(e). If the factors in §241.4 are met, ICE must release the non-citizen under conditions of supervision. *Id.* §241.4(j)(2).

25. To comply with *Zachvydas*, DHS issued additional regulations in 2001 that established “special review procedures” to determine whether detained non-citizens 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). While 8 C.F.R. §241.4’s custody review process remained largely intact, subsection (i)(7) was added

to include supplemental review procedure that ICE HQ must initiate when “the [non-citizen] submits, or record contains, information providing substantial reason to believe that removal of a detained [non-citizen] is not significantly likely in the reasonably foreseeable future.” *Id.* §241.4(i)(7).

26 Under this procedure, ICE HQ evaluates the foreseeability of removal by analyzing factors such as the history of ICE’s removal efforts to third countries. *See id.* §241.13(f). If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on “special circumstances,” it must justify the detention based on narrow grounds such as national security or public health concerns. *Id.* §241.14(b)-(d), or by demonstrating by clear and convincing evidence before an IJ that the non-citizen is “especially dangerous.” *Id.* §241.14(f).

### **iii. ICE Policy**

27. Consistent with the statutory and regulatory scheme, long-standing ICE policy favors the prompt release of non-citizens who have been granted withholding or CAT relief. In 2000, the then-Immigration and Naturalization Service (INS) General Counsel issued a memorandum clarifying that 8 U.S.C. §1231 authorizes but does not require detention of non-citizens granted withholding of removal or CAT relief during the 90-day removal period.<sup>2</sup> Ex. A, ICE Policies on Post-Relief Release at 1. A 2004 ICE memorandum turned this acknowledgement of authority into a presumption, stating that “it is ICE policy to favor the release of [non-citizens] 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 the law to detain.” *Id.* at 2.

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<sup>2</sup> INS, housed within the Department of Justice, became ICE after the formation of DHS in 2002.

28. ICE leadership subsequently reiterated this policy in a 2012 announcement, clarifying that the 2000 and 2004 ICE memorandums are “still in effect and should be followed” and that “[t]his policy applies at all times following a grant of protection, including during any appellate proceedings and throughout the removal period.” *Id.* at 3. Finally, in 2021, Acting ICE Director Tae Johnson circulated a memorandum to all ICE employees reminding 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. . . .” *Id.* at 4 (*own emphasis added*). Director Johnson clarified that “in considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat of danger to the community.” *Id.*

#### **V. FACTUAL BACKGROUND**

29. Ms. Cala-Villamil is a citizen of Colombia. Neither her nor her parents are citizens of any country besides Colombia.

30. Cala-Villamil was originally removed to Colombia in early 2024. However, she returned on or about September of 2024 and was placed in withholding/asylum proceedings on October 3, 2024. She has been in immigration custody since September 2024.

31. The Immigration Court granted Cala-Villamil request for withholding of removal under the Convention Against Torture (“CAT”) on April 30, 2025. Ms. Cala is a Columbian citizen that cannot be returned back to her home country.

32. Prior to the granting of CAT, ICE went through the release process. On October 30, 2024, she was provided a letter titled “Notice to Alien of File Custody Review” stating her

status would be reviewed on 12/9/2024. Her release was denied as she was still in custody while her withholding proceedings were pending.<sup>3</sup>

33. She received an undated letter titled “Notice to Alien of Interview for Review of Custody Status” indicating that on 2/18/2025 at 13:00 an interview could be conducted to discuss whether she could be released. Her release was denied as she was still in custody.

34. On 3/13/2025 she received another letter titled “Decision to Continue Detention” stating she would not be released because she had court hearing scheduled for May 1, 2025 and that “*your removal will occur in the reasonably foreseeable future...*” This letter with this language was provided to Ms. Cala-Villamil prior to the granting of CAT. However, since the granting of CAT, Ms. Cala-Villamil has not received a 90 day or 180 day review and continues to be detained.

## VI. ARGUMENT

### i. Cala-Villamil’s removal is not reasonably foreseeable under *Zadvydas*

35. Ms. Cala-Villamil’s detention is governed by 8 U.S.C. §1231(a)(6) because she has been detained for more than 90 days since she received a final grant of CAT relief. The 90-day removal period began on April 30, 2025, when relief was granted and the government did not appeal. *See* 8 U.S.C. §1231(A)(1)(B)(I); 8 C.F.R. §1241.1(c). Therefore, the *Zadvydas* framework applies to Ms. Cala-Villamil’s detention, and she has been detained for more than six months since her removal order became final.

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<sup>3</sup> Ms. Cala-Villamil submitted a request to be released on parole on November 15, 2025. Ex. B. To date, ICE has failed to make a decision and have not provided a decision to counsel even though one has been requested.

36. Ms. Cala-Villamil will very likely never be deported from the United States, let alone in the reasonably foreseeable future. She cannot be deported to her home country of Colombia because she has final grant of CAT deferral of removal. *See* 8 C.F.R. §1208.17(b)(2).

37. Furthermore, it is exceedingly unlikely that ICE will identify an alternative country to which it can remove Cala-Villamil. They have had approximately eight months since she was granted CAT relief to effectuate her removal, yet they have failed to do so and have not provided any evidence to show her removal is reasonably foreseeable.

38. Because Ms. Cala-Villamil removal is not reasonably foreseeable and she has been in post-removal order detention for more than six months, *Zadvydas* requires immediate release. *See* 533 U.S. at 700-01 (describing release as an appropriate remedy); 8 U.S.C. §1231(a)(6) (authorizing release “subject to. . . terms of supervision”). To order her immediate release, this Court need only determine that Cala-Villamil’s removal is not reasonably foreseeable under *Zadvydas*; it need not analyze whether she poses a danger to the community or a flight risk. *See* 533 U.S. at 699-700 (“[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.”).

39. *Zadvydas* explicitly held that flight risk is already baked into the reasonable foreseeability analysis, *See id.* at 690 (observing that the “justification. . . [of] preventing flight. . . is weak or nonexistent where removal seems a remote possibility at best”), and that dangerousness cannot unilaterally justify indefinite civil detention barring “special circumstances,” which may include the non-citizen being a “suspected terrorist[]” but do not include the not-citizen’s “removable status itself.” *Id.* at 691. *See also Kansas v. Hendricks*,

521 U.S. 346, 358 (1997) (“A finding of dangerousness, standing alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary [civil detention].”) With respect to Cala-Villamil’s detention, ICE has not invoked the regulations governing these “special circumstances” determinations. *See* 8 C.F.R. §241.14.

**ii. ICE’S continued detention of Cala-Villamil, without reviewing her custody under ICE policy violated the APA and Due Process**

40. Under the *Accardi* doctrine, which originated in the context of an immigration case and has been developed through subsequent immigration caselaw, agencies are bound to follow their own rules that affect the fundamental rights of individuals, even self-imposed policies and processes that limit otherwise discretionary decisions. *See Accardi*, 347 U.S. at 226 (holding that BIA must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. . . even where the internal procedures are possibly more rigorous than otherwise would be required.”).

41. 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 Cir. 1991). Even an unpublished policy binds the agency if “an examination of the provision’s language, its context, and any available extrinsic evidence” support the conclusion that it is “mandatory rather than merely precatory.” *Doe v. Hampton*, 566 F.2d 265, 281 (D.C. Cir. 1977); *See also Morton*, 415 U.S. at 235-236 (applying *Accardi* to violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 813 (4<sup>th</sup> Cir. 1969) (“Nor does it matter that these IRS instructions to Special Agents were not promulgated in something formally labelled a ‘Regulation’ . . .”).

42. When agencies fail to adhere to their own policies as required by *Accardi*, courts typically frame the violation as arbitrary, capricious, and contrary to law under the APA, *see Damus v. Nielson*, 313 F. Supp. 3d, 317, 337 (D.D.C. 2018) (“It is clear, moreover, that [*Accardi*] claims may arise under the APA”), or as due process violation, *See Sameena, Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9<sup>th</sup> Cir. 1998) (“An agency’s failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individuals’ constitutional rights to due process.”)

43. Prejudice is generally presumed when an agency violates its own policy. *See Montilla*, 926 F.2d at 167 (“We hold that an alien claiming the INS has failed to adhere to its own regulations. . . is not required to make a showing of prejudice before he is entitled to relief. All that need to be shown is that the subject regulations were for the alien’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.”).

44. 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 apply the policy itself and order relief consistent with the policy. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioner’s custody under ICE’s standards because “it would be particularly unfair to require that petitioners remain detained. . . while ICE attempts to remedy its failure”).

45. ICE's long-standing policy (hereinafter "the Policy") is to release non-citizens immediately following a grant of withholding or CAT relief absent exceptional circumstances. *See* Ex. A ("In general, it is ICE policy to favor the release [non-citizens] who have been granted protection by an immigration judge, absent exceptional concerns. . ."); *id.* at 4. ("Pursuant to longstanding policy, absent exceptional circumstances. . . noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge *should* be released. . .") (*own emphasis added*). The Policy specifically instructs the local ICE field office to make an individualized determination whether to keep a non-citizen detained based on exceptional circumstances. *See Id.* at 3 ("[T]he Field Office Director must approve any decision to keep a [non-citizen] who received a grant of [asylum, withholding, or CAT relief] in custody.").

46. The Policy constitutes ICE's interpretation of the statute and regulations governing post-removal order detention. *See* 8 U.S.C. §1231; 8 C.F.R. §241.1, 241.13, 241.14. ICE has reasonably concluded that 8 U.S.C. §1231(a)(2) does not require the detention of non-citizens granted withholding or CAT relief for the entirety of the 90-day removal period and that ICE "has the authority to consider the release of such [non-citizens] during the removal period." Ex. A at 1. Furthermore, ICE later stated that the release policy established in 2004 "applies at all times following a grant of protection, including during any appellate proceedings and throughout the removal period," thereby extending the Policy to non-citizens with final removal order who were granted withholding or CAT relief. *Id.* at 3.

47. Such an application of the Policy is consistent with the broad discretion afforded to ICE by the statute and regulations governing post-removal order detention and is a reasonable interpretation of the ambiguities in that framework. Neither the statute nor regulations

specifically contradict the Policy,<sup>4</sup> and the regulatory language suggests that the standard custody review procedure for non-citizens with final orders do not apply to non-citizens like Petitioner who have been detained for 90 days or more after being granted withholding or CAT and lack a connection to an alternative country. *See, e.g.*, 8 C.F.R. §241.4(b)(4) (“The custody review procedures in this section do not apply after the Service has made a determination, under the procedures provided in 8 CFR 241.13, that there is no significant likelihood that [non-citizen] under a final order of removal can be removed in the reasonably foreseeable future.”).

48. The Policy and its application to individuals with final grants of withholding or CAT relief are thus entitled to deference. *See Kisor v. Wilkie*, 139 S. Ct. 2400, 2408 (2019) (“This Court has often deferred to agencies’ reasonable readings of genuinely ambiguous regulations. We call that practice Auer deference. . .”); *Auer v. Robbins*, 519 U.S. 452 (1997) (deferring to Labor Secretary’s reasonable interpretation of overtime pay regulations); *Chevron U.S.A. Inc. v. Natural Defense Council, Inc.*, 467 U.S. 837, 843 (1984) (holding that courts should defer to agencies’ reasonable interpretations of ambiguous statutes).

49. The Policy is precisely the type of rule ICE is obligated to follow under *Accardi*. In *Damus*, the U.S. District court for the District of Columbia found that a similarly styled ICE directive from 2009 laying out “procedures ICE must undertake to determine whether a given asylum-seeker should be granted parole” fell “squarely within the ambit of those agency actions to which the [*Accardi*] doctrine may attach,” in part because it “establish[ed] a set of minimum protections for those seeking asylum” and “was intended—at least in part—to

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<sup>4</sup> 8 U.S.C. §1231(a)(2) does not apply to Cala-Villamil because she has been detained past the 90-day removal period.

benefit asylum-seekers navigating the parole process.” 313 F. Supp. 3d at 324, 337-38; *See also Pasquini v. Morris*, 700 F.2d 658, 663 n.1 (11<sup>th</sup> Cir. 1983) (“Although the [INS] internal operating instruction confers no substantive rights on the [non-citizen]-applicant, it does confer the procedural right to be considered for such status upon application.”). Similarly, the Policy here establishes procedures for reviewing the custody of non-citizens who are granted immigration relief and is clearly intended, at least in part, to benefit those non-citizens. *See* Ex. A at 4 (referring to “ICE policy favoring non-citizen’s release”).

50. Furthermore, by reiterating the Policy four times over the last two decades and using mandatory language, ICE leadership has clearly indicated that it intends the Policy to be binding on all field offices and officers. *See, e.g.,* Ex. A at 2 (“In all cases, the Field Office director must. . .”) (*own emphasis added*); *Id.* at 4 (“I am issuing this reminder to ensure that ICE personnel remain cognizant of and continue to follow this Directive”); *See also Padula v. Webster*, 822 F.2d 97, 100 (D.C. Cir. 1987) (“[A]n agency pronouncement is transformed into a binding norm if so intended by the agency.”).

51. El Paso ICE has clearly flouted ICE’s national policy with respect to Petitioner’s detention, in violation of *Accardi*. The available evidence demonstrates that El Paso ICE is automatically detaining *every* non-citizen granted withholding or CAT relief, including Petitioner, for at least the 90-day removal period. After the 90-day removal period lapses, El Paso ICE conducts a standard custody review pursuant to the factors in 8 C.F.R. §241.4, without regard to the Policy’s requirements. Only after El Paso ICE denies release based on these factors does the case transfer to ICE HQ to consider likelihood of removal under §241.13. At no point does it appear that El Paso ICE is conducting an individualized review under the “exceptional circumstances” standard as required by the policy.

52. To the contrary, based on the evidence provided by Petitioner, El Paso ICE has not conducted any review after the granting of CAT relief. The initial communications and review occurred prior to the grant of CAT relief. Hence, Petitioner has been in custody well over seven months without ICE applying the Policy. ICE should have reviewed Cala-Villamil release on April 30, 2025, when CAT relief was granted or shortly thereafter. They have failed to do so.

53. El Paso ICE's failure to promptly review Petitioner's custody under the Policy is prejudicial to her. Prejudice can be presumed because the Policy implicates Petitioner's fundamental liberty interests and due process rights. *See Delgado-Corea v. INS*, 804 F.2d 261, 263 (4<sup>th</sup> Cir. 1986) (holding that "violation of a regulation can serve to invalidate a deportation order when the regulation serves a purpose to benefit the [non-citizen]" and the violation affected "interests of the [non-citizen] which were protected by the regulation"). The Policy provides Cala-Villamil with a discrete opportunity to win her freedom for detention and that opportunity has thus far been withheld from her. *See Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

54. The Policy presumes that non-citizens granted withholding or CAT relief will be release "absent exceptional circumstances, such as when the non-citizen presents a national security threat or danger to the community," and it specifies that "prior convictions alone do not necessarily indicate a public safety threat or danger to the community." Ex. A at 4. If El Paso ICE were to review Cala-Villamil's custody under the Policy, she would very likely be released.

55. Therefore, Cala-Villamil has been prejudiced by ICE's failure to review her custody under the Policy's "exceptional circumstances" standard. According to the *Accardi* doctrine, ICE's departure from its own policy is arbitrary, capricious, and contrary to law under the APA and violates Cala-Villamil's due process rights.

56. As a remedy, this Court should review Cala-Villamil's custody under the Policy's "exceptional circumstances" standard and order her release accordingly. *See Jimenez*, 317 F. Supp. At 657 ("In these circumstances, it is most appropriate that the court exercise its equitable authority to remedy the violations of petitioner's constitutional rights to due process by promptly deciding itself whether each should be released.").

## **VII. CLAIMS/CAUSES OF ACTION**

### **i. Violation of Immigration and Nationality Act, 8 U.S.C. §1231(a)(6)**

57. The foregoing allegations are re-alleged and incorporated herein.

58. 8 U.S.C. 1231(a)(6) as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for "a period reasonably necessary to bring about the alien's removal from the United States." 533 U.S. at 789, 701.

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

### **ii. Arbitrary and Capricious Agency Action**

#### **Under Administrative Procedure Act, 5 U.S.C. §706(2)(A)**

60. The foregoing allegations are re-alleged and incorporated herein.

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

62. ICE has deviated from its own policy in continuing to detain Petitioner after she was granted immigration relief, without determining whether exceptional circumstances warrant his continued detention. This is arbitrary, capricious, and contrary to law in violation of the APA.

63. As a remedy, this Court should conduct its own review of Petitioner's custody and order Petitioner's immediate release.

**iii. Violation of the Due Process Clause of the**

**Fifth Amendment to the U.S. Constitution**

64. The foregoing allegations are re-alleged and incorporated herein.

65. ICE has violated Petitioner's due process rights by denying him an individualized custody review to which he is entitled under ICE policy.

66. As a remedy, this Court should conduct its own review of Petitioner's custody or at least, order ICE to review Petitioner's custody under the standard articulated in ICE policy.

**VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court grant the following relief:

67. Accept and assume jurisdiction over this matter.

68. Declare that Petitioner's continued detention violates the Immigration and Nationality Act, 8 U.S.C. §1231(a)(6); the Administrative Procedure Act, 5 U.S.C. §706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

69. Order Petitioner's immediate release.

70. Alternatively, review Petitioner's custody under the standard articulated in ICE policy, or order ICE to review Petitioner's custody accordingly;

71. Grant such further relief as the Court deems just and proper.

Dated: December 17, 2025

Respectfully submitted,

/s/ ORLANDO MONDRAGON

Attorney for Plaintiff  
State Bar No. 24013183  
1028 Rio Grande  
El Paso, Texas 79902  
(915) 566-8181

**VERIFICATION BY SOMEONE ACTING ON PETITIONERS BEHALF**  
**PURSUANT TO 28 U.S.C. §2242**

I am submitting this verification on behalf of the Petitioner because I am the attorney for the Petitioner. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dates: December 17, 2025

Respectfully submitted,

/s/ Orlando Mondragon  
Orland Mondragon  
Attorney for PETITIONER