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**I. INTRODUCTION**

1. Petitioner Zakari Fofana (hereinafter "Mr. Fofana") is a 39-year-old man from Benin who was granted withholding of removal in 2020 and has lived in the U.S. without any criminal history since then. He entered the U.S. in 2020 seeking protection from attacks, death threats, and the murder of his partner in Benin, all due to his sexuality. He represented himself pro se while in detention in 2020 in his I-589 case before the Executive Office of Review's Immigration Court, and his judge granted him withholding of removal. Mr. Fofana did not understand at the time the difference between asylum and withholding of removal. He began his life in Austin, Texas, where he has lived and worked for the past five years. He is a dedicated member of his community and workplace, has no criminal history, and has attended all his ICE check-ins and kept his work permit updated.
2. Mr. Fofana challenges his indefinite detention as a violation of the Immigration and Nationality Act (INA), as well as his rights under the Due Process Clause of the Fifth Amendment.
3. Mr. Fofana respectfully requests this Court to grant him a Writ of Habeas Corpus and order Respondents to release him from custody under reasonable conditions of supervision. He is seeking habeas relief under 28 U.S.C. § 2241, which is the proper vehicle for challenging civil immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).
4. Mr. Fofana asks the Court to "award the writ or issue an order directing the respondent[s] to show cause why the writ should not be granted," within three days, as prescribed by statute. 28 U.S.C. §2243.

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**II. JURISDICTION**

5. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Karnes County Immigration Processing Center in Karnes City, Texas.

6. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

7. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

**III. VENUE**

8. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which Petitioner currently is detained.

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

**IV. REQUIREMENTS OF 28 U.S.C. § 2243**

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

11. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or

1 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application  
2 for the writ usurps the attention and displaces the calendar of the judge or justice who  
3 entertains it and receives prompt action from him within the four corners of the  
4 application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

5 **V. PARTIES**


- 6 12. Petitioner Zakari Fofana is a citizen of Benin who has been in immigration detention  
7 since November 3, 2025. After arresting Petitioner at the San Antonio ICE Office during  
8 his check-in, ICE did not set bond and Petitioner is unable to obtain review of his custody  
9 by an Immigration Judge (IJ).
- 10 13. Respondent Miguel Vergara is the Director of the San Antonio Field Office of ICE’s  
11 Enforcement and Removal Operations division. As such, Miguel Vergara is Petitioner’s  
12 immediate custodian and is responsible for Petitioner’s detention and removal. He is  
13 named in his official capacity.
- 14 14. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is  
15 responsible for the implementation and enforcement of the INA, and oversees ICE, which  
16 is responsible for Petitioner’s detention. Ms. Noem has ultimate custodial authority over  
17 Petitioner and is sued in her official capacity.
- 18 15. Respondent Department of Homeland Security (DHS) is the federal agency responsible  
19 for implementing and enforcing the INA, including the detention and removal of  
20 noncitizens.
- 21 16. Respondent Pamela Bondi is the Attorney General of the United States. She is  
22 responsible for the Department of Justice, of which the Executive Office for Immigration  
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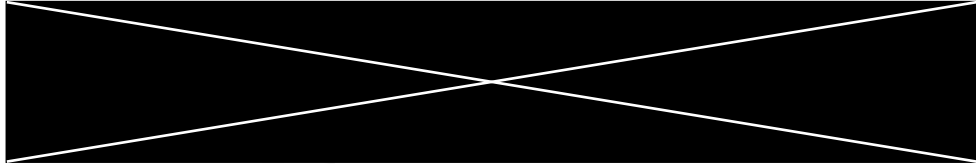
1 Review and the immigration court system it operates is a component agency. She is sued  
2 in her official capacity.

3 17. Respondent Executive Office for Immigration Review (EOIR) is the federal agency  
4 responsible for implementing and enforcing the INA in removal proceedings, including  
5 for custody redeterminations in bond hearings.

6 18. Respondent Rose Thompson is employed by GEO Group as Warden of the Karnes  
7 County Immigration Processing Center, where Petitioner is detained. She has immediate  
8 physical custody of Petitioner. She is sued in her official capacity.

9 **VI. STATEMENT OF FACTS**

10 19. Mr. Fofana was born in Benin, and when he entered adulthood he realized he was  
11 attracted to men and either bisexual or gay. He fled Benin to seek asylum in the US  
12 because he faced death threats and harm in Benin because of his sexuality. People in the  
13 general population found him with his partner and killed his partner, 

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17 20. Mr. Fofana represented himself pro se in his asylum case while detained, and  
18 Immigration Judge Stuart Alcorn granted him withholding of removal on June 24, 2020.  
19 Mr. Fofana did not understand there was a difference between asylum and withholding of  
20 removal. His order of deportation became administratively final June 24, 2020.

21 21. After his withholding of removal grant, Mr. Fofana was released under an Order of  
22 Supervision and has reported to every ICE check-in. For years, ICE presumably never  
23 found a country to deport him to, so his "removal period" of 90 days ended. For five  
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1 years, he attended regular ICE check-ins. On November 3, 2025, for his check-in, he  
2 attended his regular appointment, but ICE detained him and sent him to Karnes County  
3 Immigration Processing Center. They did not explain any reason for detaining him that  
4 day.

5 22. Upon being detained this year, Mr. Fofana learned that he is eligible for asylum, since the  
6 Immigration Judge gave him withholding instead of asylum due to the Third Country  
7 Asylum Rule, which banned anyone who had traveled through another country before  
8 reaching the U.S. The rule was overturned six days after Mr. Fofana's court decision, but  
9 he was not aware until last week. As soon as he learned his, he and undersigned pro bono  
10 counsel filed a motion to reopen to request asylum, along with a stay of removal, to the  
11 Immigration Court. The Court has accepted the filing, and it remains pending.

12 23. Mr. Fofana has worked a steady job in Austin, built a community, and begun to heal from  
13 the severe harm he faced in Benin on account of his sexual orientation. He has been  
14 diagnosed with anxiety and depression, and his detention has been exacerbating his  
15 symptoms.

## 16 VII. LEGAL FRAMEWORK

17 24. Liberty from detention is the rule, rather than the exception, under American  
18 jurisprudence. The Due Process Clause of the Fifth Amendment forbids the government  
19 from depriving any person of liberty without due process of law. U.S. Const. amend. V.  
20 "Freedom from imprisonment—from government custody, detention, or other forms of  
21 physical restraint— lies at the heart of the liberty" that the Due Process Clause Protects.  
22 *Zadvydas v. Davis*, 533 USS. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71,  
23 80 (1992)).

1 25. The Supreme Court has clearly held that due process dictates that immigration detention  
2 cannot be indefinite. Indefinite detention in particular raises a “serious constitutional  
3 problem” and violates the Due Process Clause. *Zadvydas*, 533 U.S. at 689-90.

4 Accordingly, the Due Process Clause protects Mr. Fofana’s liberty, and any deprivation of  
5 his liberty must be narrowly tailored to serve a compelling government interest. *See Reno*  
6 *v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process “forbids the government  
7 to infringe certain ‘fundamental’ liberty interests at all, no matter what process is  
8 provided, unless the infringement is narrowly tailored to serve a compelling state  
9 interest”). In the context of post-removal immigration proceedings, the government’s  
10 interest in detention is to ensure an individual’s presence at the time of removal.

11 *Zadvydas*, 533 U.S. at 680. To the extent that an individual’s removal is unforeseeable,  
12 their detention becomes unconnected to the government’s interest, and thus, unlawful.

13 ***The 90-day Removal Period***

14 26. The Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231, governs the detention  
15 and removal of noncitizens, like Mr. Fofana, who have been ordered removed. Section  
16 1231(a)(2) authorizes only a 90-day period of mandatory post-final-removal-order  
17 detention, during which ICE is supposed to effectuate removal. This is known as the  
18 “removal period.” An individual detained by ICE is entitled to a custody redetermination  
19 following the expiration of the removal period. 8 C.F.R. § 241.4.

20 27. The 90-day removal period has run in Mr. Fofana’s case. Mr. Fofana was ordered  
21 removed on June 24, 2020, and granted withholding of removal. He did not appeal, as  
22 such, his appeal became administratively final that day. The 90-day removal period, once  
23 it has expired, does not restart merely upon re-arrest. *Diaz-Ortega v. Lund*, No. 1:19-CV-  
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1 670-P, 2019 WL 6003485, at \*8 (W.D. La. Oct. 15, 2019), report and recommendation  
2 adopted, No. 1:19-CV-670-P, 2019 WL 6037220 (W.D. La. Nov. 13, 2019) (“[T]he text of  
3 § 1231(a)(1)(B) does not mention restarting the removal period. Nor does any  
4 interpretive regulation of which the Court is aware.”). *Zadvydas & the 180-Day*  
5 *Presumption of Reasonable Detention*.

6 ***Zadvydas and the 180-day presumption of reasonable detention***

- 7
- 8 28. After the expiration of the removal period, § 1231(a)(6) permits certain noncitizens to be  
9 held beyond the removal period if they are inadmissible, or removable on grounds  
10 stemming from criminal convictions, security concerns, or if they have been determined  
11 to be a danger to the community or a flight risk. See 8 U.S.C. § 1231(a)(6). This  
12 detention, however, is subject to certain limits as outlined below. Further, § 1231(a)(6)  
13 permits these individuals to be released under certain conditions detailed in § 1231(a)(3).  
14 Finally, the government may continue to detain certain individuals under extreme  
15 circumstances, such as when an individual is a threat to public health, engaged in  
16 terrorism, or a particular danger to public safety. See 8 C.F.R. § 241.14. This detention is  
17 also subject to limits.
- 18 29. The Supreme Court has imposed strict limits on who can be detained beyond the 90-day  
19 removal period, noting that “[f]reedom from imprisonment—from government custody,  
20 detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due  
21 Process] Clause [of the Fifth Amendment] protects.” *Zadvydas*, 533 U.S. at 690. In  
22 *Zadvydas*, the legacy Immigration and Naturalization Service had detained Kim Ho Ma, a  
23 Cambodian national, and Kestutis Zadvydas, a man born to Lithuanian parents in a  
24 German displaced persons camp, for years after they were ordered removed. *Id.* at 684-

1 86. Purporting to follow the plain text of § 1231(a)(6), the government asserted that the  
2 statute committed the question of whether to detain an individual, and for how long, to  
3 the executive, not the judiciary. *Id.* at 689.

4 30. The Supreme Court found squarely in favor of Zadvydas and Ma, holding that their  
5 prolonged detentions violated the Due Process Clause. *Id.* The Court noted that the  
6 indefinite detention scheme in § 1231(a)(6) raised constitutional claims that it had the  
7 power to review. *Id.* Further, the Court reasoned that immigration detention, which is  
8 civil in nature, is non-punitive in purpose and effect-and must be related to achieving  
9 those goals. *Id.* at 690. The Court held that indefinite detention is not permitted in the  
10 context of § 1231(a)(6) because it fails to achieve either regulatory purpose of protecting  
11 the community or preventing flight to avoid removal-particularly where an individual's  
12 removal is a "remote possibility at best." *Id.* at 690-92.

13 31. Interpreting § 1231(a)(6) in a constitutional manner, the Court in *Zadvydas* provided  
14 guidance to courts facing questions of prolonged detention under the statute. First, the  
15 Court raised that the primary question for a habeas court is to answer the question of  
16 whether the length of an individual's detention is statutorily authorized-here, for express  
17 purpose of presence at the time of removal. *Id.* at 699. In doing so, the Court instructs a  
18 habeas court to:

19 ask whether the detention in question exceeds a period reasonably necessary  
20 to secure removal. It should measure reasonableness primarily in terms of  
21 the statute's basic purpose, namely, assuring the alien's presence at the  
22 moment of removal. Thus, if removal is not reasonably foreseeable, the  
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1 court should hold continued detention unreasonable and no longer  
2 authorized by statute. *Id.* at 699-70

3 32. Second, as an aid to courts and judicial administration, the Supreme Court in *Zadvydas*  
4 decided that detention for 180 days after a final order of removal, including the 90-day  
5 removal period, is presumptively reasonable under the INA and Due Process Clause. *Ali*  
6 *v. Dept of Homeland Sec.*, 451 F. Supp. 3d 703, 707 (S.D. Tex. 2020) (citing *Zadvydas*,  
7 553 U.S. at 701). The government must release a noncitizen whom it has detained beyond  
8 the presumptive 180-day period if it is unable to present documented confirmation that  
9 removal is likely to occur in the reasonably foreseeable future. *Clark v. Martinez*, 543  
10 U.S. 371, 386 (2005).

11 33. In crafting this presumptively reasonable 180-day period, the Supreme Court specifically  
12 rejected the Fifth Circuit's reasoning that indefinite detention could remain "awful as long  
13 as 'good faith efforts to effectuate ... deportation continue' and *Zadvydas* failed to show  
14 that deportation will prove 'impossible.'" *Id.* at 702 (quoting *Zadvydas v. Underdown*, 185  
15 3d 279,294 (5th Cir. 1999), vacated *sub nom. Zadvydas v. Davis*, 533 U.S. 67 (2001)).

16 34. Thus, noncitizens whose removal is not reasonably foreseeable and who have been  
17 detained for a period not consistent with the purpose of effectuating removal must be  
18 released because their continued detention would violate both § 1231(a)(6) and the Due  
19 Process Clause of the Fifth Amendment. The 180-day period of reasonableness for  
20 continued detention has closed in Mr. Fofana's case. Mr. Fofana's order of removal  
21 became final on June 24, 2020. He was released from detention immediately after his  
22 withholding of removal grant, and he has presented himself faithfully to ICE officials  
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1 since that time. ICE officials have presumably worked over five years since his release to  
2 effectuate his removal, yet they have been unable to do so.

3 35. Respondents cannot now, years down the road, re-detain Mr. Fofana, and attempt to take  
4 advantage of this presumption when their own agents have expressed that his removal is  
5 not any more foreseeable than it was during his release. Officials' re-detention of Mr.  
6 Fofana itself violates the clear directive of the Court to ensure that any detention be for  
7 the sole purpose of his foreseeable removal.

8 ***The 180-day period is a rebuttable presumption, not a bright line rule***

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10 36. Even assuming that the 180-day period has not expired, Mr. Fofana's detention is  
11 unlawful because it is not related to his foreseeable removal. Consistent with the bedrock  
12 principle in *Zadvydas* that detention must be connected to ensuring that an individual is  
13 present for removal, the government cannot hide behind the presumption that 180 days of  
14 post-removal detention is reasonable when continued detention is completely unmoored  
15 from reasonably foreseeable removal. *Zadvydas* "d[oes] not require a detainee to remain  
16 in detention for six months or to prove that the detention was of an indefinite duration  
17 before a habeas court could find that the detention is unconstitutional." *Ali*, 451 F. Supp.  
18 3d at 708 (emphasis added). Instead, "*Zadvydas* established a 'guide' for approaching  
19 detention challenges, not a categorical prohibition on claims challenging detention less  
20 than six months." *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020).

21 37. A challenge made within 180 days of detention after final order of removes the burden of  
22 proof of unremovability to the petitioner, see *Cesar v. Achim*, 542 F. Supp. 2d 897, 903  
23 (E.D. Wis. 2008), and once the petitioner meets that burden, the government must put  
24 forth evidence as to the foreseeability of the petitioner's removal, see *Khan v. Gonzales*,

1 481 F. Supp. 2d 638, 641 (W.D. Tex. 2006). Moreover, the *Zadvydas* Court's reasoning  
2 behind the 180-day rebuttable presumption does not create a floor for every  
3 constitutionally infirm detention. The Court posited that 180 days of detention after final  
4 order of removal was presumably reasonable "to grant the Government appropriate  
5 leeway *when its judgments rest upon foreign policy expertise.*" *Zadvydas*, 533 U.S. at 700  
6 (emphasis added). Where the reason to detain an individual does not "implicate foreign  
7 policy and administrative expertise" and "the analysis drifts out of that realm, the  
8 justification for the presumption no longer applies." *Cesar*, 542 F. Supp. 2d at 904.

9 38. Thus, even if post-removal-order detention has been for less than 180 days, if "the sole  
10 purpose of [detention] was to effectuate imminent removal," and imminent removal is not  
11 possible, the detention "no longer serves its intended purpose, and thus, is unreasonable,"  
12 particularly when it "follows a previous detention, on the same grounds." *Ali*, 451 F.  
13 Supp. 3d at 708.

14 39. In *Ali*, the petitioner was re-detained for the purpose of effectuating his release to  
15 Pakistan after six years of supervised release, but within two months, COVID-19  
16 pandemic travel shutdowns canceled his removal flights. 451 F. Supp. 3d at 706-07.  
17 Despite just a few months' length detention, the court granted *Ali* a writ of habeas corpus  
18 because he could not be removed and his detention no longer served its intended purpose.  
19 *Id.* at 708. The government could not hide behind the presumption of reasonableness of  
20 final-removal-order detention because the petitioner had already languished in  
21 immigration detention prior to being released on an order of supervision, and was re-  
22 detained only to attempt to remove him anew. *Id.* When that removal became foreseeable,  
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1 the government's interest in detaining him melted away, and his detention became  
2 unlawful.

3 40. Release is the proper remedy for unconstitutionally definite post-order detention. *See*  
4 *Zadvydas*, 533 U.S. at 699-700 (explaining that supervised release is the appropriate  
5 relief when "the detention in question exceeds a period reasonably necessary to secure  
6 removal" because at that point, detention is "no longer authorized by statute").

7 ***The 180-day presumption of reasonableness in this case is rebutted***

8  
9 41. Even if the government claims it is entitled to detain Mr. Fofana for six months of  
10 "presumptively reasonable" detention, that presumption is rebutted in this case where Mr.  
11 Fofana has already shown no reasonable purpose to his detention.

12 42. Mr. Fofana's re-detention fits squarely within the *Zadvydas* framework. Like the  
13 petitioner in *Zadvydas*, Mr. Fofana's withholding of removal order became  
14 administratively final over five years ago, on June 24, 2020. He has not impeded his own  
15 removal. Despite numerous attempts by ICE to remove him, they have not found a  
16 country to which to deport him. ICE therefore cannot demonstrate a significant likelihood  
17 of removability in the reasonably foreseeable future, which should have been a  
18 prerequisite to re-detaining Mr. Fofana in 2025.

19 43. The unlikelihood of Mr. Fofana's removal is evidenced by the age of Respondent's  
20 removal order, which he received five and-a-half years ago.

21 44. Indeed, this rationale that Mr. Fofana can be detained while the government makes  
22 attempts to contact countries that historically have not agreed to take him, is precisely the  
23 rationale that was rejected by the Court in *Zadvydas*. *See Zadvydas*, 533 U.S. at 702  
24 (detaining someone as long as "good faith efforts" to remove were ongoing was "more

1 than [the Court's] reading of the statute can bear"). Mr. Fofana has therefore more than  
2 met his burden to establish "good reason to believe that there is no significant likelihood  
3 of removal in the reasonable foreseeable future." *Id.* at 701.

4 45. Nor has the government shown that there are any specific justifications for continuing  
5 Mr. Fofana's detention under the special circumstances contained in 8 C.F.R. § 241.14;  
6 *see also Zadvydas*, 533 U.S. at 690-91. Like the petitioner in *Ali*, Mr. Fofana complied  
7 with every term of his Order of Supervision for years after his final order of removal, and  
8 does not pose a flight risk or danger to the community. *See Ali*, 451 F. Supp. 3d at 7

9 ***Mr. Fofana's continued detention is a violation of Due Process***

10 46. Mr. Fofana's indefinite detention also presents a due process challenge outside the  
11 *Zadvydas* framework. "[A]s-applied constitutional challenges remain available to address  
12 'exceptional' cases." *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 583 (2022); *see also*  
13 *Castaneda v. Perry*, 95 F.4th 750, 761 (4th Cir. 2024) ("We will therefore assume ... that  
14 as-applied due process challenges to § 1231 detentions may proceed outside the *Zadvydas*  
15 framework when the alien presents, as a threshold matter, exceptional circumstances  
16 warranting that departure."). Civil detention is only allowed in narrow circumstances,  
17 "where a special justification . . . outweighs the 'individual's constitutionally protected  
18 interest in avoiding physical restraint'" under the Fifth Amendment. *Zadvydas*, 533 U.S.  
19 at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). Detention as  
20 punishment for noncriminal purposes is not allowed. *See Bell v. Wolfish*, 441 U.S. 520,  
21 535 (1979). Thus, the Fifth Amendment bars civil detention in conditions that do not  
22 reasonably relate to a "legitimate, non-punitive governmental objective." *Cadena v. El*  
23 *Paso County*, 946 F.3d 717, 727 (5th Cir. 2020).

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47. Mr. Fofana's 90-day removal period has expired, and there have been no changes to his condition since his release under Orders of Supervision in 2020. Mr. Fofana was re-detained with no explanation.

48. Mr. Fofana's mental health concerns, eligibility for asylum, deep ties to the United States, and compliance with his Orders of Supervision for over five years also constitute "exceptional" circumstances that warrant consideration of an as-applied Due Process challenge. *See Johnson v. Arteaga-Martinez*, 596 U.S. at 583.

49. Therefore, Mr. Fofana's continued detention violates the implicit requirement in § 1231(a)(6) that detention should not become unreasonably prolonged after the 90-day statutory removal period.

50. Mr. Fofana's continued detention serves no legitimate government purpose.

**VIII. CLAIMS FOR RELIEF**

**COUNT ONE**

**Violation of the Immigration and Nationality Act—8 U.S.C. §2231**

51. Petitioner repeats and realleges each allegation of this petition here.

52. Title 8 U.S.C. § 1231(a) governs the detention of an individual with a final order of removal. The INA permits DHS to detain an immigrant during the "removal period," which is defined as the 90-day period following the issuance of a final order of removal. *See* 8 U.S.C. §§ 1231(a)(1)(A); 1231(a)(2).

53. Mr. Fofana has not engaged in any conduct to trigger an extension of the removal period under § 1231(a)(1)(C). Mr. Fofana has cooperated with all requests relating to his removal.

1 54. Because Mr. Fofana is well past the 90-day removal period, and he has done nothing to  
2 extend the removal period, ICE is necessarily detaining him under § 1231(a)(6). Section  
3 1231(a)(6) is the discretionary, post-removal period detention provision.

4 55. ICE already detained Mr. Fofana for months during his immigration proceedings, in  
5 which he won withholding of removal, instead of asylum, because of a law that has since  
6 been overturned. His grant of withholding meant his deportation order became  
7 administratively final June 24, 2020.

8 56. During this time, efforts to remove him to countries that would not accept him or issue  
9 him citizenship or travel documents failed. He was released under an Order of  
10 Supervision and has spent over five years abiding by that order. With no change in his  
11 circumstances, ICE's re-detention of Mr. Fofana under § 1231 cannot be presumed  
12 reasonable. Because Mr. Fofana's detention has exceeded his removal period and ICE has  
13 made no showing that it is significantly likely to remove Mr. Fofana in the reasonably  
14 foreseeable future, he is therefore entitled to release under *Zadvydas*.

15 57. Mr. Fofana was denied asylum under the Safe Third Country Act, which was later  
16 overturned, so undersigned pro bono counsel has filed a Motion to Reopen to request  
17 asylum and Request for Stay of Removal with the Immigration Court. That request was  
18 accepted before the Pearsall Immigration Court in December 2025 and remains pending.

19 58. Furthermore, there is no "sufficiently strong special justification" for ICE to continue to  
20 detain Mr. Fofana. *See Zadvydas*, 533 U.S. at 690-91. Thus, Mr. Fofana's detention  
21 violates 1231, and he is entitled to immediate release from custody.

22 59. Thus, there are two alternative ways in which Mr. Fofana's detention runs afoul of  
23 *Zadvydas* and its progeny. First, Mr. Fofana's detention is beyond the 180 days during  
24

1 which the government can detain with a presumption of reasonableness. Second, even if  
2 this Court does not recognize he is detained beyond that time period, any presumption of  
3 reasonableness is rebutted by the facts of this case.

4 **COUNT TWO**

5 **Violation of the Due Process Clause of the Fifth Amendment of the U.S. Constitution**  
6 60. Petitioner repeats and realleges each allegation of this petition here.

7 61. Civil immigration detention violates due process if it is not reasonably related to its  
8 statutory purpose. *See id.* at 690 (citing *Jackson v. Indiana*, 506 U.S. 715, 738 (1972)).  
9 The Supreme Court recognized that the statutory purpose of § 1231 was to detain  
10 noncitizens with final orders of removal to effectuate removal. *Zadvydas*, 533 U.S. at 697  
11 (§ 1231's "basic purpose" is to "effectuat[e] an alien's removal.").

12 62. Mr. Fofana has already endured months of civil detention, and his re-detention is certain  
13 to continue into the indefinite future. His re-detention is not reasonably related to the  
14 primary statutory purpose of effectuating removal. *See id.* at 697; *Clark*, 543 U.S. at 384;  
15 *Ali*, 451 F. Supp. 3d at 707.

16 63. Even outside the *Zadvydas* framework, "as-applied constitutional challenges remain  
17 available to address 'exceptional' cases." *Arteaga-Martinez*, 596 U.S. at 583.

18 64. Here, Mr. Fofana has presented several exceptional circumstances. He has retained  
19 withholding of removal from Benin, due to severe harm he faced on account of his  
20 sexuality, and he has a pending Motion to Reopen since he is eligible for asylum. He is  
21 also suffering mental health concerns that have exacerbated in detention. Therefore, he  
22 may bring an as-applied challenge to his indefinite detention as a violation of his  
23 substantive Due Process rights.

24 65. Thus, Mr. Fofana's detention violates substantive due process.



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**Certificate of Service**

I, Bailey Barlow, hereby certify that on December 12, 2025, I mailed a copy of Petitioner's Habeas Petition to the U.S. Attorney for the Western District of Texas San Antonio Division, at the United States Attorney's Office, 601 NW Loop 410, Suite 600, San Antonio, Texas 78216.

  
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**I. VERIFICATION**

I have read the foregoing Petition for Writ of Habeas Corpus. I have personal knowledge of the factual allegations contained therein, and if called as a witness to testify, I would competently testify as to the matters stated therein. This declaration is made pursuant to 8 U.S.C. § 1746. I declare under the penalty of perjury that the foregoing is true and correct.

ZAKARI  
/s/ FOFANA

Petitioner: Zakari Fofana

Date: December 12, 2025

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

Zakari Fofana,

Petitioner,

v.

**ROSE THOMPSON**, Warden, Karnes County Immigration Processing Center; **MIGUEL VERGARA**, Field Office Director of Enforcement and Removal Operations, San Antonio Field Office, Immigration and Customs Enforcement; **TODD M. LYONS**, Acting Director of Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary, U.S. Department of Homeland Security; **UNITED STATES DEPARTMENT OF HOMELAND SECURITY**; **PAMELA BONDI**, U.S. Attorney General; **EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**, *in their official capacities*,

Respondents.

Case No.

**SA 25CA1842JKP**

**APPLICATION FOR ORDER TO SHOW CAUSE**  
**PURSUANT TO 28 U.S.C. SECTION 2243**

Petitioner respectfully requests that this Court “forthwith” issue an order directing Respondents to show cause why his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 should not be granted. *See* 28 U.S.C. § 2243.

Petitioner challenges his detention as a violation of the Immigration and Nationality Act and U.S. Constitution. *See* Pet. for Writ of Habeas Corpus, Dkt. No. 1. The federal habeas corpus statute provides that “[a] court, justice or judge entering a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained

is not entitled thereto.” 28 U.S.C. § 2243. Section 2243 further provides that the writ or order to show cause “shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed,” and that the court shall hold a hearing on the writ or order to show cause “not more than five days after the return unless for good cause additional time is allowed.” *Id.* At that hearing, the court “shall summarily hear and determine the facts, and dispose of the matter as law and justice require.” *Id.*

Courts frequently issue such orders to show cause for the government to respond to habeas petitions by individuals in immigration detention. *See, e.g., Misirbekov v. Venegas*, No. 1:25-CV 00168, 2025 WL 2201470 (S.D. Tex. Aug. 1, 2025) (Olvera, J.); *Z. v. Rodriguez et al.*, 5:25-cv 00716, (Dkt. 9) (W.D. Tex. June 26, 2025) (Farrer, J.); *John Doe v. Angel Garite*, 3:25-cv-00046, (Dkt. 5) (W.D. Tex. Feb. 21, 2025) (Cardone, J.); *Melika Mohammadi Gazvar Olya, v. Angel Garite*, 3:25-cv-00083, (Dkt. 7) (W.D. Tex, Mar. 19, 2025) (Guadderrama, J.); *D.G.L. v. Collins*, No. A-20-CV-1126-RP-SH, 2020 WL 10355163, at \*2 (W.D. Tex. Nov. 18, 2020) (Hightower, M.J.); *Abdulle v. Gonzales*, 422 F. Supp. 2d 774, 775 (W.D. Tex. 2006) (Briones, J.).

Pursuant to §2243, Petitioner requests that the Court immediately issue an Order to Show Cause directing Respondents to file a return within three days of the Court’s order, showing cause, if any, why the writ of habeas corpus should not be granted, and to provide Petitioner an opportunity to file a reply within three days after Respondents file the return. The Court has the option to immediately grant relief. However, if the Court believes the more fulsome briefing on the issues raised by Petitioner would be appropriate, then the Court should grant Petitioner’s motion for a preliminary injunction he has filed contemporaneously with this Application for

Order to Show Cause. After granting that motion, the Court can set a full briefing schedule for the issues presented.

Dated: December 12, 2025

/s/Meredith Hoffman\*  
Meredith Hoffman, Bar No. 24130708  
Casa Marianella  
821 Gunter Street  
Austin, Texas 78702  
512-385-5571  
mhoffman@casamarianella.org

*Attorney for Petitioner*

*\* Application for admission pro hac vice pending*

**Certificate of Service**

I, Bailey Barlow, hereby certify that on December 12, 2025, I mailed a copy of Petitioner's Application for Order to Show Cause to the U.S. Attorney for the Western District of Texas San Antonio Division, at the United States Attorney's Office, 601 NW Loop 410, Suite 600, San Antonio, Texas 78216.

A handwritten signature in cursive script, appearing to read "Bailey Barlow", is written over a horizontal line.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

Zakari Fofana,

Petitioner,

v.

**ROSE THOMPSON**, Warden, Karnes County  
Immigration Processing Center; **MIGUEL  
VERGARA**, Field Office Director of Enforcement and  
Removal Operations, San Antonio Field Office,  
Immigration and Customs Enforcement; **TODD M.  
LYONS**, Acting Director of Immigration and Customs  
Enforcement; **KRISTI NOEM**, Secretary, U.S.  
Department of Homeland Security; **UNITED STATES  
DEPARTMENT OF HOMELAND SECURITY**;  
**PAMELA BONDI**, U.S. Attorney General;  
**EXECUTIVE OFFICE FOR IMMIGRATION  
REVIEW**, *in their official capacities*,

Respondents.

Case No.

**SA25CA1842JKP**

ORDER TO SHOW CAUSE  
PURSUANT TO 28 U.S.C.  
SECTION 2243

ORDER GRANTING PETITIONER'S APPLICATION FOR ORDER TO SHOW  
CAUSE

On this date, the Court took under submission Petitioner Zakari Fofana's Application for Order to Show Cause. The Court, after reviewing the motion, is of the opinion that the motion is well-taken and should be in all things **GRANTED**.

It is therefore **ORDERED** that Petitioner's Application for Order to Show Cause is hereby **GRANTED** in its entirety. Respondents are **ORDERED** to file a return within three days of the date of this order, showing cause, if any, why the writ of habeas corpus should not be granted. Petitioner shall have three days to file a reply after Respondents file the return.

SIGNED this \_\_\_ day of December, 2025

\_\_\_\_\_

HON. \_\_\_\_\_

U.S. WESTERN DISTRICT OF TEXAS JUDGE

**Certificate of Service**

I, Bailey Barlow, hereby certify that on December 12, 2025, I mailed a copy of Petitioner's Order to Show Cause to the U.S. Attorney for the Western District of Texas San Antonio Division, at the United States Attorney's Office, 601 NW Loop 410, Suite 600, San Antonio, Texas 78216.

  
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