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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

In the Matter of

LUZ ELSA CRUZ, AKA )  
EDGAR OMAR CHAVEZ CRUZ )

*Petitioner*

vs.

CHRISTOPHER G. LAROSE, in his )  
official capacity as Warden of CCA )  
Detention facility, DANIEL )  
BRIGHTMAN, in his official capacity )  
as Field Office Director of the )  
Immigration & Customs Enforcement )  
and Removal Operations San Diego )  
Field Office; KRISTI NOEM, in her )  
official capacity as Secretary of the )  
Department of Homeland Security; )  
U.S. DEPARTMENT OF )  
HOMELAND SECURITY; )

*Respondents,*

Case No. '25CV3742 CAB KSC

Agency No



**PETITION FOR HABEAS CORPUS**

1 **I. INTRODUCTION**

2 1. Since Thursday, December 18, 2025, Petitioner LUZ ELSA CRUZ aka  
3 EDGAR OMAR CHAVEZ CRUZ (Hereinafter “Petitioner” or “Ms. Cruz”) a  
4 citizen of Mexico, has been detained at the Otay Mesa Detention Center (Herein  
5 ‘OMDC”) under the custody of the U.S. Department of Homeland Security’s  
6 Immigration and Customs Enforcement (“ICE”), specifically its Enforcement and  
7 Removal Operations “ERO”) division. For ease of reference, ICE will be used  
8 throughout this submission to refer to ICE and its ERO division.

9 2. Petitioner is a transgender female who legally changed her name on January 19,  
10 2011, in the San Diego Superior Court from Edgar Omar Chavez Cruz to Luz Elsa  
11 Cruz on. In these filings she will use female pronouns and be referred to as Ms.  
12 Even though she is a transgender female she is housed with the male population at  
13 OMDC.

14 3. Her initial physical detention occurred after a referral to immigration court was  
15 issued in April of 2010. On May 26, 2010, she passed a reasonable fear interview  
16 and filed an application for Withholding of Removal and requested protection  
17 under the Convention Against Torture. (Petitioner was found ineligible for  
18 political asylum because of a prior removal order entered on August 31, 2004).

19 4. On November 9, 2010, An immigration judge (“IJ”) granted Petitioner’s  
20 application for Withholding Of Removal. The government did not appeal the  
21 decision and it is a final order.

22 5. On November 17, 2010, after approximately seven months, Ms. Cruz  
23 was released from ICE custody and attended regular check-in  
24 appointments under an Order of Supervision (“OSUP”) for  
25 approximately fifteen years.

26 6. Ms. Cruz checked-in with respondent ICE at their office in San Diego,  
27 California on November 20, 2025, and was placed on a monitor by the  
28 Intensive Supervision Appearance Program (Herein ‘ ISAP’).

29 7. Petitioner was notified by the ISAP office to appear on December 18,  
30 2025. When she checked in, she was detained and placed in custody at  
31 OMDC where she remains to date.

32 8. Petitioner has been detained cumulatively for more than six months  
33 and requests release from detention as there has been no change in her  
34 circumstance or new factors warranting detention. *Infra* “Section VII.”

35 9. Respondents’ continued custody of Petitioner, and the conditions thereof,  
36 violate the Fifth Amendment because the conditions constitute punishment,  
37 or, alternatively, are excessive relative to their regulatory  
38 purpose. *Infra* “Section VII.”

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## II. CUSTODY

40 10. Ms. Cruz is detained at the OMDC in Otay Mesa, California since  
41 December 18, 2025. She is under the direct control of Respondents and in  
42 custody for habeas purposes. *Infra* “Section VII.”

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## III. JURISDICTION AND VENUE

45 11. This action arises under the Constitution of the United States and the  
46 Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

47 12. Jurisdiction is proper under 28 U.S.C § 2241 (habeas corpus); 28  
48 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); U.S.  
49 Const. art. I, § 9, cl. 2 (the Suspension Clause); and 5 U.S.C. § 702  
50 (Administrative Procedure Act)

51 13. Venue lies in this District under 28 U.S.C. § 1391(e) and § 2241(d)  
52 because Petitioner is detained within this District, and the immediate  
53 custodian is located in this District. Additionally, all the events giving  
54 rise to the claims in this action took place in the Southern District of  
55 California. All material decisions regarding Ms. Cruz’s detention have  
56 been made at the ICE’s San Diego Field Office, located within San  
57 Diego, California.

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60 **IV. EXHAUSTION**

61 14. Ms. Cruz has exhausted administrative remedies. She cannot be  
62 placed in removal proceedings because her grant of Withholding of  
63 Removal to Mexico is final. Exhaustion for habeas claims is  
64 prudential, not jurisdictional. *See Laing v. Ashcroft*, 370 F.3d 994,  
65 997 (9th Cir. 2004). The prudential exhaustion requirement  
66 may be waived if “administrative remedies are inadequate or not  
67 efficacious, pursuit of administrative remedies would be a futile  
68 gesture, [or] irreparable injury will result...” *Id.* at 1000.

69 15. Administrative remedies would be futile, inadequate, and not  
70 efficacious for Ms. Cruz. Exhausting her constitutional claim  
71 would be futile because the agency does not have the authority to rule  
72 on constitutional questions. *See Wang v. Reno*, 81 F.3d 808, 815–16 (9th  
73 Cir. 1996) (*per curiam*) (“the inability of the INS to adjudicate the  
74 constitutional claim completely undermines most, if not all, of the  
75 purposes underlying exhaustion”).

76 16. Even if exhaustion were not futile, waiver is warranted because Ms.  
77 Cruz’s claim presents purely legal issues, and no purpose is  
78 served by requiring an administrative appeal. *See Hernandez v. Sessions*,  
79 872 F.3d 976, 988-989 (9th Cir. 2017).

80 17. Exhaustion of remedies at the BIA is not required because  
81 post-order custody matters fall squarely under ICE's jurisdiction. Ms.  
82 Cruz has suffered irreparable harm in the form of continued increased  
83 custody conditions that cause great stress, especially because she is  
84 detained with males and identifies with and appears as a female. Her  
85 custody is causing great emotional distress to her mother, a United States  
86 Citizen, who relies on her for financial and emotional support.

87 **V. PARTIES**

88 18. Petitioner, LUZ ELSA CRUZ (AKA Edgar Omar Cruz Chavez) is a  
89 citizen of Mexico. She is 47-years old. She has resided legally in the  
90 United States since 2010, when she was granted Withholding of Removal  
91 and has a lawfully issued work permit.

92 19. In April of 2010, she was taken into custody, held for approximately  
93 seven months in detention, and released after her application for  
94 Withholding of Removal was granted. She was placed on supervision by  
95 the San Diego, California ICE office and checked in regularly for  
96 approximately fifteen years. On December 18, 2025, she was again  
97 detained by respondents at an ISAP appointment and has been in custody  
98 for approximately one week.

99 20. Respondent, **CHRISTOPHER G. LAROSE**, is the Warden and has  
100 control of the OMDC in Otay Mesa, California where Petitioner is  
101 currently being detained. He maintains his office in Otay Mesa,  
102 California, within this judicial district.

103 21. Respondent, **DANIEL A. BRIGHTMAN**, is the Field Office  
104 Director for the San Diego Field Office of the U.S. Immigration and  
105 Customs Enforcement (“ICE”), Enforcement and Removal Operations  
106 (“ERO”), a component of the Department of Homeland Security  
107 (“DHS”). Respondent Brightman maintains his office in San Diego,  
108 California, within this judicial district. The San Diego Field Office is  
109 responsible for carrying out ICE’s immigration enforcement and removal  
110 operations in San Diego, therefore Respondent Brightman is a legal  
111 custodian of Petitioner and is sued in his official capacity.

112 22. Respondent, **KRISTI NOEM**, is the Secretary of the  
113 Department of Homeland Security, an agency of the United States. She is  
114 responsible for the administration and enforcement of the  
115 immigration laws. *See* 8 U.S.C. § 1103(a). Respondent Noem is a legal  
116 custodian of Petitioner and is sued in her official capacity.

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

120 **VI. FACTUAL ALLEGATIONS**

121 24. Ms. Cruz was born in Tijuana, Baja California, Mexico on [REDACTED] 1978.

122 25. Her mother, Rosalva Cruz, resides with her daughter and is a citizen of the  
123 United States. Her father was never in her life. Her half-brother is also a United  
124 States citizen.

125 26. Ms. Cruz entered the U.S. with her border crossing card and began living in  
126 San Diego, California when was approximately 13-years old. Her mother brought  
127 her to San Diego, California because she was being abused in Mexico for being  
128 feminine. She graduated from high school and attended community college here.

129 27. On June 21, 2004, she was arrested for using the identity of a deceased person,  
130 Alan Fernandez. She was convicted of a violation of CA PEN CODE §529.3,  
131 falsely impersonating another, and sentenced to 102 days. She was detained by ICE  
132 and ordered removed from the United States in August of 2004.

133 Ms. Cruz went to live with her mother in Tijuana, Mexico. One night she went out  
134 and was kidnapped by the owner of a transgender bar. [REDACTED]

135 [REDACTED] Through a customer,  
136 her mother was notified and she was able to rescue her from the bar. Ms. Cruz

137 immediately entered the U.S. without inspection as the Mexican police, believed to  
138 be controlled by the owner of the bar, were looking for her.

139 28.

[REDACTED]

140

[REDACTED]

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143 29. She was re-arrested by ICE in April of 2010, after an arrest for disturbing the  
144 peace. (no conviction entered). She was placed in custody at OMDC and remained  
145 there until November 17, 2010, released after she was granted Withholding of  
146 Removal by an IJ.

147 30. After her release from custody on November 17, 2010, Petitioner has been  
148 living in the United States complying with annual check-ins for fifteen years. She  
149 resides with her mother and works full time at a residential care facility for elder  
150 people run by Catholic Charities. Her mother has health issues and relies heavily  
151 on her daughter, emotionally and financially.

152 31. In 2011, she was arrested and pleaded guilty to a violation of CA VEH Code  
153 §23152(a). She regularly attended her check-in appointments after this date  
154 without incident. On November 20, 2025, Petitioner attended her ICE check-  
155 in appointment and was referred to receive an ankle monitor at ISAP.

156 32. On December 18, 2025, approximately a month after her ICE check-in  
157 appointment, she was called back in to the ISAP office and arrested. The reason  
158 given for her arrest and detention by respondent ICE was because they were  
159 ordered to arrest immigrants with Withholding of Removal grants who had prior  
160 orders of removal.

161 33. While in custody, Respondent ICE tried to convince Petitioner to sign  
162 a 'voluntary departure' to her country of origin, Mexico. This was done  
163 without permitting her to call to discuss her case with legal counsel.

164 34. Petitioner is detained in the male section of OMDC, although she  
165 identifies and appears physically to be a female. She faces possible harm  
166 by fellow inmates who may discriminate or harm her because she is  
167 transgender.

168 35. It is believed respondents desire to remove Petitioner to another  
169 country without due process of law and without notice to legal counsel.

170 Ms. Cruz was informed by an officer at OMDC that she is going to be  
171 removed to Mexico.

172 **VII. LEGAL ARGUMENT**

173 36. A federal district court can grant a writ of habeas corpus if the Petitioner "is in  
174 custody in violation of the Constitution or laws or treaties of the United States." 28  
175 U.S.C. § 2241. It is well established that the Fifth Amendment entitles non-citizens

176 to process of law in deportation proceedings. *Demore v. Kim*, 538 U.S. 510, 523  
177 (2003). The Due Process Clause of the Fifth Amendment forbids the government  
178 from depriving any “person” of liberty without due process of law. U.S. Const.  
179 amend. V.

180 37. Individuals in custody of a facility run by respondents are clearly eligible to file  
181 a petition for habeas corpus.

182 38. The Ninth Circuit has held that a final deportation order subjects  
183 a noncitizen to a restraint on liberty sufficient to place the noncitizen “in  
184 custody.” *Nakaranurack v. United States*, 68 F.3d 290, 293 (9th Cir. 1995).

185 Here, Petitioner was found by an IJ to face persecution if removed to Mexico.

186 The decision granting Withholding of Removal is final.

187 39. Individuals under an order of supervision are considered in custody for  
188 habeas purposes. “As the Supreme Court recently noted, physical detention  
189 (or here, physical detention be federal, rather than state, authority) is no  
190 longer required for a petitioner to meet the custody requirement and obtain  
191 habeas relief.” *Rosales v. Bureau of Immig. & Custodms Enf’t*, 426 F. 3d 733,  
192 735 (5<sup>th</sup> Cir. 2005) citing *Rumsfeld v. Padilla*, 542 U.S. 426, 124 S. Ct. 2711,  
193 2719, 159 L.Ed.2d 513 (2004). (“[O]ur understanding of custody has  
194 broadened to include restraints short of physical confinement[.]; See also,  
195 *Jones v. Cunningham*, 371 U.S. 236, 239-40, 83 S. Ct. 373, 9 L.Ed.2d 285

196 (1963)(Recognizing that restraining on liberty other than physical  
197 confinement may constitute custody for habeas purposes).

198 40. Petitioner has been under an order of supervision since November 17,  
199 2010, through December 18, 2025, when she was placed in custody.

200 Therefore, Petitioner's custody is governed by 8 U.S.C. § 1231(a) because she  
201 has a final order of removal to Mexico, but cannot be removed there due  
202 to her grant of Withholding of Removal. Post-order custody is limited by  
203 §1231(a)(6) and implementing regulations, 8 C.F.R. §§ 241.4–241.5.

204 Accordingly, this Court has jurisdiction over this habeas action.

205 41. Respondents have subjected Petitioner to prolonged custody for more than six  
206 months. See, *Zadvydas, infra*. Ms. Cruz was detained from April of 2010 through  
207 November 17, 2010. She was under the custody of OSUP, from November 17,  
208 2010 through December 18, 2025, or for fifteen years. She is now detained at  
209 OMDC since December 18, 2025.

210 42. Because removal to Mexico is barred and removal to another  
211 country is unforeseeable, any continued detention or increased  
212 restrictions violates the Due Process Clause (*Zadvydas*, 533 U.S. at  
213 699; *Diouf II*, 634 F.3d at 1086–87). As a transgender woman,  
214 Petitioner can demonstrate she will suffer persecution if removed to any  
215 third country on respondent's list, such as Uganda or Honduras.

216 43. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme  
217 Court found violation of the due process rights of noncitizens held during  
218 and after a removal period. *Zadvydas* concerned a resident noncitizen who  
219 could not be deported because none of the relevant countries would accept  
220 him. *Id.* at 684. Because indefinite detention without adequate safeguards  
221 could violate noncitizens' due process rights, the Supreme Court  
222 established a presumption of six months as a reasonable period of  
223 detention while an order of removal is carried out. *Id.* at 701. After that  
224 period elapses, a noncitizen who "provides good reason to believe  
225 that there is no significant likelihood of removal in the reasonably  
226 foreseeable future" must be released, unless the government can "respond  
227 with evidence sufficient to rebut that showing." *Id.* Respondents have not  
228 made any such showing or provided any rebuttal evidence as to why  
229 Petitioner must remain in custody.

230 44. A civil detainee's confinement is unconstitutional under the Fifth Amendment  
231 if his conditions of confinement "amount to punishment." *Bell v. Wolfish*, 441 U.S.  
232 520, 535 (1979); *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) (quoting *Bell*,  
233 441 U.S. at 535); accord *Bent v. Barr*, 445 F. Supp. 3d 408, 413-14 (N.D. Cal.  
234 2020). "[P]unitive conditions may be shown (1) where the challenged restrictions  
235 are expressly intended to punish, or (2) where the challenged restrictions serve an

236 alternative, non-punitive purpose but are nonetheless excessive in relation to the  
237 alternative purpose, . . . or are employed to achieve objectives that could be  
238 accomplished in so many alternative and less harsh methods." *Jones*, 393 F.3d at  
239 932, also *Jones v. Cunningham*, 371 U.S. 236, 239-40, 83 S. Ct. 373, 9 L.Ed. 2d  
240 285 (1963) (recognizing that restraints on liberty other than physical confinement  
241 may constitute custody for habeas purposes.).

242 45. Petitioner was released from custody after a grant of Withholding of  
243 Removal on November 17, 2010. There is no reason to subject her to  
244 prolonged detention a second time, facing removal to an unknown  
245 country other than Mexico. Even worse, discrimination and persecution  
246 against Petitioner is likely to occur because she is a transgender female.

247 46. Accordingly, the increase in custody conditions violates the Fifth  
248 Amendment because such post final punishment does not serve a purpose  
249 other than to punish Ms. Cruz under the Fifth Amendment's Due Process  
250 clause as well as 8 U.S.C. § 1231(a)(6) post-final order custody limits,  
251 especially if it for the purpose of removing her to Mexico or another  
252 country without any safeguards in place. Arbitrary or punitive re-  
253 detention is unlawful under the Due Process Clause and controlling  
254 precedent.

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**IIX. PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully prays this Court grant the following relief:

- 1) Assume jurisdiction over this habeas action;
- 2) Issue a Writ of Habeas Corpus ordering Petitioner’s immediate release from custody without any Order of Supervision, and enjoin re-detention absent a constitutionally adequate pre-deprivation hearing;
- 3) Alternatively, issue an Order to Show Cause directing Respondents to justify any continued placement under an Order of Supervision and any threatened re-detention;
- 4) Declare that any continued or threatened deprivation of Petitioner’s liberty – including re-detention after her grant of Withholding of Removal – violates 8 U.S.C. § 1231, its implementing regulations and the Due Process
- 5) Enjoin Respondents from taking any action that would subject Petitioner to additional harm during the pendency of this litigation or related immigration proceedings;

274                   6) Award reasonable costs and attorneys' fees under the Equal  
275                   Access to Justice Act, 28 U.S.C. § 2412, or on any other basis justified under  
276                   law. and

277                   7) Grant such further relief as the Court deems just and proper.

278                   Date: December 23, 2025

279                   Respectfully submitted,

280                   /s/ Karla L. KRAUS

281                   *Attorney for Petitioner*

VERIFICATION BY SOMEONE ACTING PETITIONER'S BEHALF

PURSUANT TO 28 U.S.C. §2242

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. 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.

Date: December 23, 2025

Respectfully submitted,

/s/ Karla L. Kraus

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Karla L. Kraus

Attorney at Law

Attorney for the Petitioner