

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

KARIM CHENNAH

Petitioner,

v.

JUAN BALTAZAR, Warden of the Aurora
Contract Detention Facility owned and
operated by GEO Group, Inc.;

ROBERT HAGAN, Acting Field Office
Director, Denver Field Office, U.S.
Immigration and Customs Enforcement;

KRISTI NOEM, Secretary, U.S. Department
of Homeland Security;

TODD LYONS Acting Director of
Immigration and Customs Enforcement;

PAMELA BONDI, Attorney General, U.S.
Department of Justice.

Respondents.

Case No. 1:26-cv-00112

**VERIFIED PETITION FOR WRIT
OF HABEAS CORPUS**

INTRODUCTION

1. This case concerns the indefinite — and potentially permanent — civil detention of a young gay man and trauma survivor who has been held for over six months following the issuance of a final removal order at the Immigration and Customs Enforcement (“ICE”) Denver Contract Detention Facility in Aurora, Colorado.
2. The Department of Homeland Security (“DHS,” “the Department,” “the government”) jailed Petitioner Karim Chennah (“Mr. Chennah”) for being unlawfully present in the United States on or about October 17, 2024, and placed him in removal proceedings. Mr. Chennah had recently entered the United States after fleeing from Morocco. He has no criminal record anywhere in the world.
3. On June 25, 2025, the IJ entered a final order of removal against Mr. Chennah, which was simultaneously withheld upon the IJ’s decision to grant Mr. Chennah withholding of removal to Morocco (“Withholding”). Exh. A, IJ Order. The judge found it “more likely than not” that Mr. Chennah will face persecution in Morocco based on his sexual orientation. *See id.*; *see also* 8 U.S.C. § 1231(b)(3). Mr. Chennah would have received asylum but for the Circumvention of Lawful Pathways rule. Both parties waived their right to appeal. *See* Exh. A, IJ Order.
4. Under the Department’s own longstanding policies, Respondents should have released Mr. Chennah on an order of supervision given that he has no criminal history and lacks any

“exceptional” circumstances that would justify continued detention. *See* Exh. F, Fear-Based Grant Release Policy.

5. Under 8 U.S.C. § 1231, which governs the detention and removal of noncitizens who have been issued final orders, DHS may continue detention to facilitate a noncitizen’s removal. However, section 1231 does not authorize indefinite detention and provides that removal should be effectuated within a “removal period” of 90 days.
6. The United States Supreme Court addressed the government’s authority to continue detention past the 90-day removal period in *Zadvydas v. Davis* and held that post-removal-period detention must be limited to the period of time “reasonably necessary” to facilitate removal. 533 U.S. 678, 699 (2001). Accordingly, *Zadvydas* established a rule that after a noncitizen has been detained for six months following a removal order, once a noncitizen provides “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.* at 701. The noncitizen must be released if “there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*
7. In this case, the Department cannot remove Mr. Chennah to Morocco. *See* Exh. A, IJ Order. After more than six months of failing to identify a viable third country for removal, Mr. Chennah’s attorney notified the U.S. Attorney’s Office on January 8, 2026 of his intent to file this petition for habeas corpus. Exh. B(d). The next day ICE served Mr. Chennah with a notice of removal to Cameroon but did not email a copy to his attorney. Exh. B(e). Mr. Chennah has

no travel documents for Cameroon. It is unclear when ICE might be able to remove Mr. Chennah to Cameroon.

8. Mr. Chennah is likely to be persecuted as a gay man in Cameroon. When served with the notice of removal on January 9, 2026, Mr. Chennah affirmatively stated a fear of being removed to Cameroon. *See* Exh B(e). Same-sex sexual activity is illegal in Cameroon and violence and discrimination against gay people are widespread. Cameroon is not a safe country for removal, and Mr. Chennah's sexual orientation makes it highly improbable that DHS will be able to identify a safe third country for his removal. As a gay man, Mr. Chennah faces well-documented risks of targeted persecution in many countries and will pursue his procedural rights to protection against removal to any country where he would face persecution or torture.
9. During the more than six months since Mr. Chennah was issued a final removal order, DHS has failed to timely comply with its own policies and federal regulations regarding custody reviews, and the review procedure has not substantiated any real likelihood of removal. *See* 8 C.F.R. § 241.4. While DHS stated (in a custody review that was completed almost two months after the expiration of the removal period) that Mr. Chennah's continued detention is justified by a significant likelihood of removal in the reasonably foreseeable future, DHS provided no explanation for that conclusion. ICE only identified Cameroon as a destination after being advised that this petition would be shortly filed. *See* Exh B(d). Mr. Chennah has no

connections with any third countries, has no travel documents for any third countries, and has not been asked to apply for any travel documents.

10. Where ICE's identification of third country for removal is triggered only by a petition for habeas corpus, and where the facts suggest that third country removal is unlikely to succeed, removal cannot be considered reasonably foreseeable.
11. Because there is no significant likelihood of removal in the reasonably foreseeable future, Mr. Chennah's continued detention is unauthorized by statute and is unconstitutional. Accordingly, Mr. Chennah respectfully asks this Court to declare that his continued detention by Respondents is unlawful and order his immediate release from custody.

JURISDICTION AND VENUE

12. Mr. Chennah brings this action under Art. I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1651 (the All Writs Act).
13. District courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their civil immigration detention. *See Zadvydas*, 533 U.S. at 687.
14. This Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the laws of the United States.
15. Venue is proper in the District of Colorado because at least one of the Respondents resides in this District and Respondents imprison Mr. Chennah in this District. As such, Mr. Chennah is a resident of this District, and a substantial part of the events giving rise to the claims in this action took place within this District. 28 U.S.C. § 1391(b).

PARTIES

Petitioner

16. Mr. Chennah is a 22-year-old gay man from Morocco who has been detained by DHS for over 400 days.
17. Despite being granted Withholding by the immigration judge in June 2025, DHS has refused to release him, continuing to hold him for more than 180 days after his final order without legal justification.

Respondents

18. Juan Baltazar is the Warden of the Aurora Facility where DHS jails Mr. Chennah. Accordingly, Juan Baltazar is an employee of the GEO Group — the private, for-profit prison company that operates the facility — and is therefore a legal custodian of Mr. Chennah. He is sued in his official capacity.
19. Robert Hagan is the interim Field Office Director of the Denver Field Office of ICE Enforcement and Removal Operations (“ERO”), which has administrative jurisdiction over Mr. Chennah’s detention and removal. He is a legal custodian of Mr. Chennah and is sued in his official capacity.
20. Kristi Noem is the Secretary of DHS. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (“INA”). She has ultimate custodial authority over Mr. Chennah because ICE is a sub-agency of DHS. She is sued in her official capacity.

21. Todd M. Lyons is the Acting Director of ICE. He has the authority to make decisions related to detaining and removing noncitizens. As such, Mr. Lyons is responsible for Mr. Chennah's unlawful detention. He has custodial authority over him and is sued in his official capacity.
22. Pamela Bondi is the Attorney General of the United States. She is responsible for the actions of the Department of Justice (DOJ). The Executive Office for Immigration Review (EOIR) and the immigration court system are a component agency of the DOJ. Ms. Bondi routinely transacts business in the District of Colorado and has custodial authority over Mr. Chennah. She is sued in her official capacity.

EXHAUSTION OF REMEDIES

23. Habeas petitions under 28 U.S.C. § 2241 are not subject to statutory exhaustion requirements. *Compare* 28 U.S.C. § 2241 *with* 28 U.S.C. § 2254. Moreover, there is no exhaustion requirement because no administrative agency exists to adjudicate a petitioner's constitutional challenges to post-removal-order detention. *See Matter of C--*, 20 I. & N. Dec. 529, 532 (BIA 1992) (“[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations.”); *see also Brandon v. 30th Judicial Cir. Ct. Of Ky.*, 410 U.S. 484, 490 (1973) (discussing purpose of exhaustion requirement).
24. Courts have imposed a prudential exhaustion requirement in which petitioners are generally expected to exhaust administrative remedies before seeking habeas relief. *See McCarthy v. Madigan*, 503 U.S. 140, 144-45 (1992). But courts retain discretion to excuse exhaustion in circumstances, like post-removal-period detention, “when it would be futile. . . or when ‘the interests of the individual in retaining prompt access to a federal judicial forum outweigh the interest of the agency in protecting its own authority.’” *Quintana Casillas v. Sessions*, No. CV

17-01039-DME-CBS, 2017 WL 3088346, at *9 (D. Colo. July 20, 2017) (citing *Son Vo v. Greene*, 109 F. Supp. 2d 1281, 1282 (D. Colo. 2000) and *Gonzalez-Portillo v. U.S. Attorney Gen., Reno*, No. CIV. A. 00-Z-2080, 2000 WL 33191534, at *4 (D. Colo. Dec. 20, 2000)).

25. Despite the absence of any statutory exhaustion requirement, Mr. Chennah has nonetheless made repeated requests for the custody reviews to which he is entitled under section 1231. He has submitted multiple written requests to the government requesting notice of any custody reviews conducted pursuant to 8 C.F.R. § 241.4, requesting notice of any country DHS considers for removal, and requesting his release. *See* Exh. B(a)-(c). ICE identified Cameroon as a potential third country for removal 198 days after Mr. Chennah's removal order became final and only after being advised that this petition was forthcoming. *See* Exh. B(d). Mr. Chennah's efforts demonstrate a futile attempt to resolve his detention through the processes available to him.
26. No other remedies are available to Mr. Chennah. *See Zadvydas*, 533 U.S. at 692 (noting that periodic administrative reviews, even when conducted, may not be sufficiently protective of constitutional rights during post-removal-period detention). He is detained under 8 U.S.C. § 1231(a) and thus cannot request a bond hearing before an immigration judge. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580-81 (2022).

STATEMENT OF THE FACTS

Mr. Chennah's Background and Immigration History

27. Mr. Chennah grew up in a small town in Morocco. He was severely beaten and imprisoned by his family because he is gay. When he attempted to escape, his family tracked him and returned him to captivity after he unsuccessfully sought help from local police. When Mr. Chennah

was finally able to escape a second time, he fled to the United States in search of safety.

28. Mr. Chennah has spent nearly his entire time in the United States in ICE custody. Upon entering the country, he was encountered by border patrol and taken into custody on or about October 17, 2024. From detention, Mr. Chennah filed a *pro se* application for asylum, withholding of removal, and protection under the Convention Against Torture.
29. At the conclusion of his merits hearing on June 25, 2025, IJ Elanie Cintron granted Mr. Chennah withholding of removal under 8 U.S.C. § 1231(b)(3) (INA § 241(b)(3)) to Morocco. Judge Cintron found that Mr. Chennah would “more likely than not” face persecution in Morocco because of his sexual orientation. Exh. A, IJ Order; 8 U.S.C. § 1231(b)(3).
30. Neither Mr. Chennah nor DHS reserved the right to appeal. Exh. A, IJ Order. The immigration judge’s order therefore became administratively final that day.
31. The IJ granted Mr. Chennah withholding of removal rather than asylum solely because of the Circumvention of Lawful Pathways rule, which bars asylum eligibility for noncitizens who enter the United States at the southern border without using a lawful process. *See* 8 C.F.R. § 1208.33. This regulation only applies to noncitizens who entered the country on or after May 11, 2023. *Id.*

Post-Order Custody Review

32. Although removal to Morocco is legally prohibited by the grant of Withholding, DHS may still pursue removal to a third country. 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16. Under section 1231(a), DHS has 90 days to facilitate removal.
33. Mr. Chennah’s removal order became administratively final on June 25, 2025, meaning the 90-day “removal period” in which DHS was expected to effectuate removal expired on

September 23, 2025. *See* Exh. A, IJ Order.

34. While a non-citizen is held in custody post-final-order, DHS regulations provide for Post-Order Custody Reviews (“POCR”s). Pursuant to 8 C.F.R. §§ 241.4(h)(2) and 241.4(k)(1), DHS was required to provide Mr. Chennah with written notice of an upcoming POCR on or about August 24, 2025. Mr. Chennah received no such notice.
35. On November 20, 2025, Mr. Chennah received a “Decision to Continue Detention” dated November 13, 2025, which purported to be the outcome of a 90-day POCR, although it was signed 51 days after the expiration of the 90-day removal period. Exh. C, 90-day POCR. The decision indicated “ICE has made such determination [to continue detention] based upon: The Significant Likelihood of Removal in the Reasonably Foreseeable Future.” *Id.* The decision gave no destination or anticipated date for removal.
36. Mr. Chennah’s attorney requested information from ICE about where Mr. Chennah would be removed on July 2, 2025 and December 11, 2025, and has repeatedly urged ICE to release Mr. Chennah given the apparent absence of any substantial likelihood of removal. Exh. B(a)-(c). ICE Assistant Field Office Director Monique Fabrè initially told Mr. Chennah’s attorney via email on July 2, 2025 that Mr. Chennah would be removed to Morocco, in violation of the order for Withholding. Exh. B(a). After Mr. Chennah’s attorney brought the Withholding order to ICE’s attention, subsequent requests for information about plans for removal went unanswered. Exh. B(a)-(c).
37. Mr. Chennah also requested information from ICE via “kite,” the internal detention center messaging system, again with no substantive response. Exh. D, Kite. On November 27, 2025, after ICE had informed Mr. Chennah in his tardy 90-day POCR that he would continue to be

detained because likelihood of his removal in the reasonably foreseeable future, Deportation Officer (DO) Allen nevertheless informed Mr. Chennah that he had “no updates about your case.” *Id.*

38. DHS regulations provide for further review of Mr. Chennah’s custody status by the DHS Headquarters Post-Order Detention Unit at the expiration of the three-month period after the 90-day review, or approximately 180 days after the removal order. 8 C.F.R. § 241.4(k)(2). The regulations also direct DHS to provide approximately 30 days notice of this review. *Id.* For Mr. Chennah, the 180-day period ended on December 22, 2025. Mr. Chennah has received no information about the results of this 180-day POCR. *See* 8 C.F.R. § 241.4(h)-(k).
39. In its November 13, 2025 “Decision to Continue Detention,” ICE offered Mr. Chennah a personal interview to be considered in its 180-day POCR. Exh. C, 90 day POCR. The notice indicated Mr. Chennah and his attorney would “be notified of the date and time of the interview approximately 30 days prior to the scheduled interview date.” *Id.*; *see also* 8 C.F.R. § 241.4(d)(3) (providing for notice to counsel). Mr. Chennah never received advanced notice of an interview. His receipt of the “Decision to Continue Detention” on November 20, 2025, left only only 39 days to conduct an interview before the expiration of 180 days of post-order detention on December 22, 2025. Mr. Chennah’s attorney did not receive a copy of the “Decision to Continue Detention” from ICE until an email on November 27, 2025, only 32 days before the 180-day mark. Exh. B(c).
40. When Mr. Chennah received the “Decision to Continue Detention,” he requested the presence of his attorney at a future personal interview. Exh. C, 90-day POCR. Cognizant of the impending deadline for a 180-day POCR, Mr. Chennah’s attorney began efforts to schedule

the personal interview with ICE despite the absence of the 30 days notice referenced in the “Decision to Continue Detention.” Exh. B(c). DO Mark Kinsey told Mr. Chennah’s attorney via email on Monday, December 8, 2025 that he would attempt to schedule the interview for Wednesday, December 10. Exh. B(c). DOs Benner and Mansur then conducted a personal interview with Mr. Chennah without notice and without his attorney on Tuesday, December 9, 2025. Exh. B(c); Exh. E, Personal Interview.

41. The record ICE prepared of this personal interview contains errors about Mr. Chennah’s plans if released. Exh. E, Personal Interview. Mr. Chennah verbally informed DO Benner of the error, and his attorney subsequently informed DO Kinsey of the error via email. Exh. B(c). The interview included no information substantiating a significant likelihood that Mr. Chennah will be removed from the United States in the reasonably foreseeable future. Exh. E, Personal Interview.
42. As of December 22, 2025, Mr. Chennah had been in post-final order custody for six months — or 180 days. He has still not received any information about the outcome of a 180-day POCR. He was provided with a notice of removal to Cameroon on January 8, 2026, only after ICE was notified that this petition would be filed. Exh. B(d). He has no documents to travel to Cameroon. He has affirmatively asserted a fear of removal to Cameroon based on widespread persecution of gay people there.
43. The haphazard administrative handling of Mr. Chennah’s custody status appears focused only on providing a paper justification for continued detention, without providing any real basis to conclude Mr. Chennah will be removed from the United States in the reasonably foreseeable future.

LEGAL FRAMEWORK

Constitutional Limits to Post-Final Order Detention

44. The statutes and regulations governing post-final-order detention make it clear that continued detention is meant to serve a single purpose: removal from the United States. *See* 8 U.S.C. § 1231; *see also* 8 C.F.R. § 241.4. Removal is expected to occur within the 90-day “removal period.” *See* 8 U.S.C. § 1231(a)(1)(A). Although continued detention beyond this period may be permissible, post-removal-period detention is subject to constitutional constraints. *See Zadvydas*, 533 U.S. at 689-90.¹
45. “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 [of the Fifth Amendment] protects.” *Zadvydas*, 533 U.S. at 690. Indefinite detention raises a particularly “serious constitutional problem” and directly violates the Due Process Clause. *Id.* at 689-90.
46. Any deprivation of the liberty interests protected by the Due Process Clause must be closely related to a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 302 (1993) (holding that due process “forbids the government to infringe certain ‘fundamental’ liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest”) (emphasis in original). Accordingly, any post-removal-period detention must be strictly limited to what is necessary to achieve the goal of removal.

¹ *Zadvydas* recognizes that “specially dangerous individuals” may warrant continued preventative post-removal-period detention, but ICE has not justified Mr. Chennah’s continued detention based on this characterization, nor could it based on the record. *See* 533 U.S. at 691.

47. In *Zadvydas*, the Supreme Court limited post-removal-period detention to “a period reasonably necessary to secure removal.” 533 U.S. at 699. Where removal is not reasonably foreseeable, continued detention is deemed unreasonable and “no longer authorized by statute.” *Id.* The Court held that a noncitizen may not be held in detention more than six months after the removal order unless there is a “significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.
48. “[F]or detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as ‘the reasonably foreseeable future’ conversely would have to shrink,” meaning the longer the noncitizen remains in post-removal-period detention, the shorter the window the government has to show removal is reasonably foreseeable. *Id.* at 701.
49. Following the six-month period, “once the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the burden shifts to the government to “respond with evidence sufficient to rebut that showing.” *Id.*
50. At this stage, if the government cannot present evidence that removal is likely to occur in the reasonably foreseeable future, the noncitizen must be released. *See id.*, 533 U.S. at 701; *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005). Continued detention would violate both section 1231(a)(6) and the Due Process Clause of the Fifth Amendment. *See Zadvydas*, 533 U.S. at 701; *Morales-Fernandez v. INS*, 418 F.3d 1116, 1118 (10th Cir. 2005).
51. Respondents may impose conditions of supervised release and may continue efforts to find a third country for removal while the noncitizen is out of custody. *See Zadvydas*, 533 U.S. at 700; 8 U.S.C. § 1231(a)(3).

DHS's Longstanding Release Practices for Withholding Grantees

52. The government may not remove a noncitizen to a country where the noncitizen's life or freedom would be threatened in that country because of their race, religion, nationality, membership in a particular social group, or political opinion. *See* 8 U.S.C. § 1231(b)(3). This form of relief is called withholding of removal, a status which allows a noncitizen to legally live and work in the United States, and one that has historically led to release under supervision. *See* Exh. F, Fear-Based Grant Release Policy.
53. The Department's longstanding practice is to release noncitizens, like Mr. Chennah, following a grant of withholding of removal, absent "exceptional circumstances." *See id.*
54. This longstanding practice is exemplified by the 2004 Fear-Based Grant Release Policy. *Id.* ("In general, it is ICE policy to favor release of [noncitizens] who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain."). This policy was repeatedly affirmed by ICE over the next twenty years. *Id.*

Third Country Removal

55. Under 8 U.S.C. § 1231, DHS has the authority to remove noncitizens granted Withholding to a third country. 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f). The term "third country" refers to one not previously designated by an IJ or DHS during the underlying removal proceedings.²

² American Immigration Council, "What Are Third-Country Removals? Understanding Their Use In U.S. Immigration Policy" (December 5, 2025), available at <https://www.americanimmigrationcouncil.org/fact-heret/what-are-third-country-removals-factsheet/>.

56. Although the statutory framework for third country removal has long existed, DHS rarely pursued this option in the past. Individuals granted Withholding were generally released from detention following the conclusion of their immigration proceedings. *See* Exh. F, Fear-Based Grant Release Policy.
57. Under the current administration, however, DHS has demonstrated a renewed interest in pursuing third country removal.³ When a noncitizen cannot be removed to his country of origin due to the risk of persecution or torture they face there, the statute provides for removal to alternative countries in which a noncitizen is a citizen, was born, or resided immediately before entering the United States. 8 U.S.C § 1231(b). Only if it is “impracticable, inadvisable, or impossible to remove” the noncitizen to a country where he has existing connections may the government remove the noncitizen to “another country whose government will accept the [noncitizen] into that country.” 8 U.S.C § 1231(b)(2)(E)(vii). Individuals who would have been released in the past are now being held in ICE custody for extended periods, despite having won on the merits of their fear-based claims, allegedly so that DHS may assess the viability of removal to a third country where they have no existing connections.
58. On March 30, 2025, DHS issued a memorandum entitled *Guidance Regarding Third Country Removals*, clarifying key procedural elements of third country removal (“March Memo”). Exh. G, March Memo at ¶¶ 1, 2. The March Memo requires DHS to first “determine whether [a] country has provided diplomatic assurances that [noncitizens] removed from the United States will not be persecuted or tortured” in that country before removal may occur. *Id.* at ¶

³ *See, e.g., id.; see also* Ximena Bustillo, “The White House is deporting people to countries they're not from. Why?,” National Public Radio, (June 1, 2025), available at <https://www.npr.org/2025/06/01/g-s1-69780/trump-deportations-south-sudan>.

1. If the Department is unable to obtain the necessary individualized diplomatic assurances, it must notify the noncitizen of its intent to remove them to that country to ensure the individual has an opportunity to contest removal, seek relief under available immigration laws, or make logistical arrangements. *Id.* at ¶ 2.

59. On July 9, 2025, Acting ICE Director Todd M. Lyons issued a memorandum clarifying key procedural requirements and confirming that ICE officers should adhere to the March Memo. Exh. E, Lyons Memo at ¶¶ 1, 2. Among these requirements is the obligation to serve the noncitizen with a Notice of Removal written in a language they can understand that names the third country DHS intends to remove them to. *Id.* at ¶ 1.
60. Although DHS is not required to affirmatively ask whether the noncitizen fears removal to an indicated third country, the individual may still raise such fear and contest their removal. *Id.* If fear is expressed, the individual must be screened for eligibility for protection under 8 U.S.C. § 1231(b)(3) and the Convention Against Torture. *Id.* at ¶ 2.

Mandatory Post-Final-Order Custody Reviews

61. When an IJ determines that a noncitizen has met the criteria of 8 U.S.C. § 1231(b)(3) for Withholding with respect to a particular country, a removal order is issued and simultaneously withheld with respect to the country for which the noncitizen demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021).
62. Under section 1231(a)(2), the government is given 90 days to carry out the removal. This is known as the “removal period” and it commences once a noncitizen’s removal order “becomes administratively final.” *See* 8 U.S.C. § 1231(a)(1)(B). During this time, detention is mandatory. *See* 8 U.S.C. § 1231(a)(2)(A).

63. If the removal period lapses before removal occurs, the noncitizen “*may* be detained beyond the removal period” if they are inadmissible or deportable under specified categories. 8 U.S.C. § 1231(a)(6) (emphasis added). The discretionary language of section 1231(a)(6) implies the necessity of an individualized determination on whether a noncitizen meets this specified criteria.

The 90-Day POCR

64. Where removal “cannot be accomplished during the period, or is impracticable or contrary to the public interest,” 8 C.F.R. § 241.4(k), DHS regulations provide that “prior to the expiration of the removal period” the local ICE field office “shall conduct a custody review” to determine whether a noncitizen should remain detained. *See* 8 C.F.R. §§ 241.4(c)(1), (k)(1)(i).
65. These administrative reviews are commonly called POCRs — for “Post-Order Custody Review.”
66. At a 90-day POCR, DHS considers multiple factors, including the availability of travel documents for removal. *Id.* §§ 241.4(e)-(f). At this stage, ICE may release the noncitizen under conditions of supervision as it deems appropriate. *Id.* § 241.4(j).
67. DHS is obligated to provide the noncitizen with written notice approximately 30 days before the impending 90-day POCR so that the noncitizen may submit information in writing to support their release. *See* 8 C.F.R. § 241.4(h)(2).
68. If DHS finds that removal is not reasonably foreseeable yet seeks to extend the removal period of a detained noncitizen based on “special circumstances,” it must demonstrate that continued detention is based on narrow circumstances, such as national security or public health concerns. 8 C.F.R. §§ 241.4(b)-(d). Alternatively, the government must demonstrate by clear

and convincing evidence before an IJ that the noncitizen is “specially dangerous.” 8 C.F.R. § 241.14(f).

69. At the 90-day PO CR, the noncitizen seeking release must convince DHS they are not a flight risk or danger to the community. *See* 8 C.F.R. § 241.4(d)(1). DHS should find release is appropriate where travel documents are unavailable, making removal “not practicable or not in the public interest.” *See* 8 C.F.R. § 241.4(f). Additionally, DHS may weigh factors, such as the person’s disciplinary record while in detention, their criminal history and any immigration history indicating a likelihood that they are “a significant flight risk.” 8 C.F.R. § 241.4(f).
70. After the 90-day PO CR, DHS must advise the noncitizen in writing whether they are to be released or remain in detention pending removal or further custody review. *See* 8 C.F.R. § 241.4(k)(1)(i).

The 180-Day PO CR

71. In response to *Zadvydas*, DHS issued additional regulations establishing “special review procedures” to determine whether noncitizens in post-removal-period detention 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). Subsection (i)(7) was incorporated to 8 C.F.R. § 241.4’s preexisting process to include an additional review procedure that ICE headquarters must initiate “when the [noncitizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [noncitizen] is not significantly likely in the reasonably foreseeable future.” 8 C.F.R. § 241.4(i)(7).

72. Three months *after* the lapse of the 90-day removal period, or six months after the issuance of a final order, authority over custody determinations transfers to the Executive Associate Commissioner to conduct an additional custody review on that date or “as soon thereafter as practicable,” referred to as the 180-day POCR. *See* 8 C.F.R. § 241.4(k)(1)(ii) and (k)(2)(i)-(ii). DHS is again obligated to provide approximately 30 days’ written notice to the noncitizen of this review. *Id.*
73. Custody reviews are to be conducted within these specified timeframes or “as soon as possible thereafter, allowing for any unforeseen circumstances or emergent situation.” *See* 8 C.F.R. § 241.4(k)(2)(iv). DHS may postpone the custody review process for “good cause,” such as a noncitizen’s imminent removal, but must document this decision and specify the reasons for the delay in the noncitizen’s custody review file or A file. *See* 8 C.F.R. § 241.4(k)(3). As soon as the reason for the delay is remedied, DHS must exercise “[r]easonable care” to ensure that the custody review occurs. *Id.*
74. Only when the government determines that a noncitizen’s request for release has merit — meaning it agrees there is no significant likelihood of removal in the foreseeable future — will the government refer the request to the State Department for further review. *Id.* The State Department will provide a report to DHS regarding the likelihood of removal; however, DHS is still the ultimate decision maker as to whether removal is likely to occur within the reasonably foreseeable future. *Id.*
75. Although the addition of the 180-day POCR was intended to address concerns surrounding indefinite detention of noncitizens for whom there is no significant likelihood of removal in the reasonably foreseeable future, the custody review process itself, even when followed, is

inadequate to protect against due process violations. *See Zadvydas*, 533 U.S. at 692 (“[T]he constitution may well preclude granting an administrative body the unreviewable authority to make determinations implicating fundamental rights.”) (quotation and citation omitted).

ARGUMENT

Mr. Chennah’s Removal Is Not Reasonably Foreseeable So His Continued Detention Violates *Zadvydas*

76. In *Zadvydas*, the Supreme Court held that under 8 U.S.C. § 1231(a)(6), post-final-order detention is presumptively reasonable for a period of six months. 533 U.S. at 701. After the expiration of six months, if removal is not reasonably foreseeable, continued detention is no longer authorized. *Id.* at 699-700. At this stage, the burden shifts to the government to show that there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* at 701.
77. Here, that burden has shifted to the government and it cannot be met. Mr. Chennah has been detained for more than six months following the IJ’s grant of Withholding. *See* Exh. A, IJ Order. Having been granted this form of relief, Mr. Chennah cannot be deported to Morocco, the only country of which he is a citizen. 8 U.S.C. § 1231(b)(3). He has no legal status, no ties, and has never resided in any other country. He has no travel documents for any other country.
78. Although third country removal provides DHS with the legal framework to remove noncitizens who have been granted Withholding, that purpose cannot justify indefinite detention. ICE failed to identify a third country for removal for more than six months, then identified Cameroon as a third country without travel documents or any indication that

removal can be accomplished, only when advised this petition was forthcoming. These facts do not substantiate a good faith effort to effectuate third country removal.

79. Moreover, Mr. Chennah's identity as a gay man significantly increases his risk of facing persecution in many parts of the world, including Cameroon, which further complicates the viability of third country removal as a legitimate option. Mr. Chennah has affirmatively raised a fear of removal to Cameroon, which should trigger additional screening and litigation. See Exh. G. "Diplomatic assurances" referenced by the March Memo (Exh. G) are ineffective to protect against persecution based on sexual orientation in many countries like Cameroon that have been reported as potential locations for third country removal.
80. When combined, Mr. Chennah's Withholding order, ICE's failure to identify viable third country, and Mr. Chennah's heightened risk as a gay man renders his removal unlikely and functionally impossible in the foreseeable future.
81. Under *Zadvydas*, where removal is not reasonably foreseeable, it no longer serves its intended purpose under section 1231(a)(6). 533 U.S. at 699-700. Without this Court's intervention, Mr. Chennah is at risk of remaining permanently detained.
82. Accordingly, Mr. Chennah's detention has exceeded constitutional and statutory limits. Where the government cannot demonstrate the significant likelihood of removal in the reasonably foreseeable future, it must release Mr. Chennah.

Post-Order Custody Reviews Offer Inadequate Protection Against This Constitutional Violation

83. The government's haphazard custody review procedures illustrate the risk of Mr. Chennah's indefinite detention absent intervention from this Court. The government has held Mr. Chennah in post-final-order detention for more than six months yet has failed to complete a

180-day POCR. The 90-day POCR the government conducted was late and substantively failed to demonstrate any likelihood of removal as a basis for continued detention. *See* Exh. C, 90-day POCR; *see also* 8 U.S.C. § 1231(a); 8 C.F.R. § 241.4.

84. As of December 22, 2025, Mr. Chennah had been in post-final-order custody for six months, or 180 days with no information demonstrating a substantial likelihood of removal in the reasonably foreseeable future.
85. Mr. Chennah's counsel made inquiries of ICE regarding plans for removal to a third country, custody reviews, and plans to release Mr. Chennah. No response from ICE substantiated a likelihood of removal in the reasonably foreseeable future. Exh. B(a)-(c). ICE identified Cameroon as a potential third country for removal after Mr. Chennah had been in post-final-order custody for 198 days. The government's documented efforts to remove Mr. Chennah appear to have been triggered only by the prospect of this petition. *See* Exh. B(d).

Removal to a Safe Third Country is Not Viable Due to Mr. Chennah's Sexual Orientation

86. A legitimate government interest in third country removal does not mean that removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 699. As a gay man, Mr. Chennah faces significant risk of persecution or torture in the limited list of countries that may accept non-nationals deported from the United States, including Cameroon. Mr. Chennah has affirmatively stated a fear of removal to Cameroon. Exh. B(e). Deportation to a country where gay men are routinely persecuted or tortured would violate federal law. *See* 8 U.S.C. § 1231(b)(3). Any "diplomatic assurances" DHS may receive about Mr. Chennah's safety

under the March Memo procedures (Exh. G, March Memo) are inadequate, particularly in the context of widespread persecution of gay people in much of the world.⁴

The Appropriate Remedy for this Due Process Violation is Immediate Release.

87. The indefinite nature of Mr. Chennah’s detention is a grave and ongoing violation of his due process rights, and the appropriate remedy is release. Immediate release is contemplated when immigration detention becomes unlawful. *Zadvydas*, 533 U.S. at 701; *Mapp v. Reno*, 241 F.3d 221, 229 (2d Cir. 2001) (recognizing court’s inherent power to order release of habeas petitioners from immigrant detention).

CLAIMS FOR RELIEF

COUNT I

Unlawful Post-Final Order Detention Under 8 U.S.C. § 1231(a)(6) and *Zadvydas v. Davis*

88. Mr. Chennah realleges and incorporates by reference the paragraphs above.
89. The government detains Mr. Chennah pursuant to 8 U.S.C. § 1231(a)(6), which governs the detention of noncitizens who have administratively final orders of removal.
90. In *Zadvydas*, the Supreme Court interpreted section 1231(a)(6) to contain an implicit timeframe, authorizing detention only for “a period reasonably necessary to bring about the [noncitizen’s] removal from the United States. 533 U.S. at 589. The Court established a six-month period of post-final-order detention, after which the government must provide evidence that removal is “substantially likely in the reasonably foreseeable future.” *See id.* at 701.

⁴ See Letter from Members of Congress to Secretary Kristi Noem, Secretary Marco Rubio, and Secretary Pete Hegseth (Sept. 24, 2025), available at: https://www.warren.senate.gov/imo/media/doc/letter_on_third-country_deportations.pdf

91. In the more than six months since Mr. Chennah's removal order became administratively final, the government has failed to demonstrated any real progress toward third country removal.
92. Mr. Chennah cannot be deported to Morocco — the only country where he is a citizen — because he has a final grant of withholding of removal to Morocco. Exh. A, IJ Order. He has no legal status in or connections to any other country.
93. Before initiating removal to any third country, the government must first afford Mr. Chennah notice and the opportunity to raise a fear-based protection claim seeking relief from removal to that country. Mr. Chennah has asserted a fear of being removed to Cameroon. Mr. Chennah's identity as a gay man makes it highly improbable that DHS will succeed in identifying a country that would be a safe destination for him. These factors contribute to the absence of a substantial likelihood that Mr. Chennah will be removed in the reasonably foreseeable future.
94. Because Mr. Chennah cannot be removed from the United States in the "reasonably foreseeable future," his continued detention violates 8 U.S.C. § 1231(1). *See Zadvydas*, 533 U.S. at 701.
95. Accordingly, Mr. Chennah respectfully requests that this Court order Respondents to immediately release him from detention.

COUNT II

Violation of the Procedural Due Process Clause of the Fifth Amendment of the United States Constitution

96. Mr. Chennah realleges and incorporates by reference the paragraphs above.

97. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Cont. amend. V. To comply with the Due Process Clause, civil detention must “bear[] a reasonable relation to the purpose for which the individual was committed,” which for immigration detention pursuant to section 1231 is removal from the United States. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690).
98. The government’s continued detention of Mr. Chennah, absent any indication it has made any real progress toward third country removal in more than six months, violates his procedural due process rights and renders his detention indefinite. The government’s refusal to provide Mr. Chennah with information about its plans to remove him during the first 198 days of post-final-order detention, while justifying his detention with an alleged likelihood of removal, has deprived Mr. Chennah of a meaningful opportunity to challenge the viability of his removal, further depriving him of the due process rights to which he is entitled under the United States Constitution.
99. The government has failed to conduct timely and meaningful custody reviews required by 8 C.F.R. § 241.4 during this prolonged period of detention, further violating Mr. Chennah’s right to due process.

COUNT III

Violation of the Substantive Due Process Clause of the Fifth Amendment of the United States Constitution

100. Mr. Chennah realleges and incorporates by reference the paragraphs above.

101. The Fifth Amendment provides that “No person shall . . . be deprived of life, liberty, or property[] without due process of law.” U.S. Const. amend. V. Moreover, “The Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.
102. Moreover, the Supreme Court has established that noncitizens in post-final-order detention for more than six months must be released from custody if there is no likelihood that they will be removed in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 699-700.
103. More than six months have lapsed since Mr. Chennah was granted Withholding, yet he remains confined without any further court proceedings, appellate process, or any real progress toward removal. Under these circumstances, Mr. Chennah’s continued detention is not legally justified. *Id.* at 690 (“where detention’s goal is no longer practically attainable, detention no longer bears reasonable relation to the purpose for which the individual was committed.”). At this stage, DHS’s refusal to release Mr. Chennah is “the exercise of power without any reasonable justification” and a violation of due process principles. *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).
104. The indefinite nature of Mr. Chennah detention under section 1231 violates his substantive due process rights under the Fifth Amendment by depriving him of his “strong interest in liberty.” *United States v. Salerno*, 481 U.S. 739, 750 (1987).
105. At six months post-final-order and with numerous “good reason[s] to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the government must now carry the burden of justifying Mr. Chennah’s continued imprisonment. *Zadvydas*, 533 U.S. at 701.

106. Moreover, the government interest in “preventing flight [] is weak or nonexistent where removal seems a remote possibility at best.” *Id.* at 690.
107. Accordingly, Mr. Chennah respectfully requests this Court order Respondents to immediately release him.

PRAYER FOR RELIEF

WHEREFORE Mr. Chennah respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Issue an order prohibiting Respondents from transferring Mr. Chennah outside of the jurisdiction of the District of Colorado pending the resolution of this case;
- c. Issue an order to show cause or order to answer pursuant to 28 U.S.C. § 2243, ordering Respondents to show cause within three days of why the writ should not be granted;
- d. Issue an order declaring that Respondents' continued detention of Mr. Chennah violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6), and his procedural and substantive due process rights under the Due Process Clause of the Fifth Amendment of the U.S. Constitution;
- e. Award Mr. Chennah his costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
- f. Grant any further relief as this Court deems just and proper.

Dated: January 10, 2026

s/ Alison Suthers

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Pro Bono Counsel for Petitioner

VERIFICATION

I, s/ Alison Suthers, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in Mr. Chennah's Petition for Writ of Habeas Corpus are true and correct.

Dated: January 10, 2026

EXHIBITS

- A. Order of the Immigration Judge Granting Withholding of Removal (dated June 25, 2025) (“IJ Order”)
- B. Email communications
 - a. Re: Karim Chennah (██████████) — thread from July 2, 2025
 - b. Re: Karim Chennah (██████████) — thread from Sept 29, 2025-Nov 26, 2025
 - c. Re: 90-day POCR decision for Chennah, Karim — thread from Nov 27, 2025-Dec 11, 2025
 - d. RE: [EXTERNAL] intent to file habeas petition - Karim Chennah — thread from Jan 8, 2026
 - e. Karim Chennah (██████████) — thread from Jan 9, 2026
- C. Decision to Continue Detention (dated November 13, 2025) (“90 day POCR”)
- D. Request Form – Kite (dated November 27, 2025) (“Kite”)
- E. Record of Personal Interview (dated December 9, 2025) (“Personal Interview”)
- F. ICE Memorandum, Re: Detention Policy Where An Immigration Judge Has Granted Asylum And ICE Has Appealed (Dated February 9, 2004) (“Fear-Based-Grant Release Policy”)
- G. Department of Homeland Security, U.S. Immigration and Customs Enforcement Memorandum from Kristi Noem titled Guidance on Third Country Removals (dated March 30, 2025) (“The March Memo”)
- H. U.S. Immigration and Customs Enforcement Memorandum from Todd Lyons titled, Third Country Removals Following the Supreme Court’s Order in Department of Homeland Security v. D.V.D., No 24A1153 (U.S. June 23, 2025) (dated July 9, 2025) (“The Lyons Memo”)