

**UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

|                                                   |   |                                       |
|---------------------------------------------------|---|---------------------------------------|
| <b>EDGAR GOMEZ-MALDONADO,</b>                     | § |                                       |
|                                                   | § |                                       |
| <b>Petitioner,</b>                                | § |                                       |
|                                                   | § |                                       |
| <b>v.</b>                                         | § | <b>Civil Action No. 5:26-cv-00117</b> |
|                                                   | § |                                       |
| <b>KRISTI NOEM,</b>                               | § |                                       |
| <b>Secretary of Homeland Security;</b>            | § |                                       |
|                                                   | § |                                       |
| <b>TODD LYONS,</b>                                | § |                                       |
| <b>Acting Director, U.S. Immigration and</b>      | § |                                       |
| <b>Customs Enforcement,</b>                       | § |                                       |
|                                                   | § |                                       |
| <b>SYLVESTER M. ORTEGA,</b>                       | § |                                       |
| <b>Acting Field Office Director for Detention</b> | § |                                       |
| <b>and Remova, San Antonio Field Office,</b>      | § |                                       |
| <b>U.S. Immigration and Customs Enforcement,</b>  | § |                                       |
|                                                   | § |                                       |
| <b>BOBBY THOMPSON,</b>                            | § |                                       |
| <b>Warden, South Texas ICE Processing Center,</b> | § |                                       |
|                                                   | § |                                       |
| <b>in their official capacities,</b>              | § |                                       |
|                                                   | § |                                       |
| <b>Respondents.</b>                               | § |                                       |

**PETITION FOR WRIT OF HABEAS CORPUS**

1. Petitioner Edgar Gomez-Maldonado (“Petitioner” or “Mr. Gomez-Maldonado”) files this petition seeking a Writ of Habeas Corpus releasing him from detention immediately and also requiring Respondents to provide notice and an opportunity to contest removal to a third country that is not his country of nationality and was not designated for removal by an immigration judge.

2. Petitioner is a citizen and national of Mexico. On January 7, 2020, an immigration judge ordered him removed but granted withholding of removal under 8 U.S.C. § 1231(b)(3). In other words, Respondents are statutorily barred from removing Mr. Gomez-Maldonado to Mexico. The immigration judge did not designate any other country for removal. As a condition of releasing Petitioner with his removal order, the Immigration and Customs Enforcement (ICE) placed Respondent on an Order of Supervision (OSUP) and required that he report periodically to ICE and abstain from engaging in criminal conduct.

3. Petitioner contends that the revocation of his OSUP and his re-arrest by ICE violate federal regulations and his right to due process. Petitioner cannot be removed to Mexico and Respondents are unlikely in the reasonable, foreseeable future to remove him to a third country where he does not hold any citizenship and has no ties. Petitioner therefore should be released from custody.

4. Further, simple justice requires that Respondents reopen Petitioner's removal proceedings and designate a third country of removal to afford him an opportunity to contest the designation.

#### **CUSTODY**

5. Petitioner is in the physical custody of Respondent SYLVESTER M. ORTEGA, Acting Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement ("ICE"), DHS, and Respondent BOBBY THOMPSON, warden of the South Texas ICE Processing Center in Pearsall, Texas. At the time of the filing of this petition, Petitioner is detained at the South Texas ICE Processing Center. The Geo Group Inc., which owns and operates the South Texas ICE Processing Center, contracts with the DHS to detain noncitizens, such as

Petitioner, pending their removal proceedings. Petitioner is under the direct control of Respondents and their agents.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction to entertain this habeas petition under 28 U.S.C. § 2241(c)(1) and (3), and the Suspension Clause, U.S. Const. art. I, § 9, cl. 2.

7. The proper venue for a habeas petition under § 2241 is the petitioner's district of confinement. Venue in this case lies in the Western District of Texas because Petitioner is detained in Frio County, Texas.

8. No petition for habeas corpus has previously been filed in any court to review Petitioner's case.

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

9. Section 2243 requires district courts to grant writ of habeas corpus "forthwith" or direct the respondents to show cause why the writ should not be granted.

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

### **PARTIES**

11. Mr. Gomez-Maldonado is a citizen and national of Mexico.

12. Respondent KRISTI LYNN NOEM is the Secretary of the U.S. Department of Homeland Security ("DHS"), an agency of the United States. Respondent is responsible for the

administration of immigration laws pursuant to 8 U.S.C. § 1103(a). The Secretary is a legal custodian of the Plaintiff-Petitioner. Respondent is named in her official capacity. Her address is Department of Homeland Security, Washington, D.C. 20528.

13. Respondent TODD LYONS is the Acting Director of the U.S. Immigration and Customs Enforcement, a sub-agency of the United States. Respondent is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(a). The Secretary is a legal custodian of the Plaintiff-Petitioner. Respondent is named in her official capacity. Respondent can be served with process at U.S. Immigration and Customs Enforcement, Office of the Principal Legal Advisory, 500 12<sup>th</sup> St., SW, Mail Stop 5900, Washington, DC 20536-5900.

14. Respondent SYLVESTER M. ORTEGA is the Acting Director for the San Antonio Field Office of the ICE Enforcement & Removal Operations (“ERO”). In this capacity, he is responsible for, among other things, the administration of immigration laws, the institution of removal proceedings in Central Texas, detention of noncitizens who are in removal proceedings or who have final orders of removal. Respondent ORTEGA is therefore a custodian of Mr. GOMEZ-MALDONADO and is authorized to release him. Respondent can be served with process at U.S. Immigration and Customs Enforcement, Office of the Principal Legal Advisory, 500 12<sup>th</sup> St., SW, Mail Stop 5900, Washington, DC 20536-5900.

15. Respondent BOBBY THOMPSON is the warden of the South Texas ICE Processing Center in Pearsall, Texas. He is Petitioner’s immediate custodian and resides in the judicial district of the United States Court for the Western District of Texas. Respondent is named in his official capacity. Respondent Thompson can be served with process at Corporate Creations Network, Inc., 2595 N. Dallas Pkwy., Ste. 350, Dallas, Texas 75201.

## STATUTORY AND REGULATORY FRAMEWORK

### Removal Proceedings

16. In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). The Act generally retained prior procedures for removal hearings for all noncitizens—i.e., full immigration court hearings, appellate review before the Board of Immigration Appeals, and federal court review. *See* 8 U.S.C. § 1229a; 8 U.S.C. § 1252(a).

17. In these removal proceedings (commonly referred to as “Section 240” proceedings), the noncitizen is entitled to select a country of removal. 8 U.S.C. § 1231(b)(2)(A); *see also* 8 C.F.R. § 1240.10(f) (“[T]he immigration judge shall notify the respondent that if he or she is finally ordered removed, the country of removal will in the first instance be the country designated by the respondent . . .”). The immigration judge (IJ) will designate the country where the person “is a subject, national, or citizen,” if either the noncitizen does not select a country or as an alternative in the event the noncitizen’s designated country does not accept the individual. 8 U.S.C. § 1231(b)(2)(D). The IJ also may designate alternative countries, as specifically set out by 8 U.S.C. § 1231(b)(2)(E). For individuals placed in Section 240 proceedings upon arrival, the statute provides designation to the country from which the individual boarded a vessel or aircraft and then can consider alternative countries. *See* 8 U.S.C. § 1231(b)(1); *see also* 8 C.F.R. § 1240.10(f).

18. An IJ must provide sufficient notice and opportunity to apply for protection from a designated country of removal. 8 C.F.R. § 1240.10(f) (providing that the “immigration judge shall notify the respondent” of designated countries of removal) (emphasis added); 8 C.F.R. § 1240.11(c)(1)(i) (providing that the IJ shall “[a]dvice the [noncitizen] that he or she may apply

for asylum in the United States or withholding of removal to [the designated countries of removal]”).

19. Asylum is a form of protection available in Section 240 removal proceedings. An IJ may grant asylum in the exercise of discretion where the applicant demonstrates a “well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion” in their country of origin. 8 U.S.C. §§ 1101(a)(42), 1158(b)(1)(A); *see also* 8 C.F.R. §§ 208.1, 1208.1. Once granted asylum, an individual generally cannot be deported to their country of origin or any other country absent subsequent unlawful conduct, evidence of fraud in the asylum application, or a fundamental change in country conditions. *See generally* 8 U.S.C. § 1158(c)(2); 8 C.F.R. §§ 208.24, 1208.24.

20. For individuals determined to be ineligible for asylum, Congress further provided, with certain exceptions not relevant here, that “notwithstanding [8 U.S.C. §§ 1231(b)(1) and (2)], the Attorney General [i.e., DHS] may not remove [a noncitizen] to a country if the Attorney General [(i.e., an immigration judge)] decides that [the noncitizen’s] life or freedom would be threatened in that country because of [the noncitizen’s] race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. This form of protection, known as withholding of removal, is mandatory, i.e., it cannot be denied to eligible individuals in the exercise of discretion. Unlike asylum, the protection of withholding of removal is country-specific.

21. Individuals in Section 240 proceedings who are ineligible for withholding of removal, are still entitled to receive protection under the Convention Against Torture (CAT), in the form of withholding or deferral of removal, upon demonstrating a likelihood of torture if removed to the designated country of removal. *See* FARRA (codified as Note to 8 U.S.C. §

1231); 8 C.F.R. §§ 208.16(c), 208.17(a), 1208.16(c), 1208.17(a); 28 C.F.R. § 200.1. Like withholding of removal under 8 U.S.C. § 1231(b)(3), CAT protection is mandatory. *Id.* With respect to any individual granted deferral of removal under CAT, the IJ “shall also inform the [noncitizen] that removal has been deferred only to the country in which it has been determined that the [noncitizen] is likely to be tortured, and that the [noncitizen] may be removed at any time to another country where he or she is not likely to be tortured.” 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2).

22. An IJ may only terminate a grant of CAT protection based on evidence that the person will no longer face torture. DHS must move for a new hearing and provide evidence “relevant to the possibility that the [noncitizen] would be tortured in the country to which removal has been deferred and that was not presented at the previous hearing.” 8 C.F.R. §§ 208.17(d)(1), 1208.17(d)(1). If a new hearing is granted, the IJ must provide notice “of the time, place, and date of the termination hearing,” and must inform the noncitizen of the right to “supplement the information in his or her initial [withholding or CAT] application” “within 10 calendar days of service of such notice (or 13 calendar days if service of such notice was by mail).” 8 C.F.R. §§ 208.17(d)(2), 1208.17(d)(2).

23. Individuals in Section 240 proceedings are entitled to an administrative appeal to the BIA along with an automatic stay of deportation while the appeal is pending, and to seek judicial review of an adverse administrative decision by filing a petition for review in the court of appeals. *See* 8 U.S.C. §§ 1101(a)(47)(B), 1252(a); 8 C.F.R. §§ 1003.6(a), 1240.15.

**Statutory and Regulatory Framework Governing  
Re-detention of Noncitizens Issued an OSUP**

24. When a person is ordered removed, 8 U.S.C. § 1231(a) authorizes the government to detain the individual during the “removal period,” defined as the 90-day period during which “the Attorney General shall remove the [noncitizen] from the United States.” 8 U.S.C. § 1231(a)(1)(A). The removal period begins on the latest of the following:

- (1) the date the order of removal becomes administratively final;
- (2) if the removal order is judicially reviewed and the court orders a stay, the date of the court’s final order; and
- (3) if the noncitizen is released from non-immigration detention or confinement, the date of that release.

8 U.S.C. § 1231(a)(1)(B)(i-iii). In this case, only § 1231(a)(1)(A)(1) is applicable. Critically, § 1231 “contains no provisions for pausing, reinitiating, or refreshing the removal period after the 90-day clock runs to zero.” Transcript of Motions Hearing at 32, *Cordon-Salguero v. Noem, et al.*, 1:25-cv-01626-GLR (D. Md. June 18, 2025).

25. Once the removal period has expired, the government “may” detain a noncitizen only if they fall into one of the four categories under § 1231(a)(6): (1) individuals who are inadmissible, (2) individuals who are removable on specific grounds, (3) individuals determined to be a danger to the community, or (4) individuals determined to be unlikely to comply with the order of removal. However, under § 1231(a)(6) “[o]nce remove is no longer reasonably foreseeable, continued detention is no longer authorized by statute,” and the noncitizen must be released, *Zadvydas v. Davis*, 533 U.S.678, 699 (2001). In *Zadvydas*, the Supreme Court held that six months is a presumptively reasonable for post-order detention. *Id.*

26. Upon release, a noncitizen subject to a final order of removal is typically placed under an order of supervision with conditions. 8 U.S.C. § 1231(a)(3), (6). Revocation of such

release is governed by 8 C.F.R. § 241.13(i). The regulation purports to allow ICE to revoke an order of supervised release if the noncitizen violates the terms of their release or if “on account of changed circumstances,” there is a “significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2); *see also* 8 C.F.R. § 241.4(b)(4).

27. “These regulations clearly indicate, that upon revocation of supervised release, it is the Service’s burden to show a significant likelihood that the [noncitizen] may be removed.” *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 U.S. Dist. LEXIS 148899 (E.D. Tex. Aug. 2, 2025) (citing *Nguyen v. Hyde*, No. 25-cv-11470, 2025 U.S. Dist. LEXIS 117495, 2025 WL 1725791 (D. Mass. June 20, 2025) (finding *Zadvyd* 6-month presumption not applicable where [noncitizen] is “re-detained” after having been on supervised release and that respondents failed to meet their burden to show a substantial likelihood of removal is now reasonably foreseeable) and *Tadros v. Noem*, No. 25-cv-4108, 2025 U.S. Dist. LEXIS 113198, 2025 WL 1678501 (D. N.J. June 13, 2025) (finding 6-month presumption had long lapsed while petitioner was on supervised release and it is respondent’s burden to show removal is now likely in the reasonably foreseeable future.)).

28. Upon a determination of a change in circumstances, the regulations provide the following “procedures” that Respondents must follow when they revoke a noncitizen’s release:

[T]he [noncitizen] will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification. The [noncitizen] may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a

determination whether the facts as determined warrant revocation and further denial of release.

8 C.F.R. § 241.13(i)(3). The prevailing statute, 8 U.S.C. § 1231(a)(6), unlike the regulation, contains no such allowance for re-detention upon a finding of changed circumstances.

### **Statutory Scheme for Removal to a Third Country**

29. “Third-country removals are burdensome for the affected noncitizen, so Congress has sharply limited their use. They are permissible only after the Government tries each and every alternative noted in the statute, and determines they are all ‘impracticable, inadvisable, or impossible.’ §§1231 (b)(1)(C)(iv), (2)(E)(vii).” D.V.D., 2025 U.S. LEXIS 2487, at \*2-3 (Sotomayor, J., dissenting).

30. Subsection (b)(1) applies to noncitizens “[a]rriving at the United States,” including from a contiguous territory, but expressly contemplates arrival via a “vessel or aircraft.” It designates countries and alternative countries to which the noncitizen may be removed. 8 U.S.C. § 1231(b)(1)(B) (removal to contiguous country from which the noncitizen traveled), § 1231(b)(1)(C) (alternative countries).

31. Subsection (b)(2) applies to all other noncitizens, and like Subsection (b)(1), designates countries and alternative countries to which the noncitizen may be removed. 8 U.S.C. § 1231(b)(2)(A) (noncitizen’s designation of a country of removal), 1231(b)(2)(B) (limitation on designation), 1231(b)(2)(C) (disregarding designation), 1231(b)(2)(D) (alternative country), 1231(b)(2)(D) (alternative countries), 1231(b)(2)(E) (additional removal countries).

32. Critically, both Subsections (b)(1) and (b)(2), have a specific carve-out provision prohibiting removal of persons to countries where they face persecution or torture. Specifically, § 1231(b)(3)(A), entitled “Restriction on removal to a country where [noncitizen’s] life or freedom would be threatened,” reads:

**Notwithstanding paragraphs [b](1) and [b](2),** the Attorney General may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion.

*Id.* § 1231(b)(3)(A) (emphasis added).

33. Similarly, with respect to the Convention Against Torture, the implementing regulations allow for removal to a third country, but only “where he or she is not likely to be tortured.” 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2).

34. In *Jama v. Immigr. & Customs Enf't*, the Supreme Court addressed the designation procedure under Subsection (b)(2). 543 U.S. 335 (2005). Critically, the Court stated that noncitizens who “face persecution or other mistreatment in the country designated under § 1231(b)(2), . . . have a number of available remedies: asylum; withholding of removal; relief under an international agreement prohibiting torture . . . .” *Jama*, 543 U.S. at 348 (citing 8 U.S.C. §§1158(b)(1), 1231(b)(3)(A); 8 C.F.R. §§ 208.16(c)(4), 208.17(a)).

35. Although individuals granted CAT protection may be removed to a third country, the regulations provide that they may not be removed to a country where they are likely to be tortured: “The immigration judge shall also inform the [noncitizen] that removal has been deferred only to the country in which it has been determined that the [noncitizen] is likely to be tortured, and that the [noncitizen] may be removed at any time to another country where he or she is not likely to be tortured.” 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2).

36. Notably, the regulations also provide that protection under CAT may be terminated based on evidence that the person will no longer face torture but nevertheless provides certain protections to noncitizens. First, the regulations require DHS to move for a new hearing, requiring that DHS support their motion for the new hearing with evidence “relevant to the possibility that the [noncitizen] would be tortured in the country to which removal has been

deferred and that was not presented at the previous hearing. 8 C.F.R. §§ 208.17(d)(1), 1208.17(d)(1). Second, even if a new hearing is granted, the regulations require that the IJ provide the noncitizen with notice “of the time, place, and date of the termination hearing. Such notice shall inform the [noncitizen] that the [noncitizen] may supplement the information in his or her initial application for withholding of removal under the Convention Against Torture and shall provide that the [noncitizen] must submit any such supplemental information within 10 calendar days of service of such notice (or 13 calendar days if service of such notice was by mail).” 8 C.F.R. §§ 208.17(d)(2), 1208.17(d)(2). Thus, not only is the noncitizen provided notice, but also an opportunity to submit documentation in support of their claim for protection.

37. “In other words, third-country removals are subject to the same mandatory protections that exist in removal or withholding-only proceedings.” *D.V.D.*, 2025 U.S. Dist. LEXIS 74197, at \*6.

**DHS’ Obligation to Provide Notice and Opportunity to Present a  
Fear-Based Claim Before Removal to a Third Country**

38. For individuals in removal proceedings, the designation of a country of removal (or, at times, countries in the alternative that the IJ designates) on the record provides notice and an opportunity to permit a noncitizen who fears persecution or torture in the designated country (or countries) to file an application for protection. See 8 C.F.R. § 1240.10(f) (stating that “immigration judge shall notify the [noncitizen]” of proposed countries of removal); 8 C.F.R. § 1240.11(c)(1)(i) (“If the [noncitizen] expresses fear of persecution or harm upon return to any of the countries to which the [noncitizen] might be removed pursuant to § 1240.10(f) . . . the immigration judge shall . . . [a]dvice [the noncitizen] that he or she may apply for asylum in the United States or withholding of removal to those countries[.]”).

39. Pursuant to § 1231(b)(3)(A), courts repeatedly have held that individuals cannot be removed to a country that was not properly designated by an IJ if they have a fear of persecution or torture in that country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf. Protsenko v. U.S. Att’y Gen.*, 149 F. App’x 947, 953 (11th Cir. 2005) (per curiam) (permitting designation of third country where individuals received “ample notice and an opportunity to be heard”).

40. Providing such notice and opportunity to present a fear-based claim prior to deportation also implements the United States’ obligations under international law. *See* United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8 U.S.C. § 1231(b)(3)); *INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting that the Refugee Act of 1980 “amended the language of [the predecessor statute to § 1231(b)(3)], basically conforming it to the language of Article 33 of the United Nations Protocol”); *see also* United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature Dec. 10, 1984, art. III, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, 114; FARRA at 2681–822 (codified at Note to 8 U.S.C. § 1231) (“It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.”); United Nations Committee Against Torture, General Comment No. 4 ¶ 12, 2017, Implementation of Article 3 of the Convention in the Context of Article 22, CAT/C/GC/4

(“Furthermore, the person at risk [of torture] should never be deported to another State where he/she may subsequently face deportation to a third State in which there are substantial grounds for believing that he/she would be in danger of being subjected to torture.”).

41. Meaningful notice and opportunity to present a fear-based claim prior to deportation to a country where a person fears persecution or torture are also fundamental due process protections under the Fifth Amendment. *See Andriasian*, 180 F.3d at 1041; *Protsenko*, 149 F. App’x at 953; *Kossov*, 132 F.3d at 408; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Similarly, a “last minute” IJ designation of a country during removal proceedings that affords no meaningful opportunity to apply for protection “violate[s] a basic tenet of constitutional due process.” *Andriasian*, 180 F.3d at 1041.

42. The federal government has acknowledged these obligations. In 2005, in jointly promulgating regulations implementing 8 U.S.C. § 1231(b), the Departments of Justice and Homeland Security asserted that “[a noncitizen] will have the opportunity to apply for protection as appropriate from any of the countries that are identified as potential countries of removal under [8 U.S.C. § 1231(b)(1) or (b)(2)].” Execution of Removal Orders; Countries to Which Aliens May Be Removed, 70 Fed. Reg. 661, 671 (Jan. 5, 2005) (codified at 8 C.F.R. pts. 241, 1240, 1241) (supplementary information). Furthermore, the Departments contemplated that, in cases where ICE sought removal to a country that was not designated in removal proceedings, namely, “removals pursuant to [8 U.S.C. § 1231(b)(1)(C)(iv) or (b)(2)(E)(vii)],” DHS would join motions to reopen “[i]n appropriate circumstances” to allow the noncitizen to apply for protection. *Id.*

43. Furthermore, consistent with the above-cited authorities, at oral argument in *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), the Assistant to the Solicitor General

represented that the government must provide a noncitizen with notice and an opportunity to present a fear-based claim before that noncitizen can be deported to a non-designated third country. Specifically, at oral argument in that case, the following exchange between Justice Kagan and Vivek Suri, Assistant to the Solicitor General, took place:

JUSTICE KAGAN: . . . [S]uppose you had a third country that, for whatever reason, was willing to accept [a noncitizen]. If -- if -- if that [noncitizen] was currently in withholding proceed -- proceedings, you couldn't put him on a plane to that third country, could you?

MR. SURI: We could after we provide the [noncitizen] notice that we were going to do that.

JUSTICE KAGAN: Right.

MR. SURI: But, without notice --

JUSTICE KAGAN: So that's what it would depend on, right? That -- that you would have to provide him notice, and if he had a fear of persecution or torture in that country, he would be given an opportunity to contest his removal to that country. Isn't that right?

MR. SURI: Yes, that's right.

JUSTICE KAGAN: So, in this situation, as to these [noncitizens] who are currently in withholding proceedings, you can't put them on a plane to anywhere right now, isn't that right?

MR. SURI: Certainly, I agree with that, yes.

JUSTICE KAGAN: Okay. And that's not as a practical matter. That really is, as -- as you put it, in the eyes of the law. In the eyes of the law, you cannot put one of these [noncitizens] on a plane to any place, either the -- either the country that's referenced in the removal order or any other country, isn't that right?

MR. SURI: Yes, that's right.

*See* Transcript of Oral Argument at 20-21, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021).

44. Notice is only meaningful if it is presented sufficiently in advance of the deportation to stop the deportation, is in a language the person understands, and provides for an automatic stay of removal for a time period sufficient to permit the filing of a motion to reopen

removal proceedings so that a third country for removal may be designated as required under the regulations and the noncitizen may present a fear-based claim. *Andriasian*, 180 F.3d at 1041; *Aden*, 409 F. Supp. 3d at 1009 (“A noncitizen must be given sufficient notice of a country of deportation [such] that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation.”).

45. An opportunity to present a fear-based claim is only meaningful if the noncitizen is not deported before removal proceedings are reopened. *See Aden*, 409 F. Supp. 3d at 1010 (holding that merely giving petitioner an opportunity to file a discretionary motion to reopen “is not an adequate substitute for the process that is due in these circumstances” and ordering reopening); *Dzyuba v. Mukasey*, 540 F.3d 955, 957 (9th Cir. 2008) (remanding to BIA to determine whether designation is appropriate).

**DHS Will Not Provide Notice and Opportunity to Present a Fear-Based Claim Before Deportation to a Third Country**

46. As a matter of policy or practice, DHS violates the statutory, regulatory, and due process framework by depriving Plaintiffs of any notice, let alone meaningful notice, and any opportunity, let alone a meaningful opportunity, to present a fear-based claim prior to deportation to a third country.

47. Although DHS has a nondiscretionary duty to provide both these protections, DHS routinely fails to do so.

48. DHS has no written policy to provide, or guarantee provision of, either of these protections.

49. In litigation involving a plaintiff who was removed to a third country after being granted withholding of removal to Cuba, DHS has admitted it has no policy to provide notice or an opportunity to apply for protection regarding removal to a third country. *See Ibarra-Perez v.*

*United States*, No. 2:22-cv-01100-DWL-CDB (D. Ariz. filed Jun. 29, 2022). In both written discovery and two depositions of DHS witnesses conducted pursuant to Federal Rule of Civil Procedure 30(b)(6), the government repeatedly stated it has no obligation to provide written or oral notice if it intends to deport a noncitizen to a third country, and has no written policy requiring such written notice; instead, the government claimed that if such notifications are provided, they are usually oral. In addition, the government admitted it has no policy to ensure a noncitizen has an opportunity to seek fear-based protection from removal to a third country before that removal takes place.

50. In a limited number of cases over the years, DHS did file a motion to reopen removal proceedings to designate a new country and allow a noncitizen to pursue a fear-based claim, demonstrating that it is aware of what should be done to provide a meaningful opportunity to seek protection prior to removal to a third country.

51. DHS' routine failure to provide meaningful notice and opportunity to present a fear-based claim prior to deportation to a third country has led to hundreds of unlawful deportations, placing individuals at serious risk of persecution, torture, and/or death.

52. Respondents have been in longstanding violation of their obligation to create a system to provide noncitizens with notice and an opportunity to present a fear-based claim to an immigration judge before DHS deports them to a third country.

53. The current Administration has expressed its intention to continue to deny meaningful notice of and an opportunity to contest removal to a third country. On January 20, 2025, President Trump signed an Executive Order, entitled *Securing our Borders*, in which he instructed the Secretary of State, Attorney General, and DHS Secretary to "take all appropriate action to facilitate additional international cooperation and agreements, . . . , including [safe third

country agreements] or any other applicable provision of law.” See Exec. Order No. 14165, 90 Fed. Reg. 8467, 8468 (Jan. 20, 2025).

54. In early February, news outlets reported that Secretary of State Marco Rubio visited several Central American countries to negotiate increased acceptance of noncitizens in or arriving in the United States, including individual with final removal orders.<sup>1</sup>

55. On or about February 18, 2025, ICE issued a directive instructing officers to review cases for third country deportations and re-detain previously released individuals, including individuals granted withholding of removal or CAT protection and individuals previously released because removal was not reasonably foreseeable.

56. On March 5, 2025, the New York Times reported: “[ICE leadership] are considering deporting people who have been found to have a legitimate fear of torture in their home countries to third nations, according to documents obtained by The New York Times.”<sup>2</sup>

57. On March 6, 2025, Reuters published a copy of the February 18, 2025, directive.<sup>3</sup> The directive expressly instructs officers to review the cases of noncitizens granted withholding of removal or protection under CAT “to determine the viability of removal to a third country and accordingly whether the [noncitizen] should be re-detained” and, in the case of those who previously could not be removed because their countries of citizenship were unwilling to accept them, to “review for re-detention . . . in light of . . . potential for third country removals.”

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<sup>1</sup> Camilo Montoya-Galvez, *Trump Eyes Asylum Agreement with El Salvador to Deport Migrants There*, CBS News (Jan. 27, 2025); Matthew Lee, *Guatemala Gives Rubio a Second Deportation Deal for Migrants Being Sent Home from the US*, AP News (Feb. 5, 2025).

<sup>2</sup> Hamed Aleaziz and Zolan Kanno-Youngs, *Frustration Grows Inside the White House Over Pace of Deportations*, N.Y. Times (Mar. 5, 2025).

<sup>3</sup> Ted Hesson and Kristina Cooke, *Trump Weighs Revoking Legal Status of Ukrainians as US Steps Up Deportations*, Reuters (Mar. 6, 2025). The article links to the directive, [https://fingfx.thomsonreuters.com/gfx/legaldocs/gkpljxxoqpb/ICE\\_email\\_Reuters.pdf](https://fingfx.thomsonreuters.com/gfx/legaldocs/gkpljxxoqpb/ICE_email_Reuters.pdf) (last visited July 6, 2025).

58. On March 15, 2025, the DHS removed 238 Venezuelans to El Salvador without providing them any notice of their removal to El Salvador and without an opportunity to contest the removal to a country where they may face persecution or torture.

59. On or about July 5, 2025, the DHS removed 8 persons to South Sudan even though that county was not designated for removal and the persons hold no prior ties of citizenship, nationality, residence or prior travel to South Sudan. Only one of the 8 individual is from South Sudan; the others are from Vietnam, Mexico, Laos, Cuba and Myanmar.

60. Secretary of Homeland Security Kristi Noem's March 30, 2025 Memorandum to ICE, Customs and Border Protection (CBP), and the U.S. Citizenship and Immigration Services (USCIS) dispels any doubts that Respondents will not provide any notice of third country removals to noncitizens with final orders. If third countries willing to accept removed aliens from the United States provide assurances that the removed aliens will not be persecuted or torture, "the alien may be removed without the need for further procedures." Thus, noncitizens will never have the opportunity to contest whether they fear persecution or torture from the third country or whether the third country may deliver the noncitizen to the noncitizen's country of nationality where they fear persecution and torture.

### **FACTUAL BACKGROUND**

61. Petitioner is a native and citizen of Mexico.

62. He holds no other nationality and does not have any ties to any other country except the United States.

63. In 2005, Petitioner fled to the United States because he feared for his life in Mexico. Exh. A at 6 (IJ Dec. Grant. Withholding).

64. On January 5, 2012, the DHS initiated removal proceedings against Petitioner. *Id.* at 3. The DHS charged that Petitioner was inadmissible as an alien who was present in the United States without having been admitted or paroled. *Id.* at 3.

65. On December 19, 2018, Petitioner and his attorney appeared before the immigration judge for the final hearing in his asylum application. The immigration judge heard testimony and reviewed evidence in support of Petitioner's asylum application.

66. On January 7, 2020, the immigration judge issued his decision. He denied asylum because Petitioner filed more than one year after arriving in the United States. The immigration judge however granted Petitioner's request for withholding of removal finding that he had "sufficiently demonstrated that he suffered past persecution that was government-sponsored and on account of protected ground. And DHS has not rebutted the presumption that [Petitioner's] fear of future persecution is well-founded. Exh. A at 15.

67. The immigration judge therefore ordered Petitioner removed to Mexico but his removal was withheld pursuant to 8 U.S.C. § 1231(b)(3). Neither the DHS nor the immigration judge designated another country of removal.

68. After the grant of withholding became final, ICE issued him an Order of Supervision (OSUP). As a condition for his release, Petitioner was required to, among other things, check in annually with ICE.

69. Petitioner diligently reported to ICE every year. He applied for and was granted work authorization and has been gainfully employed. ICE never requested that Petitioner take any specific steps to facilitate third-party removal

70. On October 29, 2025, ICE detained Petitioner even though he had not violated any conditions of his release and his removal to Mexico is statutorily barred.

71. Respondents have not provided Petitioner with any information showing changed circumstances or that he is likely to be removed to a third country in the foreseeable future.

72. Respondents have not notified Petitioner of the reasons for revoking his release. 8 C.F.R. § 241.13(i)(2)-(3). In fact, to date Respondents have not provided Petitioner with notice for revoking his OSUP.

73. Further, Respondents have failed to “conduct an initial informal interview promptly after his or her return to Service custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.13(i)(3).

74. Petitioner submits that it is not reasonably likely that he will be removed to a third country. Mexico is not an option. He has no nationality or ties to any other country.

75. Lastly, Petitioner is afraid of being removed to a country where he may face persecution or torture, or to a country that cannot give written assurances that it will not send him to Mexico.

76. Petitioner has no other remedy at law but to seek habeas relief from this Court.

### **GROUND FOR RELIEF**

#### **COUNT I**

#### **PLAINTIFF SHOULD BE RELEASED BECAUSE HIS RE-DETENTION WAS IN VIOLATION OF DUE PROCESS OF LAW**

77. The allegations in the above paragraphs are re-alleged and incorporated herein.

78. The INA requires mandatory detention of individuals with final removal orders only during the 90-day removal period. 8 U.S.C. § 1231(a)(3).

79. A non-citizen who is not removed within that period “shall be subject to supervision under regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3).

80. While 8 U.S.C. § 1231(a)(6) permits detention beyond the removal period in

certain situations, “once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Zadvyas*, 533 U.S. at 699.

81. No statute permits Respondents to re-detain an individual who has been released under § 1231(a)(3) without evidence that removal is now reasonably foreseeable or that the individual has violated the conditions of their release.

82. The regulation provides that a release may be revoked upon a showing a change in circumstances that makes removal reasonably foreseeable. *See* 8 C.F.R. § 241.13(i)(2). In this case, there was no finding of a change in circumstances showing that removal is reasonably foreseeable. Nor did the Petitioner receive timely notification of the revocation and was not afforded a meaningful opportunity to respond. *See* 8 C.F.R. § 241.13(i)(3). His re-detention, as such, violates his due process rights.

83. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. Amend. V.

84. Petitioner was previously detained by ICE and released after an individualized custody determination that considered any danger or unmitigable flight risk. He has liberty interest in remaining free from physical confinement where removal is not reasonably foreseeable and he has not violated the conditions of his release. Respondents have violated this liberty interest by revoking his OSUP without providing adequate notice or an opportunity to be heard, and by failing to present changed circumstances that would make removal reasonably foreseeable. *See Nikparvar-Fard*, 2019 U.S. Dist. LEXIS 117710 at \*22.

85. Moreover, government agencies are required to follow their own regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 U.S. Dist. LEXIS 136000, \*16 (E.D. Cal. July 16, 2025). A

violation of the *Accardi* doctrine may constitute a violation of the Fifth Amendment Due Process Clause and justify release from detention. *See, e.g., United States v. Teers*, 591 F. App'x 824, 840 (11<sup>th</sup> Cir. 2014); *Ceesay v. Kurdorfer*, No. 25-CV-267-LJV, 2025 U.S. Dist. LEXIS 84258, at \*48 (W.D.N.Y. May 2, 2025) (citing *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017)).

**COUNT II**  
**FIFTH AMENDMENT DUE PROCESS CLAUSE VIOLATION**

86. The allegations in the above paragraphs are re-alleged and incorporated herein.

87. The INA, FARRA, and implementing regulations mandate meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country. The Defendants' current policies outlined in its March 30, 2025 policy memorandum fail to provide adequate protection.

88. Petitioner has a due process right to meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports him to a third country. *See, e.g., Aden*, 409 F. Supp. 3d at 1004. Petitioner also has a due process right to implementation of a process or procedure to afford these protections. *See, e.g., McNary v. Haitian Refugee Ctr. Inc.*, 498 U.S. 479, 491 (1991). Petitioner also has a due process right to not be re-detained pursuant to the February 18, 2025 directive and the March 30, 2025 Memorandum because Respondents have no procedural protections to ensure meaningful notice and an opportunity to present a fear-based claim prior to removal to a third country. *Zadvydas*, 533 U.S. at 690.

89. Accordingly, the Court should declare that Defendants have violated Petitioner's constitutional right to due process and that the Due Process Clause affords Petitioner the right to a process and procedure ensuring that DHS provides meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third

country and ordering Respondent released since his removal is not reasonably foreseeable without a meaningful process in place.

**PRAYER FOR RELIEF**

WHEREFORE, Mr. Edgar Gomez-Maldonado respectfully requests that the Court:

- a. Assume jurisdiction over this matter;
- b. Issue an order directing Respondents to show cause why the writ should not be granted;
- c. Issue a Writ of Habeas Corpus ordering Respondents to reinstate Petitioner's order of supervision;
- d. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately on his own recognizance or under parole, a low bond or reasonable conditions of supervision;
- d. Grant reasonable attorneys' fees, costs, and other disbursements pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- e. Grant such further relief as the Court deems just and proper.

Dated: January 12, 2026

Respectfully Submitted,

By: /s/ Javier N. Maldonado

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**VERIFICATION OF COUNSEL**

I, Javier N. Maldonado, hereby certify that I am familiar with the case of Edgar Gomez-Maldonado and that the facts as stated above are true and correct to the best of my knowledge and belief.

/s/ Javier N. Maldonado

Javier N. Maldonado