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11 UNITED STATES DISTRICT COURT  
12 DISTRICT OF NEVADA

13 Mario Enrique Barroz Celis,

14 Petitioner,

15 v.

16 John Mattos, et al

17 Respondents.

Case No. 2:26-cv-00079-GMN-DJA

**First Amended § 2241 Petition**

18 INTRODUCTION

19 Petitioner Mario Enrique Barroz Celis is a Venezuelan national who was  
20 tortured by the Maduro regime and granted withholding of removal to Venezuela by  
21 an Immigration Judge on October 9, 2025. Mr. Barroz waived appeal of that  
22 decision, rendering his order of removal administratively final. Removal to  
23 Venezuela is therefore barred. Despite the finality of the order, and the absence of  
24 any identified lawful removal pathway, Mr. Barroz remains in ICE custody months  
25 later.

26 ICE has stated its intent to remove Mr. Barroz to Mexico, a third country.  
27 However, there is no evidence that Mexico has agreed to accept Mr. Barroz, that

1 travel documents exist, or that Mr. Barroz has received notice and an opportunity to  
2 present fear-based claims as to removal to that country as required by due process.

3 Because Mr. Barroz is subject to a final order of removal, his detention is  
4 governed by *Zadvydas v. Davis*, 533 U.S. 678 (2001). The statutory removal period  
5 has expired, removal to Venezuela is prohibited by the grant of withholding, and  
6 Respondents have not demonstrated that lawful third-country removal is  
7 reasonably foreseeable. Continued detention under these circumstances violates due  
8 process.

9 Alternatively, if this Court determines detention is governed by 8 U.S.C. §  
10 1226(a), Mr. Barroz was entitled to an individualized merits bond hearing. The  
11 immigration judge declined to consider bond for lack of jurisdiction and made no  
12 findings regarding flight risk or dangerousness. A jurisdictional refusal is not a  
13 bond hearing, and detention without such a hearing is not authorized by § 1226(a).

14 Under either framework, Respondents have not established a lawful basis for  
15 Mr. Barroz's continued detention. The petition should therefore be granted.

#### 16 JURISDICTION AND VENUE

17 This Court has jurisdiction pursuant to 28 U.S.C. §2241 (granting general  
18 habeas authority to district courts); Art. 1 § 9, cl. 2 of the U.S. Constitution (the  
19 "Suspension Clause"); 28 U.S.C. §1331 (federal question jurisdiction); and 28 U.S.C.  
20 § 2201, 2202 (Declaratory Judgment Act).

21 Federal district courts have jurisdiction to hear habeas claims by non-citizens  
22 challenging the lawfulness of their detention. *See e.g. Zadvydas v. Davis*, 533 U.S.  
23 678 (2001). Federal courts also have federal question jurisdiction, through the APA  
24 to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an  
25 abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).  
26 APA claims are cognizable in habeas. 5 U.S.C. § 703. The APA affords a right of  
27 review to a person who is "adversely affected or aggrieved by agency action." 5  
U.S.C. § 702. Mr. Barroz's continued detention violates his constitutional due

1 process rights, constitutes arbitrary and capricious agency action, and is an abuse of  
2 discretion.

3 Venue is proper in this district pursuant to 28 U.S.C. § 2241(c)(3) and 28  
4 U.S.C. § 1391(b)(2) and (e)(1) because Mr. Barroz is detained within this district at  
5 Nevada Southern Detention Center.

6 Accordingly, Mr. Barroz's habeas petition is properly before this court.

7 **PARTIES**

8 Petitioner Mario Enrique Barroz Celis is a native and citizen of Venezuela  
9 who was granted a withholding of removal in October 2025. He is currently  
10 detained at the Nevada Southern Detention Center in Pahrump, Nevada.

11 John Mattos is the warden of Nevada Southern Detention Center. Mattos, in  
12 his official capacity, is the immediate custodian of Mr. Barroz.

13 Michael Bernacke is the Field Director of the West Valley City Office of  
14 Immigration and Customs Enforcement (ICE) Enforcement and Removal  
15 Operations, which has jurisdiction of enforcement and removal operations over  
16 detention facilities in Nevada, including Nevada Southern Detention Center where  
17 Mr. Barroz is detained. Bernacke, in his official capacity, is a legal custodian of Mr.  
18 Barroz.

19 Todd Lyons is the Acting Director of Immigration and Customs Enforcement,  
20 which is responsible for administering and enforcing immigration laws, including  
21 the detention and removal of immigrants. Lyons, in his official capacity, is a legal  
22 custodian of Mr. Barroz.

23 Kristi Noem is the Secretary of the Department of Homeland Security (DHS),  
24 which oversees ICE. Noem, in her official capacity, is the ultimate legal custodian of  
25 Mr. Barroz.

26 Pam Bondi is the Attorney General of the United States. She oversees the  
27 immigration court system, which is housed within the Executive Office for

1 Immigration Review (EOIR) and includes all immigration courts and the Board of  
2 Immigration Appeals (BIA). She is named in her official capacity.

3 **STATEMENT OF FACTS<sup>1</sup>**

4 Petitioner Mario Enrique Barroz Celis is a citizen of Venezuela and a former  
5 member of the Venezuelan military under the Nicolás Maduro regime. While  
6 serving in the military, Mr. Barroz was accused of plotting against the Maduro  
7 government and was subjected to torture. It is well documented that the Maduro  
8 regime routinely tortured soldiers it believed to be disloyal.<sup>2</sup>

9 Mr. Barroz fled Venezuela and entered the United States on May 21, 2024,  
10 with his young autistic son and the child's mother. On May 22, 2024, U.S. Customs  
11 and Border Protection and U.S. Border Patrol issued Mr. Barroz a Notice to Appear.  
12 (ECF No. 11-4 at 3.) Notably, the administrative charge brought against Mr. Barroz  
13 alleged he was removable as a noncitizen present in the United States without  
14 being admitted or paroled. (Id.; ECF No. 11-3.) Immigration agents did not charge  
15 Mr. Barroz as an arriving alien.

16 After entering the United States, Mr. Barroz filed an application for asylum.  
17 He was taken into ICE custody on August 8, 2025. On September 30, 2025, Mr.  
18 Barroz appeared before an Immigration Judge for a bond hearing. (ECF No. 11-2.)  
19 The Immigration Judge concluded that it lacked jurisdiction to consider bond under  
20 *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) because Mr. Barroz testified that  
21 he had not been admitted to the United States. (Id.)

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25 <sup>1</sup> Unless cited to the record, factual statements are made on information and  
26 belief.

27 <sup>2</sup> *Venezuela Military Personnel Increasingly Jailed, Tortured Amid Coup Fears, Report Says*, Jan. 9, 2019, <https://www.miamiherald.com/latest-news/article224089810.html> (last visited Feb. 4, 2026).

1 On October 9, 2025, the Immigration Judge denied asylum but granted Mr.  
2 Barroz withholding of removal to Venezuela under INA § 241(b)(3). (ECF No. 11-1.)  
3 The removal order lists no alternative countries to which Mr. Barroz may be  
4 removed. (Id. at 4.) Mr. Barroz waived his right to appeal that decision, and the  
5 Department of Homeland Security initially reserved its right to appeal. (Id. at 5.)

6 In mid-October 2025, after receiving withholding of removal and while  
7 detained in ICE custody, Mr. Barroz was informed by ICE that it intended to  
8 remove him to a third country, specifically Mexico. Mr. Barroz fears being removed  
9 to Mexico, and acting pro se, he filed an appeal with the Board of Immigration  
10 Appeals on November 10, 2025, in an effort to prevent removal to Mexico. (ECF No.  
11 11 at 3.) Although DHS initially reserved its right to appeal, Respondents now  
12 assert that DHS has “declined to pursue the appeal.” (Id.)

13 On January 16, 2026, Mr. Barroz filed a pro se writ of habeas corpus. (ECF  
14 No. 4.) In it, he states that he was ordered removed but granted withholding of  
15 removal on October 9, 2029. (ECF No. 4 at 2.) After he was granted withholding of  
16 removal to Venezuela, ICE agents gave him a notice that they were “working to  
17 deport [him] to Mexico.” (Id. at 7.) Mr. Barroz does not wish to go to Mexico because  
18 his life would be in danger there. (ECF No. 4 at 7.) Because three months had  
19 passed since his last hearing before an Immigration Judge, Mr. Barroz brought the  
20 instant writ of habeas corpus due to his prolonged detention and ICE’s efforts to  
21 remove him to a third country without due process. This Court appointed the  
22 Federal Public Defenders Office to represent Mr. Barroz. (ECF No. 3.) This  
23 Amended Petition follows.

## LEGAL FRAMEWORK

### I. Third Country Removals

#### A. Statutory guidance on third country removals

A noncitizen who cannot be removed to their country of origin can be removed to another country by ICE. This is known as a “third country” because it is a country other than the one designated on the noncitizen’s removal order. 8 C.F.R. § 1208.16(f). Specific criteria for identifying a third country for removal are prescribed by statute. For example, the law provides that a noncitizen with a removal order may be removed to a non-designated country of which the noncitizen is a “subject, national or citizen.” 8 U.S.C. §1231(b)(2)(D). ICE may also remove a noncitizen with a removal order to the country from which they were admitted to the U.S.; the country from which the noncitizen departed for the U.S. or a foreign territory contiguous to the U.S.; a country in which the noncitizen resided before entering the country from which they entered the U.S.; the noncitizen’s country of birth; the country that had sovereignty over the place of birth at the time of birth; the country in which the birthplace is located at the time of the removal order; and, “if impracticable, inadvisable, or impossible to remove the [noncitizen] to each country described [above],” ICE may remove a noncitizen to “another country whose government will accept the [noncitizen] into that country.” 8 U.S.C. §1231(b)(2)(E).

Notwithstanding the criteria for removal to a third country, ICE may not remove a noncitizen to a country where the noncitizen’s life or freedom would be threatened on the basis of the five protected grounds. 8 U.S.C. §1231(b)(3)(A). The Supreme Court has emphasized the importance of existing avenues of relief from removal (such as applications for asylum, withholding of removal, and protection under the convention against torture) for providing protection against removal to a third country where a noncitizen would be in danger. *See Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335, 348 (2005) (“If aliens would face persecution or other

1 mistreatment in the country designated under § 1231(b)(2), they have a number of  
2 available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A);  
3 relief under an international agreement prohibiting torture, see 8 CFR §§  
4 208.16(c)(4), 208.17(a) (2004); and temporary protected status, 8 U.S.C. §  
5 1254a(a)(1)”; *see also A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1368 (2025) (recently  
6 holding that non-citizens “must receive notice” that “they are subject to removal” to  
7 a third country and that such notice must be provided “within a reasonable time  
8 and in such a manner as will allow the[] [non-citizen] to actually seek . . . relief.”)  
9 (quoting *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025)).

10 The government itself has previously acknowledged this limitation on  
11 removal to a third country. In oral argument before the Supreme Court in the case  
12 *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021) the following exchange took place  
13 between the then-Assistant to the Solicitor General, Vivek Suri, and Justice Kagan:

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

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

21 JUSTICE KAGAN: Right.

22 MR. SURI: But, without notice –

23 JUSTICE KAGAN: So that's what it would depend  
24 on, right? That – that you would have to provide him  
25 notice, and if he had a fear of persecution or torture in  
26 that country, he would be given an opportunity to contest  
27 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

1 proceedings, you can't put them on a plane to anywhere  
2 right now, isn't that right?

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

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

8 MR. SURI: Yes, that's right.

9 See Transcript of Oral Argument at 20–21, *Johnson v. Guzman Chavez*, 594 U.S.  
10 523 (2021).

11 **B. Trump Administration policies on third country removal.**

12 On March 30, 2025, Respondent Kristi Noem, the Secretary of the  
13 Department of Homeland Security, issued guidance to ICE and other DHS agencies  
14 regarding third country removals. This memo states that, prior to a noncitizen's  
15 removal to a third country, "DHS must determine whether that country has  
16 provided diplomatic assurances that aliens removed from the United States will not  
17 be persecuted or tortured."<sup>3</sup> The memo continues that, where a country has  
18 provided such assurances and the U.S. government believes them to be credible, a  
19 noncitizen may be removed to that country "without the need for further  
20 procedures."<sup>4</sup> In other words, an individual may be removed without providing  
21 notice or an opportunity to contest removal to that third country.

22 The March 30th memo also states that DHS will remove noncitizens even to  
23 third countries that have not provided diplomatic assurances that noncitizens  
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26 <sup>3</sup> P. Ex. 1 at 1.

27 <sup>4</sup> P. Ex 1 at 2.

1 deported from the U.S. will not be persecuted or tortured.<sup>5</sup> In such cases, DHS will  
2 inform the noncitizen of removal to the intended country but will not affirmatively  
3 ask the noncitizen if they fear being removed to that country.<sup>6</sup> DHS will refer any  
4 noncitizen that affirmatively states a fear of removal to a third country to USCIS  
5 for a screening for eligibility for withholding of removal and/or CAT protection as to  
6 the intended third country.<sup>7</sup> USCIS will then make a determination about whether  
7 the noncitizen has established that they will “more likely than not be persecuted on  
8 a statutorily protected ground or tortured in the country of removal.”<sup>8</sup>

9 If USCIS determines that the noncitizen did not meet that burden, they will  
10 be removed.<sup>9</sup> If the noncitizen does make a showing to the satisfaction of USCIS,  
11 USCIS will notify ICE and the ICE Office of the Principal Legal Advisor (OPLA)  
12 may reopen immigration court proceedings for the noncitizen to seek withholding or  
13 CAT protection from removal to the third country.<sup>10</sup> “Alternatively, ICE may choose  
14 to designate another country for removal.”<sup>11</sup> The memo provides no limitation on  
15 how many times ICE could designate a new third country for removal upon a  
16 noncitizen’s showing of a well-founded fear of removal to a particular country.

17 On July 9, 2025, Respondent Todd Lyons sent additional guidance to ICE  
18 employees regarding third country removals (“July 9 Directive”).<sup>12</sup> The directive  
19 was issued in light of the Supreme Court’s decision to stay the injunction in the case  
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21 <sup>5</sup> P. Ex. 1 at 1-2.

22 <sup>6</sup> P. Ex. 1 at 2.

23 <sup>7</sup> P. Ex. 1 at 2.

24 <sup>8</sup> P.Ex. 1 at 2.

25 <sup>9</sup> P.Ex. 1 at 2.

26 <sup>10</sup> P.Ex. 1 at 2.

27 <sup>11</sup> P.Ex. 1 at 2.

<sup>12</sup> P.Ex. 2.

1 *D.V.D. v. Department of Homeland Security*, No. 25-10676 (D. Mass.). It reiterated  
2 the procedures from the March 30 memo and provided additional details regarding  
3 how to deal with third country removals to countries that have not provided credible  
4 assurances that U.S. deportees will not be persecuted or tortured. It added that, in  
5 such cases, an ICE officer will serve the noncitizen with a Notice of Removal  
6 including the intended country and that the notice must be read in a language the  
7 noncitizen understands.<sup>13</sup> ICE “will generally wait at least 24 hours following  
8 service of the Notice of Removal before effectuating removal” but that in “exigent  
9 circumstances” ICE may remove a noncitizen to a possible-torture third country in  
10 as little as six hours after service of the Notice of Removal “as long as the  
11 [noncitizen] is provided reasonable means and opportunity to speak with an  
12 attorney prior to removal.”<sup>14</sup> Generally, if a noncitizen does not affirmatively state a  
13 fear of persecution or torture within 24 hours of service of the Notice of Removal,  
14 ICE may proceed with removal to the identified third country.<sup>15</sup>

## 15 **II. Detention of Noncitizens after a Final Order of Removal**

### 16 **A. Statutory framework**

17 Section 1231 of the INA governs the detention of noncitizens during and  
18 beyond the “removal period.” The removal period begins once a noncitizen’s removal  
19 order becomes administratively final and lasts for 90 days, during which ICE “shall  
20 remove the [noncitizen] from the United States” and “shall detain the [noncitizen]”  
21 as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the  
22 noncitizen within the 90-day removal period, the noncitizen “*may* be detained  
23 beyond the removal period.” 8 U.S.C. § 1231(a)(6) (emphasis added).  
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25 <sup>13</sup> P.Ex. 2.

26 <sup>14</sup> P.Ex. 2.

27 <sup>15</sup> P.Ex. 2.

1 The Supreme Court considered the issue of indefinite detention under 8  
2 U.S.C. §1231(a)(6) in the case *Zadvydas v. Davis*, 533 U.S. 678 (2001). In that case,  
3 the Court acknowledged that allowing a noncitizen to be detained indefinitely after  
4 the statutory removal period would raise “serious constitutional concerns” and, as a  
5 result, held that 8 U.S.C. §1231(a)(6) contains an implicit time limit. *Id.* at 682. The  
6 Court further held that 8 U.S.C. §1231(a)(6) authorizes detention only for “a period  
7 reasonably necessary to bring about the [noncitizen]’s removal from the United  
8 States” and that six months of detention after the removal order is final is  
9 “presumptively reasonable.” *Id.* at 689, 701.

10 Importantly, the *Zadvydas* court did not say the presumption is irrebuttable,  
11 and a variety of courts across the country that have considered the issue have found  
12 the presumption of reasonableness during the first six months of post-removal order  
13 detention can be rebutted. *See Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO),  
14 2025 WL 1750346, at \*5 (D.N.J. June 24, 2025) (analyzing the issue and collecting  
15 cases). “Within the six-month window,” the noncitizen bears the burden of  
16 “prov[ing] the unreasonableness of detention.” *Cesar v. Achim*, 542 F. Supp. 2d 897,  
17 903 (E.D. Wis. 2008).

18 After six months, there is “good reason to believe that there is no significant  
19 likelihood of removal in the reasonably foreseeable future,” and the burden shifts to  
20 the government to justify continued detention. *Zadvydas*, 533 U.S. at 701. “Whether  
21 detention is ‘reasonably necessary to secure removal is determinative of whether  
22 the detention is, or is not, pursuant to statutory authority...The basic federal  
23 habeas corpus statute grants the federal courts authority to answer that question.”  
24 *Medina v. Noem, et al., Respondents*, No. 25-CV-1768-ABA, 2025 WL 2306274, at \*6  
25 (D. Md. Aug. 11, 2025) (citing *Zadvydas*, 533 U.S. at 699).

## B. DHS Regulations

DHS regulations provide that, before the end of the 90-day removal period, the local ICE field office with jurisdiction over the noncitizen's detention must conduct a custody review to determine whether the noncitizen should remain detained. *See* 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). If the noncitizen is not released at the end of the removal period or in the three months that follow, jurisdiction transfers to ICE headquarters (ICE HQ), which must conduct a custody review before or at 180 days. 8 C.F.R. §241.4(c)(2), (k)(2)(ii).

To comply with *Zadvyas*, DHS issued additional regulations in 2001 that established "special review procedures" to determine whether detained noncitizens with final removal orders are likely to be removed in the reasonably foreseeable future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56, 967 (Nov. 14, 2001). Subsection (i)(7) was added to 8 C.F.R. §241.4, which added a supplemental review procedure that ICE HQ 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). Under this procedure, ICE HQ evaluates the foreseeability of removal by analyzing factors such as the history of ICE's removal efforts to third countries. *See* 8 C.F.R. §241.13(f). If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on "special circumstances," it must justify the detention based on narrow grounds such as national security or public health concerns or by demonstrating by clear and convincing evidence before an immigration judge (IJ) that the noncitizen is "specially dangerous." 8 C.F.R. §241.14(b)-(d), (f).

### C. ICE Policy

On February 18, 2025, in an apparent departure from longstanding legal requirements and ICE's own policies, ICE issued a directive to agents encouraging them to seek to re-detain noncitizens with final removal orders who had been previously released from custody for the purpose of removal to previously recalcitrant countries of origin, or to third countries.<sup>16</sup> The directive did not provide justification as to why detention of noncitizens under orders of supervision would be necessary to effectuate proper removal to countries of origin or otherwise.

This recent ICE policy goes against DHS regulations on re-detention. Beyond the protections in *Zadvydas*, 8 C.F.R. § 241.4, §241.13(i) establishes additional protective procedures for re-detention. These procedures allow for the noncitizen to "be returned to custody" due to violations of the conditions of their release. 8 C.F.R. § 241.13(i)(1); *see also* § 241.4. Absent condition violations, revocation of release is only permitted if based on "changed circumstances" it is determined that "there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2).

Regardless of the reason for re-detention, the re-detained person is entitled to "an initial informal interview promptly" after being taken back into custody. 8 C.F.R. §241.13(i)(3). The re-detained person "will be notified of the reasons for revocation" and will be afforded the "opportunity to respond to the reasons for revocation." *Id.* The re-detained person should also be permitted to "submit any evidence or information" that can demonstrate that "there is no significant likelihood [they] be removed in the reasonably foreseeable future" *Id.*

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<sup>16</sup> P. Ex. 3.

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**GROUNDS FOR RELIEF**

**Ground One: The continued indefinite detention of Mr. Barroz violates his Fifth Amendment right to due process because his removal is not reasonably foreseeable.**

**A. Mr. Barroz is subject to a final order of removal, and no lawful third-county removal is reasonably foreseeable**

**1. Mr. Barroz’s order of removal became final when issued by the Immigration Judge**

On October 9, 2025, the Immigration Judge denied asylum but granted Mr. Barroz withholding of removal to Venezuela pursuant to INA § 241(b)(3). (ECF No. 11-1.) At the conclusion of the proceedings, Mr. Barroz expressly waived appeal. (Id. at 5.) Although DHS initially reserved its right to appeal, Respondents now confirm that DHS has “declined to pursue the appeal.” (ECF No. 11 at 3.)

Under the governing regulations, an immigration judge’s order of removal becomes administratively final “[u]pon waiver of appeal by the respondent.” 8 C.F.R. § 1241.1(b). That is precisely what occurred here. Because Mr. Barroz waived appeal on October 9, 2025 (and DHS has confirmed it did not pursue its own appeal) the removal order became administratively final on that date, as did his grant of withholding of removal to Venezuela.

Once an order of removal is final, the statutory removal period is triggered. See 8 U.S.C. § 1231(a)(1)(A) (requiring removal within 90 days of a final order). The statute further provides that the removal period begins on “the date the order of removal becomes administratively final,” absent circumstances not present here. 8 U.S.C. § 1231(a)(1)(B)(i).

Accordingly, Mr. Barroz’s removal period commenced on October 9, 2025. His detention therefore is governed by the post-removal-order detention framework articulated in *Zadvydas*, 533 U.S. 678. The statutory removal period ended on January 7, 2026, 90 days after his removal order became final.

1                   **2 Third-country removal is constitutionally constrained by**  
2                   **due process**

3           Although the government may, in limited circumstances, seek to remove a  
4 noncitizen to a third country, such removal is not exempt from constitutional  
5 constraints. Any attempt to remove a noncitizen to a third country must comply  
6 with due process, including notice and a meaningful opportunity to raise fear-based  
7 claims such as protection under the Convention Against Torture. As the Ninth  
8 Circuit has explained, “[i]mmigration proceedings must provide the procedural due  
9 process protections guaranteed by the Fifth Amendment.” *Vilchez v. Holder*, 682  
10 F.3d 1195, 1199 (9th Cir. 2012) (citing *Lacsina Pangilinan v. Holder*, 568 F.3d 708,  
11 709 (9th Cir. 2009)).

12           Due process requires that individuals be informed of the matters that will  
13 determine their rights. “[I]ndividuals whose rights are being determined are  
14 entitled to notice of the issues to be adjudicated, so that they will have the  
15 opportunity to prepare and present relevant arguments and evidence.” *Andriasian*  
16 *v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999).

17           Applying these principles in the removal context, courts have recognized that  
18 surprise country designations can violate due process. “[I]n the context of country of  
19 removal designations, last minute orders of removal to a country may violate due  
20 process if an immigrant was not provided an opportunity to address his fear of  
21 persecution in that country.” *Najjar v. Lynch*, 630 Fed. App’x 724, 724 (9th Cir.  
22 2016) (non-precedential memorandum disposition).

23           The Supreme Court has made clear that due process protections apply to all  
24 persons within the United States, including noncitizens subject to final orders of  
25 removal. As the Court explained in *Zadvydas*, freedom from physical restraint lies  
26 at the core of the liberty protected by the Due Process Clause, and civil detention is  
27 permissible only where it bears a reasonable relation to its purpose. *Id.* 533 U.S. at

1 690. When the government seeks to remove an individual to a third country, due  
2 process requires procedures sufficient to ensure that removal will not result in  
3 persecution or torture. *See Cavieres Gomez v. Mattos*, 2:25-cv-00975-GMN, \*12 (D.  
4 Nev. Nov. 6, 2025) (“[t]he Court finds that Petitioner has a due process right to  
5 received meaningful notice and opportunity to present a fear-based claim to an  
6 immigration judge before DHS deports him to a third country.”)

7 **3. Because no lawful third-country removal process has begun,**  
8 **removal is not reasonably foreseeable under *Zadvydas***

9 Under *Zadvydas*, detention beyond the removal period is authorized only for  
10 so long as removal is reasonably foreseeable. *See Zadvydas*, 533 U.S. at 690 (where  
11 “detention's goal is no longer practically attainable, detention no longer bears a  
12 reasonable relation to the purpose for which the individual was committed.”)  
13 (internal citations omitted). When removal depends on speculative future events or  
14 on legally required procedures that have not yet begun, continued detention violates  
15 due process.

16 Here, removal to Mexico is not reasonably foreseeable. Respondents have not  
17 presented any evidence that it initiated a third-country removal process that  
18 complies with constitutional requirements. Indeed, Respondents provided no  
19 evidence that a fear-based adjudication regarding Mexico has occurred, and there is  
20 no evidence that Mexico has agreed to accept Mr. Barroz or issued him travel  
21 documents. *See Perez v. Bondi*, No. 2:25-cv-02390-CDS at \*4 (D. Nev.) (granting  
22 habeas relief and expressly relying on *Gomez v. Mattos*, 2025 U.S. Dist. LEXIS  
23 220190, at \*\_\_\_ (D. Nev. Nov. 6, 2025), which recognized a due process right to  
24 meaningful notice and an opportunity to present fear-based claims before DHS may  
25 remove a noncitizen to a third country).

26 Until these constitutional prerequisites are satisfied, Respondents are  
27 barred from removing Mr. Barroz to Mexico. Detention that rests on the mere

1 possibility that Respondents may someday initiate lawful procedures is precisely  
2 the type of speculative detention that *Zadvydas* forbids. *See Suarez-Ramirez v.*  
3 *Bondi*, 2:25-cv-02369-MMD, at \*3 (D. Nev. Jan. 15, 2026) (granting habeas relief to  
4 a Cuban petitioner because the government's prior failed efforts to remove him to  
5 Mexico demonstrated that future removal was not reasonably foreseeable); *see also*  
6 *Alkarori v. NSDC*, 2:25-cv-02567-MMD \*4-5 (D. Nev. Feb. 2, 2026) (granting habeas  
7 relief and finding petitioner rebutted the presumptive reasonableness of his five-  
8 and-a-half-month detention and that the government failed to show a significant  
9 likelihood of removal in the reasonably foreseeable future.)

10 Because lawful removal (either to Venezuela or to a third country) is not  
11 presently available, and because Respondents have not shown that such removal  
12 will occur in the reasonably foreseeable future, continued detention violates due  
13 process. As in *Zadvydas*, Mr. Barroz's detention has ceased to bear a reasonable  
14 relation to its purported purpose of effectuating removal. *Zadvydas*, 533 U.S. at  
15 690.

16 Detention premised on the mere possibility that Respondents may someday  
17 initiate lawful third-country removal procedures is precisely the type of speculative  
18 detention that *Zadvydas* forbids. The six-month presumption does not salvage  
19 detention where the government cannot identify a concrete, lawful pathway to  
20 removal. Because removal to Venezuela is prohibited by the grant of withholding,  
21 and lawful third-country removal is neither presently available nor reasonably  
22 foreseeable, Mr. Barroz's continued detention no longer bears a reasonable relation  
23 to the purpose of effectuating removal. As in *Zadvydas*, detention under these  
24 circumstances violates due process.  
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1 **Ground Two: ICE’s policy to remove noncitizens to a third country with no**  
2 **notice or opportunity to seek fear-based protection violates his Fifth**  
3 **Amendment right to due process and constitutes arbitrary and capricious**  
4 **agency action in violation of the Administrative Procedure Act, 5 U.S.C. §**  
5 **706.**

6 The APA entitles “a person suffering legal wrong because of agency action, or  
7 adversely affected or aggrieved by agency action . . . to judicial review.” 5 U.S.C. §  
8 702. Further, the APA compels a reviewing court to “hold unlawful and set aside  
9 agency action, findings, and conclusions found to be . . . arbitrary [or] capricious, . . .  
10 otherwise not in accordance with law,” *id.* § 706(2)(A), or “short of statutory right,”  
11 *id.* § 706(2)(C). The APA also compels a reviewing court to “hold unlawful and set  
12 aside agency action, findings, and conclusions found to be . . . without observance of  
13 procedure required by law.” 5 U.S.C. § 706(2)(D).

14 As explained above, Mr. Barroz has a due process right to meaningful notice  
15 and opportunity to present a fear-based claim to an immigration judge before DHS  
16 deports him to a third country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.  
17 1999); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Mr. Barroz  
18 also has a due process right to implementation of a process or procedure to afford  
19 these protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491  
20 (1991).

21 The government however, has adopted a policy—set forth in the March 30  
22 memo and July 9 directive—that is arbitrary and capricious and deprives Mr.  
23 Barroz of meaningful notice and an opportunity to present a fear-based claim to an  
24 immigration judge prior to his deportation to a third country. Moreover, the  
25 government’s policy also violates the INA and implementing regulations which  
26 mandate that the government refrains from removing Mr. Barroz, and similarly  
27 situated individuals, to a third country where they will likely be persecuted or  
tortured, thus requiring the government to provide meaningful notice of deportation

1 to a third country and the opportunity to present a fear-based claim to an  
2 immigration judge before deporting an individual to a third country. In this case,  
3 the March 30 memo and July 9 directive demonstrate the government does not  
4 intend to observe those protections.<sup>17</sup>

5 The APA empowers federal courts to “compel agency action unlawfully  
6 withheld or unreasonably delayed.” 5 U.S.C. § 706(1). This Court should hold that  
7 the government’s actions and policy are unlawful and compel that before any  
8 attempt is made to deport him to a third country Mr. Barroz be provided with  
9 meaningful notice and opportunity to present a fear-based claim to an immigration  
10 judge.

11 **Ground Three: Mr. Barroz’s detention in immigration custody pursuant to**  
12 **recent ICE policy regarding third country removal violates the Due**  
13 **Process Clause of the Fifth Amendment.**

14 To the extent that Mr. Barroz’s continued detention is meant to facilitate his  
15 removal to a third country, his detention is unlawful because, as argued in Grounds  
16 One and Two (incorporated here by reference), ICE’s procedure for third country  
17 removal is arbitrary and capricious and does not comply with due process. Any such  
18 future removal would be accomplished in violation of his due process rights,  
19 rendering his detention on that basis unlawful. Accordingly, this Court should order  
20 Mr. Barroz’s immediate release.

21 Moreover, continued detention under these circumstances operates as a  
22 coercive mechanism designed to pressure Mr. Barroz to acquiesce to third-country  
23 removal without the procedural protections to which he is entitled. A noncitizen’s  
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26 <sup>17</sup> See also Gerald Imray, 3 deported by U.S. held in African prison despite  
27 completing sentences, lawyers say, PBS NEWS (Sept. 2, 2025),  
<https://www.pbs.org/newshour/amp/nation/3-deported-by-u-s-held-in-african-prison-despite-completing-sentences-lawyers-say>.

1 refusal to consent to removal that has not been lawfully authorized or adjudicated  
2 does not constitute obstruction of removal and cannot justify continued detention.

3 Because DHS lacks a lawful and reasonably foreseeable mechanism to  
4 effectuate Mr. Barroz’s removal, his continued detention is not reasonably related to  
5 removal and violates due process. Accordingly, this Court should order Mr. Barroz’s  
6 immediate release.

7 **Ground Four: Petitioner’s prolonged detention without a merits bond**  
8 **hearing violates his right to due process under the Fifth Amendment of the**  
9 **United States Constitution.**

10 If this Court determines that 8 U.S.C. § 1226(a) governs Mr. Barroz’s  
11 detention because he filed a late appeal of the Immigration Judge’s withholding  
12 decision based on his misunderstanding of the status of his removal, his detention is  
13 still unlawful.

14 “The Fifth Amendment’s Due Process Clause forbids the Government to  
15 ‘depriv[e]’ any ‘person . . . of . . . liberty . . . without due process of law.’ Freedom  
16 from imprisonment—from government custody, detention, or other forms of physical  
17 restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S.  
18 at 690; (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). “Arbitrary civil  
19 detention is not a feature of our American government. ‘[L]iberty is the norm, and  
20 detention prior to trial or without trial is the carefully limited exception.’”  
21 *Rodriguez v. Marin*, 909 F.3d 252, 256–57 (9th Cir. 2018) (quoting *United States v.*  
22 *Salerno*, 481 U.S. 739, 755 (1987)).

23 In considering the issue of prolonged detention in ICE custody pursuant to  
24 mandatory detention, the Ninth Circuit has expressed “grave doubts that any  
25 statute that allows for arbitrary prolonged detention without any process is  
26 constitutional or that those who founded our democracy precisely to protect against  
27 the government’s arbitrary deprivation of liberty would have thought so.”

1 *Rodriguez*, 909 F.3d at 256. Other circuits have similarly determined that  
2 unreasonably prolonged detention violates a noncitizen’s due process rights. *See*  
3 *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir.  
4 2021).

5 Mr. Barroz’s continued detention without ever having a merits bond hearing  
6 is the type of arbitrary deprivation of liberty the Due Process Clause of the  
7 Constitution protects against. *See Rodriguez*, 909 F.3d at 257 (“The Fifth  
8 Amendment says that ‘[n]o person shall be . . . deprived of life, liberty, or property  
9 without due process of law.’ An alien is a ‘person.’ To hold him without bail is to  
10 deprive him of bodily ‘liberty.’ And, where there is no bail proceeding, there has  
11 been no bail-related ‘process’ at all. The Due Process Clause—itsself reflecting the  
12 language of the Magna Carta—prevents arbitrary detention.” (quoting *Jennings v.*  
13 *Rodriguez*, 583 U.S. 281, 330 (2018) (Breyer, J., dissenting) (internal citations  
14 omitted)).

15 Section 1226(a) authorizes discretionary detention only after an  
16 individualized bond determination by an immigration judge assessing flight risk  
17 and danger to the community. That never occurred here. At Mr. Barroz’s custody  
18 hearing, the immigration judge denied bond for lack of jurisdiction under *Matter of*  
19 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The immigration judge made no findings  
20 regarding flight risk, danger to the community, or discretionary factors relevant to  
21 release. A jurisdictional refusal to consider bond is not a bond hearing within the  
22 meaning of § 1226(a).

23 The Immigration Judge’s conclusion that it lacked jurisdiction to grant Mr.  
24 Barroz a bond hearing rests on ICE’s interpretation of §§ 1225 and 1226(a), as  
25 endorsed by the BIA in *Hurtado*. That interpretation, however, has been repeatedly  
26 rejected by federal courts. In *Gimenez Rivero v. Mina*, 2026 WL 199319 (M.D. Fla.  
27 Jan. 26, 2026), the court explained that “judges across the country—the vast

1 majority who have considered this question—have told the Government many times  
2 in the past few months that its interpretation of the law is wrong,” emphasizing  
3 that this conclusion spans judges “appointed by every President from Ronald  
4 Reagan through Donald Trump.” *Id.* at \*5.<sup>18</sup> The court further held that the BIA’s  
5 decision in *Hurtado* is not entitled to deference and is plainly incorrect under  
6 ordinary principles of statutory interpretation. *Id.* at \*4.

7 Likewise, in *Escobar Salgado v. Mattos*, 2025 WL 3205356 (D. Nev. Nov. 17,  
8 2025), the court rejected the government’s attempt to treat residents arrested inside  
9 the United States as “applicants for admission” subject to mandatory detention  
10 under § 1225(b). *Id.* at 10. The court held that individuals arrested in the interior  
11 are detained under § 1226(a), not § 1225, and that detention without access to a  
12 bond hearing violates procedural due process. *Id.* at 25-26.

13 Here, the Immigration Judge’s reliance on *Hurtado* reflects adherence to an  
14 interpretation of the detention statutes that has been repeatedly repudiated and  
15 cannot support the denial of bond jurisdiction here. The only authority under which  
16 ICE may lawfully detain Mr. Barroz is 8 U.S.C. § 1226(a), pursuant to which he  
17 must receive a bond hearing.

18 Accordingly, this Court should order that Mr. Barroz receive a merits bond  
19 hearing before the immigration judge at which the government bears the burden of  
20 proving, by clear and convincing evidence, that he is either a flight risk or a danger  
21 to the community. *See Arechiga v. Archambeault*, 2023 WL 5207589, at \*1 (D. Nev.  
22 Aug. 11, 2023) (granting habeas relief and requiring a bond hearing with the  
23 burden placed on the government by clear and convincing evidence.)  
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27 <sup>18</sup> But see *Buenrostro-Mendez v. Bondi*, --- F.4th --- (5th Cir. 2026), 2026 WL 323330.

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CONCLUSION

For the reasons set forth above, there is no lawful basis for Mr. Barroz's continued detention. His removal order has been administratively final since October 9, 2025; removal to Venezuela is barred by the grant of withholding; and there is no evidence that lawful third-country removal is presently available or reasonably foreseeable. Continued detention under these circumstances violates due process under *Zadvydas*.

Alternatively, if this Court determines that Mr. Barroz's detention is governed by 8 U.S.C. § 1226(a) because of the late filed appeal, which Petitioner maintains it is not, his detention remains unlawful because he has never received the individualized merits bond hearing that the statute and the Constitution require. A jurisdictional refusal to consider bond is not a substitute for a meaningful custody determination.

Accordingly, this Court should grant the petition for writ of habeas corpus and order Mr. Barroz's immediate release from ICE custody, or, in the alternative, order a prompt individualized bond hearing before an immigration judge with the burden on the government to prove he is a flight risk or danger.

**PRAYER FOR RELIEF**

Accordingly, Mr. Barroz respectfully requests that this Court:

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

2. Order Petitioner’s immediate release;

3. Prohibit the government from re-detaining Petitioner in the future absent proof of changed circumstancing making his removal reasonably foreseeable;

4. Prohibit the government from removing petitioner to a third country without providing Petitioner and Petitioner’s counsel with adequate notice of intent to seek removal to a third country and due process in the form of an opportunity to seek to reopen Petitioner’s immigration court proceedings to seek fear-based relief from removal; and

5. Grant such other and further relief as, in the interests of justice, may be appropriate.

February 17, 2026

Respectfully submitted,

Rene L. Valladares  
Federal Public Defender

/s/ Margaret Lambrose  
Margaret Lambrose  
Assistant Federal Public Defender

**DECLARATION UNDER PENALTY OF PERJURY**

I declare under penalty of perjury under the laws of the United States of America and the State of Nevada that the facts alleged in this petition are true and correct to the best of counsel's knowledge, information, and belief.

Dated February 17, 2026

Respectfully submitted,

Rene L. Valladares  
Federal Public Defender

/s/ Margaret Lambrose  
Margaret Lambrose  
Assistant Federal Public Defender

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing has been filed on February 17, 2026. I personally served a true and correct copy of the foregoing First Amended § 2241 Petition by CM/ECF to the following individuals:

|  |   |
|--|---|
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I further certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three calendar days, to the following person:

|  |  |
|--|--|
| Mario Barroz Celis, A5823<br>Nevada Southern Detention Center<br>2190 E Mesquite Avenue<br>Pahrump, NV 89060         | Todd Lyons<br>500 12th St SW<br>Washington, DC 20536   |
| Pamela Bondi<br>Attorney General<br>U.S. Department of Justice<br>950 Pennsylvania Ave, NW,<br>Washington, DC, 20530 | John Mattos, Warden<br>Nevada Southern Detention Center<br>2190 E Mesquite Avenue<br>Pahrump, NV 89060 |

|  |  |
|--|--|
| <p>1 Kristi Noem<br/>2 Secretary of the Department of<br/>3 Homeland Security<br/>4 2707 Martin Luther King Jr. Ave SE,<br/>Washington, DC 20530</p> | <p>Michael Bernanke<br/>Salt Lake City ICE Field Office Director<br/>2975 Decker Lake Drive, Ste 100<br/>West Valley City, UT 84119-6096</p> |
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9 */s/ Victoria Lenzi*

10 An Employee of the  
11 Federal Public Defender  
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