UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

Keiberth Jose MORENO BARRETO, Petitioner, v. Jason Streeval, Warden, El Paso Camp East Montana Processing Center; Mary DeAnda-Ybarra, Director of El Paso Field Office, Immigration & Customs Enforcement Jesse D. Munoz, Chief, U.S. Border Patrol El Paso; U.S. Immigration and Customs Enforcement; and Kristi Noem, in her official capacity as Secretary of the U.S. Department of Homeland Security Defendant-Respondents.	Case No. 26-248 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; PETITION FOR WRIT OF HABEAS CORPUS** **VIDEO TELEPHONIC ARGUMENT REQUESTED**

INTRODUCTION

1. This lawsuit seeks the immediate relief of Petitioner Keiberth Jose Moreno Barreto ("Petitioner") from unlawful detention in violation of his constitutional and statutory rights.
2. U.S. Immigration and Customs Enforcement ("ICE") has detained Petitioner since March 11, 2025. On July 28, 2025, Immigration Judge ("IJ") Jennifer Bell at the Stewart Immigration Court ordered Petitioner removed and granted Petitioner's application for withholding of removal protections from Venezuela.
3. Petitioner's detention became unlawful on January 25, 2026, when the Respondent failed to release Petitioner from detention. Petitioner's continued detention is an unlawful violation of due process, an incorrect interpretation of immigration law, and is *ultra vires*.

4. The Government has informed Petition of their intention to transport him to Venezuela in violation of an Immigration Order not to remove him to that country entered on July 28, 2025, by Immigration Judge.

5. Accordingly, Petitioner asks this Court to grant the instant petition for a writ of habeas corpus under 28 U.S.C. § 2241 and enjoin Respondent's unlawful removal and continued detention of Petitioner to protect his due process rights and reunite Petitioner with his wife and children. In the alternative, he respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243.

JURISDICTION

6. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question, and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

8. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2441 *et seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

9. Venue is proper because Petitioner is detained at El Paso Camp East Montana detention facility in El Paso, Texas, which is within the jurisdiction of this District.

10. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to his claims occurred in this District. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

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

12. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. "'The writ of habeas corpus is an ancient and important writ designed to safeguard individual freedom against unlawful custody.'" *Obando-Segura v.* Garland, 999 F.3d 190, 192 (4th Cir. 2021); *see also* Fay *v. Noia*, 372 U.S. 391, 400 (1963).

13. Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

PARTIES

14. Petitioner is the recipient of a grant of withholding of removal from Venezuela, country of citizenship.

15. Respondent Jason Streeval is the Warden of El Paso Camp East Montana Detention Center and he has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent-Streeval is a legal custodian of Petitioner.

16. Respondent Mary DeAnda-Ybarra is sued in her official capacity as the Director of the El Caso Field Office of U.S. Immigration and Customs Enforcement. Respondent DeAnda-Ybarra is a legal custodian of Petitioner and has authority to release him.

17. Respondent Jesse D. Munoz is sued in his official capacity as the Chief of U.S. Border Patrol in El Paso. U.S. Border Patrol in El Paso controls the management of the El Paso Camp East Montana Detention Center. Respondent Munoz is a legal custodian of Petitioner.

18. Respondent Kristi Noem is sued in her official capacity as Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement and U.S. Border Patrol, the component agencies responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

19. There is no statutory requirement of administrative exhaustion before immigration detention may be challenged in federal court by a writ of habeas corpus. *See* 8 U.S.C. § 1252(d)(1); *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007) ("Under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.").

20. The Supreme Court has recognized that exhaustion is not required where a plaintiff "may suffer irreparable harm if unable to secure immediate judicial consideration of [his] clam." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). This is the case here, where Petitioner raises constitutional and statutory claims that the agency cannot redress, and where each day that passes is one in which he is being unconstitutionally deprived of his liberty.

21. Even if the Court were to consider requiring exhaustion as a prudential matter, further action with the agency is unnecessary when pursuing administrative remedies and would be futile or the agency has predetermined a dispositive issue. *McCarthy v. Madigan*, 503 U.S. 144, 147-48 (1992) (holding that an administrative remedy is inadequate when it "lacks institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute" or where the "challenge is to the adequacy of the agency procedure itself").

22. Therefore, habeas corpus is an appropriate avenue to vindicate his constitutional, statutory, and regulatory rights and restore his liberty.

LEGAL FRAMEWORK

23. Title 8 of the United States Code, Section 1231 details the United States Government's authority to detain noncitizens during their removal proceeding following the conclusion of their removal proceedings. 8 U.S.C. § 1231(a) generally requires the detention of certain noncitizens who are subject to a final removal order during the 90-day period after the completion of removal proceedings and permits the detention of certain noncitizens beyond that period. *Id.* at §1231(a)(2), (6).

24. The instant case concerns the detention provisions at 8 U.S.C. § 1231(a), following the grant of withholding of removal on July 28, 2025. The order allowing the grant of withholding of removal was entered by Immigration Judge Jennifer Bell on July 28, 2025. See attached Exhibit A.

25. In general, a recipient of withholding of removal has demonstrated to the Immigration Judge that his life or freedom would be threatened in the proposed country of removal "on

account of race, religion, nationality, membership in a particular social group, or political opinion." 8 C.F.R. §208.16(b).

26. Pursuant to 8 C.F.R. §§ 241.1, 1241.1, an order becomes final at the conclusion of proceedings under 8 U.S.C. § 1229a, and there is no valid and pending appeal of the final order.

27. Detained noncitizens granted withholding of removal may continue to be detained post-order pursuant to 8 U.S.C. § 1231(b)(3). Generally, the removal period runs for a period of 90 days post order. 8 C.F.R. § 241.4(g)(1)(ii).

28. An initial custody review must be conducted after the expiration of the detainee's 90-day removal period by an ICE district director or a director of detention and removal field offices with jurisdiction over the detainee. 8 C.F.R. §§ 241.4(c)(1), (k)(1)(i).

29. A detainee may be released after a determination that his release "will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending [the noncitizen's] removal from the United States." 8 C.F.R. § 241.4(d).

30. When determining whether to release the detainee, the district director considers factors such as the detainee's criminal history, mental health, evidence of rehabilitation, prior immigration violations and history, flight risk, likelihood of adjusting to life in a community, and whether the detainee is likely going to violate the conditions of his release. 8 C.F.R §§ 241.4(d)(1), (f).

31. The removal period may be extended when a noncitizen refuses to act in good faith with ICE's attempts to remove them from the United States. 8 C.F.R. § 241.4(k)(1)(i). "The Service will provide an alien with a Notice of Failure to Comply . . . before the expiration of the removal period" and the removal period can be extended until the alien demonstrates

his compliance with statutory obligations. *Id.* "Once the [noncitizen] has complied with his or her obligations under the law, the Service shall have a reasonable period of time in order to effect the [noncitizen's] removal." *Id.*

32. A detained noncitizen should receive written notice approximately thirty days in advance of a records review to allow them to submit information, in writing, in support of their release from immigration detention. 8 C.F.R. § 241.4(h)(2).

33. A district director shall take appropriate steps to secure a travel document for the detained noncitizen both before and after expiration of the removal period. 8 C.F.R. § 241.4(g)(2).

34. After the three-month period following the expiration of the removal period, jurisdiction over the custody determination transfers from the director to the Executive Associate Commissioner of the Headquarters Post-Order Detention Unit (HQPDU). 8 C.F.R. § 241.4(k)(2)(ii). The HQPDU review should be conducted **as soon as practicable**. *Id.* **Emphasis added**.

35. Custody review may be postponed in the discretion of either the district director or the HQPDU director if "such detainee's prompt removal is practicable and proper, or for other good cause. The decision and reasons for the delay shall be documented in the alien's custody review file or A file, as appropriate." 8 C.F.R. § 241.4(k)(3).

STATEMENT OF FACTS

36. Petitioner is a thirty-five-year-old national and citizen of Venezuela who last entered the United States in December 2024. Petitioner and his wife and three children fled Venezuela after [redacted]

[redacted]

43. Consequently, Petitioner and the family fled Venezuela, to try and seek refuge in the United States.

44. The family traveled to Mexico to request entry with Customs and Border Protection ("CBP"). While awaiting in Mexico an appointment, Petitioner was repeatedly extorted by Mexican law enforcement and robbed.

45. When Petitioner and his wife attempted to relocate to a safe location within Mexico, to await their appointment with CBP, they were kidnapped and extorted by a local cartel. The cartel threatened to kill Petitioner and his family if they did not comply with the cartel's demands.

46. Under duress, Petitioner and his family entered to the United States without inspection.

47. After entry and release into the United States, Respondents monitored Petitioner through an ankle monitor, used as an alternative to detention program.

48. On March 11, 2025, Petitioner was arrested and detained by Respondents.

49. Petitioner had continuously attended all required appointments and hearings since arriving in the United States.

50. Prior to his detention, Petitioner lived with and supported his family in Bethlehem, Georgia.

51. This detention is a substantial deprivation and burden to Petitioner and his family. The prolonged detention endangers his wife and children without adequate spousal, parental, emotional, and financial support.

52. Petitioner has never been arrested or convicted of any crimes and has never failed to appear in any criminal or immigration proceedings.

53. Petitioner's wife and three children have pending applications for asylum, withholding of removal, of the convention against torture.

54. In early August 2025, Respondents sent a message to the Petitioner while he remained detained at Stewart Immigration Center via a tablet that the government intended to take steps to deport him to Mexico.

55. Respondents did not inform Petitioner of any additional steps to remove him to Mexico until January 9, 2026.

56. On the morning of January 9, 2026, officers of Respondent-ICE met virtually with a room of approximately forty-five detained individuals of varying nationalities, including Petitioner.

57. During this call, the Respondents requested for Petitioner to sign a document, agreeing to be deported.

58. Respondents told Petitioner and the other men within the facility that regardless of whether they signed the document, they would be deported to Mexico.

59. Respondents stated that if Petitioner refused to sign the document, that he would be transferred to Louisiana.

60. Petitioner refused to sign the document provided by Respondents.

61. During the evening of January 9, 2026, Respondents advised Petitioner that he was being transferred to Louisiana, and then the next night, he would be sent to Mexico.

62. Petitioner responded to the officers and stated his fear of being deported to Mexico and requested a credible fear interview.

63. On January 10, 2026, Respondents transferred Petitioner from Stewart Immigration Center to El Paso Camp East Montana Immigration Center.

64. On the flight, Petitioner again stated his fear of being deported to Mexico and requested a credible fear interview.

65. After arriving at the El Paso Camp East Montana Immigration Center, officers of Respondents asked Petitioner to sign a document, agreeing to his deportation. Petitioner refused to sign the document.

66. Petitioner subsequently sent another request for a credible fear interview.

67. On January 11, 2026, Petitioner's immigration counsel, Kjerstin Lewis Shukla, submitted a credible fear interview request to Respondent-ICE via email and received no response.

68. On January 12, 2026, Attornet Lewis Shukla, submitted another request for a credible fear interview.

69. On January 26, 2026, Petitioner, through Attorney Lewis Shukla, requested a custody review from Respondent-DeAnda-Ybarra.

70. On January 27, 2026, Petitioner, through Attorney Lewis Shukla, mailed a custody review request to the HQPDU.

71. On January 27, 2026, Respondent-DeAnda-Ybarra and Respondent-Munoz informed Petitioner of an imminent transfer to Arizona for removal to Venezuela. After advising Respondents of his withholding of removal grant, Respondents kept Petitioner detained in a room alone without access to a bathroom, food, or water for approximately hours.

72. Respondents then informed Petitioner that he would receive a credible fear interview related to his fear of being removed to Mexico.

73. On January 29, 2025, Respondents informed Petitioner that he is to be imminently removed to Venezuela in violation of the order entered July 2025, Exhibit A. Respondents told Petitioner that this decision came from headquarters in Washington, D.C.

74. As of the date of this filing, Respondents have not scheduled Petitioner for a credible fear interview.

75. As a result of his unlawful detention and the order withholding removal, Petitioner seeks this Court to enter an order enjoining the Respondent from removal to another country and an order releasing him from custody.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process Against Prolonged Detention

76. Petitioner realleges all paragraphs above as if fully set forth here.

77. The Fifth Amendment's Due Process clause prohibits the deprivation of an individual's life, liberty, or property without due process of law. U.S. Const. amend. V.

78. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 528 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

79. Due Process requires that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protested interest in avoiding physical restraint.'" *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

80. Post-removal period was authorized by 8 U.S.C. § 1231(a)(6), which states that the government may only detain an alien detainee with an order of removal for "a period reasonably necessary to bring about detainee's removal from the United States" and does not allow for the individual to be detained indefinitely. *Zadvydas v. Davis*, 121 S. Ct. 2491,

2498 (2005). Detention for longer than is "reasonably necessary" results in a violation of the detainee's constitutional rights. *Id.*

81. In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.

82. The "reasonable time" limitation may be reviewed by the federal courts. *Id.* at 682.

83. "[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699.

84. Instead, the Court permits the Department to use alternatives to detention rather than keeping Petitioner detained. *Id.*

85. Here, there is no evidence that Petitioner would attempt to evade immigration enforcement in the future. Although Petitioner entered without inspection, Petitioner has cooperated throughout his removal proceedings and detention, while continuing to exercise his constitutional rights. Respondents have not issued any notice of Petitioner's failure to comply, nor any notice identifies any ways in which Petitioner has delayed his removal from the United States in bad faith. There are no other facts that support a finding that Petitioner would seek to evade removal enforcement in the future.

86. Additionally, Petitioner has no criminal history and only violated immigration law by entering the United States twice, in 2024, without inspection and admission or parole. There are no facts to establish that Petitioner would be a danger to the community if released. Instead, Petitioner has a history of complying with the law through his work to

help protect the public as a Criminal Investigator in Venezuela. If not for his dedication to eliminating corruption in the government, Petitioner would not have had to flee Venezuela.

87. Therefore, the prolonged detention of Petitioner without the justification of flight risk or danger to the public is clearly a violation of Petitioner's constitutional rights under the Fifth Amendment.

COUNT TWO
Violation of the *Accardi* Doctrine With Respect to 8 C.F.R. § 241.4

88. Petitioner realleges all paragraphs above as if fully set forth here.

89. Under the *Accardi* doctrine, the government and its agencies are required to follow their own binding rules. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Where a regulation governing agency behavior has been promulgated, citizens and noncitizens alike are entitled to "that due process required by the regulations." *Id.* at 268.

90. Pursuant to 8 C.F.R. §§ 241.1, 1241.1, an order of removal becomes final at the conclusion of proceedings under INA § 240, and there is no valid and pending appeal of the final order, if it is certified to the Board or Attorney General following the order, upon an alien's failure to appear, and when the Immigration Judge orders voluntary departure and the noncitizen fails to depart the United States in the allotted time.

91. Aliens granted withholding of removal pursuant to INA § 241(b)(3) may continue to be detained post-order of removal.

92. Generally, the removal period runs for a period of 90 days. 8 C.F.R. § 241.4(g)(1)(ii).

93. An initial custody review must be conducted after the expiration of the detainee's 90-day removal period by a district director or a director of detention and removal field offices with jurisdiction over the detainee. 8 C.F.R. §§ 241.4(c)(1), (k)(1)(i).

94. The removal period may be extended if the noncitizen acts in bad faith to prevent his removal from the United States. *Id.*

95. Generally, the detainee should receive written notice approximately thirty days in advance of the records review to submit information in writing in support of his release. 8 C.F.R. § 241.4(h)(2).

96. In the meantime, the district director shall take appropriate steps to secure the travel document for the alien both before and after the expiration of the removal period. 8 C.F.R. § 241.4(g)(2).

97. "If the district director is unable to secure travel documents within the removal period, he or she shall apply for assistance from Headquarters Detention and Deportation Office of Field Operations." *Id.*

98. "The Service's determination that receipt of a travel document is likely may itself warrant continuation of detention pending the removal of the [noncitizen] from the United States" unless immediate removal "is not practicable or in the public interest. 8 C.F.R. §§ 241.4(g)(2)-(3).

99. A director may release the detainee after determining his release "will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending [the noncitizen's] removal from the United States." 8 C.F.R. § 241.4(d).

100. The director must (1) consider the availability of a travel document for the detainee and whether the detainee's removal is in the public interest; (2) determine whether the detainee is non-violent; (3) consider whether the detainee will remain non-violent upon release; (4) determine whether the detainee will be a threat to the community upon release;

(5) consider whether the detainee is likely to violate the conditions of his release; and (6) the detainee does not pose a significant flight risk if released. 8 C.F.R. § 241.4(e).

101. The director also considers a multitude of factors, such as (1) the nature of incidents the detainee has been involved in while in custody; (2) the detainee's criminal history; (3) the detainee's mental health; (4) any relative evidence of rehabilitation; (5) any favorable factors, including close relatives; (6) prior immigration violations and history; (7) the likelihood of flight risk; and (8) any additional factors related to detainee's behavior post-release. 8 C.F.R. § 241.4(f).

102. The director should provide written notice to the detainee with the results of his custody review. 8 C.F.R. § 241.4(h)(4).

103. A custody review decision must state the reasons for the noncitizen's continued detention. 8 C.F.R. § 241.4(d).

104. When the Department denies the detained noncitizen's release, the director may retain responsibility for the custody determination for *up to* three months after expiration of the removal period. 8 C.F.R. § 241(k)(1)(ii). *Emphasis added*.

105. After the three-month period following the expiration of the removal period, jurisdiction over the custody determination transfers from the director to the Executive Associate Commissioner of the HQPDU. 8 C.F.R. § 241(k)(2)(ii).

106. The HQPDU review will be conducted as soon as practicable. *Id.*

107. Custody review may be postponed in the discretion of either the district director or the HQPDU director if "such detainee's prompt removal is practicable and proper, or for other good cause. The decision and reasons for the delay shall be documented in the noncitizen's custody review file or A file, as appropriate." 8 C.F.R. § 241.4(k)(3).

108. In the present case, Petitioner has not received a custody review decision and remained detained for more than 180 days following his grant of withholding of removal by the Immigration Judge.

109. Petitioner received no notification of the Respondent's intention to review Petitioner's custody nor an opportunity for Petitioner to provide documents for a custody review.

110. Additionally, Petitioner has not received a Notice of Failure to Comply before the expiration of his removal period.

COUNT THREE
***Ultra Vires* Violation**

111. Petitioner realleges all paragraphs above as if fully set forth here.

112. The continued detention of Petitioner is *ultra vires*, as it exceeds the authority conferred by Congress through 8 U.S.C. 1231(a), regarding the detention, release, and removal of aliens ordered removed.

113. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner.

114. Generally, regulations should not "circumvent the plain text of the statute[,]" such that have been otherwise established by Congress in law. *See, e.g., You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018) (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal period only if the person is a risk to the community, unlikely to comply with the removal order, or was ordered removed on specific grounds).

115. It is clear, however, that regulations permit the prolonged detention of a detained foreign national with an order of removal only within certain conditions, such as when the

detainee acted in a manner to prevent his removal from the United States without good faith. *See* 8 C.F.R. § 241.4(g)(ii).

116. Here, Respondents are circumventing limitations set by Congress in 8 U.S.C. § 1231(a) regarding the length of Petitioner's detention after receiving a grant of withholding of removal.

117. Even assuming that regulations purporting to offer additional justifications for prolonged detention are not ultra vires, Respondents did not comply with them. Respondents did not perform a custody review within 90 days following Petitioner's order of removal and grant of withholding of removal. A failure to perform the custody review is a direct failure of Respondents which directly leads to Petitioner's prolonged detention. The lack of notice of non-compliance implies that Petitioner has not acted in bad faith regarding Respondents' attempts—or lack thereof—to remove Petitioner from the United States.

118. Further, Respondents have not provided any written notice to Petitioner of any country to where Respondents are attempting to deport Petitioner, as is required by regulation.

119. Petitioner has a non-statutory right of action for the Court to declare unlawful, set aside, and enjoin Respondents' *ultra vires* actions.

COUNT FOUR
Violation of Petitioner's Fifth Amendment Rights to Procedural Due Process Regarding Referral to a Third Country

120. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), instructs the courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and

the probable value, if any, of additional procedural safeguards; and (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail.

121. A recipient of withholding of removal may be removed to a third country other than the country from which the Immigration Judge granted them protection. 8 U.S.C. § 12341(b)(3)(A); *see also* 8 C.F.R. §208.16(f).

122. If the country of designation identified in removal proceedings is the country from which Petitioner received protection, DHS may select certain specified alternative countries for the foreign national's removal. 8 U.S.C. § 1231(b)(3). The factors considered by DHS when making this determination include a country (i) where the foreign national was admitted; (ii) from where the foreign national traveled before coming to the United States; (iii) where the foreign national resided before entering the United States; (iv) where the noncitizen was born; (v) that has sovereignty over the noncitizen's place of birth; (vi) where the noncitizen's birthplace is located at the time of the removal order. 8 U.S.C. § 1231(b)(2)(E)(i)-(vi). If removal to one of these countries is "impracticable, inadvisable, or impossible," DHS may remove the noncitizen to "another country whose government will accept [the foreign national.]" *Id.* § 1231(b)(2)(E)(vii). To remove the foreign national to a third country, DHS must provide evidence that the foreign government "will accept" the individual. *El Himri v. Ashcroft*, 378 F.3d 932, 939 (9th Cir. 2004).

123. An IJ must notify the foreign national of proposed countries of removal. 8 C.F.R. § 1240.11(c)(1)(i). However, 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) ("Failing to notify individuals

who are subject to deportation that they have the right to apply . . . for withholding of deportation to the country to which they will be deported violates both INA regulations and the constitutional right to due process."); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998) (failure to provide notice of and hearing on deportation to third country was a "fundamental failure of due process"); *see also Hadera v. Gonzales*, 494 F.3d 1154, 1159 (9th Cir. 2007); *El Himri*, 378 at 938.

124. An opportunity to present a fear-based claim is only meaningful if the noncitizen is not deported before removal proceedings are reopened. *See Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (E.D. Wash. 2019) (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;" ordering reopening).

125. Here, Respondents have not provided Petitioner a formal notice of removal to any country as required under 8 C.F.R. § 1240.11(c)(1)(i). Therefore, any actions taken by Respondents to imminently remove Petitioner to a third country would violate Petitioner's due process rights to procedural due process, for a failure to provide Petitioner of notice and an opportunity to be heard.

126. The first *Mathews* factor, the private interest at issue, favors Petitioner. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the health of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. at 690.

127. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner. To safeguard against erroneous deprivations of liberty, statute specifies a foreign national cannot be removed to a third

country if there is a fear of persecution in that third country and affords the foreign national an opportunity to present their fear of persecution. If Petitioner was removed to the third country before the opportunity to present a claim of persecution, the present court would lose jurisdiction and Petitioner, who is neither dangerous nor a flight risk, would lose the opportunity to present his fear of persecution before removal.

128. The third factor, the government's interest, also favors Petitioner. Although preventing removal of Petitioner to a third country costs the government both financial and administrative resources, the government could reasonably avoid these costs through the supervised release of Petitioner. The use of the resources to keep Petitioner detained while the government finds an alternative country of removal is a waste since Petitioner is neither a flight risk nor dangerous. This waste drags down the efficiency of the entire immigration system. Plus, the government must also spend resources defending against a habeas petition in federal court to compel Respondents to comply with the law, requiring Respondents to instead provide notice to Petitioner about where the government is removing him and an opportunity to describe any reasonable fear of being removed to that country.

129. For these reasons, Petitioner's order of supervision without providing notice and a meaningful opportunity to respond violated procedural due process under the Fifth Amendment to the U. S. Constitution.

COUNT FIVE
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(6)
In Excess of Statutory Authority

130. Plaintiff realleges all paragraphs above as if fully set forth here.

131. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).

132. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, *any* law, and not merely those laws and the agency itself is charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

133. Respondents' failure to conduct a custody review and keep Petitioner detained more than 180 days after his grant of withholding of removal by the IJ is contrary to the agency's constitutional power under the Fifth Amendment's Due Process Clause, as explained above.

134. The prolonged detention is also not in accordance with 8 U.S.C. and implementing regulations government the length of time a foreign national may be following a final order of removal and a grant of withholding of removal, as cited and discussed above.

135. In addition to failing to notify Petitioner of the country of removal where Respondents intend to remove him, Respondents similarly have not provided a Notice of Failure to Comply, which could reasonably extend Petitioner's detention, pursuant to the regulations, if Petitioner did not cooperate with his removal in good faith. Here, Respondent's requests for a credible fear interview to Mexico is not an action in bad faith.

136. Even assuming that regulations purporting to offer additional justifications for extension of Petitioner's detention post order of removal, Respondents did not comply with them. Respondents could not make findings that Petitioner's immigration history, criminal history, nor conduct would make him either a danger to the public or would make it likely

that he would evade removal in the future. Respondents' goal to indiscriminately detain foreign national in Texas and remove him to a third country without proper notice or opportunity to present his credible fear is inappropriate.

137. Petitioner's continued detention should be held unlawful and set aside because it is contrary to the agency's constitutional power and not in accordance with 8 U.S.C. and implementing regulations.

COUNT SIX
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)
Arbitrary and Capricious

138. Petitioner realleges all paragraphs above as if fully set forth here.

139. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

140. Respondents' continued detention of Petitioner without … is arbitrary and capricious because it violates statute, regulation, and the Constitution, as described above.

141. An agency decision that "runs counter to the evidence before the agency" is also arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

142. Respondents' decision to prolong Petitioner's detention without performing a custody review and without making lawful steps towards removing Petitioner to an appropriate third country. Petitioner has no criminal history and his only immigration violations include entries into the United States without inspection. Petitioner did not violate the terms of his supervision following his initial release from detention upon entry into the United States. Petitioner has a university education and has [redacted]

[redacted], such that it is reasonable that he could obtain adequate work to support him and his family.

143. The continued detention also "fail[s] to consider important aspects of the problem" before Respondents, making it arbitrary and capricious for multiple other reasons. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020).

144. First, Respondents failed to consider the serious constitutional concerns by failing to review Petitioner's custody after 90 days of detention after the grant of withholding of removal.

145. Second, Respondents failed to provide notice of non-compliance by Petitioner, which may allow Respondents to extend Petitioner's detention while taking the appropriate and lawful steps to secure travel documentation to a third country.

146. Third, Respondents failed to consider Petitioner's positive equities which favor his release from detention, to allow him to return to his wife and three children while awaiting adjudications of their asylum applications and a travel document to be removed to a third country.

147. Fourth, Respondents failed to consider Petitioner's substantial reliance interest, created by its guidelines for custody review of detainees following an IJ issuing the foreign national an order of removal.

148. For these and other reasons, Respondents' continued detention of Petitioner is arbitrary and capricious and should be held unlawful and set aside.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

149. Assume jurisdiction over this matter;

150. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

151. Issue an Order to enjoining Respondents from removing Petitioner from the Country prior to a determination of this matter;

152. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

153. Issue a Writ of Habeas Corpus ordering Respondent to release Petitioner immediately;

154. Award Petitioner's attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

155. Grant any further relief this Court deems just and proper.

This, the 30th day of January, 2026.

Respectfully submitted,

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***Pro Hac Vice Admission Pending*

VERIFICATION PURSUANT TO 28 U.S.C. § 2241

I represent Petitioner, Keiberth Jose Moreno Barreto, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 30th day of January, 2026.

Tiffany Walker, Esq.

United States District Court
Western District of Texas
El Paso Division

Keiberth J Moreno Barreto, Petitioner, v. Jason Streeval, *et al.*, Respondents.	No. 3:26-CV-00248-DCG

Advisory to the Court

Respondents file this Advisory to notify the Court of Petitioner's physical removal from the United States, which action moots this habeas challenge to the legality of his detention. *See Bacilio-Sabastian v. Barr*, 980 F.3d 480, 483 (5th Cir. 2020); *Ortez v. Chandler*, 845 F.2d 573, 575 (5th Cir. 1988); *Riley v. I.N.S.*, 310 F.3d 1253, 1257 (10th Cir. 2002); *Virani v. Huron*, 2020 WL 7405655, at *3 (W.D. Tex. Dec. 17, 2020). On or about January 30, 2026, Petitioner brought this habeas claim, seeking release from detention. ECF No. 1. On January 30, 2026, ICE executed Petitioner's final order of removal. *See* Exh. A ([redacted] (redacted)). The relief Petitioner sought, namely release, has already occurred. This petition is, therefore, moot.

Respectfully submitted,

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