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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

RAHUL, RAHUL

Petitioner,

v.

SHIKHA DOSANJ, *in her official capacity as Warden of the Federal Detention Center, Honolulu, Hawai'i*; POLLY KAISER, *in his official capacity as Acting Field Office Director of the Immigration and Customs Enforcement, San Francisco Field Office*; KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security*; PAMELA BONDI, *in her official capacity as Attorney General of the United States*,

Respondents.

Civil Case No.

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. §2241 AND REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Petitioner RAHUL RAHUL ("Mr. Rahul") has been in the custody of U.S. Immigration and Customs Enforcement ("ICE") since November 7, 2024, is currently detained at the Federal Detention Center ("FDC") in Honolulu, and seeks habeas corpus relief pursuant to 28 U.S.C. § 2241, to challenge his continued and unlawful detention, along with injunctive relief, including a Temporary Restraining Order ("TRO"). He has been detained for 15 months without criminal charges and any sentence. *See* Exhibit 1, *FBP, Find an Inmate*.

2. Mr. Rahul was born on [redacted], at Kailram, India, and is a national and citizen of India. He first entered the United States on or about August 29, 2024, at or near Sonoyta, AZ, without inspection.

3. On September 1, 2024, Mr. Rahul was taken into custody and detained at an ICE facility at the Eloy detention facility in Phoenix, AZ. On September 8, 2024, he was moved to the Georgia ICE facility and was later released on October 8, 2024. Once released, he relocated to McFarland, California, where he established residence, strong community ties with the support of his sponsor (Mr. Sachin Sachin) and lived peacefully and without incident.

4. On November 7, 2024, he was forcibly taken into ICE custody and detained again in San Diego, CA, and transferred to the Bakersfield, CA facility on

December 19, 2024. On June 7, 2025, he was again transferred to the FDC in Honolulu, Hawaii, where he remains in custody. *Id.*

5. On January 2, 2025, removal proceedings were formally initiated against Mr. Rahul in California. Later that month on January 31, 2025, he timely filed Form I-589, Application for Asylum and Withholding of Removal and protection under the Convention Against Torture ("CAT"), based on [redacted]

6. The Circumvention of Lawful Pathways ("CLP") rule applies to certain noncitizens who entered the United States at the southwest land border without documents sufficient for lawful admission under § 212(a)(7) of the Immigration and Nationality Act ("INA") between May 11, 2023, and May 11, 2025, after transiting through a country other than their country of citizenship. *See* 8 C.F.R. 1208.33. Mr. Rahul entered the United States on August 29, 2024, at the southwest land border without valid entry documents and does not qualify for any enumerated exception. Accordingly, on October 27, 2025, the Immigration Judge ("IJ") denied his application for asylum. *See* Exhibit 4, *Order of the IJ.*

7. In the same decision, the IJ granted Mr. Rahul withholding of removal pursuant to INA § 241(b)(3), and entered a final order of removal. *Id.* Mr. Rahul has therefore been subject to a final order of removal since October

27, 2025, and his detention is governed by INA § 241(a). That provision mandates detention during the 90-day removal period and authorizes continued detention thereafter only under limited statutory circumstances. No appeal was filed by the U.S. Department of Homeland Security; thus, the granted withholding of removal is final. See Exhibit 5, *Automated Case Information.*

8. Because removal is now legally barred under INA § 241(b)(3), ICE lacks statutory authority to continue detaining Mr. Rahul for purposes of removal. Continued detention is ultra vires and violates both the INA and the Due Process Clause of the Fifth Amendment.

9. As established under *Zadvydas v. Davis,* 533 U.S. 678, 701 (2001), detention beyond six months (180 days) following a final order of removal is presumptively unreasonable absent a significant likelihood of removal in the reasonably foreseeable future. Despite the expiration of both the statutory 90-day removal period and the 180-day presumptive limit, and even though Mr. Rahul cannot be removed to his country of origin due to the grant of withholding of removal, ICE continues to detain him without lawful justification.

10. On February 3, 2026, Mr. Rahul had a custody (bond) redetermination hearing and IJ Clarence Wagner Jr. denied his bond request stating that he "is

ineligible for bond". See Exhibit 3, *Order of the IJ.* Subsequently, on February 10, 2026, Counsel Carmen Di Amore-Siah filed a bond appeal with the Board of Immigration Appeals ("BIA") on behalf of Mr. Rahul. See Exhibit 2, *BIA Filing Receipt.*

11. Mr. Rahul has been detained since November 7, 2024, and since October 27, 2025, has remained in custody under an order of withholding. His continued and potentially indefinite detention, despite exhausting all available avenues for release from ICE custody, violates due process and the INA. The arbitrary and capricious nature of his detention unlawfully deprives Petitioner of a protected liberty interest in violation of the Constitution.

12. Mr. Rahul therefore seeks relief habeas corpus relief under 28 U.S.C. § 2243: immediate release, or, at minimum, a prompt custody redetermination (bond hearing) before an IJ; together with appropriate injunctive relief, including a TRO directing Respondents immediately release Petitioner, declaratory relief stating that detention is unlawful, an injunction barring removal or transfer absent Court approval, and to maintain the status quo while this Court adjudicates the petition.

JURISDICTION AND VENUE

13. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art. I § 9, cl. 2 of the U.S.

Constitution ("Suspension Clause"); 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 2201, 2202 (Declaratory Judgment Act).

14. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. See, *e.g.*, *Zadvydas*, 533 U.S. at 687.

15. Federal courts also have federal question jurisdiction, through the APA, to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus"). The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702. Individual injunctive relief is not barred by Section 1252(f)(1). *See Garland v. Aleman Gonzalez,* 142 S.Ct. 2057, 2065-66 (2022). Respondents' continued detention of Petitioner up to and past the 90-day removal period has adversely and severely affected Petitioner's liberty and freedom.

16. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is

detained within this district at FDC Honolulu and the Warden of FDC Honolulu—his immediate custodian—is located within this District. *See Rumsfeld v. Padilla,* 542 U.S. 426, 434–47 (2004) (immediate-custodian rule and district-of-confinement principle). The record confirms Petitioner's current confinement at FDC Honolulu.

PARTIES

17. Rahul Rahul is a native and citizen of India who was granted withholding of removal under INA § 241(b)(3) on October 27, 2025. He is currently detained at FDC in Honolulu.

18. Shikha Dosanj, Facility Administrator (Warden), Federal Detention Center Honolulu ("FDC Honolulu"), a detention facility that contracts with ICE to detain non-citizens. She is responsible for the administration and management of FDC Honolulu. Ms. Dosanj is Petitioner's immediate custodian. She is sued in her official capacity.

19. Polly Kaiser serves as the Acting Field Office Director for the San Francisco ICE Field Office and is the federal agent charged with overseeing all detention centers ICE's in San Francisco Area of Responsibility, including FDC Honolulu. Mr. Kaiser is a legal custodian of Petitioner. He is sued in his official capacity.

20. Kristi Noem is the Secretary of the U.S. Department of Homeland Security ("DHS"). DHS oversees ICE, the agency responsible for administering and enforcing the immigration laws of the United States. In her official capacity and through her agents, Secretary Noem exercises broad authority over the operation and enforcement of the immigration laws, conducts official business within this District, and is legally responsible for actions relating to Petitioner's detention and removal. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity.

21. Pamela Bondi is the Attorney General of the United States and the highest-ranking official within the U.S. Department of Justice. In this role, she oversees the immigration court system, which is housed within the Executive Office for Immigration Review ("EOIR") and includes all IJs and the BIA. She is sued in her official capacity.

LEGAL FRAMEWORK

EXHAUSTION

22. Habeas Corpus review under 28 U.S.C. § 2241 is proper here because Petitioner challenges the lawfulness of his present civil detention, not the validity of any removal order. The statutory exhaustion provision in 8 U.S.C. § 1252(d)(1) applies to petitions for review filed in the courts of appeals—not to district-court habeas challenges to executive detention. *See*, e.g.,

Zadvydas v. Davis, 533 U.S. 678, 687– 88 (2001) (permitting § 2241 custody challenges); *Jennings v. Rodriguez*, 138 S. Ct. 830, 840–42 (2018) (channeling provisions do not foreclose detention challenges in district court).

23. No adequate administrative remedy exists to test the legality of Rahul's re-detention or to obtain the pre-deprivation hearing he seeks. Under the expedited removal framework (8 U.S.C. § 1231 and 8 C.F.R. §§ 241.4–241.13), custody determinations are made internally by ICE; there is no immigration judge bond jurisdiction and no administrative appeal that can award the relief requested (immediate release or, at minimum, a neutral hearing before detention). Any later post-order custody review is discretionary, after-the-fact, and cannot cure the present constitutional violation. Requiring Mr. Rahul to await a paper review while in custody would defeat the point of the writ. See *McCarthy v. Madigan*, 503 U.S. 140, 147–49 (1992) (exhaustion not required where remedies are inadequate, futile, or where irreparable injury would result).

24. Under similar circumstances presented here; Courts in the 9th Circuit have recently granted TRO/PI relief for individuals re-detained after long periods on supervision, recognizing that there is no meaningful administrative avenue to adjudicate the due-process requirement of a pre-deprivation

hearing and ordering release or a hearing with appropriate burdens. *Maklad v. Murray* (E.D.Cal. Aug. 8, 2025, No. 1:25-cv-00946 JLT SAB) 2025 U.S.Dist.LEXIS 153675 (Notably, already her I-589 petition has been summarily dismissed, and it appears that if she is not released, she will not receive the consideration of her derivative asylum claims. As other courts have done, the Court concludes that the government's interest in detaining Ms. Maklad or re-detaining her without a hearing is slight); Arzate v. Andrews (E.D.Cal. Aug. 19, 2025, No. 1:25-cv-00942-KES-SKO (HC)) 2025 U.S.Dist.LEXIS 161136.) (petitioner has consistently shown up for his check-ins and hearings, and petitioner has complied with the terms of supervision. In such circumstances, "the government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions."); *See* also *Barrera v. Andrews* (E.D.Cal. Aug. 21, 2025, No. 1:25-cv-01006 JLT SAB) 2025 U.S.Dist.LEXIS 162825.) (parole allowed him to build a life outside detention, albeit under the terms of that parole. Detainee has a substantial private interest in being out of custody, which would allow him to continue in these life activities, including living under the supervision of his relative. As other courts have done, the Court concludes that the

government's interest in detaining him or re-detaining him without a hearing, is slight); *Castellon v. Kaiser* (E.D.Cal. Aug. 14, 2025, No. 1:25-cv-00968 JLT EPG) 2025 U.S.Dist.LEXIS 157841 (During her more than three years on parole, Ms. Arostegui Castellon obtained work, attended classes at a community college, and built connections with her community . . . Thus, parole allowed her to build a life outside detention, albeit under the terms of her parole. Ms. Arostegui Castellon has a substantial private interest in being out of custody, which would allow her to continue in these life activities, including obtaining necessary medical care. As other courts have done, the Court concludes that the government's interest in detaining Ms. Arostegui Castellon or re-detaining her without a hearing, is slight.)

25. To the extent the Government argues that Mr. Rahul could request a stay of removal or make informal pleas to the Field Office, those are purely discretionary measures that do not provide a channel to adjudicate the constitutional and statutory limits on detention and are therefore not required to be exhausted. See *McCarthy*, 503 U.S. at 147–49. Likewise, if Mr. Rahul has expressed or now expresses fear of return, 8 C.F.R. § 208.31 imposes a mandatory referral for a reasonable-fear interview; there is no administrative appeal to compel that referral, and habeas is an appropriate vehicle to prevent removal and ensure compliance with the regulation. Finally, the claim is ripe.

Petitioners are presently detained at FDC in Honolulu. The injury is ongoing and not speculative; the absence of any pre-deprivation process is complete, and continued custody inflicts irreparable harm on Petitioner and his family.

26. Federal courts retain authority under 28 U.S.C. § 2241 to review the legality of executive detention, including immigration custody that is independent of, or collateral to, any challenge to a removal order. The Supreme Court has repeatedly confirmed that habeas extends to challenges to "the fact or duration" of detention and to conditions governing release. See *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004) (core habeas challenges executive detention; immediate custodian is proper respondent); *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001) (§ 2241 lies to review post-order immigration detention); *Clark v. Martinez*, 543 U.S. 371, 377–78 (2005) (same). The jurisdiction-channeling provisions of 8 U.S.C. § 1252 do not eliminate habeas review for detention claims that do not ask the court to adjudicate the validity of a final removal order. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018) (addressing detention authority under §§ 1225/1226; detainees may bring statutory and constitutional challenges to custody); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (same). Accordingly, this Court may assess whether Mr. Rahul's re-detention and ongoing custody violate the Constitution, the INA, or DHS's own regulations.

WITHHOLDING OF REMOVAL AND RELIEF UNDER THE CONVENTION AGAINST TORTURE.

27. Non-citizens in immigration removal proceedings can seek three main forms of relief based on their fear of returning to their home country: asylum, withholding of removal, and CAT relief. Non-citizens may be ineligible for asylum for several reasons, including failure to apply within one year of entering the United States. See 8 U.S.C. § 1158(a)(2). There are fewer restrictions on eligibility for withholding of removal, id. § 1231(b)(3)(B)(iii), and no restrictions on eligibility for CAT deferral of removal. 8 C.F.R. § 1208.16.

28. To be granted CAT relief, a non-citizen must show that "it is more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2). An applicant for CAT relief must show a higher likelihood of torture than the likelihood of persecution an asylum applicant must demonstrate. See id.

29. When an IJ grants a non-citizen withholding or CAT relief, the IJ issues a removal order and simultaneously withholds or defers that order with respect to the country or countries for which the non-citizen demonstrated a sufficient risk of persecution or torture. See *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021). Once withholding or CAT relief is granted, either party has the right to appeal that decision to the BIA within 30 days. See 8 C.F.R.

§ 1003.38(b). If both parties waive appeal or neither party appeals within the 30-day period, the withholding or CAT relief grant and the accompanying removal order become administratively final. See *id.* § 1241.1.

30. When a non-citizen has a final withholding or CAT relief grant, they cannot be removed to the country or countries for which they demonstrated a sufficient likelihood of persecution or torture. See 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.17(b)(2). While ICE is authorized to remove non-citizens who were granted withholding or CAT relief to alternative countries, *see* 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f), the removal statute specifies restrictive criteria for identifying appropriate countries. Non-citizens can be removed, for instance, to the country "of which the [non-citizen] is a citizen, subject, or national," the country "in which the [non-citizen] was born," or the country "in which the [non-citizen] resided" immediately before entering the United States. 8 U.S.C. § 1231(b)(2)(D)-(E).

31. If ICE identifies an appropriate alternative country of removal, ICE must undergo further proceedings in immigration court to effectuate removal to that country. [1] See *Jama v. ICE*, 543 U.S. 335, 348 (2005) ("If [non-citizens]

[1] ICE itself acknowledges this obligation. In 2020, officials within ICE's Office of the Principal Legal Advisor (OPLA) created and circulated forms—acquired though a Freedom of Information Act (FOIA) request—that were designed to advise non-citizens of ICE's intent to pursue third country removal and afford them the opportunity to seek withholding-only relief for that country. To counsel's knowledge, no such form has been provided to Petitioner.

would face persecution or other mistreatment in the country designated under § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture, see 8 CFR §§ 208.16(c)(4), 208.17(a) (2004) . . ."); *Romero v. Evans,* 280 F. Supp. 3d 835, 848 n.24 (E.D. Va. 2017) ("DHS could not immediately remove petitioners to a third country, as DHS would first need to give petitioners notice and the opportunity to raise any reasonable fear claims."), *rev'd on other grounds, Guzman Chavez*, 141 S. Ct. 2271.

32. As a result of these restrictions and procedures, "only 1.6% of noncitizens granted withholding-only relief were actually removed to an alternative country" in FY 2017. *Guzman Chavez*, 141 S. Ct. at 2295 (Breyer, J., dissenting). An analysis by undersigned counsel of updated statistics provided by ICE and EOIR for FY 2019 through FY 2020 reveals that this percentage was at most 3.3% during that period.[2]

DETENTION OF NON-CITIZENS GRANTED WITHHOLDING OF REMOVAL OR RELIEF UNDER THE CONVENTION AGAINST TORTURE.

[2] EOIR data indicates that approximately 386 non-citizens were granted withholding-only relief in FY 2019 and 2020. In response to a 2021 FOIA request, the ICE-ERO Statistical Tracking Unit provided data showing that a total of 13 people in "Case Category 5C (Relief Granted - Withholding of Deportation/Removal)" were removed in FY 2019 and 2020. Comparing these data suggests that approximately 3.3% of non-citizens granted withholding or CAT relief were ultimately deported by ICE during that period. To the extent that the ICE data includes non-citizens removed to their home country after their withholding or CAT grant was terminated, the percentage of non-citizens removed to *third* countries following a final withholding or CAT relief grant is even lower.

a. Statutory Framework

33. 8 U.S.C. § 1231 governs the detention of non-citizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)-(6). The "removal period" begins once a non-citizen's removal order "becomes administratively final." 8 U.S.C. § 1231(a)(1)(B).[3] The removal period lasts for 90 days, during which ICE "shall remove the [non-citizen] from the United States" and "shall detain the [non-citizen]" as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the non-citizen within the 90-day removal period, the non-citizen "*may* be detained beyond the removal period" if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6) (emphasis added).

34. To avoid "indefinite detention" that would raise "serious constitutional concerns," the Supreme Court in *Zadvydas* construed § 1231(a)(6) to contain an implicit time limit. 533 U.S. at 682. *Zadvydas* dealt with two non-citizens who could not be removed to their home country or country of citizenship due to bureaucratic and diplomatic barriers. The Court held that § 1231(a)(6) authorizes detention only for "a period reasonably necessary to bring about

[3] There are two other events that trigger the start of the removal period, which are not applicable here. See 8 U.S.C. § 1231(a)(1)(B)(ii)-(iii).

the [non-citizen]'s removal from the United States." Id. at 689. Six months of post-removal order detention is considered "presumptively reasonable." Id. at 701.

35. But the "*Zadvydas* Court did not say that the presumption is irrebuttable, and there is nothing inherent in the operation of the presumption itself that requires it to be irrebuttable." *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008). "Within the six-month window," the non-citizen bears the burden of "prov[ing] the unreasonableness of detention." Id. After six months of detention, if there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the Government to justify continued detention. *Zadvydas*, 533 U.S. at 701; see also *Cesar*, 542 F. Supp. 2d at 903 ("[T]he presumption scheme merely suggests that the burden the detainee must carry within the first six months of [post- order] detention is a heavier one than after six months has elapsed").

b. Regulations

36. DHS regulations provide that, before the end of the 90-day removal period that ensues upon a non-citizen's removal order becoming final, the local ICE field office with jurisdiction over the non-citizen's detention must conduct a custody review to determine whether the non-citizen should remain detained. See 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). If the non- citizen is not released

following the 90-day custody review, jurisdiction transfers to ICE Headquarters (ICE HQ), *id.* § 241.4(c)(2), which must conduct a custody review before or at 180 days. *Id.* § 241.4(k)(2)(ii). In making these custody determinations, ICE considers several factors, including whether the non-citizen is likely to pose a danger to the community or a flight risk if released. *Id.* § 241.4(e). If the factors in § 241.4 are met, ICE must release the non-citizen under conditions of supervision. *Id.* § 241.4(j)(2).

37. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that established "special review procedures" to determine whether detained non-citizens 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). While 8 C.F.R. § 241.4's custody review process remained largely intact, subsection (i)(7) was added to include a supplemental review procedure that ICE HQ must initiate when "the [non- citizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [non-citizen] is not significantly likely in the reasonably foreseeable future." *Id.* § 241.4(i)(7).

38. 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 id.* § 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, *id.* § 241.14(b)-(d), or by demonstrating by clear and convincing evidence before an IJ that the non-citizen is "especially dangerous." *Id.* § 241.14(f).

c. ICE Policy

39. Consistent with the statutory and regulatory scheme, long-standing ICE policy favors the prompt release of non-citizens who have been granted withholding or CAT relief. In 2000, the then-Immigration and Naturalization Service (INS) General Counsel issued a memorandum clarifying that 8 U.S.C. § 1231 authorizes but does not require the detention of non- citizens granted withholding of removal or CAT relief during the 90-day removal period. A 2004 ICE memorandum turned this acknowledgment of authority into a presumption, stating that "it is ICE policy to favor the release of [non-citizens] who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain."

40. ICE leadership subsequently reiterated this policy in a 2012 announcement, clarifying that the 2000 and 2004 ICE memorandums are "still in effect and should be followed" and that "[t]his policy applies at all times following a

grant of protection, including during any appellate proceedings and throughout the removal period."

ARGUMENT

I. PETITIONER'S CONTINUED DETENTION IS UNLAWFUL UNDER *ZADVYDAS* BECAUSE HIS REMOVAL IS NOT REASONABLY FORESEEABLE, AND THIS COURT SHOULD ACCORDINGLY ORDER HIS IMMEDIATE RELEASE.

a. Mr. Rahul's removal is not reasonably foreseeable under *Zadvydas*.

41. Mr. Rahul's detention is governed by 8 U.S.C. § 1231(a)(6) because he has been detained for more than 90 days since he was granted withholding by an IJ on October 27, 2025. Although the 90-day removal period began for Mr. Rahul on November 27, 2025, when the appeal period expired without either party filing a timely appeal, he has been in ICE custody since November 7, 2025. See 8 U.S.C. § 1231(a)(1)(B0(i); 8 C.F.R. § 1241.1(c). Therefore, the *Zadvydas* framework applies to Mr. Rahul's detention, as he has been detained for a total of 15 months, and nearing four months since he's been granted withholding of removal.

42. Mr. Rahul will very likely *never* be deported from the United States, let alone in the reasonably foreseeable future as he has been granted a withholding of removal. He cannot be deported to his home country of India because he has a withholding of removal. See 8 C.F.R. § 1208.17(b)(2).

43. Furthermore, it is exceedingly unlikely that ICE will identify an alternative country to which it can remove Mr. Rahul. ICE only managed to remove to third countries approximately three percent of non-citizens granted withholding and CAT relief in FY 2019 and 2020, and a significant increase in ICE's third country removals is highly doubtful without a substantial change in diplomatic relationships between the United States and other countries.[4]

44. More specifically, ICE has recently and repeatedly failed to remove similarly situated individuals to alternative countries. For example, CAIR Coalition recently represented two detainees who ICE failed to remove to a third country, but who nonetheless remained detained in Virginia for more than 90 days past their final relief grants. ICE Washington confirmed that they had received "negative responses" from six alternative removal countries (Honduras, Guatemala, Mexico, Nicaragua, Costa Rica, and Panama) to which ICE had purportedly sought to remove the two individuals. ICE nonetheless continued to detain both individuals for months after receiving "negative responses" and only later released the individuals after they each

[4] Foreign countries do not accept the deportation of random non-citizens who lack any connection to their territory. According to a 2019 DHS report on ICE deportation procedures, "foreign governments do not issue travel documents without confirming the identity and citizenship of the [non-citizen]" and "with limited exceptions, require a passport or temporary travel permit to accept their nationals back into the country." DHS Office of the Inspector General, *ICE Faces Barriers in Timely Repatriation of Detained Aliens* (March 11, 2019), at 8 https://www.oig.dhs.gov/sites/default/files/assets/2019-03/OIG-19-28-Mar19.pdf.

filed federal habeas petitions like this one. Id. at 4, 8; *see also Martinez Alfaro v. Perry*, 1:22-cv-1243 (E.D. Va. 2022); *Hernandez Preza v. Perry*, 1:23-cv-200 (E.D. Va. 2023).

45. Given this history, it strains credulity to think that ICE will be able to remove Mr. Rahul to a random collection of alternative countries that have recently and repeatedly declined to accept the deportation of similarly situated individuals.[5] Like the individuals referenced above, Mr. Rahul is not a citizen of, has never lived in, and has no connection to *any* country besides his home country, let alone the countries to which ICE has purportedly attempted to remove individuals in the past.

46. Even in the highly unlikely scenario that an alternative country notifies ICE of its willingness to accept the deportation of Mr. Rahul, ICE would still be required to obtain travel documents and afford him a Reasonable Fear Interview (RFI) at which he would have the opportunity to articulate a fear of return to the country willing to accept him. See 8 C.F.R. § 241.8(e). If an Asylum Officer (AO) were to find that Rahul demonstrated a reasonable possibility of persecution or torture at the RFI, or an IJ subsequently vacated a negative finding by the AO, he would enter withholding-only proceedings before an IJ in which he would again seek to demonstrate his eligibility for

[5] ICE has not informed Petitioner to which specific countries it is attempting to remove him.

withholding or CAT relief with respect to that country, thereby restarting the process that took several months to complete the first time.

47. Therefore, Mr. Rahul has been detained for more than twelve months since, and his removal is not reasonably foreseeable because 1) he cannot reasonably be deported to his home country due to his granted withholding of removal; 2) ICE has historically managed to remove only a tiny fraction of non-citizens granted withholding or CAT to alternative countries; 3) ICE failed to remove every similarly situated individual in the last year, leading to their eventual release; 4) any countries to which requests may still be pending have no logical reason to accept Rahul's deportation and have provided no timeline under which they might decide; and 5) deporting Mr. Rahul to those alternative countries would require additional, lengthy proceedings. See *Hassoun v. Sessions*, No. 18-cv-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019) (finding removal not reasonably foreseeable where several countries had declined to issue travel documents and several others had provided no response or timeline for response); *Kacanic v. Elwood*, No. 02-cv-8019, 2002 WL 31520362, at *5 (E.D. Pa. Nov. 8, 2002) (finding removal not reasonably foreseeable where the country of origin had "been in possession of all the information [ICE] is capable of providing to it" but had

"never stated that the Petitioner is likely to be granted travel papers" and was "unable to tell the [ICE] when a decision will be reached").

48. Rahul has demonstrated that his continued detention is unreasonable under *Zadvydas*. See *Cesar*, 542 F. Supp. 2d at 904 ("The burden might be on the detainee within the first six months to overcome the presumptive legality of his detention, but where a[] [non-citizen] can carry that burden, even while giving appropriate deference to any Executive Branch expertise, his detention would be unlawful."); *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) ("*Zadvydas* established a 'guide' for approaching detention challenges")

49. For the reasons stated above, Mr. Rahul has clearly met any burden of proof that this Court may place on him. Unlike *Zadvydas* and the vast majority of its progeny, which analyzed whether ICE will foreseeably remove non-citizens to their home country or country of citizenship, see, *e.g.*, *Zadvydas*, 533 U.S. at 684-85, the question here is whether ICE will be able to deport Mr. Rahul to random third countries to which he has no connection whatsoever. The answer to that question has been no from the moment Mr. Rahul's withholding of removal grant became final, and the likelihood of third-country removal has only decreased since then.

B. This Court should order Mr. Rahul's immediate release.

50. Because Mr. Rahul's removal is not reasonably foreseeable, *Zadvydas* requires that he be immediately released. See 533 U.S. at 700-01 (describing release as an appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release "subject to . . . terms of supervision"). To order his immediate release, this Court need only determine that Rahul's removal is not reasonably foreseeable under *Zadvydas*; it need not analyze whether he poses a danger to the community or a flight risk. See 533 U.S. at 699-700 ("[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.").

51. *Zadvydas* explicitly held that flight risk is already baked into the reasonable foreseeability analysis, see *id.* at 690 (observing that the "justification . . . [of] preventing flight . . . is weak or nonexistent where removal seems a remote possibility at best"), and that dangerousness cannot unilaterally justify indefinite civil detention barring "special circumstances," which may include the non-citizen being a "suspected terrorist[]" but do not include the non-citizen's "removable status itself." Id. at 691. See also *Kansas v. Hendricks*, 521 U.S. 346, 358 (1997) ("A finding of dangerousness, standing alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary [civil detention]."). With respect to Mr. Rahul's detention, ICE has not

invoked the regulations governing these "special circumstances" determinations. See 8 C.F.R. § 241.14.

52. To the extent this Court considers any factors outside of the foreseeability of Petitioner's removal, which it need not do, Mr. Rahul has significant equities that warrant release. Mr. Rahul has lived in the United States for approximately one year and has lived in California where he has established residence and lived peacefully and without incident. He has had a stable living arrangement under the supervision of Mr. Sachin Sachin, a lawful permanent resident who has agreed to provide him support and assist him in complying with all ICE and Court imposed requirements.

53. Additionally, this Court or ICE is free to impose conditions on release to mitigate any potential concerns regarding flight risk or danger. See *Zadvydas*, 533 U.S. at 700 ("[T]he [non- citizen]'s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances.").

II. ICE'S CONTINUED DETENTION OF PETITIONER, WITHOUT REVIEWING HIS CUSTODY UNDER ICE POLICY VIOLATES THE APA AND DUE PROCESS.

54. Under the *Accardi* doctrine, which originated in the context of an immigration case and has been developed through subsequent immigration case law, agencies are bound to follow their own rules that affect the fundamental

rights of individuals, even self-imposed policies and processes that limit otherwise discretionary decisions. See *Accardi*, 347 U.S. at 226 (holding that BIA must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

55. The requirement that an agency follow its own policies is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Even an unpublished policy binds the agency if "an examination of the provision's language, its context, and any available extrinsic evidence" supports the conclusion that it is "mandatory rather than merely precatory." *Doe v. Hampton*, 566 F.2d 265, 281 (D.C. Cir. 1977); *see also Morton*, 415 U.S. at 235–36 (applying *Accardi* to violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 813 (4th Cir. 1969) ("Nor does it matter that these IRS instructions to Special Agents were not promulgated in something formally labeled a 'Regulation' . . .").

56. When agencies fail to adhere to their own policies as required by *Accardi*, courts typically frame the violation as arbitrary, capricious, and contrary to law under the APA, see *Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C.

2018) ("It is clear, moreover, that [*Accardi*] claims may arise under the APA"), or as a due process violation, see *Sameena, Inc. v. United States Air Force,* 147 F.3d 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual's constitutional right to due process.") (internal quotations omitted).

57. Prejudice is generally presumed when an agency violates its own policy. See *Montilla,* 926 F.2d at 167 ("We hold that an alien claiming the INS has failed to adhere to its own regulations . . . is not required to make a showing of prejudice before he is entitled to relief. All that need be shown is that the subject regulations were for the alien's benefit and that the INS failed to adhere to them."); *Heffner*, 420 F.2d at 813 ("The *Accardi* doctrine furthermore requires reversal irrespective of whether a new trial will produce the same verdict.").

58. To remedy an *Accardi* violation, a court may direct the agency to properly apply its policy, see *Damus*, 313 F. Supp. 3d at 343 ("[T]his Court is simply ordering that Defendants do what they already admit is required."), or a court may apply the policy itself and order relief consistent with the policy. See *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners' custody under ICE's standards because "it

would be particularly unfair to require that petitioners remain detained . . . while ICE attempts to remedy its failure").

59. ICE's long-standing policy, ICE Directive 16003.1 (hereinafter "the Policy") is to release non-citizens immediately following a grant of withholding or CAT relief absent exceptional circumstances. See ICE Directive 16004.1 ("in general, it is ICE policy to favor the release [non-citizens] who have been granted protection by an immigration judge, absent exceptional concerns..."); id. ("Pursuant to longstanding policy, absent exceptional circumstances...noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge *should* be released...") (emphasis added). The Policy specifically instructs the local ICE field office to make an individualized determination whether to keep a non-citizen detained based on exceptional circumstances. See id ("[T]he Field Office Director must approve any decision to keep a[ll] non-citizen) who received a grant of [asylum, withholding, or CAT relief] in custody.")

60. The Policy constitutes ICE's interpretation of the statute and regulations governing post-removal order detention. See 8 U.S.C. § 1231; 8 C.F.R. §§ 241.4, 241.13, 241.14. ICE has reasonably concluded that 8 U.S.C. § 1231(a)(2) does not require the detention of non-citizens granted withholding or CAT relief for the entirety of the 90-day removal period and that ICE "has

the authority to consider the release of such [non-citizens] during the removal period." *See* ICE Directive 16004.1. Furthermore, ICE later stated that the release policy established in 2004 "applies at all times following a grant of protection, including during any appellate proceedings and throughout the removal period," thereby explicitly extending the Policy to non-citizens with final removal orders who were granted withholding or CAT relief. *Id.*

61. Such an application of the Policy is consistent with the broad discretion afforded to ICE by the statute and regulations governing post-removal order detention and is a reasonable interpretation of the ambiguities in that framework. Neither the statute nor regulations specifically contradict the Policy,[6] and the regulatory language suggests that the standard custody review procedures for non-citizens with final removal orders do not apply to non-citizens like Petitioner who have been detained for 90 days or more after being granted withholding or CAT and lack a connection to an alternative country. *See, e.g.,* 8 C.F.R. § 241.4(b)(4) ("The custody review procedures in this section do not apply after the Service has made a determination, under the procedures provided in 8 CFR 241.13, that there is no significant likelihood

[6] 8 U.S.C. § 1231(a)(2) does not apply to Mr. Rahul because he has been detained past the 90-day removal period. Even if this Court were to find that Mr. Rahul is still within the 90-day removal period, § 1231(a)(2) would not preclude his release because he has not been charged as removable on the grounds described therein. 8 U.S.C. § 1231(a)(2) ("Under no circumstance during the removal period shall [ICE] release a [non-citizen] who has been founded inadmissible [based on certain criminal or terrorism grounds] or deportable [based on similar grounds]).

that [non- citizen] under a final order of removal can be removed in the reasonably foreseeable future.").

62. The Policy and its application to individuals with final grants of withholding or CAT relief are thus entitled to deference. See *Kisor v. Wilkie*, 139 S. Ct. 2400, 2408 (2019) ("This Court has often deferred to agencies' reasonable readings of genuinely ambiguous regulations. We call that practice Auer deference . . ."); *Auer v. Robbins*, 519 U.S. 452 (1997) (deferring to Labor Secretary's reasonable interpretation of overtime pay regulations); *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984) (holding that courts should defer to agencies' reasonable interpretations of ambiguous statutes).

63. The Policy is precisely the type of rule ICE is obligated to follow under *Accardi*. In *Damus*, the U.S. District Court for the District of Columbia found that a similarly styled ICE directive from 2009 laying out "procedures ICE must undertake to determine whether a given asylum-seeker should be granted parole" fell "squarely within the ambit of those agency actions to which the [*Accardi*] doctrine may attach," in part because it "establish[ed] a set of minimum protections for those seeking asylum" and "was intended—at least in part—to benefit asylum-seekers navigating the parole process." 313 F. Supp. 3d at 324, 337-38; see *also Pasquini v. Morris*, 700 F.2d 658, 663 n.1

(11th Cir. 1983) ("Although the [INS] internal operating instruction confers no substantive rights on the [noncitizen]-applicant, it does confer the procedural right to be considered for such status upon application."). Similarly, the Policy here establishes procedures for reviewing the custody of non-citizens who are granted immigration relief and is clearly intended, at least in part, to benefit those non-citizens. See ICE Directive 16004.1 (referring to "ICE policy favoring a non-citizen's release").

64. Furthermore, by reiterating the Policy four times over the last two decades and using mandatory language, ICE leadership has clearly indicated that it intends the Policy to be binding on all field offices and officers. See, *e.g.,Id.* ("In all cases, the Field Office director *must*...(emphasis added); *id.* I am issuing this reminder to ensure that ICE personnel remain cognizant of and continue to follow this Directive"); see *also* Padula v. Webster, 822 F.2d 97, 100 (D.C. Cir. 1987)("[A]n agency pronouncement is transformed into a binding norm if so intended by the agency.").

65. Under 8 C.F.R. §241.4, which facially applies to all non-citizens subject to an administrative final order of removal, employs a different standard that places the burden of proof on the non-citizen to justify their release. See *8 C.F.R. §*241.4(d)(1)("[ICE] may release a[ll] [non-citizen] if the [non-citizen] demonstrates to the satisfaction of [ICE] that his or he release will not pose a

dang to the community or to the safety of other person or to property or a significant risk of flight…"

66. In contrast, the Policy presumes that non-citizens granted withholding o CAT relief will be released 'absent exceptional circumstances, such as when the non-citizen presents a national security risk or a danger to the community," and it specifies that 'prior convictions alone do not necessarily indicate a public safety threat or danger to the community." *See* ICE Directive 16004.1 (referring to "ICE policy favoring a non-citizen's release").

67. Therefore, Mr. Rahul has been prejudiced by ICE's failure to review his custody under the Policy's "exceptional circumstances" standard. According to the *Accardi* doctrine, ICE's departure from its own policy is arbitrary, capricious, and contrary to law under the APA and violates Mr. Rahul's due process rights.

68. As a remedy, this Court should review Mr. Rahul's custody under the Policy's "exceptional circumstances" standard and order his release accordingly. *See Jimenez*, 317 F. Supp. at 657 ("In these circumstances, it is most appropriate that the court exercise its equitable authority to remedy the violations of petitioners' constitutional rights to due process by promptly deciding itself whether each should be released."). At the very least, this Court should order

that ICE San Francisco immediately conduct such a review for Petitioner pursuant to the Policy. *See Damus*, 313 F. Supp. 3d at 343.

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1231(a)(6)

69. Petitioner realleges and incorporates by reference the paragraphs above.

70. 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for "a period reasonably necessary to bring about the alien's removal from the United States." 533 U.S. at 689, 701.

71. Petitioner's continued detention has become unreasonable because his removal is not reasonably foreseeable. Because removal to India is barred and no lawful alternative country has been designated, ICE lacks authority to detain Petitioner. Therefore, his continued detention violates 8 U.S.C. § 1231(a)(6), and he must be immediately released.

COUNT II

ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)

72. Petitioner realleges and incorporates by reference the paragraphs above.

73. Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

74. ICE has deviated from its own policy in continuing to detain Petitioner after he was granted immigration relief, without determining whether exceptional circumstances warrant his continued detention. This is arbitrary, capricious, and contrary to law in violation of the APA.

75. As a remedy, this Court should conduct its own review of Petitioner's custody or, at least, order ICE to review Petitioner's custody under the standard articulated in ICE policy.

COUNT III

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

76. Petitioner realleges and incorporates by reference the paragraphs above.

77. In contrast to noncitizens subject to mandatory detention for serious criminal offenses under §236(c) [8 U.S.C. §1226(c)], Petitioner has no qualifying convictions that justify a categorical denial of release. The government has no legitimate basis to keep Mr. Rahul in detention or to insist that Petitioner's detention be mandatory, yet he remains confined with no opportunity for release. The IJ bond denial states, that Petitioner "is ineligible for bond"

despite Mr. Rahul's grant of withholding, not being subject to mandatory detention, and his cumulative time of detention well over one year.

REQUEST FOR INJUNCTIVE RELIEF

78. Mr. Rahul respectfully requests that this Court grant injunctive relief directing Respondent to release him under reasonable conditions of supervision. The Petitioner also requests preliminary injunctive relief and a TRO in the event that ICE attempts to move the Petitioner.

79. There is no evidence that Petitioner poses a danger to the community or presents a risk of flight. On the contrary, Petitioner has affirmatively complied with DHS requirements by initiating and maintaining lawful proceedings before the immigration court and subsequently received an order of withholding. He has no history of violence or criminal activities and remained in full compliance with immigration authorities.

80. Mr. Rahul will file a separate motion for a TRO under Rule 65 to prevent ICE from removing or transferring him while this habeas petition is adjudicated, if necessary; his likelihood of success on the merits are high, given that the final withholding of removal to India, with no appeal, eliminates statutory detention authority.

81. Continuance of unlawful detention, risk of refoulement, and loss of habeas jurisdiction through transfer or removal would tilt the balance of equities and

public interest in favor of enforcing immigration court orders that granted Mr. Rahul's application of withholding and provided constitutional limits on executive detention.

82. Granting Mr. Rahul's request for release pursuant to his recent grant of withholding reinforces confidence in the integrity of the immigration system, upholds the rule of law, and prevents the arbitrary deprivation of liberty. Protecting fundamental due process rights benefits not only Mr. Rahul but the public at large.

83. Based on the foregoing, this Court should grant injunctive relief, requiring Respondents to release Mr. Rahul.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this Court:

a. Assume jurisdiction over this matter;

b. 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.

c. Order Petitioner's immediate release;

d. Alternatively, review Petitioner's custody under the standard

articulated in ICE policy, or order ICE to review Petitioner's custody accordingly;

e. Grant permanent injunctive relief as appropriate;

f. Grant any other further relief this Court deems just and proper.

Dated: 02/12/2026

Respectfully submitted,

Carmen Di Amore-Siah, HI 5035
Lead Counsel of Record

Norman K.M. Wong, HI 10627
Co-Counsel of Record

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I or my co-counsel have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: 02/12/2026

Respectfully submitted,

Carmen Di Amore-Siah, HI 5035
Lead Counsel of Record

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. My co-counsel will furthermore mail a copy by USPS Certified Priority Mail with Return Receipts to each of the following individuals:

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Dated: 02/12/2026

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