

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. \_\_\_\_\_

**ALEJANDRA SALAZAR-ARIAS,**

Petitioner,

v.

**FIELD OFFICE DIRECTOR,**

Miami Field Office,

U.S. Immigration and Customs Enforcement,

Respondent.

**EMERGENCY<sup>1</sup> VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

The petitioner, Alejandra Salazar-Arias, submits this Verified Petition for Writ of Habeas Corpus, by and through the undersigned, and alleges as follows:

**INTRODUCTION**

1. Twenty-two years ago, on September 7, 2004, the petitioner was granted withholding of removal from Colombia by an immigration judge pursuant to 8 U. S. C. § 1231(b)(3) which requires an individualized showing that “that the alien’s life or freedom would be threatened in

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<sup>1</sup> Pursuant to Local Rule 7.1(d)(1), the undersigned certifies:

After reviewing the facts and researching applicable legal principles, I certify that this motion in fact presents a true emergency (as opposed to a matter that may need only expedited treatment) and requires an immediate ruling because the Court would not be able to provide meaningful relief to a critical, non-routine issue after the expiration of seven days. I understand that an unwarranted certification may lead to sanctions.

Although no motion is presented with this petition, the petitioner will be filing an emergency motion for an order to show cause as soon as possible, and makes this certification now in the abundance of caution, and to alert the Court of the impending motion. The case presents an emergency because the government is trying to deport the petitioner even though she is **not, and never has been,** subject to an order of removal.

that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion” if removed to Colombia. **App.**, p. 7.


2. In so granting that relief, the immigration judge did **not** order the petitioner removed to any country. **App.**, p. 7.

3. Thus, the petitioner is not even subject to an order of removal. **App.**, p. 7. In fact, the “[p]roceedings were terminated” in conjunction with the grant of withholding. **Id.**

4. And yet, on or about January 29, 2026, the petitioner was arrested by immigration authorities while boarding a domestic flight, and thereafter taken to the Broward Transitional Center in Pompano Beach, Florida to remove her to some other country that the government has not even identified yet — again, with no order of removal in place.

5. For various reasons, as alleged below, the petitioner is entitled to a writ of habeas corpus ordering her immediate release from civil immigration custody.

#### **PARTIES**

6. The petitioner, **Alejandra Salazar-Arias**, alien number  is a resident of Miami-Dade County, and is currently detained by the respondent and his or her agents at the Broward Transitional Center in Pompano Beach, FL. **App.**, pp. 1–2.

7. The respondent **Field Office Director**, Miami Field Office, U.S. Immigration and Customs Enforcement is sued in his or her official capacity. In this capacity, the Field Office Director has jurisdiction over the detention facility in which the petitioner is held, is authorized to release the petitioner, and is a legal custodian of the petitioner.

#### **JURISDICTION**

8. This action arises under the Constitution of the United States of America, 28 U. S. C. § 2241 *et seq.* (habeas corpus), the Immigration and Nationality Act (INA), 8 U. S. C.

§ 1101 *et seq.*, and Title 8 of the Code of Federal Regulations.

9. The Court has jurisdiction over this case under 28 U. S. C. § 2241 (habeas corpus), and § 1331 (federal question).

10. The Court may grant relief pursuant to the U.S. Const., art. I, § 9, cl. 2 (Suspension Clause), 28 U. S. C. § 1651 (All Writs Act), 28 U. S. C. §§ 2201–02 (declaratory relief), and 28 U. S. C. § 2241 (habeas corpus).

11. No jurisdictional bars under the Immigration and Nationality Act apply to a claim that an order of removal does not exist. *Madu v. U. S. Att’y Gen.*, 470 F. 3d 1362, 1368 (CA11 2006) (“In this case, Madu does not seek review of an order of removal, and the REAL ID Act therefore does not apply. Furthermore, neither 8 U.S.C. § 1252(b)(9) nor § 1252(g) divest the district court of jurisdiction.”).

12. Regardless, no jurisdictional bars under the Immigration and Nationality Act apply to a habeas claim challenging the legal framework and application of such framework to a claim of unlawful detention.

### VENUE

13. Venue is proper in this district under 28 U. S. C. § 2241 because this is the district where the “the custodian can be reached by service of process.” *Rasul v. Bush*, 542 U. S. 466, 478–79 (2004).

14. Venue will remain proper throughout the course of this action because the Court had proper venue when this action was initiated. *Ex parte Endo*, 323 U. S. 283, 307 (1944) (“That end may be served and the decree of the court made effective if a respondent who has custody of the prisoner is within reach of the court’s process even though the prisoner has been removed from the district since the suit was begun.”)

### EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. No exhaustion is statutorily required for the petitioner's habeas claims because "Section 2241 itself does not impose an exhaustion requirement," *Santiago-Lugo v. Warden*, 785 F.3d 467, 474 (CA11 2015)."

16. Exhaustion in the habeas context is at most a "non-judicial," *id.*, at 475, "judicially-created . . . doctrine," *Haitian Refugee Ctr., Inc. v. Nelson*, 872 F.2d 1555, 1561 (CA11 1989) (*HRC v. Nelson*), *aff'd sub nom. McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479 (1991), subject to various exceptions. See *Jaimes v. United States*, 168 Fed. Appx. 356, 359, n. 4 (CA11 2006) ("judicially-created exhaustion requirements may be waived by the courts for discretionary reasons") (quoting *Gallo Cattle Co. v. U.S. Dep't of Agric.*, 159 F.3d 1194, 1197 (CA9 1998)); *Richardson v. Reno*, 162 F.3d 1338, 1374 (CA11 1998) (*Richardson I*), cert. granted, judgment vacated on other grounds, 526 U.S. 1142 (1999) ("judicially developed exhaustion requirements might be waived for discretionary reasons by courts").<sup>2</sup>

17. For example, "a petitioner need not exhaust his administrative remedies 'where the administrative remedy will not provide relief commensurate with the claim.'" *Boz v. United States*, 248 F.3d 1299, 1300 (CA11 2001), abrogation on other grounds recognized by *Santiago-Lugo*, 785 F.3d, at 474–75 n. 5 (quoting *HRC v. Nelson*, 872 F.2d, at 1561).

18. **First**, no statute, regulation, or other legal source with binding authority exists to provide the remedy that the petitioner's claims seek to remedy.

19. For example, "[b]ecause the BIA does not have the power to decide constitutional

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<sup>2</sup> In a revised opinion following remand, the Eleventh Circuit "readopt[ed] and reaffirm[ed] the reasoning in *Richardson I* except to the extent it relied on INA § 242(g) to support its holding." *Richardson v. Reno*, 180 F.3d 1311, 1313 (CA11 1999) (*Richardson II*).

claims—like the validity of a federal statute— . . . certain due process claims need not be administratively exhausted.” *Warsame v. U. S. Att’y Gen.*, 796 Fed. Appx. 993, 1006 (CA11 2020); accord *HRC v. Nelson*, 872 F. 2d, at 1561 (exhaustion had “no bearing” where petitioner sought to make a constitutional challenge to procedures adopted by the INS); see also *Matter of Punu*, 22 I. & N. Dec. 224, 229 (BIA 1998) (“this Board cannot entertain constitutional challenges”) (citations omitted).

20. The petitioner urgently seeks and is entitled to habeas relief because he has no meaningful opportunity to challenge the constitutionality of his detention through any available administrative process. See *Boumediene v. Bush*, 553 U. S. 723, 783 (2008).

21. **Second**, there is no available administrative remedy available which the petitioner can pursue to present his regulatory and statutory arguments, and thus those claims are not subject to prudential exhaustion.

22. In addition to the rule that prudential exhaustion is not required “ ‘where the administrative remedy will not provide relief commensurate with the claim,’ ” *Boz*, 248 F. 3d, at 1300 (citation omitted), the same is also true where “the nature of [a] challenge [to agency] procedures is such that relief at the administrative review level would [be] unlikely,” *HRC v. Nelson*, 872 F. 2d, at 1561. This analysis is conducted by balancing the nature of a claim against “[t]he policies advanced by allowing the administrative process to run its full course” to determine whether such policies “are not thwarted by judicial intervention in [a] case.” *Haitian Refugee Ctr. v. Smith*, 676 F. 2d 1023, 1034 (CA5 Unit B 1982) (*HRC v. Smith*) (precedential under *Stein v. Reynolds Sec., Inc.*, 667 F. 2d 33, 34 (CA11 1982), disapproved of on other grounds by *Jean v. Nelson*, 727 F. 2d 957, 976, n. 27 (11th Cir. 1984) (en banc)).

23. As noted by precedent, “the Supreme Court [has] deemed it insignificant that [an]

agency . . . possesse[s] the power to change the content of its procedures and thus could . . . pre-empt[t] the necessity for judicial intervention.” *HRC v. Smith*, 676 F. 2d, at 1034 (citing *Mathews v. Eldridge*, 424 U. S. 319 (1976)). As “[t]he [Supreme] Court commented: ‘It is unrealistic to expect that the [agency head] would consider substantial changes in the current administrative review system at the behest of a single [regulated party] raising a [legal] challenge in an adjudicatory context.’” *Id.*, (quoting *Mathews*, 424 U. S., at 330). In the immigration context, “[an] assumption that the INS or the BIA would . . . substantially revis[e] the procedures established for [a specific] program is equally naive.” *Id.*

24. Here, the petitioner argues that the respondent is failing to comply with the existing regulatory and statutory framework for several reasons, and there is no established administrative process by which those claims can be presented.

#### FACTUAL BACKGROUND

25. The petitioner is a 32-year-old native and citizen of Colombia. **App.**, p. 3.

26. At the age of 7, the petitioner, along with her family, was “admitted,” see 8 U. S. C. § 1101(a)(13)(A), as a nonimmigrant tourist under § 1101(a)(15)(B) under on January 30, 2001. **App.**, pp. 4–5.

27. Some time after being admitted, the petitioner was included in an asylum application that was affirmatively filed with the legacy Immigration and Naturalization Service (INS) by her parent(s).

28. On April 7, 2004, an INS Supervisory Asylum Officer (SAO) issued a notice to appear (NTA) for removal proceedings under 8 U. S. C. § 1229a against the petitioner and (presumably) her parent(s) as well. **App.**, p. 6.

29. Unlike asylum applications which allow for the inclusion of derivative spouses and

children under a principal applicant's application, see § 1158(b)(3), derivative applicants are not recognized for purposes of applications for withholding of removal under § 1231(b)(3).

30. Thus, when a family unit applies for withholding of removal under § 1231(b)(3), an independent showing must be made as each family member that "the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion" if removed to a given country.

31. On September 7, 2004, an immigration judge in New York granted the petitioner withholding of removal, and the Department of Homeland Security waived appeal. **App.**, p. 7.

32. The immigration judge did not order the petitioner removed. **App.**, p. 7.

33. Rather, the immigration judge terminated the removal proceedings in conjunction with the grant of withholding of removal to the petitioner. **App.**, p. 7.

34. Again, the Department of Homeland Security waived its right to appeal the immigration judge's order. **App.**, p. 7.

35. The immigration judge's order is entitled to issue preclusion (collateral estoppel) and claim preclusion (res judicata). See *CSX Transp., Inc. v. Bhd. of Maint. of Way Emps.*, 327 F.3d 1309, 1317 (CA11 2003) (citations omitted); *Ragsdale v. Rubbermaid Inc.*, 193 F.3d 1235, 1238 (CA11 1999) (citation omitted).

36. Since then, the petitioner has lived in the United States as a member of the community, renewing a driver license and employment authorization documents on a yearly basis. **App.**, pp. 8–17.

37. She is also a single mother and principal caretaker of her two U. S. citizen children who are 11 and 7 years old respectively. **App.**, pp. 18–19.

38. The petitioner has no criminal arrest history that the undersigned is aware of.

## LEGAL BACKGROUND

### I. Withholding of Removal.

39. To be eligible for withholding of removal, one must make an individualized showing that “that the alien’s life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion” if removed to a particular country.

40. Generally, similar to a grant of protection under the Convention Against Torture, an order granting withholding of removal is usually accompanied by an order of removal with the withholding order protecting its recipient from being removed to a specific nation. See *Nasrallah v. Barr*, 590 U. S. 573, 582 (2020) (“An order granting CAT relief means only that, notwithstanding the order of removal, the noncitizen may not be removed to the designated country of removal, at least until conditions change in that country.”); *Johnson v. Guzman Chavez*, 594 U. S. 523, 531 (2021) (“If an alien is granted withholding-only relief,” following an automatically final reinstatement of a prior removal order, “DHS may not remove the alien to the country designated in the removal order unless the order of withholding is terminated. §§ 208.22, 1208.22.”).

41. However, as demonstrated by this case, that is not always true. See, e. g., *Abrego Garcia v. Noem*, — F. Supp. 3d —, No. 8:25-CV-02780-PX, 2025 WL 3545447, at \*2 (D. Md. Dec. 11, 2025) (“The October 10 withholding decision referenced as ‘procedural history’ Abrego Garcia’s concession at a prior hearing that he was an El Salvadoran national who entered the United States without lawful permission, and that an IJ ‘found his removability to be established by clear and convincing evidence.’ ECF No. 1-1 at 3. But nothing suggests the IJ ordered Abrego Garcia removed to El Salvador.”).

42. In fact, prior to the BIA’s decision in *Matter of I-S- & C-S-*, 24 I. & N. Dec. 432

(BIA 2008), some immigration judges were granting withholding of removal without issuing orders of removal.

43. “An order of removal must be ‘explicit’ in its directive that a noncitizen is to be removed to an identified country or countries.” *Id.*, at \*10 (quoting *Kouambo v. Barr*, 943 F.3d 205, 210 (CA4 2019) (in turn quoting *Matter of I-S- & C-S-*, 24 I. & N. Dec. 432, 434 (BIA 2008))). “Further, where, as here, ‘an Immigration Judge issues a decision granting a [noncitizen’s] application for withholding of removal . . . the decision must include an explicit order of removal.’” *Id.* (quoting *Matter of I-S- & C-S-*, 24 I. & N. Dec., at 432) (alteration in original). “This is so because when a noncitizen receives protection from removal to an identified country, the predicate removal order takes on special importance.” *Id.*

44. “[B]ecause a [noncitizen] protected by an order of withholding may still be removed to a willing third country, the IJ must issue a final order of removal to authorize DHS to effect such a removal if a third country is identified.” *Id.* (quoting *Kouambo*, 943 F.3d, at 210 (in turn quoting *Matter of I-S- & C-S-*, 24 I. & N. Dec. at 433)) (second alteration in original); accord *Romero v. Sec’y, U. S. Dep’t of Homeland Sec.*, 20 F.4th 1374, 1380 (CA11 2021) (“Although the order in *Madu* never came into existence, while the order here—on Romero’s theory—came into and then passed out of existence, both petitioners make the same basic argument: An operative removal order does not exist.”).

45. Just like in the *Abrego Garcia* case, the immigration judge’s order granting withholding of removal is **not** an order of removal:

The October 10 withholding decision is unambiguously *not* an order of removal. It does not “order” *Abrego Garcia* removed to any country or designate removal to alternative countries, as required under the INA. *See Nasrallah*, 590 U.S. at 579, 140 S.Ct. 1683 (an order of removal is “an order ‘concluding that the [noncitizen] is deportable or ordering deportation.’”) (citing 8 U.S.C. § 1101(a)(47)(A)). *See also* 8 C.F.R. § 1240.12(d). Nowhere in the October 10 withholding decision does

the IJ order Abrego Garcia removed to El Salvador or anywhere else.

2025 WL 3545447, at \*12;

Moreover, to conclude as the Respondents suggest—that the withholding order is also the order of removal—would contravene well established Supreme Court precedent directing otherwise. Consider first *Nasrallah v. Barr*, 590 U.S. 573, 140 S.Ct. 1683, 207 L.Ed.2d 111 (2020). There, the Court held that for jurisdictional purposes under the INA, a final order of removal cannot “merge” with a withholding order. *Nasrallah*, 590 U.S. at 583, 140 S.Ct. 1683. The *Nasrallah* Court reasoned that withholding relief under CAT cannot be construed as a final order of removal because the withholding order itself does not conclude “the [noncitizen] is deportable or ordering deportation.” *Id.* at 579, 140 S.Ct. 1683. Rather, a withholding order “means only that, notwithstanding the order of removal, the noncitizen may not be removed to the designated country of removal, at least until conditions change in that country.” *Id.* at 582, 140 S.Ct. 1683.

*Id.* “Because removal orders remain legally distinct from subsequent denials of relief, the final removal order ‘does not depend’ on the outcome of the withholding proceedings.” *Id.* (citations omitted).

## II. Background Constitutional Framework for Civil Immigration Detention

46. Civil immigration detention is presumptively unconstitutional absent its authorization by a special justification enacted pursuant to an Act of Congress. *Sopo v. U. S. Att’y Gen.*, 825 F.3d 1199, 1210 (CA11 2016) (“Under the Due Process Clause, civil detention is permissible only when there is a ‘special justification’ that ‘outweighs the individual’s constitutionally protected interest in avoiding physical restraint.’”) (citation omitted), vacated on mootness grounds, 890 F.3d 952 (2018).

47. Thus, absent a statutory special justification, civil immigration detention is unlawful and unconstitutional.

48. Further, only criminal detention, following a lawful conviction by jury trial, may be utilized for punitive purposes.

49. Civil detention becomes punitive when it is being used for purposes that are not

contemplated within the special statutory justification authorizing its use. See *Bell v. Wolfish*, 441 U. S. 520, 539 (1979) (“Thus, if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to ‘punishment.’ Conversely, if a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees.”) (citations and footnotes omitted); *In re Grand Jury Proc.*, 877 F. 2d 849, 850 (CA11 1989) (“Civil contempt is a coercive device imposed to secure compliance with a court order and if the circumstances illustrate that the sanction will not compel compliance, it becomes punishment and violates due process.”) (citation omitted); *Lynch v. Baxley*, 744 F. 2d 1452, 1463 (CA11 1984) (“A court must decide whether the restriction is imposed to punish or whether it is simply an incident of legitimate governmental purpose. . . . Absent an express intent to punish, that determination will turn on whether the restriction appears excessive in relation to the alternative purpose assigned to it. . . . If a restriction is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court may infer that the purpose of the government action is punishment.”) (citations omitted); *United States v. Vasquez-Escobar*, 30 F. Supp. 2d 1364, 1365 (M.D. Fla. 1998) (ruling that improper use of civil immigration detention was unconstitutionally punitive).

50. Thus, where civil immigration detention becomes punitive in its nature, it has become unlawful and unconstitutional.

51. In sum, civil immigration detention is lawful only: (1) when it is being administered in accordance with the terms of duly enacted statutes; (2) which are based upon a special justification that outweighs the deprivation of liberty at stake; and (3) it is being carried out in a manner that is consistent with and reasonably related to that special statutory justification.

### **III. Substantive and procedural due process governs civil immigration detention.**

52. “The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U. S. 678, 693 (2001) (citation modified). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Id.*, at 690.

53. Under substantive due process doctrine, a restraint on liberty is only permissible if it serves a “legitimate nonpunitive objective.” *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *Zadvydas*, 533 U. S., at 690–92 (discussing constitutional limitations on civil detention).

54. “Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty,’” like the decision to revoke a non-citizen’s order of supervision. *Mathews v. Eldridge*, 424 U. S. 319, 332 (1976). “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Id.*, at 333 (citation omitted).

### **IV. The *Accardi* doctrine requires agencies to follow internal rules.**

55. Principles of administrative due process apply to civil immigration detention. That is because federal regulations which afford procedural protections or “that affect substantial individual rights and obligations” are binding upon agencies without a showing of prejudice. *Morton v. Ruiz*, 415 U. S. 199, 232 (1974); *id.*, at 235 (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the

internal procedures are possibly more rigorous than otherwise would be required.”) (citations omitted); accord *Port of Jacksonville Mar. Ad Hoc Comm., Inc. v. U.S. Coast Guard*, 788 F. 2d 705, 709 (CA11 1986) (“The guideline clearly was intended to confer a procedural benefit and therefore, under the *American Farm Lines* framework, no inquiry into substantial prejudice was necessary.”); *Kurapati v. USCIS*, 775 F. 3d 1255, 1262 (CA11 2014) (“ ‘Even when a decision is committed to agency discretion, a court may consider allegations that an agency failed to follow its own binding regulations.’ ”) (citations omitted); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at \*9 (S.D. Fla. Sept. 9, 2025) (“It is a rather ‘unremarkable proposition that an agency must abide by its own regulations.’ ”) (citations omitted).

56. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *United States ex rel. Accardi v. Shaughnessy*, 347 U. S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); accord *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.”).

57. *Accardi* is not “limited to rules attaining the status of formal regulations.” *Montilla v. INS*, 926 F. 2d 162, 167 (CA2 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. *Morton*, 415 U.S. 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *U.S. v. Heffner*, 420 F. 2d 809, 812 (CA4 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

## CLAIMS FOR RELIEF

### COUNT I:

#### Civil Immigration Detention Not Authorized by Statute

58. The allegations in paragraphs 1-57 are realleged and incorporated herein.

59. Because the petitioner is not subject to an administratively final order or removal, she is not subject to civil immigration detention under any of 8 U. S. C. § 1231's provisions.

60. Because the petitioner is not "an applicant for admission," § 1225(a)(1), she is not subject to civil immigration detention under any of § 1225's provisions.

61. And because there is no proceeding "pending [on] a decision on whether the alien is to be removed from the United States," § 1226(a), the petitioner is not subject to civil immigration detention under any of § 1226's provisions.

62. There is no other statutory basis for civil immigration detention that exists.

63. "[A]n order of [an agency] made in excess of its delegated powers" is an action not "made within its jurisdiction." *Leedom v. Kyne*, 358 U. S. 184, 188 (1958). Such an action is "ultra vires agency action." *Fed. Express Corp. v. U. S. Dep't of Com.*, 39 F. 4th 756, 763-64 (CADC 2022) (citing *Leedom*, 358 U. S., at 188). And as has long been understood, an act without jurisdiction is void. *Harris v. Hardeman*, 55 U. S. 334, 339 & 342 (1852).

64. Thus, the petitioners' detention is completely ultra vires of the respondent's statutory authority.

65. Further, because no statute authorizes the petitioner's civil detention, and she is no subject to a duly authorized jury verdict of conviction for a crime, the petitioner's ongoing detention violates substantive and procedural due process, and is unconstitutionally punitive without authorization by a verdict of the petitioner's peers.

66. Therefore, the petitioner is entitled to a writ of habeas corpus ordering that she be

immediately released from the respondent's custody.

**COUNT II:**

**Lack of Meaningful Opportunity to Contest Third Country Removal  
through Claims of Fear of Persecution or Torture, and Claims of Chain Nonrefoulement**

67. The allegations in paragraphs 1-57 are realleged and incorporated herein.

68. Alternatively, even if the petitioner was subject to an existing order of removal, her current detention is still unlawful.

69. Pursuant to § 1231(b)(3)(A), courts repeatedly have held that individuals cannot be removed to a country that was not properly designated by an immigration judge if they have a fear of persecution or torture in that country. See *Andriasian v. INS*, 180 F.3d 1033, 1041 (CA9 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 INS regulations and the constitutional right to due process.”); *Kossov v. INS*, 132 F.3d 405, 408–09 (CA7 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 (CA9 2007); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (CA9 2004); cf. *Protsenko v. U. S. Att’y Gen.*, 149 Fed. Appx. 947, 953 (CA11 2005) (per curiam) (failure to give “proper notice of a potential country of deportation” and a subsequent order of removal to that country may constitute a violation of due process, citing *Kossov*).

70. Subsection 1231(b)(2) sets out a 4-step process for designating countries of removal. This procedure is also addressed in *Jama v. ICE*, 543 U. S. 335, 338–41 (2005).

71. First, in the removal hearing, subject to § 1231(b)(3), the noncitizen is entitled to select a country of removal. § 1231(b)(2)(A); 8 CFR § 1240.10(f).

72. Second, subject to Subsection 1231(b)(3), the immigration judge or DHS may disregard a designation if the noncitizen “fails to designate a country promptly,” the designated country is nonresponsive or unwilling to accept the person, or removal to the designated country would prejudice U.S. interests. § 1231(b)(2)(C).

73. Third, still subject to § 1231(b)(3), the immigration judge may designate, or DHS may select, an alternative country of removal where the person “is a subject, national, or citizen,” unless such country is nonresponsive or unwilling to accept the person. § 1231(b)(2)(D).

74. Fourth, subject to § 1231(b)(3), the immigration judge may designate or DHS may select, certain specified additional alternative countries, including the country: (i) from which the noncitizen was admitted; (ii) of the noncitizen’s port of departure for the United States or a foreign contiguous territory; (iii) where the noncitizen resided before entering the United States; (iv) where the noncitizen was born; (v) having sovereignty over the noncitizen’s place of birth at the time of birth; or (vi) where the noncitizen’s birthplace is located at the time of the removal order. § 1231(b)(2)(E)(i)-(vi).

75. Only if removal to one of these countries is “impracticable, inadvisable, or impossible” may DHS remove the noncitizen to “another country whose government will accept [the noncitizen].” § 1231(b)(2)(E)(vii). For this last step, DHS counsel must provide evidence to the immigration court that the foreign government “will accept” the individual. *El Himri*, 378 F. 3d, at 939.

76. Critically, Congress carved § 1231(b)(3) out from the designation statutes, i.e., §§ 1231(b)(1) and (b)(2). See §§ 1231(b)(1)–(2) (providing that both subsections are “subject to paragraph (3)”); *see also Jama*, 543 U. S., at 348 (noncitizens who “face persecution or other mistreatment in the country designated under § 1231(b)(2), . . . have a number of available remedies:

asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); relief under an international agreement prohibiting torture, *see* 8 C.F.R. §§ 208.16(c)(4), 208.17(a)"); *Andriasian*, 180 F. 3d, at 1041 (IJ must provide sufficient notice and an opportunity to apply for relief from designated country of removal); *Kossov*, 132 F. 3d, at 405 (due process violation to order deportation to Russia after a claim of asylum as to Latvia where uncounseled noncitizen was provided insufficient notice of Russia possibility).

77. In 2005, in jointly promulgating regulations implementing 8 U.S.C. § 1231(b), the Departments of Justice and Homeland Security assumed that “[a noncitizen] will have the opportunity to apply for protection as appropriate from any of the countries that are identified as potential countries of removal under [8 U.S.C. § 1231(b)(1) or (b)(2)].” 70 Fed. Reg. 661, 671 (Jan. 5, 2005) (codified at 8 C.F.R. pt. 241) (supplementary information). Furthermore, the Departments contemplated that, in cases where DHS sought removal to a country that was not designated in removal proceedings, namely, “removals pursuant to [8 U.S.C. § 1231(b)(1)(C)(iv) or (b)(2)(E)(vii)],” DHS would join motions to reopen “[i]n appropriate circumstances” to allow the noncitizen to apply for protection. *Id.*

78. For these reasons, if DHS designates a new country of removal *after* the completion of removal proceedings, the Immigration and Nationality Act (INA), the Due Process Clause, and binding international agreements obligate DHS to provide meaningful notice and an opportunity to present a fear-based claim *prior to* carrying out the deportation.

79. Notice is only meaningful if it is presented sufficiently in advance of the deportation to stop the deportation, is in a language the person understands, and provides for an automatic stay of removal to permit the filing of a motion to reopen removal proceedings if the person claims a fear of removal to the third country. *See Andriasian*, 180 F. 3d, at 1041; *Aden v. Nielsen*, 409

F. Supp. 3d 998, 1009 (W.D. Wash 2019) (“A noncitizen must be given sufficient notice of a country of deportation [such] that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation.”); *Sadychov v. Holder*, 565 Fed. Appx. 648, 651 (CA9 2014) (“However, should circumstances change such that Azerbaijan is the designated country of removal, the agency must provide Sadychov with notice and an opportunity to reopen his case for full adjudication of his claim of withholding of removal from Azerbaijan.”).

80. Likewise, an opportunity to present a fear-based claim is only meaningful if the noncitizen is not deported before removal proceedings are reopened. See *Aden*, 409 F. Supp. 3d, at 1010 (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); *Dzyuba v. Mukasey*, 540 F. 3d 955, 957 (CA9 2008) (remanding to BIA to determinate whether designation is appropriate).

81. Alternatively, a reasonable fear interview before an asylum officer must be provided, along with the right to an immigration judge review, prior to removal to a third alternate country. *Cruz-Medina v. Noem*, — F. Supp. 3d —, No. 25-CV-1768-ABA, 2025 WL 2841488, at \*9 (D. Md. Oct. 7, 2025) (“Accordingly, Petitioner has shown a strong likelihood of success on the merits of his claim that until and unless an immigration judge concurs with the asylum officer’s determination that Petitioner lacks a reasonable fear of persecution or torture in Mexico, due process precludes his removal to Mexico.”); *Sagastizado v. Noem*, 802 F. Supp. 3d 992, 1016 (S.D. Tex. 2025) (“For the foregoing reasons, this Court hereby ORDERS that Respondents and all of their officers, agents, servants, employees, attorneys, successors, assigns, and persons acting in

concert or participation with them are hereby ENJOINED from removing Petitioner from the continental United States until seven (7) days after an Immigration Judge reviews Petitioner's denied Reasonable Fear Interview, and only if the Immigration Judge affirms such denial.”)

82. Upon information and belief, ICE, as a matter of practice, does not voluntarily afford this process, and is not currently affording this process to the petitioner.

83. As such, the petitioner's ongoing and continued civil immigration detention is unlawful.

84. Therefore, the petitioner is entitled to a writ of habeas corpus ordering that she be immediately released from the respondent's custody unless he is afforded the full reasonable fear and withholding-only proceeding process used in reinstatement of removal cases with regard to any third country of removal that ICE wishes to designate.

### **COUNT III:**

#### **No Significant Likelihood of Removal in the Reasonably Foreseeable Future**

85. The allegations in paragraphs 1-57 are realleged and incorporated herein.

86. Alternatively, even if the petitioner was subject to an existing order of removal, her current detention is still unlawful.

87. When the respondent took the petitioner into their custody, the respondent had no authority to remove the petitioner to Colombia, and the respondent has no settled expectations of removing the petitioner to any third country.

88. Upon information and belief, the respondent has a practice of taking persons subject to removal orders for the purpose of **afterward** trying to coordinate a third country to accept their removal. See, e. g.:

In the days that followed, Respondents took no steps to “process” Abrego Garcia for removal to Uganda, ostensibly because of his claimed fear of persecution and torture in that country. ECF No. 24 at 19–20; ECF No. 28 at 17; ECF No. 52 at

219:11–15. Instead, on September 5, 2025, Respondents notified Abrego Garcia's counsel that they now would remove him to the South African country of Eswatini. ECF No. 27-3. Abrego Garcia immediately asserted fear of removal to Eswatini on similar grounds. ECF No. 57-1 at 3.

Within days, Eswatini learned of Respondents' notice to Abrego Garcia and it bit back. On September 11, 2025, Eswatini's spokesperson, Thabile Mdluli, announced that "the Government of Eswatini ha[d] not received any communication regarding this person," and did not have any agreement with the United States to receive Abrego Garcia. ECF No. 32-6 at 2. Respondents also had not done anything with Abrego Garcia's credible fear assertions, or communicated whether he would receive similar refugee or other status in Eswatini or be protected from persecution or torture. ECF No. 27 at 4–5.

*Abrego Garcia v. Noem*, 2025 WL 3545447, at \*4–5.

89. Given that the "removal period" under 8 U. S. C. § 1231(a)(1) has long passed several decades ago, the petitioner is not subject to "removal period" detention under § 1231(a)(2):

The respondents argue Beltran's petition is premature because he has not been detained for longer than six months. Their argument assumes the six-month clock started on November 10, 2025, when Beltran's current detention began. That assumption is inconsistent with *Zadvydas*. It would effectively allow DHS to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every six months. As the Eleventh Circuit recognized, "[t]he Supreme Court's stated rationale for establishing a presumptively reasonable '6-month period' for detention pending removal supports our conclusion that this period commences at the beginning of the removal period." *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002).

*Beltran v. Ripa*, No. 2:25-CV-01174-SPC-NPM, 2026 WL 21252, at \*2 (M.D. Fla. Jan. 5, 2026).

90. Because "[t]he *Zadvydas* framework guards only against *indefinite* detention," when § 1231(a)(6) begins years or even decades after the administrative finality of a removal order, "[t]he government loses the presumption of reasonableness after the six-month period, but it can still show that detention is reasonable by meeting its burden of proof." *Id.*, at\*3.

91. That burden is met "[i]f the government can establish a significant likelihood of removal in the reasonably foreseeable future, detention is lawful. Otherwise, the government can

keep tabs on the noncitizen through reasonable conditions of supervision while it continues removal efforts. If removal becomes likely, the government can detain the noncitizen while it iron[s] out the details.” *Id.*

92. In those circumstances, the government must “offer . . . evidence to suggest removal to Mexico or any other country is more likely now than it was” when a person subject to an administratively final removal ordered was allowed at liberty. *Id.*; see also Order 9 (D.E. 28), *Guerlie Pierre v. Field Off. Dir.*, No. 0:25-cv-62475-WPD (S.D. Fla. Jan. 29, 2026) (“Courts have ‘broadly agree[d] that “the six-month period [under *Zadvydas*] does not reset when the government detains an alien under 8 U.S.C. § 1231(a), releases him from detention, and then re-detains him again.” ’”) (citations omitted) (second alteration in original).

93. “The Government may not sit on its hands for thirteen [or more] years before deciding to implement an order of removal and then hold the non-resident in detention while it figures out how to effectuate removal. Such conduct runs afoul of the very danger outlined in *Zadvydas*.” Order 10 (D.E. 28), *Guerlie Pierre*, No. 0:25-cv-62475-WPD (citations omitted).

94. “A grant of CAT [or § 1231(b)(3)] withholding of removal to a noncitizen ‘is a powerful indication of the improbability of his foreseeable removal, by any objective measure.’ ” Order 11 (D.E. 28), *Guerlie Pierre*, No. 0:25-cv-62475-WPD (citation omitted).

95. Where “[t]he best the Government [can] come up with [i]s a request to . . . continue [a habeas] case . . . , and let [the petitioner] languish in detention, while the Government figures it out,” the detention is unlawful and not authorized by 8 U. S. C. § 1231(a)(6). Order 12 (D.E. 28), *Guerlie Pierre*, No. 0:25-cv-62475-WPD. “Under similar circumstances, and even lesser circumstances, courts have found deportation is not reasonably foreseeable and has ordered release.” *Id.* (citations omitted).

96. Therefore, the petitioner is entitled to a writ of habeas corpus ordering that she be immediately released from the respondent's custody.

**PRAYER FOR RELIEF**

**WHEREFORE**, the petitioner prays that the Court grant the following relief:

- (a) Assume jurisdiction over this matter;
- (b) Set this matter for expedited consideration pursuant to 28 U.S.C. § 1657;
- (c) Order the respondent to show cause why the writ should not be granted within three days, and allowing the petitioner three days to file a traverse, and, if necessary, set a hearing on this petition within five days of the submission of the return, pursuant to 28 U. S. C. § 2243;
- (d) Order the respondent to refrain from transferring the petitioner out of the jurisdiction of this Court during the pendency of this proceeding and while the petitioner remains in the respondents' custody;
- (e) Enjoin the respondent from removing the petitioner from the United States while this case is pending;
- (f) Grant, with respect to Count I and, alternatively, Count III, the petitioner a writ of habeas corpus ordering her immediate release from the respondent's custody because that custody is unlawful;
- (g) Grant, alternatively, with respect to Count II, the petitioner a writ of habeas corpus ordering her immediate release from the respondent's custody unless she is afforded the full reasonable fear and withholding-only proceeding process used in reinstatement of removal cases with regard to any third country of removal that ICE wishes to designate;

- (h) Award Petitioner attorneys' fees and costs under the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. § 2412, and on any other basis justified under law; and
- (i) Grant any other and further relief that the Court deems just and proper.

Dated: February 16, 2026

**s/ Mark A. Prada**

Fla. Bar No. 91997

Fla. Bar No. 1010180

Prada Dominguez, PLLC

12940 SW 128 Street, Suite 203

Miami, FL 33186

o. 786.703.2061

c. 786.238.2222

mprada@pradadominguez.com

*Counsel for Petitioner*

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

I, Mark A. Prada, am submitting this verification on behalf of the petitioner because I am the petitioner's attorney in these proceedings. Based upon a review of the records available to me, discussions with the petitioner's other attorney, and/or discussions with the petitioner's family, I hereby verify that the statements made in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: February 16, 2026

**s/ Mark A. Prada**

Fla. Bar No. 91997