IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND,

JHON LESTER GARCIA BARRIENTOS,
[redacted]

Petitioner,

v.

NIKITA BAKER, *in her official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Baltimore Field Office*;
c/o DHS Office of the General Counsel
245 Murray Lane, SW
Mail Stop 0485
Washington, DC 20528-0485

TODD LYONS, *in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement*;
500 12th St. SW
Washington, DC 20536

KRISTI NOEM, *in her official capacity as Secretary of Homeland Security*;
c/o DHS Office of the General Counsel
245 Murray Lane, SW
Mail Stop 0485
Washington, DC 20528-0485

PAMELA BONDI, *in her official capacity as Attorney General of the United States*,
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Respondents.

AMENDED PETITION FOR A WRIT OF HABEAS CORPUS

Case No. 1:26-cv-984

INTRODUCTION

1. Petitioner, Jhon Lester García Barrientos ("Mr. García Barrientos" or "Petitioner"), through undersigned Counsel, petitions this Court for a Writ of Habeas Corpus ordering his immediate release from immigration custody because he is being detained without due process and in violation of the Immigration and Nationality Act ("INA") and the Administrative Procedure Act ("APA"). Mr. García Barrientos was given a removal order on February 6, 2025, ordering removal to Venezuela. Additionally, he was granted withholding of removal under the Convention Against Torture ("CAT"). Mr. García Barrientos has been in detention since Thursday, March 5, 2026. He was first detained at the Immigration and Customs Enforcement ("ICE") Enforcement and Removal Operations ("ERO") Baltimore Field Office. Despite having been given a removal order ordering removal to Venezuela, the grant of CAT bars removal of Mr. García Barrientos to Venezuela. In the absence of a removal order to another country, Mr. García Barrientos will be denied due process if he is removed to a third country. Accordingly, to vindicate Petitioner's constitutional and statutory rights, this Court should grant the instant petition for a writ of habeas corpus.
2. Mr. García Barrientos was granted withholding of removal under the CAT on February 6, 2025. Since that date, he has complied with his ICE check-in requirements and been granted employment authorization. It was not until March 5, 2026, over one year after Mr. García Barrientos' grant of withholding of removal, that Mr. García Barrientos was taken into ICE custody and informed that ICE was attempting to remove him to a third country.
3. At ERO Baltimore Field Office, Mr. García Barrientos was given a Notice of Revocation of Release, informing him of the revocation of his order of supervision ("OSUP"). The

Notice of Revocation was signed by Baltimore Field Office Director, Respondent Nikita Baker, and did not make a finding that the Executive Associate Commissioner could not be involved in the decision due to extenuating circumstances. Mr. García Barrientos was also given a Notice of Removal to El Salvador, a country to which he has not been ordered removed and where he fears persecution and torture if removed. When Mr. García Barrientos asked for a fear interview, Respondents denied his request.

4. Mr. García Barrientos's removal to El Salvador, or to any other third country, without any due process, despite his current grant of CAT, violates his constitutional and statutory rights under the Fifth Amendment of the Constitution, the INA, the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105-277, div. G, Title XXII, § 2242(a), 112 Stat. 2681 (1998) (codified as Note to 8 U.S.C. § 1231), implementing regulations, and his rights under the CAT.

5. Accordingly, Mr. García Barrientos seeks a writ of habeas corpus requiring that he be immediately released from custody, with all of his personal property, or, in the alternative, that Respondents be prohibited from removing Mr. García Barrientos from the United States until this Court is satisfied that due process has been met, and that Respondents give Mr. García Barrientos sufficient notice and an opportunity to be heard regarding his claim of fear of removal to any third country, including a reasonable fear interview.

6. This remedy is necessary to efficiently vindicate Mr. García Barrientos's due process and statutory rights.

JURISDICTION

7. This action arises under the Constitution of the United States and the Convention Against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987) ("CAT").

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause), and 28 U.S.C. § 2201, 2202 (Declaratory Judgment Act).

9. This Court may grant relief under the habeas corpus statutes 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of Maryland, the judicial district in which Petitioner was detained at the time of filing his original petition.

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

12. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

REQUIREMENTS OF 28 U.S.C. § 2243

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

14. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

15. Petitioner, Mr. García Barrientos, is a native and citizen of Venezuela who was granted withholding of removal under the Convention Against Torture. Petitioner was first detained at the ICE ERO Baltimore Field Office, and he is now detained at the Northwest ICE Processing Center in Tacoma, Washington. He has been in ICE custody since March 5, 2026.

16. Respondent Nikita Baker is the Field Office Director of the ICE ERO Baltimore Field Office, and she has immediate physical custody of Petitioner. In that capacity, she has the authority to make custody determinations regarding individuals detained in Maryland and was a legal custodian of Petitioner and had authority to release him. Respondent Baker signed a Notice of Revocation of Release revoking Petitioner's order of supervision. She is sued in her official capacity.

17. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and as such is the legal custodian of Mr. Garcia Barrientos. He is sued in his official capacity. Respondent Lyons is a legal custodian of Petitioner

18. Respondent Kristi Noem is the Secretary of Homeland Security. She supervises ICE, an agency within the Department of Homeland Security ("DHS") which is responsible for the administration and enforcement of immigration laws and has supervisory responsibility for

and authority over the detention and removal of noncitizens throughout the United States. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity. Respondent Noem is a legal custodian of Petitioner

19. Respondent Pamela Bondi is the Attorney General of the United States. As the Attorney General, she oversees EOIR, including all IJs and the Board of Immigration Appeals ("BIA"), and has authority over immigration detention. Respondent Bondi is a legal custodian of Petitioner. She is sued in her official capacity.

STATEMENT OF FACTS

Mr. García Barrientos Was Granted CAT Protection

20. Mr. García Barrientos is a 32-year-old citizen of Venezuela. Mr. García Barrientos entered the United States on or about July 18, 2022, was granted parole until September 19, 2022, and was granted Temporary Protected Status on April 2, 2024, until April 2, 2025. On February 6, 2025, Mr. García Barrientos was granted withholding of removal to Venezuela under the Convention Against Torture. Mr. García Barrientos suffers from severe, life-threatening mental and physical health conditions requiring medication and treatment which he has been denied in Immigration and Customs Enforcement ("ICE") detention. Mr. García Barrientos has no criminal record, and he is the father of a U.S. citizen daughter, J.V.G.T., who was born on [redacted] in Washington D.C. and suffers from a severe disability caused by medical negligence during the delivery. J.V.G.T. depends on Mr. García Barrientos' support, and Mr. García Barrientos brings J.V.G.T. to her necessary physical therapy appointments which she attends twice a week. Mr. García Barrientos' partner, J.V.G.T.'s mother, is an asylee. Mr. García Barrientos was granted work authorization by U.S. Citizenship and Immigration Services ("USCIS") until August 5,

2030, which can be renewed. He works as a welder and is the primary income earner for his family, which includes his partner, his U.S. citizen daughter, and his eight-year-old stepson, J.M.G.T.

Mr. García Barrientos Was Detained by ICE and His OSUP Was Revoked

21. On or about March 5, 2026, Mr. García Barrientos was detained by immigration officials when he attended a routine check-in appointment.

22. Mr. García Barrientos was brought to the ICE ERO Baltimore Field Office. On March 5, 2026, ICE Deportation Officer K. Rufino gave Mr. García Barrientos ICE Form 71-091, "Notice of Revocation of Release," digitally signed by Respondent Baker, which states, "Your release on the [OSUP] issued to you on or about 03/05/2026 is hereby revoked." The only reason selected for the revocation on the notice is "It is appropriate to enforce the removal order entered against you as ICE has the ability and means to effectuate your removal." The notice also states that on February 6, 2025, Mr. García Barrientos was ordered removed to Venezuela and granted withholding of removal to Venezuela, and that "[his] case is under review for removal to an alternate country."

23. Upon information and belief, Respondent Baker did not first refer the case to the ICE Executive Associate Director and did not make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director.

24. Upon information and belief, at no time following Mr. García Barrientos' arrest did Respondents give him a reasonable opportunity to respond to those reasons.

25. Upon information and belief, at the time ICE revoked Petitioner's OSUP, the agency had not secured travel documents necessary for removal from the United States.

26. On or about March 8, 2026, Mr. García Barrientos was transferred to an unknown location in Arizona. On or about March 10, 2026, Mr. García Barrientos was transferred to the Northwest ICE Processing Center, over 2,700 miles away from his family and his attorney.

27. When Mr. García Barrientos arrived at the Northwest ICE Processing Center, he and the other detainees were given different colored uniforms and told that the color of their uniform corresponded to how dangerous they were considered. Mr. García Barrientos was given a blue uniform, which he was told meant that he was not considered dangerous.

Mr. García Barrientos Suffers from Severe Mental and Physical Health Issues

~~28.~~ Mr. García Barrientos has been diagnosed with kidney stones, which cause him a significant amount of pain and require him to take pain medication. About one month ago, Mr. García Barrientos saw a doctor who referred him to a urologist so that he can do an ultrasound to determine whether he must undergo surgery for his kidney stones.

29. In or around May of 2025, Mr. García Barrientos suffered from depression and anxiety after he was given an ankle monitor by immigration. Mr. García Barrientos' depression led to a suicide attempt. Following the suicide attempt, Mr. García Barrientos was hospitalized to treat his physical injuries and was then hospitalized for about one week for his psychiatric condition. He then received treatment including depression and anxiety medication which he continues to require. Mr. García Barrientos was detained without his prescription medication and has not been given access to this medication since he was detained. Mr. García Barrientos fears that due to his lack of access to his necessary medication and the terrible conditions in which he is currently being held, he will suffer from severe depression and anxiety again.

30. Abrupt cessation of the medication that Mr. García Barrientos was prescribed for his depression can lead to potentially dangerous discontinuation syndrome, including dizziness, nausea, insomnia, sensory disturbances, intensification of depressive symptoms, irritability, and anxiety. History of a prior suicide attempt is the strongest predictor of a future suicide attempt. Separation from family removes a vital protective factor against suicide, and conditions in immigration detention can be actively harmful to psychological recovery.

While in ICE Custody, Mr. García Barrientos Has Been Denied Adequate Food, Clothing, Shelter, and Medical Care

31. At the Baltimore Field Office, Mr. García Barrientos was detained in an overcrowded room with over thirty other detainees, and they were forced to sleep on the hard floor with no mattress and no blanket. Mr. García Barrientos and the other detainees are were given almost no food – only once a day, they were given a dehydrated military-style meal which was only enough for a single meal. Mr. García Barrientos and other detainees were not given access to a shower or a change of clothes, and the only toilet they were allowed to use was a toilet in the middle of the room in front of the other detainees.

32. On or about March 6, 2026, Mr. García Barrientos was brought to the emergency room, where he underwent an ultrasound and X-rays. The doctor told him that he had large kidney stones which required him to return to the hospital to make an appointment for surgery. The doctor also told him that he still has three fractured ribs. The doctor prescribed medication to help treat the kidney stones and the pain. ICE told Mr. García Barrientos that they could only bring him to the hospital for emergency care, so he was unable to make an appointment for his necessary surgery to treat his life-threatening kidney stones.

33. In Arizona, Mr. García Barrientos reports that the conditions were even worse than in Baltimore. He was required to sleep on the hard floor in a room that was even more crowded than in Baltimore. He was given very little food. The water was not clean and often has insects in it. In Baltimore he was given soap, but in Arizona he was not given any soap. ICE agents verbally abused detainees, using bad words.

34. Mr. García Barrientos was not given any medication while detained in Baltimore and Arizona, including his mental health medication, medication prescribed for his kidney stones, and pain medication for the pain caused by his kidney stones and fractured ribs, which was exacerbated by sleeping on the hard floor. The pain from Mr. García Barrientos' kidney stones and fractured ribs has gotten a lot more severe since he was detained.

35. At the Northwest ICE Processing Center, Mr. García Barrientos was given ibuprofen, anti-nausea medication, and prescription medication for his kidneys. Nausea may be a sign that kidney stones are getting worse, and it is also a symptom of discontinuation syndrome following abrupt cessation of psychiatric medication, and of untreated depression and anxiety.

36. On March 13, 2026, undersigned counsel was informed by Respondents' counsel that Mr. García Barrientos has been referred to a specialist for his kidney stones and depression. It remains unclear when these appointments will take place and whether he will be able to schedule the potentially life-saving surgery that he requires for his kidney stones. As of March 13, 2026, Mr. García Barrientos has not been given the psychiatric medication that he requires while in ICE custody. He has now gone over one week since the abrupt cessation of his psychiatric medication.

Mr. García Barrientos Was Denied a Fear Interview

37. When Mr. García Barrientos was detained, he was told by ICE officers that he had to choose a third country to which he would be removed. Mr. García Barrientos was given a list of third countries to choose from. Mr. García Barrientos refused to choose one of these countries, because he fears being deported to those countries.

38. Mr. García Barrientos was given a "Notice of Removal" signed by an ICE official, stating that ICE intends to remove him to El Salvador. Mr. García Barrientos told ICE officers that he fears being deported to El Salvador and requested a fear interview. ICE officers told Mr. García Barrientos that he would not be given a fear interview unless he hired an attorney who requested one.

39. On March 6, 2026, undersigned counsel visited Mr. García Barrientos at the ICE ERO Baltimore Field Office. Undersigned counsel then sent a request for a reasonable fear interview to the ICE ERO Baltimore Field Office via email. Mr. García Barrientos has not been given a fear interview, and undersigned counsel has not been informed about a scheduled interview.

LEGAL FRAMEWORK

Section 240 Removal Proceedings

40. In full immigration court removal proceedings, also referred to as Section 240 proceedings, an immigration judge ("IJ") determines whether to order a noncitizen removed and whether to grant an immigration benefit or protection from removal. 8 U.S.C. §§ 1229a, 1231(b)(2)(A). If the noncitizen does not select a country of removal, the IJ will do so and may also designate alternative countries. 8 U.S.C. § 1231(b)(2)(D)-(E).

41. Noncitizens in removal proceedings are entitled to sufficient notice and opportunity to apply for protection from removal to a designated country where they fear persecution or torture. 8 C.F.R. §§ 1240.10(f), 1240.11(c)(1). These forms of protection include asylum, statutory withholding of removal under 8 U.S.C. § 1231(b)(3)(A), and protection under the Convention Against Torture.

Withholding of Removal Under the Convention Against Torture

42. Withholding of removal under the Convention Against Torture prohibits the return of an individual to their country of removal, if the individual shows that it is more likely than not that they will be tortured upon return. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987); FARRA (codified as Note to 8 U.S.C. § 1231); 8 C.F.R. §§ 208.16(c), 208.17, 1208.16(c), 1208.17; 28 C.F.R. § 200.1. Termination of CAT protection requires a new hearing, notice, and evidence that the person will no longer face torture. *See* 8 C.F.R. § 1208.17(d)(1), (d)(2).

Removal to a Third Country

43. The INA lays out how the government may designate countries to which noncitizens may be removed, including alternative countries. 8 U.S.C. § 1231(b)(1), (b)(2). Deportation to a country where the noncitizen is likely to face persecution or torture is not permitted. *See* 8 U.S.C. § 1231(b)(3)(A); 28 C.F.R. § 200.1; 8 C.F.R. 1208.17(a).

44. While ICE is authorized to remove noncitizens ordered removed to a specific country to alternative countries, *see* 8 U.S.C. § 1231(b)(2), the removal statute specifies restrictive criteria for identifying appropriate countries. Noncitizens can be removed, for instance, to the country "of which the [noncitizen] is a citizen, subject, or national"; the country "in

which the [noncitizen] was born"; or the country "in which the [noncitizen] resided" immediately before entering the United States. 8 U.S.C. § 1231(b)(2)(D)–(E).

45. When a noncitizen with a final grant of either withholding under the INA or deferral of removal under CAT is in ICE custody, the noncitizen's assigned Deportation Officer typically sends requests for removal to a random collection of three or more alternative countries. The request typically consists of an email to the country's embassy, with an attached form entitled ICE Form I-241, "Request for Acceptance of Alien." In nearly every case, the embassies either do not respond or they decline the request.

46. As a result, third country removal is exceedingly rare. As the Supreme Court noted in *Johnson v. Guzman Chavez*, in fiscal year 2017, "only 1.6% of [noncitizens] who were granted withholding of removal were actually removed to an alternative country." 594 U.S. at 537. From FY 2020 to FY 2023, according to publicly available data, ICE removed a total of only *five* noncitizens granted withholding or CAT relief to alternative countries. Exhibit G, ICE Removal Data[1]; *see also Munoz Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J. 2025).

47. If ICE does identify an appropriate alternative country of removal to accept the noncitizen, ICE must provide that individual with additional process prior to effectuating removal to that country. *See Jama v. ICE*, 543 U.S. 335, 348 (2005) ("If [noncitizens] 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) . . ."); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.

[1] The complete raw data for FY 2020 through FY 2023 is available at https://deportationdata.org/data.html and select "Removals (deportations)."

1999) (finding that "last minute" designation of alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process"); *D.V.D. v. DHS*, No. CV 25-10676-BEM, 2026 WL 521557, at *48 (D. Mass. Feb. 25, 2026) (finding 8 C.F.R. § 1231(b) requires notice and an opportunity to present statutory withholding claims and CAT relief from third countries).

48. On February 25, 2026, the U.S. District Court for the District of Massachusetts issued a decision declaring that the Department of Homeland Security ("DHS")'s third country removal policy is unlawful. *D. V. D. v. United States Dep't of Homeland Sec.*, No. 25-10676-BEM 2026 U.S. Dist. LEXIS 38553 (D. Mass. Feb. 25, 2026).[2] According to this policy, DHS sends noncitizens who were ordered removed to their country of origin to third countries to which they were not ordered removed, without notice or an opportunity to seek protection from persecution and torture. Instead, if the State Department receives credible diplomatic assurances from the third country that the noncitizen will not be persecuted or tortured, DHS does not provide any additional process or oversight. *Id.* at *3. If assurances are not available, DHS issues notice of intent to remove to third country. Upon receiving a third country notice a noncitizen who articulates a fear of torture or persecution in that third country should be provided a third country screening before a USCIS Asylum Officer. Unlike the well-known processes for similar interviews throughout the INA, such as for Reasonable Fear or Credible Fear Interviews, if the result of the third country fear screening is negative, the Government has maintained there is no mechanism for IJ review. *Cf.* 8 C.F.R. §§ 208.30(a)-(g) (outlining CFI procedure and IJ review), 208.31(a)-(g) (outlining CFI procedure and IJ review).

[2] *D.V.D.* is currently under an administrative stay issued by the First Circuit.

Due Process Protections for Immigrant Detainees

52. The government is required to provide conditions of reasonable health and safety to anyone that it detains or incarcerates. The Supreme Court has held that, ""when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being," and the government must therefore provide those in its custody with "food, clothing, shelter, medical care, and reasonable safety. . . ." DeShaney v. Winnebago Cty. Dep't. of Soc. Servs., 489 U.S. 189, 199–200 (1989).

53. Civil immigration detainees are entitled to even stronger constitutional protections than criminal prisoners, as they are held only to ensure their appearance for civil removal proceedings or deportation. The constitutional protections of immigration detainees derive from the Fifth Amendment Due Process Clause. *See Zadvydas v. Davis,* 533 U.S. 678, 690 (2001) ("[G]overnment detention violates the [Fifth Amendment Due Process] Clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections . . . or, in certain special and 'narrow' nonpunitive 'circumstances' . . . .").

54. Under the Fifth Amendment, the conditions of confinement of a person in civil detention may not "amount to punishment. . . ." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). The conditions of confinement may not be "expressly intended to punish," and they must be rationally related to a legitimate government objective. *Wolfish*, 441 U.S. at 535 & n.16.

55. The only legitimate purpose for civil immigration detention is to prevent flight and ensure the detained person's attendance for a hearing adjudicating their status or for removal, or to otherwise ensure the safety of the community. *See Zadvydas*, 533 U.S. at 690.

Detention of Noncitizens Granted CAT Protection

A. Statutory Framework

56. 8 U.S.C. § 1231 governs the detention of noncitizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)–(6). The "removal period" begins once a noncitizen's removal order "becomes administratively final" and lasts for 90 days, during which ICE "shall remove the [noncitizen] from the United States" and "shall detain the [noncitizen]" as it carries out the removal. 8 U.S.C. § 1231(a)(1)–(2). If ICE does not remove the noncitizen within the 90-day removal period, the noncitizen "*may* be detained beyond the removal period" if he meets certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6) (emphasis added). The 90-day removal period is extended where the noncitizen interferes with his removal in bad faith. *Id.* § 1231(a)(1)(C). If the removal period is not extended under § 1231(a)(1)(C) or § 1231(a)(6), the noncitizen is released on an OSUP, subject to conditions of release. 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.5(a)–(b).

57. To avoid "indefinite detention" that would raise "serious constitutional concerns," the Supreme Court in *Zadvydas* construed § 1231 to contain an implicit time limit. 533 U.S. at 682. In *Zadvydas*, the Court held that § 1231 authorizes detention only for "a period reasonably necessary to bring about the [noncitizen]'s removal from the United States." *Id.* at 689. Six months of post-removal order detention is considered "presumptively reasonable." *Id.* at 701. After that point, when the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.*

58. The six-month presumption is not irrebuttable. *Cruz-Medina v. Noem*, No. 1:25-cv-01768, Dkt No. 15, Order (D. Md. Aug. 11 2025) (Abelson, J.) (finding that the Supreme Court's six-month presumption was intended to be a rebuttable presumption). Rather, "*Zadvydas* established a 'guide' for approaching detention challenges, not a categorical prohibition on claims challenging detention less than six months." *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020); *see also Ali v. DHS*, 451 F. Supp. 3d 703, 708 (S.D. Tex. 2020) ("Whereas the *Zadvydas* Court established a presumption that detention that exceeded six months would be unconstitutional, it did not require a detainee to remain in detention for six months or to prove that the detention was of an indefinite duration before a habeas court could find that the detention is unconstitutional.").

B. Regulations on Post-Removal Order Detention

59. DHS regulations provide that, by the end of the 90-day removal period, the local ICE field office with jurisdiction over the noncitizen's detention must conduct a custody review to determine whether the noncitizen should remain detained. *See* 8 C.F.R. § 241.4(c)(1), (k)(1)(i) ("Prior to the expiration of the removal period, the district director . . . shall conduct a custody review . . ."). ICE is required to provide the noncitizen and, if applicable, their counsel with approximately 30 days' notice prior to such custody reviews, to allow an opportunity to submit evidence in support of release. *Id.* § 241.4(d)(3), (h)(2). The regulations further require that custody decisions be provided to counsel. *Id.* § 241.4(d)(3).

60. The Field Office Director, or their delegate, makes the final custody decision based on recommendations offered by lower-level officers. In making this custody determination, ICE considers several factors, including the availability of travel documents for removal. 8 C.F.R. § 241.4(e). The removal period can be extended, and the noncitizen may remain

in detention during such extended period if he fails or refuses to make timely application in good faith for travel or other documents necessary for departure. 8 U.S.C. § 1231(a)(1)(C); 8 C.F.R. § 241.5. If the factors in § 241.4 are met, ICE releases the noncitizen on an OSUP. 8 C.F.R. § 241.4(j)(2).

61. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that established "special review procedures" to determine whether detained noncitizens with final removal orders are likely to be removed in the reasonably foreseeable future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56,967 (Nov. 14, 2001). 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 [noncitizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [noncitizen] is not significantly likely in the reasonably foreseeable future." *Id.* § 241.4(i)(7).

62. Under this procedure, ICE HQ evaluates the foreseeability of removal by analyzing factors such as the history of ICE's removal efforts to the countries in question. *See* 8 C.F.R. § 241.13(f). If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on "special circumstances," it must justify the detention based on narrow grounds such as national security or public health concerns, *id.* § 241.14(b)–(d), or by demonstrating by clear and convincing evidence before an IJ that the noncitizen is "specially dangerous." *Id.* § 241.14(f).

C. Regulations on Revocation of Release

63. ICE may revoke the release of certain noncitizens released on an OSUP under two categories of circumstances. First, a noncitizen's release can be revoked if they violate the

conditions of release. 8 C.F.R. § 241.4(l)(1). Alternately, the Executive Associate Commissioner (or a District Director) can revoke release on conditions and re-detain a noncitizen when (1) the purposes of release have been served, (2) the noncitizen violated any condition of release, (3) "it is appropriate to enforce a removal order or to commence removal proceedings," or (4) "release would no longer be appropriate" due to the noncitizen's conduct. *Id.* § 241.4(l)(2).

64. In either case, the noncitizen is entitled to receive notice of the reasons for revocation and a "prompt" informal interview to respond to the reasons for revocation. If the noncitizen demonstrates that they did not violate the conditions of release, they can be released following the interview. 8 C.F.R. § 241.4(l)(3).

65. However, any individual whose release has been revoked (under either subsection) is entitled to the regular custody review procedures in 8 C.F.R. § 241.4, "which will ordinarily be expected to occur within approximately three months after release is revoked." *Id.* § 241.4(l)(3). "That custody review will include a final evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." *Id.*

CLAIMS FOR RELIEF

COUNT ONE
Violation of the Substantive Due Process Protections of the Fifth Amendment of the Constitution and 8 U.S.C. § 1231(a)

66. The allegations in the above paragraphs are realleged and incorporated herein.

67. Under longstanding Supreme Court precedent, noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status.

Zadvydas, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Freedom from physical restraint "lies at the heart of the liberty that the Due Process Clause protects." *Zadvydas*, 533 U.S. at 690.

68. Under the Due Process Clause, detention must always bear "some reasonable relation to the purpose for which the individual was committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The only legitimate purpose for federal civil immigration detention is to prevent flight risk and ensure the detained person's attendance for legal hearings adjudicating their status or potential removal, or to otherwise ensure the safety of the community. *Zadvydas*, 533 U.S. at 690–91.

69. Here, Mr. García Barrientos' detention is not reasonably related to its purpose. There is no reason to believe that Mr. García Barrientos would not attend any immigration proceedings. Mr. García Barrientos has lived in the United States since 2022 and has a disabled 22-month-old U.S. citizen daughter whom he takes care of and supports financially. Mr. García Barrientos has attended all of his ICE check-ins and his immigration court hearings. Mr. García Barrientos was granted withholding of removal under the CAT by an immigration judge ("IJ") and has been granted employment authorization. Before his detention, Mr. García Barrientos was lawfully working in the United States and supporting his family.

70. A noncitizen with a final removal order who is not removed within 90 days "shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3). While 8 U.S.C. § 1231(a)(6) permits detention of an individual with a final removal order beyond 90 days, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Zadvydas*, 533 U.S. at 699.

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

72. Under *Zadvydas*, the government must show that removal will be effectuated "in the reasonably foreseeable future." Courts have routinely granted habeas petitions where, as here, the government does not establish *Zadvydas*'s timing element. *See, e.g., Balza v. Barr*, No. 6:20-CV-00866, 2020 WL 6143643, at *5 (W.D. La. Sept. 17, 2020), *report and recommendation adopted,* No. 6:20-CV-00866, 2020 WL 6064881 (W.D. La. Oct. 14, 2020) ("[A] theoretical possibility of eventually being removed does not satisfy the government's burden[.]"); *Eugene v. Holder*, No. 408CV346-RH WCS, 2009 WL 931155, at *4 (N.D. Fla. Apr. 2, 2009) ("While Respondents contend Petitioner *could* be removed to Haiti, it has not been shown that it is significantly likely that Petitioner *will* be removed in the *reasonably foreseeable* future."); *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418, 426 (M.D. Pa. 2004) (granting petition because even if "Petitioner's removal will ultimately be effected . . . the Government has not rebutted the presumption that removal is not likely to occur in the reasonably foreseeable future"); *Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 50 (D.D.C. 2002) (granting petition where the government had not provided any "evidence . . . that travel documents will be issued in a matter of days or weeks or even months").

73. Respondents have not shown that Mr. García Barrientos will be removed to a third country in the reasonably foreseeable future. Respondents are required to provide Mr. García Barrientos with sufficient due process before removing him to a third country to which he has not been ordered removed. Sufficient process must include a reasonable fear interview

and the opportunity to appeal the decision to an IJ. Furthermore, Mr. García Barrientos has not been ordered removed to a third country, so any attempt to lawfully remove him to a third country would take time and not be completed in the reasonably foreseeable future.

74. Mr. García Barrientos has a liberty interest in remaining free from physical confinement where removal is not reasonably foreseeable, and he has not violated the conditions of his release. His re-detention is unlawful, because Respondents do not have a lawful mechanism which ensures that he will be given meaningful notice and an opportunity to present a fear-based claim before removal to a third country.

75. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO
Violation of the Convention Against Torture, the Foreign Affairs Reform and Restructuring Act of 1998, and Implementing Regulations

76. The allegations in the above paragraphs are realleged and incorporated herein.

77. The Convention Against Torture prohibits state parties from expelling, returning, or extraditing a person to another State "where there are substantial grounds for believing that he would be in danger of being subjected to torture." Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987); FARRA (codified as Note to 8 U.S.C. § 1231).

78. There are substantial grounds for believing that Mr. García Barrientos would be tortured if he is removed to El Salvador. Furthermore, Mr. García Barrientos is entitled to due to process with regards to any country to which Respondents attempt to remove him, and he must be given notice and an opportunity to present his claim of fear.

79. For these reasons, Petitioner's removal to El Salvador or any other country to which he has not been ordered removed violates the CAT.

COUNT THREE
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and Procedural Due Process Clause of the Fifth Amendment

Against ICE Respondents

80. The allegations in the above paragraphs are realleged and incorporated herein.

81. Under the APA, "a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . is entitled to judicial review." 5 U.S.C. § 702.

82. 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).

83. ICE Respondents have violated their own binding regulations at 8 C.F.R. § 241.4(l) by re-detaining Petitioner after he was granted immigration relief, without determining whether exceptional circumstances warrant his renewed detention. This agency action is arbitrary, capricious, and contrary to law in violation of the APA and of the *Accardi* Doctrine. *See Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *see also Benitez Pineda v. Noem et al.*, No. 1:25-cv-2337 (E.D. Va. Mar. 2, 2026), Dkt. No. 17 (finding that "the requirement that a senior official 'make the determination to revoke release—that is, to restrict a person's liberty—is not merely a housekeeping requirement' but instead 'part of a procedural framework, designed to ensure the fair processing of an action affecting an individual, a violation of which can be deemed to be prejudicial and thus to implicate due process.'").

84. The revocation of Petitioner's OSUP is deficient because it does not make the required finding that the Executive Associate Commissioner could not be involved in the decision due to extenuating circumstances. *See* 8 C.F.R. § 241.4(l)(2) (authorizing district director to revoke release where "in the district director's opinion, revocation is in the public interest *and* circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner") (emphasis added). No finding was provided as to why revocation of the order of supervision serves the public interest, or why circumstances did not reasonably permit referral of the case to the Executive Associate Commissioner, as required by 8 C.F.R. § 241.4(l)(2).

85. ICE Respondents have further failed to comply with the post-order custody review procedures at 8 C.F.R. § 241.4(d), (h), and (k) by failing to provide Petitioner and his counsel with 30 days' notice and an opportunity to submit evidence prior to his custody review, failing to conduct the custody review soon after his re-detention, and failing to provide counsel with a copy of his Decision to Continue Detention. Such omissions violate Petitioner's due process rights under the Fifth Amendment. Although the revocation order states that Petitioner will be "afforded an informal interview," there is no indication on the record that any such informal interview pursuant to 8 C.F.R. § 241.4(*l*)(1) has taken place, or will take place.

86. 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 FOUR
Violation of the Procedural Due Process Clause of the Fifth Amendment

87. The allegations in the above paragraphs are realleged and incorporated herein

88. Petitioner has a due process right to meaningful notice and opportunity to present a fear-based claim to an asylum officer in a fear interview and the option of IJ review of that interview. *See D.V.D. v. DHS*, No. CV 25-10676-BEM, 2026 WL 521557, at *48; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019).

89. This Court has recently ordered the government to provide for IJ review of a petitioner's removal to a third country not identified in his or her removal order. *See Cruz-Medina v. Noem*, No. 1:25-cv-01768, Dkt No. 51, Order (D. Md. Nov. 12 2025) (Abelson, J.).

90. Petitioner also has a due process right to not be re-detained without having received meaningful notice and an opportunity to present a fear-based claim prior to removal to a third country.

91. This Court should order Petitioner's release from custody and enjoin his removal to any third country until the completion of a full and lawful fear interview process, including the option of IJ review.

COUNT FIVE
Declaratory Judgment, 28 U.S.C. § 2201

92. The allegations in the above paragraphs are realleged and incorporated herein

93. A court "may declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. § 2201(a).

94. This Court should declare that the INA, FARRA, implementing regulations, the Due Process Clause of the Fifth Amendment, and the treaty obligations of the United States

require Respondents to provide meaningful notice and an opportunity to present a fear-based claim, with the possibility of IJ review, prior to re-detaining Petitioner and prior to removing Petitioner to a third country.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter.

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

(3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment and Petitioner's statutory rights.

(4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.

(5) In the alternative, order that Petitioner not be removed from the United States until this Court is satisfied that due process has been met.

(6) Order that Respondents afford Petitioner with sufficient notice and an opportunity to be heard regarding any claim of fear that he has with regards to any third country to which Respondents seek to remove Petitioner, including giving Petitioner a reasonable fear interview for each country to which Respondents seek to remove Petitioner and to which Petitioner fears removal.

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

(8) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Julia Rigal
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Pro Bono Counsel for Petitioner

Dated: March 13, 2026

List of Exhibits

Exh. 1) Copy of Order of the Immigration Judge ordering Mr. Garcia Barrientos removed to Venezuela and granting Mr. Garcia Barrientos Withholding of Removal under the Convention Against Torture on February 6, 2025.

Exh. 2) Copy of Notice of Revocation of Release issued March 5, 2026, and accompanying Notice of Removal to El Salvador.

Exh. 3) Copy of ICE Form I-385, showing date of entry of July 18, 2022 and granting Mr. Garcia Barrientos parole until September 19, 2022.

Exh. 4) Copy of Form I-797C, Approval Notice granting Mr. Garcia Barrientos Temporary Protected Status from April 2, 2024, until April 2, 2025.

Exh. 5) Emails between Mr. Garcia Barrientos' counsel and the ICE ERO Baltimore Field Office, dated March 6, 2026-March 9, 2026.

Exh. 6) ICE Policies on Post-Relief Release

Exh. 7) Copy of Form I-797, Category A10 Employment Authorization Approval Notice, granting Mr. Garcia Barrientos employment authorization until August 5, 2030.

Exh. 8) Letter from [redacted] regarding Mr. Garcia Barrientos' mental health conditions and risks of detention for his mental health and physical safety.

Exh. 9) Letter from [redacted] regarding Mr. Garcia Barrientos' mental and physical health conditions.

Exh. 10) Redacted birth certificate of Mr. Garcia Barrientos' 22-month-old U.S. citizen daughter.

Exh. 11) Redacted letter from doctor documenting disabilities of Mr. Garcia Barrientos' 22-month-old U.S. citizen daughter.

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

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

Dated this 13th day of March, 2026.

/s/ Julia Rigal
Julia Rigal