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9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE WESTERN DISTRICT OF WASHINGTON**

12 **MAFOUZE DIALLO,**
13 (A ¹)
14 *Petitioner,*

15 v.

16 **BRUCE SCOTT, WARDEN**
17 **OF NORTHWEST ICE PROCESSING**
18 **CENTER, in his official capacity;**

19 **LAURA HERMOSILLO, SEATTLE**
20 **FIELD OFFICE ACTING DIRECTOR,**
21 **ENFORCEMENT AND REMOVAL**
22 **OPERATIONS, ICE, in her official**
capacity;

PAMELA BONDI, ATTORNEY
GENERAL, UNITED STATES
DEPARTMENT OF JUSTICE, in her
official capacity;

KRISTI NOEM, SECRETARY,
UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, in her official
capacity; and

TODD LYONS, DIRECTOR,
IMMIGRATION AND CUSTOMS
ENFORCEMENT, in his official capacity;

Respondents.

) **CIVIL ACTION NO.:**

) **PETITION FOR WRIT OF HABEAS**
) **CORPUS PURSUANT TO 28 U.S.C. §**
) **2241 AND COMPLAINT FOR**
) **DECLATORY AND INJUNCTIVE**
) **RELIEF**

) **IMMIGRATION HABEAS CASE**

¹ Petitioner is currently detained

PETITION FOR WRIT OF HABEAS CORPUS TO 28 U.S.C. § 2241

1
2 1. COMES NOW, Petitioner, Mafouze Diallo ("Petitioner" or "Mr. Diallo") by and through
3 the undersigned counsel, and hereby files this Complaint against Respondents Bruce Scott,
4 Warden of Northwest Immigration and Customs Enforcement ("ICE") Processing Center; Laura
5 Hermosillo, Acting Director of the Seattle Field Office, Enforcement and Removal, ICE; Pamela
6 Bondi, Attorney General, United States Department of Justice ("DOJ"); Kristi Noem, Secretary,
7 United States Department of Homeland Security ("DHS"); and Todd Lyons, Director, U.S.
8 Immigration and Customs Enforcement. In support of his petition, Petitioner alleges as follows:

9 **INTRODUCTION**

10 2. Petitioner Mafouze Diallo is a twenty-nine-year-old (29) native and citizen of Senegal who
11 arrived in the United States for the first time on December 17, 2023, where he sought protection
12 from severe persecution [REDACTED] in his home country
13 of Senegal on account of [REDACTED]

14 3. On December 18, 2023, Mr. Diallo was served with a Notice to Appear ("NTA"), charging
15 Petitioner as inadmissible under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act
16 ("INA") as a noncitizen present in the United States without admission or parole. *See Exhibit 1;*
17 *see also* 8 U.S.C. § 1182(a)(6)(A)(i).

18 4. On June 17, 2024, Mr. Diallo submitted Form I-589, Application for Asylum and
19 Withholding of Removal, where he sought protection from persecution in his native home of
20 Senegal on account of [REDACTED]

21 5. On October 6, 2025, prior to his Master Calendar Hearing, Petitioner appeared as instructed
22 at the Spokane, Washington ICE sub-office for a check-in, as part of the Alternatives to Detention

1 program.² Petitioner was detained at this time for allegedly failing to check in through the Smart
 2 Link application. *See Exhibit 2.* Mr. Diallo was taken into detention at the Northwest ICE
 3 Processing Center, where he has remained ever since. *Id.*

4 6. On October 30, 2025, Petitioner attended his Master Calendar Hearing, where allegations
 5 and pleadings were entered and his Individual Hearing was set for November 20, 2025. In advance
 6 of his Individual Hearing before the Immigration Judge ("IJ"), Petitioner submitted a Prehearing
 7 Statement and Brief in support of his applications for asylum, withholding of removal, and
 8 protection under the Convention Against Torture ("CAT"). Along with his Prehearing Statement
 9 and Brief, Petitioner submitted over 150 pages of documents in support of his applications which
 10 detailed [REDACTED] *See Exhibit 3.*

11 7. On November 20, 2025, the IJ issued an oral decision denying his application for asylum
 12 on the grounds that Petitioner was subject to the Circumvention of Lawful Pathways Rule, 8 C.F.R.
 13 § 208.33(a)(1)-(2). *Exhibit 4.* Petitioner was then ordered removed to Senegal, but his removal
 14 order was withheld upon the IJ granting Petitioner's application for Withholding of Removal. *Id.*;
 15 8 U.S.C. § 1231(b)(3). The Department of Homeland Security ("DHS") waived their right to
 16 appeal this decision. *Id.* Accordingly, the removal order became final on Monday, December 22,
 17 2025. *See* 8 U.S.C. § 1011(a)(47)(A). Under the controlling laws, Petitioner therefore has a final

18
 19 ² According to ICE, the Alternatives to Detention Program (also known as ADP) is a supervision
 20 process used "to ensure compliance with release conditions and provides important case
 21 management services for non-detained aliens." *See* Alternatives to Detention, ICE, available at
 22 <https://www.ice.gov/features/atd> (last visited Mar. 20, 2026). The Alternatives to Detention
 Program monitors noncitizens through the "the Intensive Supervision Appearance Program
 (ISAP)," which allegedly "utilizes case management and technology tools to support aliens'
 compliance with release conditions while on ICE's non-detained docket." *Id.* The technology used
 in Petitioner's case was a cell-phone app where Petitioner was required to "check-in" frequently.

1 order of removal under 8 U.S.C. § 1231(a), but his removal order is withheld. *See also* INA §
2 241(a), 212(a)(6)(A)(i).

3 8. Under 8 U.S.C. § 1231, once a removal order becomes administratively final, the
4 government has 90 days—called the “removal period”—to remove the noncitizen from the United
5 States. 8 U.S.C. § 1231(a)(1)(A). During the removal period, the noncitizen “shall” be detained.
6 *Id.* § 1231(a)(2)(A). Once the removal period expires, the government “may” continue to detain
7 certain noncitizens, or it may release the noncitizen on supervision. *Id.* § 1231(a)(3); *see also*
8 *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001).

9 9. The length that a noncitizen may be detained after expiration of the removal period is
10 limited by “the Constitution’s demands.” *Zadvydas*, 533 U.S. at 689. Specifically, the Fifth
11 Amendment forbids the government from depriving any person of “life, liberty, or property,
12 without due process of law.” U.S. Const. Amend. V. In *Zadvydas*, the Supreme Court held that,
13 when read in light of this constitutional mandate, “post-removal-period detention” under § 1231(a)
14 must be limited to “a period reasonably necessary to bring about [the noncitizen’s] removal from
15 the United States.” *Zadvydas*, 533 U.S. at 689.

16 10. The Supreme Court has held that the INA’s post-removal period detention provision “does
17 not permit indefinite detention” of a noncitizen beyond the 90-day removal period but rather
18 contains “an implicit limitation” of “detention to a period that is reasonably necessary to bring
19 about” removal. 533 U.S. at 689, 697. The provision stating that the Attorney General “may”
20 continue to detain a noncitizen who is a “risk to the community or unlikely to comply with the
21 order of removal” is not grant of limited discretion and once removal is no longer reasonably
22 foreseeable, continued detention is no longer authorized under the INA. *Id.*; *see also* U.S. Const.
Amend. V; INA § 241(a)(6); 8 U.S.C. § 1236(a)(6).

11. Petitioner's prolonged civil detention for **169 days** now includes more than 90 days since his final order of removal, and without release on bond and without likely release in the foreseeable future it is considered unreasonable under *Zadvydas* and violates the Due Process Clause of the Fifth Amendment. The IJ withheld Petitioner's removal to his native home of Senegal, upon a finding that he had a well-founded fear of persecution, *See Exhibit 3*.

12. DHS has yet to designate a country of removal, nor has DHS moved to challenge or terminate Petitioner's grant of withholding of removal. Accordingly, because there is not a likelihood that Petitioner will be removed to Senegal or any other country in the reasonably foreseeable future, his detention is no longer permitted by the INA as construed in *Zadvydas*. *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."). Petitioner's detention is therefore unlawful and he should be released from detention. *See Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025) (allowing release upon a finding that removal was not reasonably foreseeable).

13. Because ICE has exceeded the scope of its limited authority to deprive Mr. Diallo of his physical liberty, and because Petitioner is deprived of the opportunity for release on bond, Petitioner respectfully requests this Court issue a writ of habeas corpus and determine that his continued detention is not justified under the Fifth Amendment of the U.S. Constitution.

JURISDICTION

I. STATUTORY JURISDICTION UNDER 28 U.S.C. § 2241

14. This action arises under the Constitution of the United States and the INA. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. §1331 (federal question

Petition for Writ of Habeas Corpus
Pursuant to 28 U.S.C. § 2241

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jurisdiction) as well as jurisdiction pursuant to Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

15. Federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas*, 533 U.S. 678, 687 (2001).

16. This Court has jurisdiction to grant writs of habeas corpus to noncitizens who are being detained “in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3); *see also Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (clarifying that an immigration detainee’s challenge to “their confinement and removal . . . fall within the ‘core’ of the writ of habeas corpus”) (per curiam); *Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (“[D]istrict courts retain jurisdiction under 28 U.S.C. § 2241 to consider habeas challenges to immigration detention”).

II. JURISDICTION PRESERVED BY THE CONSTITUTION AND THE SUSPENSION CLAUSE

17. Habeas jurisdiction is also preserved by the Constitution. Although the Constitution does not itself grant federal habeas jurisdiction, it expressly preserves the writ through the Suspension Clause. *Boumediene v. Bush*, 553 U.S. 723, 743–46 (2008). As the Supreme Court has explained, the Suspension Clause “ensures that, except during periods of formal suspension, the Judiciary will have a time-tested device, the writ, to maintain the delicate balance of government that is itself the surest safeguard of liberty.” *Boumediene*, 553 U.S. at 745. “The Clause protects the rights of the detained by affirming the duty of the Judiciary to call the jailer into the account.” *Id.*

18. Congress may not “eliminate the writ without running afoul of the Suspension Clause” unless it “provides ‘a collateral remedy which is neither inadequate nor ineffective to test the legality of a person’s detention.’” *Singh v. Mukasey*, 533 F.3d 1103, 1106 (9th Cir. 2008) (quoting *Swain v. Pressley*, 430 U.S. 372, 381 (1977)); see also *Perez v. Barr*, 957 F.3d 958, 963 (9th Cir. 2020).

19. Petitioner is in the custody of federal immigration authorities and challenges both the lawfulness of the government subjecting him to mandatory detention under 8 U.S.C. section 1231 on the grounds that such actions violate the Constitution, judicial precedent, and federal statutes. Petitioner’s claims fall squarely within the scope of habeas corpus review under 28 U.S.C. § 2241, as recognized by controlling Ninth Circuit and Supreme Court authority. Accordingly, this Court has jurisdiction over Petitioner’s habeas petition pursuant to 28 U.S.C. § 2241 and the Constitution.

III. ADMINISTRATIVE EXHAUSTION

20. Neither the habeas statute, 8 U.S.C. § 2241, nor the relevant statutory provisions of the INA require petitioners to exhaust administrative remedies before filing petitions for habeas corpus. *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001).

21. As to prudential exhaustion, courts may waive the requirement if “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.” quoting *SEC v. G.C. George Sec., Inc.*, 637 F.2d 685, 688 (9th Cir. 1981); see also *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (affirming the Court’s ability to waive prudential exhaustion).

22. As a preliminary note, Petitioner already endured a due process violation during the first two months of his removal proceedings. From October 6, 2025, through December 21, 2025, Petitioner, who was detained pursuant to 8 U.S.C. section 1226(a), was erroneously subject to

1 mandatory detention, pursuant to the government's newly minted interpretation of the INA in
2 *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 219-220 (BIA 2025) (concluding that individuals
3 detained pursuant to 8 U.S.C. section 1226(a) are subject to section 1225's mandatory detention
4 provision). And district courts across the Ninth Circuit—including this Court—have concluded
5 that the government's practice of subjecting individuals detained under section 1226(a) to
6 mandatory detention constitutes both a substantive and procedural due process violation. See
7 *Escobar Salgado v. Mattos*, 809 F. Supp. 3d 1123, 1158-62 (D. Nev. 2025); see also
8 *Balwan v. Bondi*, No. 2:26-CV-00248-LK, 2026 WL 497098, at *4-9 (W.D. Wash. Feb. 23, 2026).

9 23. Nonetheless, when Petitioner's removal order became final on December 21, 2025, the
10 statute governing Petitioner's detention transitioned to 8 U.S.C. section 1231(a). While section
11 1231(a) mandates detention for the 90-days following a removal order (known as the removal
12 period), any permissible period of detention thereafter is constrained by the Fifth Amendment's
13 Due Process Clause.

14 24. The constraints of the Due Process Clause are imperative in Petitioner's case considering
15 the government previously subjected Petitioner to more than two months of mandatory detention
16 based on an erroneous reading of the INA. Furthermore, "[i]t is well established that the
17 deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v.*
18 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).
19 And where, as here, the "alleged deprivation of a constitutional right is involved, most courts hold
20 that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989,
21 1001-02 (9th Cir. 2005) (quotation omitted).

22 25. To the extent additional irreparable injury is necessary, Petitioner urges this Court to
consider the Ninth Circuit's acknowledgement of the "irreparable harms imposed on anyone

subject to immigration detention” which include, but are not limited to, “subpar medical and psychiatric care in ICE detention facilities,” as well as “the economic burdens imposed on detainees and their families as a result of detention.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). When these “irreparable harms” are combined with the due process violations Petitioner has already endured, it is imperative that this Court waive any prudential exhaustion requirement to prevent further irreparable injury. *Hernandez*, 872 F.3d at 995; *see also Rodriguez v. Bostock*, 779 F.Supp.3d 1239, 1253 (W.D. Wash. 2025) (“The Ninth Circuit has recognized the ‘irreparable harms imposed on anyone subject to immigration detention’”) (quoting *Hernandez*, 872 F.3d at 995).

VENUE

26. Venue is proper in this District, pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2), (e)(1), because the Petitioner is detained within this District at the Northwest ICE Processing Center in Tacoma, Washington. Petitioner is a resident of Spokane Washington and was detained by ICE within this District.

PARTIES

27. Petitioner Mafouze Diallo is a native and citizen of Senegal who first entered the United States in December 2023, after fleeing Senegal to save his life.

28. Respondent Bruce Scott is the Warden of the Tacoma, Washington Northwest ICE Processing Center located in this District. As such, Mr. Scott is Petitioner’s custodian and is responsible for Petitioner’s detention and removal. Respondent is sued in his official capacity.

29. Respondent Laura Hermosillo is the Acting Director of the Seattle Field Office Enforcement and Removal Operations of ICE. As such, Ms. Hermosillo is Petitioner’s immediate

1 custodian responsible for his detention at Northwest ICE Processing Center and the person with
2 the authority to authorize Petitioner's detention or release. She is named in her official capacity.

3 30. Respondent Todd M. Lyons is the Acting Director of ICE. As the Senior Official
4 Performing the Duties of the Director of ICE, he is responsible for the administration and
5 enforcement of the immigration laws of the United States; routinely transacts business in this
6 District; and is legally responsible for pursuing any effort to detain and remove Mr. Diallo.
7 Respondent Lyons is sued in his official capacity.

8 31. Respondent Kristi Noem is the Secretary of Homeland Security and has ultimate authority
9 over DHS. In that capacity and through her agents, Respondent Noem has broad authority over
10 and responsibility for the operation and enforcement of the immigration laws; routinely transacts
11 business in this District; and is legally responsible for pursuing any effort to detain and remove
12 Mr. Diallo. Respondent Noem is sued in her official capacity.

13 32. Respondent Pamela Bondi is the Attorney General of the United States and the most senior
14 official at the Department of Justice. In that capacity and through her agents, she is responsible for
15 overseeing the implementation and enforcement of the federal immigration laws. The Attorney
16 General delegates this responsibility to the Executive Office for Immigration Review, which
17 administers the immigration courts and the BIA. Respondent Bondi is sued in her official capacity.

18 **BACKGROUND**

19 33. Petitioner Mafouze Diallo is a twenty-nine-year-old (29) native and citizen of Senegal who
20 arrived in the United States for the first time on December 17, 2023 where he sought protection
21 from severe persecution [REDACTED]
22 [REDACTED]

1 34. On December 18, 2023, Mr. Diallo was served with an NTA, charging Petitioner as
2 inadmissible under INA section 212(a)(6)(A)(i). *See Exhibit 1; see also* 8 U.S.C. §
3 1182(a)(6)(A)(i). Petitioner's Master Calendar Hearing was set for November 8, 2024 and later
4 rescheduled for October 30, 2025. *Id.*

5 35. On June 17, 2024, Mr. Diallo submitted Form I-589, Application for Asylum and
6 Withholding of Removal, where he sought protection from persecution in his native home of
7 Senegal on account of [REDACTED]

8 36. On October 6, 2025, prior to his Master Calendar Hearing, Petitioner appeared as instructed
9 at the Spokane, Washington ICE sub-office for a check-in (as part of the Alternatives to Detention
10 program). Petitioner was apprehended at this time for allegedly failing to check in through the
11 Smart Link application. *See Exhibit 2.* Mr. Diallo was taken into detention at the Northwest ICE
12 Processing Center, where he has remained ever since. *Id.*

13 37. On October 30, 2025, Petitioner attended his Master Calendar Hearing, where allegations
14 and pleadings were entered and his Individual Hearing was set for November 20, 2025. In advance
15 of his Individual Hearing before the IJ, Petitioner submitted a Prehearing Statement and Brief in
16 support of his applications for asylum, withholding of removal, and protection under the CAT.
17 Along with his Prehearing Statement and Brief, Petitioner submitted over 150 pages of documents
18 in support of his applications which detailed [REDACTED]
19 [REDACTED]

20 38. On November 20, 2025, the IJ issued an oral decision denying his application for asylum
21 and ordering Petitioner removed, but granting Petitioner's application for Withholding of
22 Removal. *See Exhibit 4; see also* 8 U.S.C. § 1231(b)(3). The administrative appeal period for the

1 IJ's decision expired on December 21, 2025. *See* 8 CFR § 1241.1(c). Petitioner's final order of
2 removal became final that same day. 8 U.S.C. § 1231(a).

3 39. Petitioner has remained in civil detention for over 169 days and for more than 90 days
4 since his final order of removal without release on bond and with no release likely in the
5 foreseeable future. The IJ withheld Petitioner's removal to his native home of Senegal, upon a
6 finding that he had a well-founded fear of persecution. *See Exhibit 4*. And as of the date of this
7 filing, DHS has yet to designate a country of removal or take any action to indicate that a country
8 of removal is being sought out. Nor has Petitioner been granted the opportunity for release on
9 bond.

10 40. Despite Petitioner's lack of any criminal history, his grant of withholding of removal, and
11 clear ties to the United States—including his previously issued work permit and desire to remain
12 for his own safety—Petitioner remains in a seemingly indefinite detention with no hope of a future
13 release. This is harmful to Petitioner's emotional and physical well-being and a clear violation of
14 his Due Process rights.

15 LEGAL FRAMEWORK

16 41. "Writs of habeas corpus may be granted by ... the district courts ... within their
17 respective jurisdictions." 28 U.S.C. § 2241(a). A habeas petitioner must prove "by the
18 preponderance of the evidence that he is entitled to habeas relief." *Davis v. Woodford*, 384 F.3d
19 628, 638 (9th Cir. 2004); 28 U.S.C. § 2241(c).

20 42. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of
21 law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v.*
22 *Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody,

1 detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process]
 2 Clause protects.” *Zadvydas*, 533 U.S. at 690.

3 I. WITHHOLDING OF REMOVAL AND THE 90-DAY REMOVAL PERIOD

4 43. Petitioner is detained pursuant to 8 U.S.C. §1231, which governs detention following the
 5 entry of a final order of removal. Because Petitioner received a grant of Withholding of Removal,
 6 DHS is prohibited from removing Petitioner to Senegal. *See Johnson v. Guzman Chavez*, 594 U.S.
 7 523, 536 (2021) (outlining the framework for withholding of removal). A grant of withholding of
 8 removal does not, however, prohibit removal from the United States. *Id.*

9 44. 8 U.S.C. § 1231 sets out the authority of ICE to detain noncitizens under federal law. The
 10 statute directs the Attorney General of the United States to complete the removal of any noncitizen
 11 from this country within 90 days of any order of removal. 8 U.S.C. § 1231(a)(1). Because the
 12 removal order in the instant matter became final upon expiration of the appeal period: December
 13 22, 2025, 8 U.S.C. § 1101(a)(47)(A), DHS 90-day removal period expired 90 days thereafter. *See*
 14 8 CFR § 241.1(c)

15 45. A noncitizen’s post-removal detention period is limited “to a period reasonably necessary
 16 to bring about that [noncitizen’s] removal from the United States. It does not permit indefinite
 17 detention.” *Zadvydas*, 533 U.S. at 689. Rather, “once removal is no longer reasonably foreseeable,
 18 continued detention is no longer authorized by statute,” the noncitizen must be released. *Zadvydas*
 19 *v. Davis*, 533 U.S. 678, 699 (2001). *See Tzafrir v. Bondi*, No. 25-cv-2070, 2025 WL 3134703, at *2
 20 (W.D. Wash. Nov. 10, 2025) (“A noncitizen’s liberty interest is also ‘strong enough to raise a
 21 serious question as to whether, irrespective of the procedures used...the Constitution permits
 22 detention that is indefinite and potentially permanent.’”) (quoting *Zadvydas*, 533 U.S. at 696).

II. ZADVYDAS AND THE “PRESUMPTIVELY REASONABLE” 6-MONTH PERIOD

46. Section 1231(a) states that the Secretary of Homeland Security “shall remove the alien from the United States within a period of 90 days.” 8 U.S.C. § 1231(a)(1)(A). As such, when an individual is issued a final order of removal, that person must be removed from the country within the 90-day period. *Id.*

47. Although Section 1231(a) permits post-order detention (detention after 90 days) in certain circumstances, that authority is constrained by the Fifth Amendment’s Due Process Clause. In *Zadvydas*, the Supreme Court held that “for the sake of uniform administration in the federal courts,” following a final removal order it is “presumptively reasonable” for the Government to detain a noncitizen for six months while the Government works to remove that person from the United States. *Zadvydas*, 533 U.S. 678 at 701. “After this 6-month period, once 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.*

48. However, *Zadvydas* recognized a “presumptively,” not categorically, reasonable period of detention of six months. 533 U.S. at 699; *Villanueva v. Tate*, 801 F.Supp.3d 689, 703 (S.D. Tex. 2025) (“[T]he presumption of constitutionality during that six-month period is rebuttable.”); *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *5–6 (D. Md. Sept. 8, 2025) (collecting cases). It did so merely “to guide lower court determinations” of whether removal is reasonably foreseeable. *Zadvydas*, 533 at 700–01. And *Zadvydas* unequivocally held that “once removal is no longer reasonably foreseeable, continued detention is no longer authorized.” 533 U.S. at 699–700.

49. “Although the Supreme Court established a six-month period of presumptively reasonable detention, it did not preclude a detainee from challenging the reasonableness of his detention before such time.” *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 395 (D.N.J. June 24, 2025); Indeed, numerous district courts have similarly concluded that “allowance of a detainee’s challenge to the reasonability of their detention before the six-month period expires is a more reasonable and accurate interpretation of *Zadvydas*.” See *Gomez-Simeon v. Bondi*, 2025 WL 3470872, at *4 (W.D. Tex. Nov. 24, 2025); accord *Villanueva v. Tate*, 801 F. Supp. 3d 689 (S.D. Tex. 2025) (noting that *Zadvydas* does not preclude a challenge to detention before the presumptively constitutional time period has elapsed); *Zavvar v. Scott*, 2025 WL 2592543, at *6 (D. Md. Sept. 8, 2025) (“the six-month presumptively reasonable period identified in *Zadvydas* does not outright preclude noncitizens from raising a challenge to their detention under 8 U.S.C. § 1231(a)(6) until they have been detained for six months.”).

50. The Supreme Court “recognize[d] ... that review must take appropriate account of the greater immigration-related expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive [DHS] efforts to enforce this complex statute, and the Nation’s need to ‘speak with one voice’ in immigration matters.” *Zadvydas*, 533 U.S. at 700.

51. Accordingly, as the Supreme Court instructed, “courts can take appropriate account of such matters without abdicating their legal responsibility to review the lawfulness of an alien’s continued detention.” *Id.* “The Supreme Court clearly did not envision that courts would entirely step aside and permit six months of detention even when there was no likelihood that a person would be removed in the reasonably foreseeable future.” *Cruz Medina v. Noem*, 794 F.Supp.3d 365, 375 (D. Md. 2025). “To hold otherwise would condone detention in cases where removal is

1 not reasonably foreseeable or even functionally impossible, so long as it did not exceed six
 2 months.” *Munoz-Saucedo v. Pittman*, 789 F.Supp.3d 387, 397 (D.N.J. 2025) (citing *Cesar v.*
 3 *Achim*, 542 F.Supp.2d 897, 904 (E.D. Wis. 2008)). Because the question of whether detention is
 4 “reasonably necessary to secure removal is . . . is, or is not, pursuant to statutory authority,” the
 5 “authority to answer that question” rests with the “federal courts.” *Zadvydas*, 533 U.S. at 699.

6 52. This fundamental due process protection applies to all noncitizens, including both
 7 removable and inadmissible noncitizens. *Id.* at 721 (Kennedy, J. dissenting) (“[B]oth removable
 8 and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or
 9 capricious”). It also protects noncitizens who have been ordered removed from the United States
 10 and who face continuing detention, as well as those noncitizens deemed “arriving” under the INA.
 11 *See Diouf v. Napolitano*, 634 F.3d 1081, 1084-86 (9th Cir. 2011); *Jennings v. Rodriguez*, 583 U.S.
 12 281, 289 (2018) (Breyer, J. dissenting) (stating that “arriving” noncitizens enjoy due process
 13 protections against prolonged detention because they are “are held within the territory of the United
 14 States at an immigration detention facility.”). The Ninth Circuit has likewise expressed “grave
 15 doubts that any statute that allows for arbitrary prolonged detention without any process is
 16 constitutional or that those who founded our democracy precisely to protect against the
 17 government’s arbitrary deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909
 18 F.3d 252, 256 (9th Cir. 2018).

19 **III. LIKELIHOOD OF REMOVAL FOR WITHHOLDING OF REMOVAL** 20 **RECIPIENTS**

21 53. “Very few people subject to withholding of removal or CAT relief are removed from the
 22 United States.” *Puertas-Mendoza v. Bondi*, No. SA-25-CA-00890, 2025 WL 3142089, at *3
 (W.D. Tex. Oct. 22, 2025). Indeed, “[i]n fiscal year 2017, less than two percent of those granted

withholding of removal were deported to a third country.” *Id.* (citing *See American Immigration Council October 2020 Report, The Difference Between Asylum and Withholding of Removal*, www.americanimmigrationcouncil.org/fact-sheet/asylum-withholding-of-removal/ (last visited Mar. 20, 2026)). “And that is not simply a matter of United States policy—foreign governments ‘routinely deny’ requests to receive people who lack a connection to the would-be receiving country.” *Id.*

54. The fact that removal to a third country is unusual is not necessarily decisive, but it is important context. *See Munoz-Saucedo v. Pittman*, 2025 WL 1750346, at *7 (noting that “Petitioners presented deportation data from fiscal years 2020 through 2023,” showing that in those years “ICE removed ... only five non-citizens granted withholding or CAT relief to alternative countries”); *Guzman Chavez*, 594 U.S. at 552 (Breyer, J., dissenting) (“Studies have ... found that, once withholding-only relief is granted, the alien is ordinarily not sent to another ... country. Rather, the [noncitizen] typically remains in the United States for the foreseeable future.”).

IV. 8 U.S.C. SECTION 1231(A) AND DESIGNATION OF A THIRD COUNTRY OF REMOVAL

55. “When [a noncitizen] is found ineligible to remain in the United States, the process for selecting the country to which he will be removed,” often known as third-country removals, “is prescribed by 8 U.S.C. § 1231(b)(2).” *Jama v. Immig. & Customs Enf’t.*, 543 U.S. 335, 337 (2005). In some cases, the government may designate new, third countries for removal after removal proceedings have concluded. *Aden v. Nielsen*, 409 F.Supp.3d 998, 1008 (W.D. Wash. 2019). But these designations “are subject to the same mandatory protections that exist in removal proceedings,” which includes those afforded by due process. *Kumar v. Wamsley*, --F.Supp.3d--,

No. C25-2055, 2025 WL 3204724, at *2 (W.D. Wash. Nov. 17, 2025); *Arenado-Borges v. Bondi*, 2025 WL 3687518, at *6 (W.D. Wash. Dec. 19, 2025).

56. First, to comply with due process, DHS must provide notice and a meaningful opportunity for the petitioner to present any claim of fear of persecution or harm upon removal to a newly designated third country. *Aden*, 409 F.Supp.3d at 1009. The petitioner must then have “an opportunity to apply for asylum and related relief.” *Id.* at 1019. Indeed, “[i]n the context of country of removal designations, last minute orders of removal to a country may violate due process if an immigrant was not provided an opportunity to address his fear of persecution in that country.” *Najjar v. Lynch*, 630 F. App’x 724, 724 (9th Cir. 2016).

57. Second, the INA prohibits DHS from “remov[ing] a noncitizen to a country where their life or freedom would be threatened in that country because of the [noncitizen’s] race, religion, nationality, membership in a particular social group, or political opinion.” *Aden*, 409 F.Supp.3d at 1010 (citing 8 U.S.C. § 1231(b)(3)(A)). Because DHS’ “authority to remove a noncitizen to a [third] country . . . is contingent on its compliance with §1231(b): it therefore has an affirmative obligation to make a determination regarding a noncitizen’s claim of fear before deporting him.” *Aden*, 409 F.Supp.3d at 1010.

V. PROCEDURE GOVERNING THE 90-DAY POST-ORDER CUSTODY

58. Under Section 1231(a), a noncitizen who has been ordered removed must be detained during the 90-day removal period. 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(2)(A). However, if a noncitizen is not removed within this 90-day period, they “shall” instead “be subject to supervision under regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3) (emphasis added). Such supervision may include:

A. To appear before an immigration officer periodically for identification;

- B. To submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;
- C. To give information under oath about the [noncitizen's] nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and
- D. To obey reasonable written restrictions on the [noncitizen's] conduct or activities that the Attorney General prescribes for the [noncitizen].

8 U.S.C. § 1231(a)(3)(A)-(D).

59. In addition, before the end of the 90-day period, DHS is required to conduct a post-order custody review ("POCR") of noncitizens if their removal cannot be accomplished during the removal period. *See* 8 C.F.R. § 241.4(k)(1)(i). "In conducting the POCR, officials must review the alien's records and all documents submitted by the alien and must inform the alien of the decision."

Misirbekov v. Venegas, 2025 WL 3033732, at *1 (S.D. Tex. Oct. 29, 2025) (citing 8 C.F.R. § 241.4(h)(1)). "The 90-day POCR essentially considers three criteria: (1) flight risk; (2) danger to the community; and (3) likelihood of obtaining travel documents." *Id.* The 90-day POCR applies with equal force to noncitizen detainees who have received a grant of withholding or deferral of removal under the CAT. *See* 8 C.F.R. § 241.4(b)(3).

60. In circumstances where detention under 8 U.S.C. § 1231(a) has become prolonged, removal is not likely in the reasonably foreseeable future, POCR determinations have been deficient and/or nonexistent, and administrative remedies were initially unavailable and remain ineffective to challenge a noncitizen's continued detention, then the detention violates the Due Process Clause of the Fifth Amendment. *See Zadvydas*, 533 U.S. at 699-601.

CAUSES OF ACTION

COUNT I:

CONSTITUTIONALLY PROLONGED DETENTION IN VIOLATION OF THE FIFTH AMENDMENT (SUBSTANTIVE DUE PROCESS)

61. The Petitioner re-alleges and incorporates by reference the paragraphs above.

1 62. The Due Process Clause of the Fifth Amendment “forbids” the government from depriving
2 any “person of liberty without due process of law,” unless such detention is reasonably related to
3 its purpose. *Zadvydas*, 533 U.S. at 690 (ellipses omitted). Moreover, as detention becomes
4 prolonged, the Due Process Clause requires a “sufficiently strong justification” to outweigh the
5 significant deprivation of liberty, as well as strong procedural protections. *Zadvydas*, 533 U.S. at
6 679.

7 63. “[T]he Due Process Clause applies to all persons within the United States, including
8 [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at
9 697. For this reason, even “removable and inadmissible [noncitizens] are entitled to be free from
10 detention that is arbitrary and capricious,” *Id.* at 721 (Kennedy, J., dissenting). And the
11 government’s authority to make rules for “admission” that regulate the immigration status of
12 noncitizens does not affect this constitutional protection. *See* 8 U.S.C. § 1101(a)(13)(A) (defining
13 admission as “the lawful entry of the alien”).

14 64. To justify the Petitioner’s ongoing detention of over 169 days and over 90 days since his
15 final order of removal was issued, due process and the controlling statutes **require** ICE to have
16 already conducted a POCR of Petitioner. *See* 8 C.F.R. §241.4(k) (“Prior to the expiration of the
17 removal period, the district director or Director of the Detention and Removal Field Office **shall**
18 conduct a custody review . . . where the alien’s removal, while proper, cannot be accomplished
19 during the period...” (emphasis added).

20 65. But Petitioner, who has been held in detention for over 169 days and for over 90 days
21 since his final order of removal, has yet to receive any word (written or otherwise) from ICE
22 regarding his custody review hearing—a direct violation of the controlling statutes and
requirements set forth in *Zadvydas*. *See* 8 C.F.R. § 241.4; 66 Fed. Reg. 56967, 56969 (Nov. 21,

2001) (explaining how the *Zadvydas* decision prompted new regulations to give DHS a process for determining whether there is a significant likelihood of removal in the reasonably foreseeable future).

66. Accordingly, Petitioner has been held in seemingly indefinite detention, with no country of removal designated and no opportunity to even be released under an order of supervision (a clear violation of his constitutional rights). *Zadvydas*, 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.”).

67. Petitioner’s ongoing detention without removal in the foreseeable future, compounded with the IJ’s newfound “inability” to administer a custody review hearing at the start of Petitioner’s detention, constitutes a clear and ongoing violation of Petitioner’s constitutional due process rights. “Where these procedural mechanisms are not adopted, any continued detention is unlawful.” *See* 28 U.S.C. § 2241.

68. For these reasons, Petitioner’s ongoing prolonged detention without an individualized hearing to review his continued custody and with no indication that the Government has taken any steps to effectuate his removal or release violates due process.

69. Petitioner respectfully requests this Court declare Petitioner’s immediate release under supervision, or, at minimum, a POCR justifying Petitioner’s continued detention so that Petitioner may have the opportunity to challenge the POCR before an immigration court. Indeed, “[t]he regulations” governing the POCR “do not merely facilitate agency housekeeping but afford important and imperative procedural safeguards to detainees.” 2025 WL 3033732 at *2 (citing *United States v. Caceres*, 440 U.S. 741, 760 (1979)). As such, “[t]his Court must insist on DHS’s

1 compliance with the post-order custody regulations if Petitioner's detention is to remain
2 constitutional." *Id.*

3 70. Alternatively, Petitioner respectfully requests this Court order a custody hearing before the
4 IJ where the government bears the burden of proof. *See Burnett v. Lampert*, 432 F.3d 996, 999
5 (9th Cir. 2005) ("Federal courts have a fair amount of flexibility in fashioning specific habeas
6 relief.").

7 **COUNT II:**
8 **DETENTION WITHOUT POSSIBILITY OF RELEASE IN VIOLATION OF THE**
9 **FIFTH AMENDMENT (PROCEDURAL DUE PROCESS)**

10 71. Petitioner re-alleges and incorporates by reference the paragraphs above.

11 72. The Fifth Amendment provides that "[n]o person shall be ... deprived of life, liberty, or
12 property, without due process of law," U.S. Const. amend. V. The Due Process Clause applies to
13 all persons in the United States regardless of citizenship status. *Zadvydas*, 533 U.S. at 693.

14 73. In *Mathews v. Eldridge*, the Supreme Court instructed courts to balance three factors to
15 determine whether procedural due process is satisfied:

16 First, the private interest that will be affected by the official action; second, the risk
17 of an erroneous deprivation of such interest through the procedures used, and the
18 probable value, if any, of additional or substitute procedural safeguards; and finally,
19 the Government's interest, including the function involved and the fiscal and
20 administrative burdens that the additional or substitute procedural requirement
21 would entail.

22 *See* 424 U.S. 319, 335 (1976).

74. The first factor, the private interest at issue, favors Petitioner. 424 U.S. at 333. "Freedom
from imprisonment—from government custody, detention, or other forms of physical restraint—
lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects."
Zadvydas, 533 U.S. 678, 690; *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (holding that

1 a noncitizen has a strong private interest in “the most elemental of liberty interests—the interest in
2 being free from physical detention by [the] government.”).

3 75. Here, Petitioner has been detained beyond the mandatory 90-day removal period laid out
4 in Section 1231, *see Guzman Chavez*, 594 U.S. at 528-29 (citing 8 U.S.C. § 1231(a)(2)). This
5 prolonged detention follows Petitioner’s initial erroneous detention under *Hurtado* and has
6 continued despite Petitioner being granted withholding of removal.

7 76. Petitioner, who has already suffered severe trauma in his native home of Senegal, has been
8 left alone in detention without the ability to work or connect with his friends who have been a vital
9 source of emotional support during his difficult times. Despite being granted withholding of
10 removal, Petitioner finds himself confined alongside felons and violent criminal offenders, even
11 though he himself has not been convicted of a single criminal offense—a finding that clearly
12 weighs the first *Mathews* factor heavily in Petitioner’s favor.

13 77. The second factor, the risk of erroneous deprivation of liberty and the probable value of
14 procedural safeguards, favors Petitioner. Petitioner has already been determined eligible for
15 withholding of removal based on the extensive documentation of abuse and persecution in his
16 native country of Senegal. Accordingly, allowing Petitioner to remain in detention without release
17 in the reasonably foreseeable future and without a custody review hearing before ICE or an IJ from
18 the start of his detention is a clear deprivation of his liberty and rights under the Fifth Amendment
19 of the U.S. Constitution. Requiring Respondents to release Petitioner from detention under
20 supervision (as allowed under 8 U.S.C. § 1231(a)(3)) or, at a minimum, issue a POCR, would
21 reduce the probability of continued needless detention of a person, like Petitioner, who is neither
22 dangerous nor a flight risk and who is looking at detention could last years without ever a chance
for release.

1 78. The third factor, the government's interest, also favors Petitioner. When the government
2 ignores law that ensures a noncitizen with the administrative pathways to seek a release from
3 custody and where the record evidence clearly supports a finding that Petitioner is neither a flight
4 risk, nor a danger to the community, it is more likely to waste limited financial and administrative
5 resources on unnecessary detention and the litigation of subsequent habeas petitions for individuals
6 who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire
7 immigration system. And because the government must also spend resources defending against a
8 habeas corpus petition in federal court to compel Respondents to comply with law, requiring
9 Respondents to instead provide Petitioner with either a custody hearing or simply ordering that
10 Respondents release Petitioner on bond, reduces fiscal and administrative burdens on the
11 government.

12 79. For these reasons, Petitioner's indefinite detention with no release in the reasonably
13 foreseeable future constitutes a clear violation of Petitioner's due process under the Fifth
14 Amendment to the U.S. Constitution.

15 **COUNT III**
16 **DECLARATORY RELIEF UNDER 28 U.S.C. § 2201**

17 80. The Petitioner re-alleges and incorporates by reference the paragraphs above.

18 81. Petitioner respectfully requests that the Court issue a declaration that:

- 19 (1) Petitioner, as a noncitizen who entered without inspection, was unlawfully subject to
20 mandatory detention under *Hurtado* from October 6, 2025, through December 22,
21 2025, despite being detained pursuant to 8 U.S.C. section 1226(a);
22

- (2) Once Petitioner received a final order of removal, the statutory authority governing Petitioner's detention shifted to 8 U.S.C. § 1231(a), which requires *inter alia* DHS to conduct a POGR in advance of the expiration of Petitioner's 90-day removal period;
- (3) DHS failed to conduct a POGR in advance of the expiration of Petitioner's 90-day removal period;
- (4) Pursuant to 8 U.S.C. § 1231(a), the Tacoma Immigration Court is vested with jurisdiction over Petitioner's custody redetermination and has authority to release Petitioner on bond; and
- (5) Petitioner is entitled to immediate release under supervision or, at minimum, a custody hearing where the government bears the burden of proof to justify Petitioner's detention by clear and convincing evidence.

Count IV **INJUNCTIVE RELIEF**

82. The Petitioner re-alleges and incorporates by reference the paragraphs above.

83. Absent immediate intervention by this Court, Petitioner faces imminent and irreparable harm in the form of unlawful and continued detention in violation of his due process and this country's immigration laws.

84. The harm Petitioner faces is not speculative; it is concrete and irreparable, as Petitioner has already been subjected to prolonged detention for nearly three months *prior to* obtaining withholding of removal when Petitioner, who was detained pursuant to section 1226(a), was subject to mandatory detention under *Hurtado*. Petitioner's harm has only been exacerbated considering his continued detention for more than 90 days *after* obtaining withholding of removal, where he sees no release in the reasonably foreseeable future.

RELIEF REQUESTED

WHEREFORE, Petitioner demands judgment against Respondents and requests the following injunctive and declarative relief:

1. Assume jurisdiction over this matter;
2. Declare that the Petitioner is being unlawfully held in custody.
3. HABEAS CORPUS. Issue a writ of habeas corpus under 28 U.S.C. § 2241 directing Respondents to immediately release Petitioner from ICE custody or at minimum order that Respondents provide Petitioner with a POCR and, if denied release, allow Petitioner the opportunity to challenge any denial before the Immigration Court.

4. DECLARATORY JUDGMENT. Pursuant to 28 U.S.C. § 2201, declare:

- a. The U.S. Department of Justice's policy refusing to recognize jurisdiction over Petitioner's custody hearing at the outset of his detention unlawful, as it deprived Petitioner of the opportunity to ever be considered for release on under an order of supervision or bond.
- b. Because the 90-day-removal period has passed and because the government has not established that removal is reasonably foreseeable, Petitioner is entitled to a POCR determination that continued custody is no longer necessary or justifiable.

5. INJUNCTIVE RELIEF. Pursuant to the Court's equitable powers, Fed. R. Civ. P. 65, and the All Writs Act, 28 U.S.C. § 1651, enter:

- a. Preliminary injunction immediately prohibiting Respondents, their agents, employees, and all persons acting in concert with them from continuing to detain Petitioner pending his underlying removal proceedings and any relevant appeals and adjudication of immigration petitions; and

b. An order retaining jurisdiction to monitor and enforce compliance with the foregoing injunctions.

6. FEES AND COSTS. Award Petitioner his reasonable attorneys' fees and litigation expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority.

7. SUCH OTHER RELIEF. Grant such further legal or equitable relief as the Court deems just and proper.

8. Grant such further relief as the Court deems just, equitable, and proper.

Dated: March 23, 2026

Respectfully Submitted,

/s/ Clayton Cook-Mowery

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CERTIFICATE OF COMPLIANCE

Pursuant to LCR 7(e), I certify that this complaint contains 7,246 words, in compliance with the Local Civil Rules. Counsel may rely on the word count of a word-processing system used to prepare the brief.

Respectfully submitted on the 23rd of March, 2026.

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