UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

LIBERATO, Wardy Alfonso *Petitioner-Plaintiff,* v. **JUAN BALTAZAR**, is his official capacity as Warden of the Denver Contract Detention Facility (Aurora), owned and operated by GEO Group, Inc.; **GEORGE VALDEZ**, in his official capacity as Acting Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement (ICE); **TODD LYONS**, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement (ICE); **MARKWAYNE MULLIN**, in his official capacity as Secretary, U.S. Department of Homeland Security (DHS); **TODD BLANCHE**, in his official capacity as Acting Attorney General, U.S. Department of Justice (DOJ). *Respondents-Defendants*.	**Case No.** _____ **VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS**

Petitioner-Plaintiff, Wardy Alfonso Liberato, by and through his undersigned counsel, hereby petitions this Court for a writ of habeas corpus to remedy his unlawful detention by the Respondents-Defendants, and moves this Court to enjoin his continued unlawful detention by the Respondents-Defendants. Mr. Liberato requests his immediate release from the Respondents' custody.

In support of this Petition and accompanying motion for temporary restraining order, Mr. Liberato states as follows:

INTRODUCTION

1. In *Zadvydas v. Davis*, the United States Supreme Court held that the Immigration and Nationality Act (INA) does not authorize "indefinite, perhaps permanent, detention" of noncitizens subject to final orders of removal. 533 U.S. 678, 699 (2001). Applying the doctrine of constitutional avoidance, the Court explained that such an interpretation was necessary "to avoid a serious constitutional threat[.]" *Id.* The Court recognized, "[a] statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem [under] …[t]he Fifth Amendment's Due Process Clause[.]" *Id.* at 690. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects." *Id.* The Due Process Clause applies to "all persons" within the United States, including noncitizens, whether their presence here is lawful, unlawful, temporary, or permanent. *Id.* at 693-4. Indeed, the Supreme Court has held that the Due Process Clause protects a noncitizen subject to a final order of deportation. *See Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

2. The *Zadvydas* 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. 533 U.S. at 682, 701. "After this 6-month period, once the alien 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.* at 701. If the government fails to demonstrate a significant likelihood of removal in the reasonably foreseeable future, the noncitizen must be released. *Id.*; *Ahrach v. Baltazar*, No. 25-cv-03195-PAB, 2025 WL 3227529, at *2 (D. Colo. Nov.19, 2025) (citing *Zadvydas*, 533 U.S. at 701); *see also Zadvydas*, 533 at 699 (holding, "[c]onsequently, interpreting the statute to avoid serious constitutional threat, we conclude that, once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.").

3. Petitioner-Plaintiff Wardy Alfonso Liberato ("Mr. Liberato" or "Petitioner") files this habeas petition seeking release from indefinite detention pursuant to *Zadvydas*. Mr. Liberato is entitled to immediate release.

4. Mr. Liberato remains in the custody of the Respondents despite winning deferral of his removal to the Dominican Republic under the Convention Against Torture (CAT) more than six (6) months ago. On November 6, 2025, an Immigration Judge (IJ) entered a final order of removal against Mr. Liberato, the execution of which was simultaneously deferred upon the grant of deferral of removal under the Convention Against Torture (deferral of removal under CAT or "D-CAT") as to the Dominican Republic. *See* Exh. A, *Order of the Immigration Judge*. In granting

DCAT, the IJ found it "more likely than not" that Mr. Liberato will be tortured if returned to the Dominican Republic. 8 C.F.R. §§ 1208.17; 1208.18.

5. Mr. Liberato was taken into ICE custody on or around October 4, 2023. He has been detained by ICE since that time, amounting to more than two and one-half years in the Respondents' custody. Prior to ICE custody, Mr. Liberato was in federal custody on an illegal re-entry charge. He has been continuously detained since January 12, 2023, the date he re-entered the United States, totaling, today, three years and four months in detention.

6. Mr. Liberato is detained under 8 U.S.C. § 1231, which governs the detention and removal of noncitizens with final orders of removal, including those whose final orders of removal have been withheld or deferred due to a substantial risk of persecution or torture if deported. 8 U.S.C. § 1231(a)(1)(B)(i); 8 C.F.R. § 1208.17(c). Mr. Liberato's removal order and accompanying grant of deferral under CAT became final when the Immigration Judge granted protection on November 6, 2025 because both Mr. Liberato and DHS waived appeal. 8 C.F.R. § 1241.1.

7. The Respondents-Defendants refuse to release Mr. Liberato, presumably because they are looking for alternative, or "third" countries for his removal. However, over the past six months, the government has failed to identify any third country willing to accept Mr. Liberato. Mr. Liberato has received no notice of progress towards his actual removal to a third country. Absent substantial, concrete evidence from the government of its progress towards effectuating his third country removal, Mr. Liberato's detention has become "indefinite."

8. Despite ICE's inability to identify a country of removal who will accept Mr. Liberato, Respondents continue to allege that the purpose for his continued detention is to effectuate removal to a third country. However, Respondents' desire to remove Mr. Liberato to a third country is not

sufficient justification for his continued detention. The *Zadvydas* court was clear: the government cannot render Mr. Liberato's continued detention lawful by merely pointing to good faith efforts to remove him and by conducting periodic administrative reviews. *Zadvydas*, 533 U.S. at 685, 702.

9. Additionally, Respondents' failure to identify a viable third country for removal confirms that Mr. Liberato's continued detention no longer serves a legitimate statutory purpose. In *Zadvydas*, the Supreme Court held that due process is violated when civil detention is no longer related to its purpose; in *Zadvydas* and here, the purpose of detention is the availability of the noncitizen for imminent removal. 533 U.S. at 690. Respondents' authority to detain noncitizens pursuant to § 1231 is limited in the absence of a significant likelihood of removal in the reasonably foreseeable future. *Id.* Mr. Liberato's continued detention is unlawful because his removal is not reasonably foreseeable. Due process mandates his immediate release from custody.

10. Therefore, Mr. Liberato petitions this Court to issue a writ of habeas corpus, ordering Respondents to show cause within three days, providing their reasons, if any, why his detention is lawful. 28 U.S.C. § 2243. Mr. Liberato further requests that this Court grant his petition and order his immediate release from custody. Mr. Liberato also asks this Court for an order that prohibits Respondents from transferring him outside of the District of Colorado while this Court considers his Petition.[1] Finally, Mr. Liberato asks the Court for any other relief it deems proper.

JURISDICTION AND VENUE

11. Mr. Liberato currently is detained under 8 U.S.C. § 1231(a) in Respondents' custody at the Denver Contract Detention facility in Aurora, Colorado. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq., the regulations implementing the INA, the

[1] Mr. Liberato files a Motion for TRO/injunction simultaneously with this Petition.

Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 105–277, div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1998) (codified as Note to 8 U.S.C. § 1231), the regulations implementing the FARRA, and the Due Process Clause of the Fifth Amendment.

12. This Court has jurisdiction under Art. I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause); 28 U.S.C. § 2241 (habeas authority); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 1651 (All Writs Act); and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).

13. District courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their civil immigration detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas*, 533 U.S. at 687; *Soberanes v. Comfort*, 399 F.3d 1305, 1310 (10th Cir. 2004) (holding "[c]hallenges to immigration detention are properly brought directly through habeas.") (citing *Zadvydas*, 533 U.S. at 687–88). "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

14. This Court has jurisdiction to grant declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; 28 U.S.C. § 2241(a); FED. R. CIV. P. 57, 65; as well based on its inherent authority to grant equitable relief. *See, e.g.*, *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971).

15. Venue is proper under 28 U.S.C. § 1391 because Mr. Liberato is detained at the Denver Contract Detention facility in Aurora, Colorado, within the jurisdiction of this Court. *See* 28 U.S.C. § 2241(d); *Braden v. 30th Judicial Cir. Ct. Of Ky.*, 410 U.S. 484, 493–94 (1973). Venue is also proper because at least one of the Respondents is a resident of this District, and a substantial part

of the events giving rise to the claims in this action took place within this District. 28 U.S.C. § 1391.

PARTIES

16. Petitioner-Plaintiff Wardy Liberato is a 46-year-old native and citizen of the Dominican Republic. He has been in ICE custody since October 4, 2023. Since approximately May of 2024, Mr. Liberato has been detained at the Denver Contract Detention Facility, also called the "Aurora ICE Processing Center," in Aurora, Colorado. Mr. Liberato remains detained more than six months after the grant of D-CAT on November 6, 2025.

17. Respondent Juan Baltazar is the Warden of the Denver Contract Detention Facility (Aurora) where ICE detains Mr. Liberato. Respondent Baltazar is an employee of the GEO Group, a private, for-profit company that contracts with ICE to run the Denver Contract Detention Facility. In his capacity as Warden, he oversees the administration and management of the facility. Accordingly, Respondent Baltazar is the immediate custodian of Mr. Liberato. Mr. Liberato brings this action against Respondent Baltazar in his official capacity.

18. Respondent George Valdez is the Acting Field Office Director of the Denver Field Office of Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO). In that capacity, he is charged with overseeing all ICE detention centers in Colorado and Wyoming and has the authority to make custody determinations regarding individuals detained in these facilities. Respondent Valdez is a legal custodian of Mr. Liberato. Mr. Liberato brings this action against Respondent Valdez in his official capacity.

19. Respondent Todd M. Lyons is the Acting Director of ICE. In that capacity, he has the authority to make decisions related to detaining and removing noncitizens. As such, Respondent

Lyons is a legal custodian of Mr. Liberato. Mr. Liberato brings this action against Respondent Lyons in his official capacity.

20. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (DHS). DHS oversees ICE, which is responsible for the administration and enforcement of the immigration laws and has supervisory responsibility for, and authority over, the detention and removal of noncitizens throughout the United States. Respondent Mullin is the ultimate legal custodian of Mr. Liberato. Mr. Liberato brings this action against Respondent Mullin in his official capacity.

21. Respondent Todd Blanche is the acting Attorney General of the United States. As the acting Attorney General, he is responsible for the actions of the Department of Justice (DOJ). The Executive Office for Immigration Review (EOIR) is a component agency of the DOJ. Therefore, he oversees the immigration court system, including all Immigration Judges, Immigration Courts, and the Board of Immigration Appeals (BIA), and has authority over immigration detention. Respondent Blanche routinely transacts business in the District of Colorado and has custodial authority over Mr. Liberato. Mr. Liberato brings this action against Respondent Blanche in his official capacity.

REQUIREMENTS OF 28 U.S.C. § 2243

22. The Court must grant the petition for a writ of habeas corpus or order Respondents to show cause "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to

show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

23. Habeas corpus is "perhaps the most important writ known to the constitutional law…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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from her within the four corners of the application." *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citations omitted).

24. Prior to ICE custody, Mr. Liberato was in federal custody on an illegal re-entry charge. Mr. Liberato has been continuously detained since January 12, 2023, the day he re-entered the United States, totaling, today, three years and four months in detention. Mr. Liberato has been detained by the Respondents for two and one half years. His post-removal order detention now exceeds six months. Because there is no significant likelihood of Mr. Liberato's removal in the reasonably foreseeable future, his continued detention is a violation of the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment. He therefore requests that this Court

order Respondents to submit a return within three days or another period of time that is reasonable, but not to exceed twenty days.

TRANSFER OUT THE DISTRICT: ALL WRITS ACT

25. The All Writs Act, 28 U.S.C. § 1651(a), empowers the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

26. Courts in this district have recently invoked the All Writs Act to prevent the transfer of individuals detained within the judicial district. *See Arostequi Maldonado v. Baltazar*, No. 25-cv-2205-WJM-STV, -- F. Supp. 3d --, 2025 WL 2280357, at *15-16 (D. Colo. Aug. 8, 2025) (listing cases); *see also Guevara Gomez v. Crawford*, No. 1:25-cv-1781-PTG-LRV (E.D. Va. Oct. 16, 2025).

27. Mr. Liberato requests that this Court invoke the All Writs Act to prevent any transfer out of the District of Colorado during the pendency of this habeas action. Mr. Liberato's counsel resides in Colorado, and any transfers will be disruptive to counsel's ability to communicate with their client. *See Ozturk v. Trump*, 779 F. Supp. 3d 462, 497 (D. Vt. 2025) (noting that presence in the judicial district where an action is pending "facilitate[s]" the petitioner's "ability to work with [his or] her attorneys, coordinate the appearance of witnesses," and generally present claims related to detention); *Suri v. Trump*, --F. Supp. 3d --, 2025 WL 1310745, at *13 (E.D. Va. May 6, 2025).

EXHAUSTION OF REMEDIES

28. Habeas petitions under 28 U.S.C. § 2241 are not subject to statutory exhaustion requirements. *See* 28 U.S.C. § 2241; *see also Braden,* 410 U.S. 484. However, even if exhaustion were necessary in some circumstances, it "is not required in the immigration context when it would

be futile…or when 'the interests of the individual in retaining prompt access to a federal judicial form outweigh the interest of the agency in protecting its own authority.'" *Quintana Casillas v. Sessions*, No. CV 17-01039-DME-CBS, 2017 WL 3088346, at *9 (D. Colo. July 20, 2017) (citing *Son Vo v. Greene*, 109 F. Supp. 2d 1281, 1282 (D. Colo. 2000)).

29. Although exhaustion is not required, it would be futile in this case because Mr. Liberato's claims cannot be meaningfully addressed or remedied through the administrative process. Mr. Liberato is detained under 8 U.S.C. § 1231(a) and thus cannot request a custody redetermination hearing before an IJ. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022). Moreover, neither an IJ nor the Board of Immigration Appeals can rule on constitutional claims. *Matter of C-*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."). There are no further remedies to exhaust.

STATEMENT OF FACTS

30. Mr. Liberato is a native and citizen of the Dominican Republic. Mr. Liberato is not a citizen or national of any country other than the Dominican Republic.

31. Mr. Liberato experienced a highly disrupted and traumatic early childhood in the Dominican Republic. He did not grow up with his mother, as she emigrated to the United States when he was very young, and was instead raised by his maternal grandmother. His grandmother passed away when he was around nine years old. He then moved in with his neighbor. Mr. Liberato experienced significant neglect and abuse while living with his neighbor. He was frequently mocked and mistreated for [redacted] Mr. Liberato was often denied food and clothing, sometimes

remaining naked due to lack of basic resources. He was insulted, belittled, and experienced physical abuse and repeated [redacted]. Mr. Liberato witnessed frequent violence in the neighborhood and described severe neglect, including being tied up in the yard. He indicated experiencing extreme loneliness and collecting bottles to buy food. Mr. Liberato did not attend formal school in the Dominican Republic.

32. Mr. Liberato first arrived in the United States at the age of 13 on March 19, 1993 as a lawful permanent resident in immigrant visa category F2-2, the child of a lawful permanent resident; namely, his mother.

33. Mr. Liberto struggled in school in the United States. To date, he does not know how to read and write in Spanish or English. Mr. Liberato also experienced bullying from peers and he eventually stopped going to school altogether. He began working in carpentry with his stepfather, who also subjected him to verbal abuse, [redacted]

34. Mr. Liberato lived in the United States until he was ordered deported by an Immigration Judge on November 30, 2006. He was ordered deported after having been convicted of criminal sale of a controlled substance under N.Y.P.L. § 220.31 on May 1, 2006, which, at the time, was considered an aggravated felony under the INA, rendering him removable even as a lawful permanent resident.[2] Mr. Liberato made no application for relief from removal. The IJ designated

[2] In *Harbin v. Sessions,* the United States Court of Appeals for the Second Circuit concluded that N.Y.P.L. § 220.31 is overbroad as an aggravated felony drug trafficking offense. 860 F.3d 58 (2d Cir. 2017). Specifically, the Second Circuit concluded that N.Y.P.L. § 220.31 is indivisible and not subject to a modified categorial approach, as New York criminalizes the sale of substances which are not federally controlled substances and the various substances constitute means by which the New York statute can be violated rather than specific and separate elements of the offense. *Id.*; *see also In Re: Ariel Jonathan Diaz Vargas*, (BIA Sept. 29, 2017); *see also Matter of Chairez*, 26 I&N Dec. 819 (BIA 2016); *see also Johnson v. Barr*, 967 F.3d 1103 (10th Cir. 2020) (discussing the indivisibility of certain overbroad drug statutes). The Second Circuit held that: "N.Y. Penal Law § 220.31 defines a single crime and is therefore an 'indivisible' statute. Accordingly, the agency should have applied the so-called 'categorical approach,' which looks to the statutory definition of the offense of conviction, rather than the particulars of an individual's behavior, to determine whether a prior conviction constitutes an aggravated felony. *See Mellouli v.*

the country of removal as the Dominican Republic. Mr. Liberato was physically removed from ICE detention to the Dominican Republic on or around March 21, 2007.

35. Mr. Liberato is [redacted] in the Dominican Republic. While living in the Dominican Republic after being deported, Mr. Liberato [redacted] Mr. Liberato was subjected to torture, physical harm, sexual assault, arbitrary arrest and detention, and death threats at the hands of [redacted] Mr. Liberato feared for his life and fled the Dominican Republic, traveling back to the United States.

36. Mr. Liberato was apprehended by Customs and Border Protection (CBP) officials shortly after crossing the U.S-Mexico border without permission on January 12, 2023. He was processed

---

Lynch, 135 S. Ct. 1980, 1986 (2015). Now applying the categorical approach, we conclude that Harbin's conviction under N.Y. Penal Law § 220.31 does not constitute an aggravated felony. Harbin's § 220.31 conviction therefore did not bar him from seeking cancellation of removal and asylum." 860 F.3d 58 (2d Cir. 2017). Because N.Y.P.L. § 220.31 is an indivisible statute, Immigration Courts are not permitted to consult the record of conviction to determine which substance was involved. *Id.; see also Nijhawan v. Holder*, 557 U.S. 29., 35 (2009). Analogously, Mr. Liberato's 2006 conviction under N.Y.P.L. § 220.31 would not be considered a drug-trafficking-related aggravated felony today.

for reinstatement of the November 30, 2006 deportation order the next day, January 13, 2023. Again, the Dominican Republic was the sole country of removal designated by CBP officials.

37. Mr. Liberato was thereafter prosecuted and convicted of illegal re-entry of a removal alien. On September 27, 2023, he was sentenced in the U.S. District Court of Arizona to time served and supervised release for a term of three (3) years.

38. On or around October 4, 2023, Mr. Liberato was transferred back to ICE custody. He expressed a fear of persecution and torture if removed to the Dominican Republic and was then interviewed by an asylum officer on November 9, 2023.

39. On November 11, 2023, the asylum officer concluded that Mr. Liberato established a reasonable fear of persecution or torture if returned to the Dominican Republic. His case was then referred to an Immigration Judge for withholding-only proceedings pursuant to 8 C.F.R. § 208.31(e); 208.2(c)(2)(i).

40. On February 2, 2024, Mr. Liberato applied for withholding of removal and CAT protection before the Immigration Court.

41. In approximately May of 2024, Mr. Liberato was moved from an ICE detention facility in Arizona to the ICE Denver Contract Facility in Aurora, Colorado, where he remains to date.

42. On October 3, 2024, the Aurora Immigration Court conducted a Judicial Competency Inquiry (JCI) to discern if Mr. Liberato understood the nature of the removal proceedings. After the Inquiry, the Immigration Judge found by a preponderance of the evidence that Mr. Liberato was mentally incompetent to represent himself and ordered the appointment of a Qualified

Representative, through the Executive Office for Immigration Review (EOIR)'s National Qualified Representative Program (NQRP). *See* Exh. B, *Order of the Immigration Judge*.

43. The torture committed against Mr. Liberato in the Dominican Republic, coupled with his childhood trauma and neglect, left him with significant mental health issues and symptoms of complex trauma. Since being detained in ICE custody, Mr. Liberato's mental health and cognitive functioning have been assessed multiple times; the most recent evaluation indicates a long history of psychiatric symptoms, including persistent depression and suicidal ideation. Mr. Liberato has been diagnosed with posttraumatic stress disorder (PTSD), major depressive disorder (MDD), other specified anxiety disorder, and substance use disorders. In one assessment, licensed psychologist Dr. Darien Combs, PhD, also found that Mr. Liberato experiences cognitive difficulties, especially in executive functioning, memory, and reasoning; "his cognitive challenges are likely multifactorial, with contributions from neurodevelopmental disruption, complex trauma, and ongoing mental illness. These impairments may significantly affect his ability to navigate daily tasks, understand legal proceedings, or advocate for himself effectively in high-stakes environments such as immigration detention." Medications have alleviated some of Mr. Liberato's mental health symptoms while detained.

44. On November 6, 2025, the IJ issued a final order of removal to the Dominican Republic while simultaneously deferring it upon granting Mr. Liberato's protection under CAT. *See* Exh.

A. Neither Mr. Liberato nor DHS reserved the right to appeal. As such, the IJ's order became administratively final the same day it was issued.

45. Since Mr. Liberato's November 6, 2025 removal order and grant of relief under CAT, Mr. Liberato and the Immigration Defense Clinic at Colorado Law, as immigration counsel for Mr. Liberato, have been in contact with ICE. *See* Exh. C, *Clinical Student Affidavit*.

46. On November 13, 2025, through a co-detainee who can read and write in English and Spanish, Mr. Liberto sent a "kite" request to ICE asking when he would be released. *See* Exh. D. On November 14, 2025, Officer Ketels responded to the "kite," stating "[a]s of right now ICE is going to solicit other countries to accept you. You will not be released at this time." *Id.*

47. On December 10, 2025, Elvia R Wilcox, the Unit Chief – HQ RIO, issued a decision to continue Mr. Liberato's detention. *See* Exh. E, *Decision to Continue Detention*. The decision states: "[the Department of Homeland Security is actively working with the Department of State on avenues to remove you to a third country. Your removal from the United States is expected to occur in the reasonably foreseeable future. You are a public safety threat and flight risk. Based on the aforementioned reasons, you are to remain in ICE custody at this time, as ICE is unable to conclude that the factors set forth at 8 C.F.R. § 241.4(e) have been satisfied." The decision was not an individualized determination as it does not include any facts specific to Mr. Liberato supporting the decision to continue detention. Mr. Liberato did not receive prior notice that ICE was conducting the review, nor was he provided an opportunity to submit any evidence in support of his release prior to the review. It also appears that this review was conducted by headquarters,

and not in compliance with 8 C.F.R. § 241.4, a regulation promulgated to provide noncitizens with fundamental due process protections that courts have found to be constitutionally required.

48. On December 19, 2025, Mr. Liberato, through undersigned counsel, requested that ICE inform counsel of any efforts to remove Mr. Liberato to a third country given Mr. Liberato's incompetency, mental health issues, and illiteracy. *See* Exh. F, *Email to ICE Deportation Officer Shane Blea from Attorney Kathleen M. Glynn*. To date, ICE has not responded to this email.

49. On January 13, 2026, again through a co-detainee who can read and write in English and Spanish, Mr. Liberto sent a "kite" request to ICE asking when he would be released. *See* Exh. G. An unidentified official responded on that same day, stating "[y]ou will not be released until ICE finds a 3rd country of removal to send you to. Please let ICE know if you would like to be removed to a 3rd country of your choice." *Id.*

50. Also in January of 2026, an ICE officer verbally asked Mr. Liberato which countries he would like to be deported to, presenting Mr. Liberato with a list of approximately seventy-four (74) countries to which citizens of the Dominican Republic can travel visa-free. *See* Exh. H. Mr. Liberto reported to undersigned counsel that he could only identify Ghana, South Sudan, El Salvador, Honduras, and Ecuador on the list.

51. On January 15, 2026, Mr. Liberato, through undersigned counsel, articulated his fear of persecution and/or torture if removed to Ghana, South Sudan, El Salvador, Honduras, and Ecuador. *See* Exh. I, *Email to ICE Deportation Officer Shane Blea from Attorney Kathleen M. Glynn*. ICE Deportation Officer Shane Blea responded on the same day and explained that Mr. Liberato "was presented a list of countries that Dominicans can enter visa-free and asked if he would like to be removed to one of those countries. He replied that he had no interest in removal to any country

other than the United States. That was the extent of the conversation." *Id.* Undersigned counsel and Officer Blea then emailed about Mr. Liberato's Dominican passport, and Officer Blea confirmed that ICE is in possession of Mr. Liberato's valid Dominican passport.

52. On February 4, 2026, clinical student Chasen Marinoff from the Immigration Defense Clinic at Colorado Law provided ICE, via email to Officer Blea, with a 100-page comprehensive post-release plan and evidence in support of Mr. Liberato's release from custody. *See* Exh J, *Post-Release Plan* (redacted and without exhibits). Ms. Marinoff requested Mr. Liberato's release under 8 C.F.R. § 241.4(e) *Criteria for Release* and 8 C.F.R. § 241.4(f) *Factors for Consideration*, as well as INA § 212(d)(5)(A), the urgent humanitarian parole provision. Officer Blea responded to Ms. Marinoff on the same day, stating "[t]hank you for providing the documentation. I have placed all documents in the immigration file. We are expecting the next 90-day Post Order Custody Review to come from HQ-RIO on/about 3/21/2026."

53. On March 10, 2026, clinical student Chasen Marinoff provided Officer Blea with additional documents in support of Mr. Liberato's release. *See* Exh. K. On March 11, 2026, Officer Daniel Figueroa responded to Ms. Marinoff, explaining that he was taking over Mr. Liberato's case and stating that the next review was pending. *See* Exh. L.

54. On or around March 21, 2026, Respondents allegedly conducted a review of Mr. Liberato's detention. Respondents have not confirmed that the review took place as scheduled and have not provided Mr. Liberato or his counsel with a notice of the result. There is no indication that

Respondents have reviewed any materials that Mr. Liberato's counsel has provided in support of his release.

55. On April 1, 2026, clinical student Chasen Marinoff emailed Officer Figueroa inquiring into the status of the March 21, 2026 review that was supposed to have taken place, and further asking when any future review is scheduled and whether she and undersigned counsel can participate. *See* Exh. M. On April 2, 2026, Officer Figueroa responded and stated "[h]is Post Order Custody Review from HQ-RIO on/about 3/21/2026 is still currently pending review." *Id.* Ms. Marinoff responded on April 9, 2026 to ask clarifying questions, including whether the review happened. *Id.* ICE has not responded to the April 9, 2026 email.

56. On April 13, 2026, undersigned counsel spoke by telephone with Mr. Liberto. He reported that he had not been interviewed by ICE as of that date. He also reported that ICE had recently provided him again with the list of countries from which they instructed him to "pick a country." This list is the identical list provided to Mr. Liberato in January of 2026. *See* Exh H.

57. Mr. Liberato has not heard from any representative of ICE since April 13, 2026. Undersigned counsel and student Chasen Marinoff have not heard from ICE since April 2, 2026. As of the date of this petition, ICE appears to have failed to conduct the 180-day post-order custody review to which Mr. Liberato is entitled.

58. Upon information and belief, as of the date of this filing, Respondents have failed to secure acceptance and/or travel documents to remove Mr. Liberato to any alternative or third country. Respondents have been unable to obtain acceptance and/or travel documents from any country for

Mr. Liberato over the past six (6) months. Respondents have not provided any information to Mr. Liberato or counsel about a timeline for removal.

59. Mr. Liberato's current detention appears to be linked to an unlawful third-country removal policy DHS began implementing in February 2025. DHS first removed several noncitizens with withholding and CAT grants to Guantanamo Bay, in Cuba, and the CECOT prison in El Salvador.[3] Thereafter, DHS began sending people to additional third countries, including Panama, Costa Rica, Mexico, South Sudan, and Eswatini.[4] Ghana accepted people deported from the United States, only to return some of them to countries where, like Mr. Liberato, their removal was prohibited under U.S. law pursuant to findings that they would more likely than not be persecuted or tortured.[5] Just last month, approximately fifteen individuals from Latin American countries were removed to the Democratic Republic of the Congo (DRC); and now, are also in the process of being returned by Congolese authorities to the countries from which U.S. law prohibited their removal.[6]

60. Mr. Liberato's **lawful** removal to a third country does not appear to be imminent because Respondents have been unable to effectuate his removal for the past six months as no country has been identified by ICE for his removal, despite ICE's reliance on its third country removal policy in its boilerplate Decision to Continue Detention and its responses to Mr. Liberato's "kite"

---

[3] *See* Protected Whistleblower Disclosure of Erez Reuveni Regarding Violation of Laws, Rules & Regulations, Abuse of Authority, and Substantial and Specific Danger to Health and Safety at the Department of Justice at 16-21, https://s3.documentcloud.org/documents/25982155/file-5344.pdf.

[4] Kristina Cooke and Ted Hesson, *The US said it had no choice but to deport them to a third country. Then it sent them home*, REUTERS, Aug. 2, 2025, https://www.reuters.com/world/americas/us-said-it-had-no-choice-deport-them-third-country-then-it-sent-them-home-2025-08-02/.

[5] PBS News, *Immigrants deported from U.S. to Ghana are sent home, where lawyers say some could face torture*, Sep. 15, 2025, https://www.pbs.org/newshour/world/immigrants-deported-from-u-s-to-ghana-are-sent-home-where-lawyers-say-some-could-face-torture.

[6] PBS News, *About 15 Latin American people deported to Congo by the U.S.*, Apr. 17, 2026, https://www.pbs.org/newshour/world/about-15-latin-american-people-deported-to-congo-by-the-u-s.

requests. In contrast, Mr. Liberato fears he will be **unlawfully** removed to either the Dominican Republic, in violation of the grant of D-CAT, or, without notice and an opportunity to express fear, to a third country likely to persecute, torture, and/or imprison him, or return him to the Dominican Republic, in violation of the Immigration Court's order, international principles of nonrefoulement, and the United States' obligations under the INA and the UN Convention Against Torture.

LEGAL FRAMEWORK

Deferral of Removal Under the Convention Against Torture

61. Noncitizens facing removal are entitled under domestic and international law to seek various protections, including asylum, withholding of removal under the INA, and protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 113; 8 C.F.R. § 1240.11(c)(1). The United States is a party to the Convention Against Torture (CAT) and, in 1998, Congress passed the Foreign Affairs Reform and Restructuring Act (FARRA) to implement its dictates. Pub. L. 105-277, Div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231). The FARRA provides that "[i]t shall be the policy of the United States to not expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States." *Id.*

62. The Convention Against Torture (CAT) affords mandatory and country-specific protection against deportation to a country where an individual is likely to be tortured. *See* 8 U.S.C. § 1231; 8 C.F.R. §§ 208.16-18, 1208.16-18; 28 C.F.R. § 200.1. To be granted CAT relief, a noncitizen

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

63. When an Immigration Judge (IJ) grants a noncitizen CAT relief, the IJ issues a removal order and simultaneously defers that order with respect to the country or countries for which the noncitizen demonstrated a sufficient likelihood of torture. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021). Once CAT relief is granted, either party has the right to appeal that decision to the Board of Immigration Appeals (BIA) within 30 days. *See* 8 C.F.R. § 1003.38(b). After the passage of the 30-day appeal period, or if both parties waive appeal, the CAT relief grant and the accompanying removal order become administratively final. *See id.* § 1241.1.

64. When a noncitizen has a final CAT relief grant, the noncitizen cannot be removed to the country or countries for which the noncitizen demonstrated a sufficient likelihood of torture. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.17(b)(2). Protection pursuant to CAT deferral (D-CAT) can only be terminated if there is a change in country conditions and must follow the procedures set forth in 8 C.F.R. §§ 208.17(d), 1208.17(d).[7]

65. While ICE is authorized to remove noncitizens who were granted CAT relief to alternative countries, *see* 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.17(b)(2), the removal statute specifies

[7] Subsection (d) requires the government to "file a motion with the Immigration Court having administrative control . . . to schedule a hearing to consider whether deferral of removal should be terminated." 8 C.F.R. §§ 208.17(d)(1), 1208.17(d)(1). "The Immigration Court shall provide notice to the [noncitizen] and the Service of the time, place, and date of the termination hearing." *Id.* at (d)(2). The noncitizen must be afforded the opportunity to "supplement the information in his or her initial application." *Id.* After a hearing, the immigration judge will determine whether it "is more likely than not" that the applicant will "be tortured in the country to which removal has been deferred" and if so, the order of deferral shall remain in place. C.F.R. §§ 208.17(d)(4), 1208.17(d)(4). Otherwise, the order may be terminated, which may be appealed to the BIA. *Id.*

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). If it is impracticable, inadvisable, or impossible to remove the noncitizen to any of the above countries, the noncitizen may be removed to another country whose government will accept the noncitizen into that country. 8 U.S.C. § 1231(b)(2)(E)(vii).

66. However, notwithstanding ICE's authority to effectuate a third country removal, and even if a country "accepts" a noncitizen, ICE cannot remove a noncitizen to a country where their life or freedom will be threatened in that country because of the noncitizen's race, religion, nationality, membership in a particular social group, or political opinion, or where it is more likely than not that the noncitizen would be tortured if removed to the proposed country of removal. 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16, 208.17, 1208.16, 1208.17.

Detention of Noncitizens Granted Protection under CAT

I. Statutory and Constitutional Framework: Limits to Post-Final Order Detention

67. 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." *Id.* § 1231(a)(1)(B). The removal period 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. *Id.* § 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 they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. *Id.* § 1231(a)(6).

68. Post-final order detention is meant to serve a single purpose: removal from the United States. *See* 8 U.S.C. § 1231; *see also* 8 C.F.R. § 241.4. Removal is expected to occur within the 90-day removal period. *See* 8 U.S.C. § 1231(a)(1)(A). Although situations in which continued detention beyond this period may be permissible are contemplated, such detention is subjected to constitutional constraints. *Zadvydas*, 533 U.S. at 678, 690-91; *Rodriguez-Fernandez v. Wilkinson*, 654 F. 2d 1382, 1387 (10th Cir. 1981) (concluding that "an excluded alien in physical custody within the United States may not be 'punished' without being accorded the substantive and procedural due process guarantees of the Fifth Amendment."); *see generally Wong Wing*, 163 U.S. 228; *Morales-Fernandez v. INS*, 418 F.3d 1116, 1118 (10th Cir. 2005) (holding that post-order detention is limited by constitutional principles to "a reasonable time period and does not permit indefinite detention.").

69. "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. at 690. Indefinite detention raises a particularly "serious constitutional problem" and directly violates the Due Process Clause. *Id.* at 689-90.

70. Any deprivation of the liberty interests protected by the Due Process Clause must be closely related to a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty

interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"). Accordingly, any period of post-final order detention must be strictly limited to what is necessary to achieve the goal of removal.

71. In *Zadvydas*, the Supreme Court limited post-final order detention to "a period reasonably necessary to secure removal;" namely, six months. 533 U.S. at 699 (stating, "the habeas court…should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal."). The Court held that a noncitizen may not be held in post-final order detention beyond six months unless there is a significant likelihood of removability in the reasonably foreseeable future. *Id.* at 699. "[F]or detention to remain reasonable, as the period of post-removal confinement grows, what counts as 'the reasonably foreseeable future' conversely would have to shrink," meaning the longer the noncitizen remains in post-final order detention, the shorter the window Respondents have to demonstrate that removal is reasonably foreseeable. *Id.* at 701.

72. Following the presumptively reasonable six-month period, "once the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to Respondents to "respond with evidence sufficient to rebut that showing." *Id.* at 701. The noncitizen bears the initial burden of providing "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* This standard does not require a noncitizen to "show the absence of any prospect of removal – no matter how unlikely or unforeseeable." *Id.* at 702. Furthermore, "[g]ood reason to believe does not place a burden upon the detainee to demonstrate no reasonably foreseeable, significant likelihood of removal or show that his detention is indefinite; it is something less than that." *Ahmed v. Freden*,

744 F. Supp. 3d 259, 265 (W.D.N.Y. 2024); *see also Aguilar v. Noem*, No. 25-cv-03463-NYW, 2025 WL 3514282, at *4 (D. Colo. Dec. 8, 2025) (holding that the petitioner is not required to show that there is no significant likelihood of his removal in the reasonably foreseeable future, but rather must provide "good reason" to believe his removal is not significantly likely in the reasonably foreseeable future). A noncitizen may meet this burden by pointing to "the existence of either institutional barriers to repatriation or obstacles particular to his removal." *Id.* (citation omitted).

73. Upon such showing, the burden shifts to the government to present sufficient evidence to show that removal is likely. *Zadvydas*, 533 U.S. at 701. *Zadvydas* rejected the proposition that continued detention is permission "as long as good faith efforts to effectuate…deportation continue." *Id.* at 702. Instead, the government must actually make legitimate progress towards removal. S*ee also Aguilar*, 2025 WL 3514282, at *6; *Chennah v. Baltazar*, No. 26-cv-00112-CNS, 2026 WL 179951, at *3 (D. Colo. Jan. 26, 2026); *Jafari v. Lyons*, 26-cv-00407-NYW, 2026 WL 1213388 , at *3 (D. Colo. May 4, 2026) (holding that a "vague statement" by the Government about ICE pursuing third-country removal does not meet the *Zadvydas* standard of proving that removal is likely); *Hassoun v. Sessions*, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019) (stating that "the reasonableness of Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit. Diligent efforts alone will not support continued detention.").

74. At this stage, if Respondents cannot present documented confirmation that removal is likely to occur in the reasonably foreseeable future, the noncitizen must be released. *See Zadvydas*, 533 U.S. at 685, 699-701; *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005). Continued

detention would violate both § 1231(a)(6) and the Due Process Clause of the Fifth Amendment. *See Zadvydas*, 533 U.S. at 699-701; *see also Morales-Fernandez*, 418 F.3d 1118, 1123. In sum, where removal is not reasonably foreseeable, continued detention is deemed unreasonable and "no longer authorized by statute." *Zadvydas*, 533 U.S. at 699-700.

75. Courts throughout the Tenth Circuit, including in the District of Colorado, have repeatedly relied upon *Zadvydas* in ordering individuals' release from immigration custody. *See e.g., Morales-Fernandez*, 418 F.3d at 1123 (citing *Clark*, 125 S. Ct. at 727, holding "[t]he Government having brought forward nothing to indicate that a substantial likelihood of removal subsists despite the passage of six months…; and the District Court in each case having determined that removal to Cuba is not reasonably foreseeable; the petitions for habeas corpus should have been granted."); *Nzayikorera v. Fabbricatore*, 21-cv-02037-RMR, 2021 WL 9385836 (D. Colo. Sep. 9, 2021) (same); *Ahrach*, 2025 WL 3227529 at *10 (granting the petitioner's habeas petition and ordering her release from post-order detention when the government has not offered evidence that there is progress towards removal and acknowledging that *Zadvydas* courts have found that unsubstantiated assertions that the government will pursue removal are insufficient to satisfy its burden); *Chennah v. Baltazar*, No. 1:26-CV-00112-CNS, 2026 WL 179951 (D. Colo. Jan. 23, 2026) (same); *Jafari v. Lyons*, 26-cv-00407-NYW, 2026 WL 1213388, at *3 (D. Colo. May 4, 2026) (same); *Elsayed v. Baltazar*, 26-cv-01711-PAB, 2026 WL 1261947, at *3 (D. Colo. May 7, 2026) (same).

II. Regulatory Framework: Limits to Post-Final Order Detention

76. 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 post-order custody review

(POCR) to determine whether the noncitizen should remain detained or be released pending removal. *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 . . ."). The detention and release of individuals granted protection under the Convention Against Torture is also governed by 8 C.F.R. § 241. *See* 8 C.F.R. § 1208.17(c). In making custody determinations, ICE considers several factors, including the detainee is presently a non-violent person and is likely to remain non-violent upon release. *Id.* § 241.4(e). If the factors in § 241.4(e) and (f) are met, ICE should release the noncitizen under conditions of supervision. Id. § 241.4(j).

77. DHS is obligated to provide the noncitizen with written notice approximately 30 days before the impending 90-Day POCR so that the noncitizen may submit information in writing to support their release. *See* 8 C.F.R. § 241.4(h)(2). After the 90-Day POCR, DHS must advise the noncitizen in writing whether they are to be released or remain in detention pending removal or further custody review. *See* 8 C.F.R. § 241.4(k)(1)(i).

78. Three months after the lapse of the 90-day removal period, or six months after the issuance of a final order, authority over custody determinations transfers to the Executive Associate Commissioner to conduct an additional custody review on that date or "as soon thereafter as practicable," referred to as the 180-day post-order custody review (POCR). *See* 8 C.F.R. § 241.4(k)(1)(ii) and (k)(2)(i)-(ii). DHS is again obligated to provide approximately 30 days' written notice to the noncitizen of this review. *Id.*

79. Custody reviews are to be conducted within these specified timeframes or "as soon as possible thereafter, allowing for any unforeseen circumstances or emergent situation." *See* 8 C.F.R. § 241.4(k)(2)(iv). The District Director or Headquarters Post-Order Detention Unit (HQPDU)

Director may postpone the custody review process for "good cause," such as a noncitizen's imminent removal, but must document this decision and specify the reasons for the delay in the noncitizen's custody review file or A file. *See* 8 C.F.R. § 241.4(k)(3). As soon as the reason for the delay is remedied or if the noncitizen is not removed as anticipated, DHS must exercise "[r]easonable care" to ensure that the 180-Day POCR occurs. *Id.*

80. 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). If ICE Headquarters determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on "special circumstances," it must justify the continued detention based on narrow grounds such as national security or public health concerns, *id.* at § 241.14(b)-(d), or by demonstrating, by clear and convincing evidence before an Immigration Judge, that the noncitizen is "specially dangerous." 8 C.F.R. § 241.14(f).

81. DHS regulations allow the removal period to be extended if the noncitizen fails or refuses to make a good faith effort to secure travel documents, or if they conspire or act to prevent their removal order from being effectuated. *See* 8 C.F.R. § 241.4(g)(1)(ii). However, if this is the case, Respondents are required to provide the noncitizen with a Notice of Failure to Comply before the

90-day removal period expires. *See id.* Once the noncitizen complies with their obligations under the law, Respondents must execute their removal order within a reasonable period of time. *See id.*

III. Requirements for and Reasonable Foreseeability of Lawful Third Country Removal

82. Under 8 U.S.C. § 1231, DHS has the authority to remove noncitizens granted deferral under CAT to a third country. 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.17(b)(2). The term "third country" refers to one not previously designated by an IJ or DHS during the underlying removal proceedings. *D.V.D. v. Dep't of Homeland Sec.*, No. 1:25-cv-10676, 2025 WL 942948 (D. Mass. Mar. 28, 2025), ECF No. 34. The term "third country" is used because IJs in removal proceedings designate a country of removal (usually the noncitizen's country of origin) and, in some cases, also designate an alternate country of removal (usually a country of which they are a citizen or which they hold or previously held status). When DHS seeks to remove a person to a country other than the primary or alternate countries designated, the new country is known as a "third country."

83. Although the statutory framework for third country removal has long existed, DHS rarely pursued this option in the past. *See Guzman Chavez*, 594 U.S. at 537 (addressing the contention that "DHS often does not remove [a noncitizen] to an alternative country if withholding relief is granted" and "only 1.6% of [noncitizens] who were granted withholding of removal were actually removed to an alternative country"). Under the current administration, however, third country removals have become key to executing an aggressive detention and deportation agenda – especially in cases of noncitizens who cannot be deported to their home countries because they

have shown they are likely to be persecuted or tortured.[8] As a result, individuals who would have been released in the past under 8 C.F.R. § 241.4(e), (f) are now being held in ICE custody for extended periods so that DHS allegedly can assess the viability of removal to a third country, despite having won on the merits of their fear-based claims.

84. To justify such removals, DHS must meet the narrow criteria outlined by 8 U.S.C § 1231(b)(2)(D)-(E). For example, DHS may pursue third country removal to countries of which a noncitizen is a citizen, was born, or resided immediately before entering the United States. 8 U.S.C. § 1231(b)(2)(D)-(E). If it is impracticable, inadvisable, or impossible to remove the noncitizen to any of the above countries, the noncitizen may be removed to another country whose government will accept the noncitizen into that country. 8 U.S.C. § 1231(b)(2)(E)(vii).

85. However, there are statutory, regulatory, and constitutional limitations on this authority to remove noncitizens to a third country. 8 U.S.C. § 1231(b)(3). If ICE identifies an appropriate alternative country of removal, the noncitizen must have adequate notice and a meaningful opportunity to seek fear-based relief from removal to that country. DHS may not remove a noncitizen to a country in which they will be persecuted or tortured. 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16(c), 208.17(b)(2), 1208.16(c), 1208.17(b)(2); *see also Jama v. Immig. & Customs Enf't*, 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, §

---

[8] *See* Maria Sacchetti, et al, "ICE memo outlines plan to deport migrants to countries where they are not citizens," The Washington Post (July 13, 2025), available at: https://www.washingtonpost.com/immigration/2025/07/12/immigrantsdeportations- ; *see also* Ximena Bustillo, "The White House is deporting people to countries they're not from. Why?," National Public Radio, (June 1, 2025), available at: https://www.npr.org/2025/06/01/g-s1-69780/trump-deportations-south-sudan.

1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture, see 8 C.F.R. §§ 208.16(c)(4), 208.17(a) (2004)"); *see also* 1980 Refugee Act, 8 U.S.C. § 1101(a)(42) and the 1998 Foreign Affairs Reform and Restructuring Act, 8 C.F.R. § 208.18. Pursuant to 8 U.S.C. § 1231(b)(3)(A), circuit courts repeatedly have held that individuals cannot be removed to a country that was not properly designated by an immigration judge if they have a fear of persecution or torture in that country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408–09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf. Protsenko v. U.S. Att'y Gen.*, 149 F. App'x 947, 953 (11th Cir. 2005) (per curiam) (permitting designation of third country where individuals received "ample notice and an opportunity to be heard").

86. Adequate notice and a meaningful opportunity to present a fear-based claim prior to deportation to a country where a person fears persecution or torture are also fundamental due process protections under the Fifth Amendment. *See Andriasian*, 180 F.3d at 1041 (finding that "last minute" designation of alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process"); *Protsenko*, 149 F. App'x at 953; *Kossov*, 132 F.3d at 408; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019).

87. Further, DHS may not remove a noncitizen to a country in which he will be imprisoned. *Wong Wing,* 163 U.S. at 236-38.

88. Lastly, under the United States' obligations pursuant to the 1951 Refugee Convention and the U.N. Convention Against Torture (CAT), DHS may not remove a noncitizen to a country that will then return the noncitizen to the country from which she won relief from removal, a phenomenon known as "chain *refoulement*." UN Human Rights Committee (HRC), General

comment no. 31 [80] CCPR/C/21/Rev.1/Add.13, May 26, 2024, "an obligation not to extradite, deport, expel, or otherwise remove a person from their territory, where there are substantial ground for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or any country to which the person may be subsequently removed."[9]

89. Based on the foregoing, at a minimum, the statutory, regulatory, and Constitutional prohibitions on removing noncitizens to serious harm or torture require that the noncitizen **know** where he will be removed to and have an **opportunity** to raise concerns of persecution and/or torture. In the context of third country removal, where the risk of future persecution or torture is significant, the requirements of adequate notice and a meaningful opportunity to respond are not merely procedural technicalities, but fundamental components of due process protections. This principle is at the heart of ongoing litigation challenging the legality of current DHS procedures. *D.V.D. v. DHS*, 2026 WL 521557, ----- F. Supp. 3d ------ (D. Mass. Feb. 26, 2026).

ARGUMENT

I. Mr. Liberato is Subject to Unlawful Post-Final Order Detention That Violates Fifth Amendment Due Process, 8 USC § 1231(a)(6), and *Zadvydas* Because His Removal is Not Reasonably Foreseeable.

90. Mr. Liberato is protected from indefinite detention by 8 U.S.C. § 1231(a) and due process, as recognized by the Supreme Court in *Zadvydas*. 533 U.S. at 690. His order of removal and

[9] The nature of the general legal obligation imposed on State Parties to the Covenant, https://www.refworld.org/legal/general/hc/2004/en/52451

simultaneous CAT deferral grant (D-CAT) became final on November 6, 2025. As of May 5, 2026, Mr. Liberato has been detained 180 days post-removal order.

91. Once the six-month period of "presumptively reasonable" detention has expired, a petitioner seeking release from post-removal order detention must show that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," shifting the burden to Respondents to "respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. 678 at 701. Here, Mr. Liberato's detention began, for purposes of the *Zadvydas* analysis, on November 6, 2025, the date of his most recent administratively final removal order. The six-month period of "presumptively reasonable" detention under *Zadvydas* has expired. For the four reasons below, Mr. Liberato has met his burden of proof under *Zadvydas*, shifting the burden to Respondents. Respondents have not, and cannot, meet their burden.

92. First, Mr. Liberato is a native and citizen of the Dominican Republic. The Dominican Republic was the only country of removal designated by the IJ in Mr. Liberato's underlying removal proceedings and by DHS in its *Decision to Reinstate Prior Order*. The Aurora Immigration Court legally deferred Mr. Liberato's removal to the Dominican Republic under the Convention Against Torture (CAT). There is no indication that the Dominican Republic's country conditions have changed since November 6, 2025, when the Aurora Immigration Court found that it was more likely than not that Mr. Liberato would be tortured if removed to the Dominican Republic. There is no significant likelihood that he will be removed to the Dominican Republic in the reasonably foreseeable future. *See Aguilar*, 2025 WL 3514282 at *5 ("Because Petitioner has been granted withholding of removal to his only country of citizenship and there are no other countries currently identified that would accept him, Petitioner has shown good reason to believe

that there is no significant likelihood of removal in the reasonably foreseeable future.") and at *4 ("Courts have found this burden satisfied where, for example, a habeas petitioner shows that some impediment precludes removal to their country of origin. (collecting cases)."); *Dusabe v. Jones*, No. 24-cv-00464-SLP, 2024 WL 5465749, at *3 (W.D. Okla. Aug. 27, 2024), recommendation adopted, 2025 WL 486679 (W.D. Okla. Feb. 13, 2025) (holding that the petitioner met his burden by showing "the existence of either institutional barriers to repatriation or obstacle particular to his removal"); *Pan v. Blanche*, No. 1:26-cv-00599-SBP, 2026 WL 947935 (D. Colo. Apr. 8, 2026) (same).

93. Second, upon the information and belief of Mr. Liberato and his immigration attorneys, including undersigned counsel, over the course of the last six months, no third country has been identified for removal and no third country has accepted Mr. Liberato for removal, as required by 8 U.S.C. § 1231(b)(2)(E)(vii). Upon information and belief, travel documents have not been secured for Mr. Liberato's removal to any third country and there is no potential removal timeline. Over the past six months, Mr. Liberato and undersigned counsel have learned from ICE the following information relevant to the foreseeability of Mr. Liberato's removal: (1) on November 13, 2025 and January 13, 2026, in written communications directly to Mr. Liberato, ICE stated that they are "going to solicit other countries to accept you" and "you will not be released until ICE finds a 3rd country of removal to send you to," respectively; (2) in January 2026 and on April 13, 2026, ICE officials visited Mr. Liberato in person, presented him with a list of countries that Dominicans can enter visa-free and stated he needed to "pick one;" and (3) on December 10, 2025, ICE Headquarters issued a written decision to continue Mr. Liberato's detention, stating that "[t]he Department of Homeland Security is actively working with the Department of State on avenues to

removal you to a third country. Your removal from the United States is expected to occur in the reasonably foreseeable future." Despite these alleged efforts, it appears that ICE has identified no third country of removal willing to accept Mr. Liberato over the past six months. In the absence of Mr. Liberato's removal being accepted by a third country, third country removal appears to be but a pretext for unconstitutionally indefinite and punitive detention. *See Castellano v. U.S. Dep't of Homeland Security*, No. 26-cv-00080-PAB, 2026 WL 472732, at *3 (D.Colo. Feb. 19, 2026) (finding that petitioner met his burden where respondents has not identified any country that would accept him and made little progress in securing deportation); *see also Ahrach*, 2025 WL 3227539 at *4 (finding that noncitizen met their *Zadvydas* burden where ICE made no effort to remove him in seven months other than making initial requests to third countries); *Aguilar*, 2025 WL 3514282, at *6 ("Respondents' bare assertions that ICE is pursuing third country removal options are insufficient to meet Respondents' burden to put forth evidence sufficient to rebut Petitioner's showing"). Third country removal does not suffice to justify continued detention when Respondents can continue such efforts after Mr. Liberato has been released.

94. Third, even if Respondents were to assert that they have a selected a third country of removal for Mr. Liberato, and such country is willing to accept him, he cannot be removed in the reasonably foreseeable future because he is entitled to adequate notice, a meaningful opportunity to be heard on any fear-based claims, and individualized diplomatic assurances before being removed from the United States to a third country. *See Castellano*, 2026 WL 472732 at *3 (stating that [the] "Petitioner being entitled to 'notice and an opportunity to seek protection from removal" pursuant to 8 U.S.C. § 1231(b)(3) further supports that his deportation is not likely in the reasonably foreseeable future."); *Villanueva v. Tate*, 801 F. Supp. 3d 689, 703 (S.D. Tex. 2025)

(holding that even if ICE were to identify a country that would accept Petitioner, "any efforts to remove [him] to a third country would likely be delayed by proceedings contesting his removal to the third country finally identified."); *Ali v. Baltazar*, 2026 WL 3225656, at *5 (D. Colo. Jan. 27, 2026) (holding that "[e]ven if respondent were now to assert they have selected a third country for removal or intend to reopen [Petitioner]'s deferral under CAT, such representation would not suffice). Both avenues involve formal legal processes that afford [Petitioner] substantial procedural protections. *See e.g. Jama v. Immig. & Customs Enf't*, 543 U.S. 335, 348 (2005)."*)*; *Arostequi Maldonado*, 2025 WL 2280357 at *13 (granting "an injunction requiring Respondents to adhere to their *non-discretionary* obligation to provide [petitioner] with notice and an opportunity to seek withholding of removal before he is deported to any third country." (emphasis in original)).

95. A last-minute designation of a removal country would also violate a "basic tenet of constitutional due process: that individuals whose rights are being determined have notice of the issues to be adjudicated, so that they will have the opportunity to prepare and present relevant arguments and evidence.'" *Ali*, 2026 WL 322565, at *5 (quoting *Andriasian*, 180 F.3d at 1041 (9th Cir. 1999)); *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (affirming the due process right of noncitizens to "notice and an opportunity to challenge their removal" before being spirited away). Even DHS guidelines require "credible assurances from the third country that the noncitizen will not be persecuted or tortured" before removal and that noncitizens must be given "notice and an opportunity to raise fear-based claims" in the absence of such credible assurances. *Ahrach*, 2025 WL 3227529, at *5 n.10; Nguyen, 796 F. Supp. 3d at 728-29; *see also Chennah*, 2026 WL 179951, at *3-4 (ordering release under *Zadvydas* where USCIS determined that Petitioner would more

likely than not be persecuted in the identified third country and ICE was only considering whether to reopen proceedings before the immigration court.).

96. When charged with the question of whether noncitizens are entitled to notice and a meaningful opportunity to present a fear-based claim, circuit courts have resoundingly sided with the noncitizen. For example, in *Tomas-Ramos v. Garland*, the Fourth Circuit recognized that 8 U.S.C. § 1231 and the CAT's implementing regulations provide noncitizens with a pathway to seek withholding of removal and CAT protection "to prevent removal to a particular country." 24 F.4th 973, 977 (4th Cir. 2022). Likewise, the Ninth Circuit found in an unpublished opinion that "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 Fed. App'x 724 (9th Cir. 2016).

97. District courts across the country have found similarly. For instance, the Western District of Washington held that "[a] noncitizen must be given sufficient notice of a country of deportation that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation." *Aden*, 409 F. Supp. 3d at 1009 (citing *Mathews*, 424 U.S. at 349; *Kossov*, 132 F.3d at 408); *see, e.g.*, *Santamaria Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2444087, at *8 (D. Md. Aug. 25, 2025); *Mahdejian v. Bradford*, No. 9:25-CV-00191, 2025 WL 2269796, at *4 (E.D. Tex. July 3, 2025) (determining that "[n]oncitizens have a right to meaningful notice and opportunity to be heard before being deported to a third country."); *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *7 (C.D. Cal. June 25, 2025) (finding that CAT requires "adequate notice and a meaningful opportunity to raise any fear-based claim" before removal). The Northern District of California similarly found that where

CAT deferral to El Salvador was previously granted, "there are no countries to which [petitioner] could currently be removed without his first being afforded notice and opportunity to be heard on a fear-based claim as to that country, as the Fifth Amendment Due Process Clause requires." *Ortega v. Kaiser*, No. 25-cv-5259-JST, 2025 WL 1771438 at *3 (N.D. Cal. June 26, 2025). Most recently, in the Southern District of Texas, the court explicitly applied the *Mathews* factors in the context of a claim against unlawful removal to a third country, finding that "the cost-benefit analysis weighs in [petitioner's] favor." *Sagastizado Sanchez v. Noem, et al.*, case 5:25-cv-00104, ECF No. 26 (S.D. TX, Oct. 2, 2025).

98. Here, the Fifth Amendment Due Process Clause, 8 U.S.C. § 1231, and the CAT's implementing regulations enshrine Mr. Liberato's right to notice and opportunity to be heard on a fear-based claim when the government designates a third country for removal. *See, e.g., Aden*, 409 F. Supp. 3d at 1004. Mr. Liberato will likely succeed on a fear-based claim as to any third country, assuming he is afforded adequate notice and an opportunity to raise such claim. Mr. Liberato fears he will be persecuted or tortured in almost any third country given his unique and serious vulnerabilities, including his identity as a queer man and his mental health diagnoses. Indeed, Mr. Liberato's [redacted] significantly increase his risk of facing persecution in many parts of the world, further complicating third country removal as a viable and safe option. Accordingly, counsel for Mr. Liberato is prepared to litigate his substantive and procedural rights to challenge any country which DHS identifies.

99. Fourth, Respondents are barred from deporting Mr. Liberato to a country that will imprison him or to a country that will repatriate him to the Dominican Republic, thereby further limiting the possible countries of removal. However, Respondents have recently deported noncitizens to third

countries that, in turn, repatriated the noncitizens to their countries of origin. Chain refoulement violates the United States's treaty obligations under the Convention Against Torture, as well as U.S. statutes and regulations. Mr. Liberato's repatriation to the Dominican Republic, by either the U.S. government or a third country of removal, will violate the Immigration Court's order deferring his removal to the Dominican Republic, as well as the international principle of *nonrefoulement,* now codified into U.S. law. Even if DHS attempted to secure diplomatic assurances, their credibility should be questioned.[10] The problematic nature of diplomatic assurances has been exposed in cases such as *D.A. v. Noem*, where individuals granted fear-based relief from various West African countries were removed to Ghana presumably under such assurances and ultimately returned to the same countries where adjudicators had determined they would face persecution, rendering any "assurances" effectively meaningless. No. 1:25-cv-03135, 2025 WL 2646888 (D.D.C. Sept. 12, 2025).

100. Mr. Liberato has met his burden under *Zadvydas* to establish that his detention has become indefinite without any reasonably foreseeable possibility of removal by demonstrating: (1) the impossibility of his removal to the Dominican Republic given his CAT deferral; (2) the lack of evidence that the Respondents have identified a third country willing to accept Mr. Liberato after over six months of detention post-removal order; and (3) the paucity of available countries to which third country removal would be lawful given the statutory and Constitutional constraints

[10] Letter from Members of Congress to Secretary Kristi Noem, Secretary Marco Rubio, and Secretary Pete Hegseth (Sept. 24, 2025), available at: https://www.warren.senate.gov/imo/media/doc/letter_from_warren_members_of_congress_on_us_citizens_immigration_enforcement_letter.pdf

against removal to a country where Mr. Liberato would suffer persecution, torture, punitive detention and/or chain refoulement.

101. Accordingly, Mr. Liberato's detention has exceeded constitutional and statutory limits.

II. The Government Cannot Rebut the Showing of the Unforeseeability of Mr. Liberato's Removal

102. In turn, Respondents cannot meet their burden under *Zadvydas*. Respondents have offered no concrete details regarding the government's intent to remove Mr. Liberato, stating only that ICE is "actively working" on third country removal and "[h]is Post-Order Custody Review from HQ-RIO on/about 03/21/2026 is still currently pending review." The *Zadvydas* court was clear: Respondents cannot render Mr. Liberato's continued detention lawful by merely pointing to good faith efforts to find third countries who will accept him and by conducting periodic administrative reviews. *Zadvydas*, 533 U.S. at 685, 702. Courts in this circuit, and others, have regularly refused to find the government's burden met where the government has offered little more than generalizations and unsubstantiated assertions regarding the likelihood that removal will occur. *See e.g., Morales-Fernandez,* 418 F.3d at 1123; *Nzayikorera,* 2021 WL 9385836; *Ahrach,* 2025 WL 3227529, at *10; *Aguilar*, 2025 WL 3514282 at *4 (collecting cases); *Fadwa v. Lyons*, No. 25-CV-03660-PAB, 2025 WL 3525026 (D. Colo. Dec. 9, 2025) (holding that "[d]iligent efforts alone will not support continued detention;" instead, the government must "make legitimate progress towards removal."); *S.F. v. Bostock*, 2025 WL 2841022, at *4 (D. Or. Oct. 7, 2025) (finding the government's evidence that the petitioner "could be a candidate" for a scheduled charter flight to Iran "speculative" and "insufficient to rebut Petitioner's showing that removal is not significantly likely within the reasonably foreseeable future); *Vaskanyan v. Janecka*, 2025 WL 2014208, at *5 (C.D. Cal. June 25, 2025) (finding that petitioner's pending citizenship application

to Armenia was insufficient to rebut petitioner's showing even when "the government may receive a response from Armenia in the near term"); *Vaskanyan v. Janecka*, 2025 WL 3050075, at *3 (C.D. Cal. Sept. 10, 2025) ("That the government was 'pursuing the possibility of removing Petitioner to Armenia' did not show that the Petitioner's removal was likely in the reasonably foreseeable future. In fact – that position – that a showing of continued good faith efforts to effectuate deportation is sufficient to prolong detention – was squarely rejected by the Supreme Court in *Zadvydas* as 'demand[ing] more than our reading of the [INA] can bear.'") (internal citation omitted); *Ahmed,* 744 F. Supp. 3d at 267 ("DHS's active efforts to obtain travel documents from Pakistan are not enough to demonstrate a likelihood of removal in the reasonably foreseeable future where the record before the Court contains no information to suggest a timeline on which such documents will actually be issued."); *Hassoun*, 2019 WL 78984 at *5 (finding that the government had not met its burden when it had four requests for travel documents from third countries pending for about five months and only made "general and vague" assertions regarding the status of those requests).

103. Further, Respondents may not cite the mere possibility of third country removal as the basis for detention. *See e.g., Aguilar*, 2025 WL 3514282, at *6, *Ali*, 2026 WL 322565 at *5; *Ahrach*, 2025 WL 3227529, at *2,4; *Chennah*, 2026 WL 179951, at *3; *Elsayed*, 2026 WL 1261947, at *3.

III. This Court Should Order Mr. Liberato's Immediate Release

104. Because Mr. Liberato's removal is not reasonably foreseeable, *Zadvydas* requires that he be immediately released. *See Zadvydas*, 533 U.S. at 700–01 (describing release as an appropriate remedy); *Morales-Fernandez*, 418 F.3d at 1124 (ordering petitioner's release where "[t]here is no contention that conditions in Cuba have changed so that [the petitioner's] removal to Cuba is

reasonably foreseeable," and therefore he must "be released and paroled into the United States."); 8 U.S.C. § 1231(a)(6) (authorizing release "subject to . . . terms of supervision"). Punitive measures cannot be imposed upon noncitizens ordered removed. *Id.* at 694 (quoting *Wong Wing*, 163 U.S. at 238). Therefore, Mr. Liberato's ongoing civil detention is assumed to be "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690. However, at six months post his grant of D-CAT, there is no "sufficiently strong special justification here for indefinite civil detention" under any statute or law. *Id.* Therefore, continued detention in this case appears to be unlawfully punitive, and Mr. Liberato must be released.

105. To order his immediate release, this Court need only determine that Mr. Liberato's removal is not reasonably foreseeable under *Zadvydas*; it need not analyze whether he poses a danger to the community or a flight risk. *See id.* at 699–700 ("[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.").

106. *Zadvydas* explicitly held that flight risk is already baked into the reasonable foreseeability analysis. *See id.* at 690 (observing that the "justification . . . [of] preventing flight . . . is weak or nonexistent where removal seems a remote possibility at best"); *see also Ahrach*, 2025 WL 3227529 at *5 (citing *Zadvydas* and holding that "under *Zadvydas*, whether Ms. El Ahrach is a flight risk has no bearing on the constitutionality of her continued detention.") Here, Mr. Liberato is not a flight risk. His complex trauma, mental health diagnoses, illiteracy, and cognitive issues will require him to rely on his family and their community in New York. In turn, his lawful permanent resident mother and U.S. citizen sister will rely on Mr. Liberato for financial and emotional support as they navigate significant health issues. Mr. Liberato has provided his address in New York to ICE. Mr. Liberato will comply with all conditions imposed by ICE, as well as

those required by the supervised release imposed in his federal re-entry case. However, even if Mr. Liberto did present a flight risk, that fact does not justify his continued detention when there is no evidence that removal is likely in the reasonably foreseeable future.

107. The *Zadvydas* Court further held that dangerousness cannot unilaterally justify indefinite civil detention barring "special circumstances," which may include the noncitizen being a "suspected terrorist[]" but do not include the noncitizen's "removable status itself." *Id.* at 691-2; *see also Kansas v. Hendricks*, 521 U.S. 346, 358 (1997) ("[a] finding of dangerousness, standing alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary [civil detention]."); *Ali*, 2026 WL 322565, at *4 ("[e]ven if Mr. Ali's redetention was authorized at the outset by his recent criminal conduct, [...] it has since become unconstitutionally prolonged."). Even when limited to specially dangerous individuals, indefinite civil detention must be subject to strong procedural protections. *Zadvydas*, 533 U.S. 691.

108. In *Zadvydas*, the government's concerns about the criminal histories[11] of the individuals involved did not prevent the Court from holding that the Constitution's demands concerning due process require granting a noncitizen's release where "removal is not reasonably foreseeable." 633 U.S. at 689, 699-700. "[O]f course, the [noncitizen's] release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the [noncitizen] may no doubt be returned to custody upon a violation of those conditions." *Id* at 700.

109. Mr. Liberato is not a danger to the community. Given Mr. Liberato's stabilized mental health, his documented and sustained sobriety and rehabilitation, and a detailed release plan

[11] Kestutis Zadvydas had a long criminal record and a history of flight. Kim Ho Ma had been involved in a gang-related shooting and was convicted of manslaughter. 533 U.S. 678 at 684-86.

outlining that he will live in New York with his lawful permanent resident mother and U.S. citizen sister, the Respondents can craft conditions of release that are protective and reasonable should they choose to do so. While Mr. Liberato does have a criminal history, he is not a terrorist, a national security concern, or "specially dangerous." Mr. Liberato's criminal history is over twenty years old, with his last conviction entered on May 1, 2006. Mr. Liberato's only contemporaneous conviction is for his reentry into the United States in 2023, which reflects the difficult decision he made to flee persecution and torture in the Dominican Republic, rather than suggesting dangerousness.

110. The indefinite nature of Mr. Liberato's detention is a grave and ongoing violation of his due process rights, and the appropriate remedy is release. Immediate release is contemplated when immigration detention becomes unlawful. *Zadvydas*, 533 U.S. at 701; *Mapp v. Reno,* 241 F.3d 221, 229 (2d Cir. 2001) (recognizing court's inherent power to order release of habeas petitioners from immigrant detention).

IV. Mr. Liberato's Indefinite Detention Also Violates his Procedural Due Process Rights

111. Mr. Liberato's detention also violates his procedural due process rights because Respondents have not followed their own regulations in evaluating his case. Under the Accardi doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to

follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

112. Mr. Liberato is entitled to regular, individualized custody reviews, often referred to as "post-order custody reviews," or "POCRs." 8 C.F.R. § 241.4(k) (timing of post-order custody reviews); 8 C.F.R. § 241.4(h)(1) (initial review will include "any written information submitted to the district director"); 8 C.F.R. § 241.4(f) (listing factors for release). Upon information and belief, Respondents have conducted one POCR: on or around December 10, 2025 (approximately just one month after Mr. Liberato was granted D-CAT). One was scheduled for on or around March 21, 2026; however, Mr. Liberato and counsel have received no news on whether that POCR occurred. Respondents failed to notify Mr. Liberato and his counsel prior to the first POCR, in violation of 8 C.F.R. § 241.4(h)(2). There is no evidence to suggest that Respondents conducted an individualized review or considered supporting materials provided by Mr. Liberato's counsel, in violation of 8 C.F.R. § 241.4(k), § 241.4(h)(1), and § 241.4(f). Mr. Liberato, through counsel, has asked ICE officers to consider his post-release plan and evidence and has asked to be present for any review that ICE conducts. Mr. Liberato has not been provided an opportunity to be present and heard at any POCR despite his counsel's requests.

113. Mr. Liberato's continued detention without proper process is unlawful. *Misirbekov v. Venegas*, 796 F.Supp. 3d 436, 439 (S.D. Tex. 2025) (ordering release as a matter of procedural due process where the government gave only a "boilerplate and pretextual" basis for detention instead of a "meaningful individualized review."); *see also Cruz v. Bondi*, 25-cv-262-JJM-PAS, 2025 WL 3295485, *8 (D. R.I. 2025) (holding "the procedures underpinning Mr. Cruz's incarceration 'increase the risk of error' because he has been detained for over six months "without

an individualized hearing before an impartial adjudicator."), citing *Cabrera Galdamez v. Mayorkas*, No. 22 Civ. 9847 (LGS), 2023 WL 1777310 (S.D.N.Y. Feb. 6, 2023). Regulations governing post-removal custody reviews "do not merely facilitate internal agency housekeeping but rather afford important and imperative procedural safeguards" to people in detention. *Bonitto v. Bureau of Immigr. & Customs Enf't*, 547 F. Supp. 2d 747, 756 (S.D. Tex. 2008) (adopting Magistrate Judge's report and recommendation) (citing *United States v. Caceres*, 440 U.S. 741 (1979) at 760). "[T]hese [§ 241.4] regulations are intended to provide due process in that they are fairly construed to be part of a procedural framework 'designed to ensure the fair processing of an action affecting an individual,' such that when they are not followed, prejudice is presumed." *Santamaria Orellana*, 2025 WL 2444087 at *13 (quoting *United States v. Morgan*, 193 F.3d 252, 267 (4th Cir. 1999)) (discussing 8 C.F.R. § 241.4 generally).

114. In *Misirbekov*, a political refugee, who was granted withholding of removal under the statute, filed a habeas claim after the six-month presumptively reasonably period under *Zadvydas* had passed. 796 F.Supp. 3d 436. The court found that the petitioner's *Zadvydas* claim failed, but nevertheless found his detention to be procedurally unsound: "Respondents cannot constitutionally detain Petitioner without complying with these safeguards, regardless of whether Petitioner qualifies for release under *Zadvydas*." *Id.* at 439. "Detention beyond the removal period may be maintained only upon compliance with applicable process," which is contemplated by the regulations to be a "meaningful individualized review." *Misirbekov*, 796 F. Supp. 3d at 439

(finding deprivation of due process where respondent was late on post-order custody reviews and the reasons for detention were "boilerplate and pretextual").

115. Unlike the petitioner in *Misirbekov*, Mr. Liberato is likely to prevail on his *Zadvydas* claim. Even so, Mr. Liberato's procedural due process rights have also been violated. Respondents have not provided Mr. Liberato with notice, an individualized review, or an opportunity to challenge his detention, providing only vague statements that Mr. Liberato is "a public safety threat and a flight risk." Despite undersigned counsel's requests to be informed of any updates regarding the status of Mr. Liberato's POCRs, the only update his counsel has received is that a POCR from March 21, 2026 is pending review. By providing Mr. Liberato only with a boilerplate decision to continue his detention, not based on any facts specific to his case and despite Respondents' own regulations requiring review, Respondents have violated Mr. Liberato's procedural due process rights.

CLAIMS FOR RELIEF

COUNT I
Violation of 8 U.S.C. § 1231(a)(6) and *Zadvydas*
(Unlawful Post-Final Order Detention)

116. Mr. Liberato realleges and incorporates by reference the paragraphs above.

117. Respondents detain Mr. Liberato pursuant to 8 U.S.C. § 1231(a)(6), which governs the detention of noncitizens who have administratively final orders of removal.

118. In *Zadvydas*, the Supreme Court interpreted § 1231(a)(6) to contain an implicit timeframe, authorizing detention only for "a period reasonably necessary to bring about the [noncitizen's] removal from the United States." 533 U.S. at 589. The Court established a six-month period of post-final order detention, after which the government must provide evidence that removal is likely

in the reasonably foreseeable future. *See id.* at 701.

119. Mr. Liberato cannot be deported to the Dominican Republic—the only country where he is a citizen—because he has a final grant of deferral of removal pursuant to the CAT to the Dominican Republic. *See* Exh. A.

120. In the more than six months since Mr. Liberato's removal order became administratively final, the government has failed to identify a single country for removal that will accept Mr. Liberato – and upon information and belief, has not even begun its search for a third country willing to accept him.

121. Before initiating removal to any third country, the Respondents must first afford Mr. Liberato notice and the opportunity to raise a fear-based protection claim seeking relief from removal to that country. Mr. Liberato's identity as a queer man and his mental health diagnoses make it highly improbable that the Respondents will succeed in identifying a country that will be a safe destination for him. Accordingly, Mr. Liberato, through undersigned counsel, is prepared to litigate his substantive, procedural, and Constitutional protections to challenge any country identified by the Respondents.

122. Together, these factors render his removal more remote than ever.

123. Because Mr. Liberato cannot be removed from the United States in the "reasonably foreseeable future," his continued detention violates 8 U.S.C. § 1231. *See Zadvydas*, 533 U.S. at 701.

124. Accordingly, Mr. Liberato respectfully requests that this Court order Respondents to immediately release him from detention.

COUNT II

Violation of the Substantive Due Process Clause of the Fifth Amendment of the U.S. Constitution (Unlawful Post-Final Order Detention)

125. Mr. Liberato realleges and incorporates by reference the paragraphs above.

126. Mr. Liberato's continued detention violates his right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.

127. The Due Process Clause of the Fifth Amendment requires that the deprivation of Mr. Liberto's liberty be narrowly tailored to serve a compelling government interest. While Respondent would have an interest in detaining Mr. Liberato in order to effectuate removal, that interest does not justify the indefinite detention of Mr. Liberato, who is not significantly likely to be removed in the reasonably foreseeable future.

128. The Fifth Amendment provides that "No person shall . . . be deprived of life, liberty, or property[] without due process of law." U.S. Const. amend. V. Moreover, "The Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

129. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart" of the liberty that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690.

130. The Supreme Court has established that noncitizens in post-final order detention for more than six months must be released from custody if there is no likelihood that they will be removed in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 699–700.

131. More than six months have lapsed since Mr. Liberato was granted deferral of removal, yet

he remains confined without any further court proceedings, appellate process, or indication of any plan for removal. Under these circumstances, Mr. Liberato's continued detention is completely untethered to any legal basis. *Id.* at 690 ("where detention's goal is no longer practically attainable, detention no longer bears reasonable relation to the purpose for which the individual was committed."). At this stage, the Respondents' refusal to release Mr. Liberato is "the exercise of power without any reasonable justification" and a violation of due process principles. *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998).

132. Additionally, when imprisonment is for an indefinite period, continued beyond "reasonable efforts to expel the [noncitizen], such imprisonment is "impermissible punishment rather than detention pending deportation." *Rodriguez-Fernandez*, 654 F.2d at 1387. In other words, civil detention becomes constitutionally impermissible punishment if it is not "reasonably related to a legitimate nonpunitive governmental objective" such that "a court may permissibly infer that the purpose…is punishment." *Bell v. Wolfish*, 441 U.S. 520, 520-21 (1979); *Zadvydas,* 533 U.S. at 690 (holding civil detention violates due process except in "narrow, non-punitive circumstances where a special justification, such as harm-threatening mental illness outweigh the individual's constitutionally protected interest in avoiding physical restraint."); *see also Kansas v. Hendricks*, 521 U.S. 346, 363 (1997) (finding that under substantive due process doctrine, a restraint on liberty, such as prolonged civil detention, is only permissible if it serves a "legitimate nonpunitive objective."). As such, Mr. Liberato's ongoing, indefinite detention is punitive and violates his rights to due process. *See Zadvydas*, 533 U.S. at 690.

133. The indefinite nature of Mr. Liberato's detention under § 1231 violates his substantive due process rights under the Fifth Amendment by depriving him of his "strong liberty interest." *United*

States v. Salerno, 481 U.S. 739, 750 (1987).

134. Accordingly, Mr. Liberato respectfully requests this Court order Respondents to immediately release him.

COUNT III
Violation of the Procedural Due Process Clause of the Fifth Amendment of the U.S. Constitution
(Unlawful Post-Final Order Detention)

135. Mr. Liberato realleges and incorporates by reference the paragraphs above.

136. Under the Due Process Clause of the Fifth Amendment, an individual is entitled to a timely and meaningful opportunity to demonstrate that he should not be detained. Mr. Liberato has been denied that opportunity. Mr. Liberato was not provided notice of the December 2025 post-order custody review. The decision makers, which appear to be individuals at ICE's headquarters, have not reviewed the 100-page packet submitted by Mr. Liberato in advance of his next custody review. Upon information and belief, there has been no 180-day post-order custody review. The failure of the Respondents to provide a neutral decision-maker to conduct an individualized review of Mr. Liberato's continued custody violates procedural due process.

137. The Respondents have failed to conduct the mandatory custody reviews in accordance with 8 C.F.R. § 241.1 during this prolonged period of detention, violating his right to due process.

138. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. To comply with the Due Process Clause, civil detention must "bear[] a reasonable relation to the purpose for which the individual was committed," which for immigration detention pursuant to § 1231 is removal from the United States. *Demore*, 538 U.S. at 527 (citing *Zadvydas*, 533 U.S. at 690).

139. The Respondents' alleged justification for continuing to detain Mr. Liberato absent any indication they have even begun the preliminary research that third country removal requires in the more than six months since his grant of D-CAT, violates his procedural due process rights and renders his detention indefinite. Moreover, without notice of the Respondents' intent to deport him to a single country, Mr. Liberato cannot have a meaningful opportunity to challenge the viability of his removal, further depriving him of the due process rights to which he is entitled under the United States Constitution.

140. The appropriate remedy is an Order from this Court requiring his immediate release.

PRAYER FOR RELIEF

WHEREFORE Mr. Liberato respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Enjoin Respondents from transferring Mr. Liberato outside of the jurisdiction of the District of Colorado pending the resolution of this case;

c. Pursuant to 28 U.S.C. § 2243, issue an *Order to Show Cause* or *Order to Answer* ordering Respondents to show cause within three days of why the writ should not be granted;

d. Declare that Respondents' continued detention of Mr. Liberato violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6), and his procedural and substantive due process right under the Due Process Clause of the Fifth Amendment of the U.S. Constitution;

e. Grant a writ of habeas corpus directing Respondents to immediately release Mr. Liberato;

f. Require Respondents to provide the statutory and constitutionally mandated notice and opportunity to express fear prior to removing Mr. Liberato to a third country, or to a

country to which his removal has been deferred;

g. Grant any further relief as this Court deems just and proper.

Dated: May 12, 2026

/s/Kathleen M. Glynn

Immigration Defense Clinic
University of Colorado Law School
404 UCB
Boulder, CO 80309
Kathleen.Glynn@colorado.edu
Pro Bono Counsel for Petitioner

22 U.S.C. § 2242 VERIFICATION STATEMENT

I, /s/Kathleen M. Glynn, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petitioner's Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: May 12, 2026

EXHIBITS

A. Order of the Immigration Judge Granting Deferral of Removal under the Convention Against Torture (CAT) (dated November 6, 2025).

B. Order of the Immigration Judge Appointing a Qualified Representative to represent Mr. Liberato, finding him mentally incompetent to represent himself (dated October 3, 2024).

C. Declaration of Chasen Marinoff, Clinical Student representing Mr. Liberato in his withholding-only proceedings and post-release advocacy, supervised by Kathleen M. Glynn (dated May 7, 2026).

D. November 13, 2025 *Aurora Processing Center* (*Request Form – Kite*).

E. December 10, 2025 *Decision to Continue Detention*.

F. December 19, 2025 Email from Attorney Kathleen M. Glynn to ICE Deportation Officer Shane Blea, expressing Mr. Liberato's fear of removal to a third country without notice.

G. January 13, 2026 *Aurora Processing Center* (*Request Form – Kite*).

H. List of Third Countries for Removal Provided to Mr. Liberato by ICE in January and April 2026.

I. January 15, 2026 Email from Attorney Kathleen M. Glynn on ICE Deportation Officer Shane Blea, expressing Mr. Liberato's fear of removal to Ghana, South Sudan, El Salvador, Honduras, and Ecuador.

J. *Evidence in Support of Release from ICE Custody* (redacted and without exhibits), Post-Release Plan from Clinical Student Chasen Marinoff to ICE (dated February 2, 2026).

K. March 10, 2026 Email from Clinical Student Chasen Marinoff to ICE Deportation Officer Shane Blea.

L. March 11, 2026 Email from ICE Deportation Officer Daniel Figueroa.

M. April 2, 2026 Email from ICE Deportation Officer Daniel Figueroa and ensuing exchange.

CERTIFICATE OF SERVICE

I, Kathleen M. Glynn, hereby certify that on May 12, 2026, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Kathleen M. Glynn, hereby certify that I have mailed via certified USPS a hard copy of the document to the individuals identified below pursuant to Fed. R. Civ. P. 4 via certified mail on May 12, 2026.

Kevin Traskos
Chief, Civil Division
U.S. Attorney's Office
District of Colorado
1801 California Street, Ste. 1600
Denver, CO 80202

Todd Blanche
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Markwayne Mullin and Todd Lyons, DHS/ICE, c/o:
Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, SW
Mail Stop 0485
Washington, DC 20528-0485

Juan Baltazar
GEO Group, Inc.
3130 N. Oakland Street
Aurora, CO 80010

George Valdez
Denver ICE Field Office
12445 E. Caley Ave.
Centennial, CO 80111

s/Kathleen M. Glynn
Immigration Defense Clinic
University of Colorado Law School