

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

D.J.R.R.

*Petitioner,*

v.

KENNETH GENALO, *in his official capacity as*  
Field Office Director of New York, Immigration and  
Customs Enforcement;  
ANTOINE FRAZIER., *in his official capacity as*  
Acting Warden of the Metropolitan Detention Center;  
TODD LYONS, *in his official capacity as*  
Acting Director U.S. Immigrations and  
Customs Enforcement; MARKWAYNE MULLIN *in*  
*his official capacity as* Secretary of Homeland  
Security; TODD BLANCHE, *in his official*  
*capacity as* Acting Attorney General,

*Respondents.*

Case No. 26-3124

**EMERGENCY PETITION FOR  
WRIT OF HABEAS CORPUS AND  
COMPLAINT**

**INTRODUCTION**

1. Petitioner D.J.R.R.<sup>1</sup> is a 33-year-old man originally from Nicaragua. D.J.R.R. has been granted withholding of removal to Nicaragua due to the likelihood that he would face persecution based on his opposition to the government and the Sandinistas. This means that D.J.R.R. cannot be removed to Nicaragua.

2. Following his withholding grant, which is administratively final, D.J.R.R. has been living peacefully in the community with his family and fully complying with an Order of Supervision (“OSUP”) from Immigration and Customs Enforcement (“ICE”). Despite this, ICE suddenly took D.J.R.R. back into immigration custody on May 21, 2026 when he appeared as directed at their office for a check-in appointment. Paperwork that D.J.R.R. was provided during

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<sup>1</sup> Petitioner is concurrently filing a motion for leave to proceed via pseudonym.

his re-detention indicated that because ICE could not remove D.J.R.R. to Nicaragua given the withholding grant, ICE would instead pursue removal to a third country. D.J.R.R. has no ties to any other country and would face a significant risk of persecution or refoulement to Nicaragua if he were deported to a third country. Respondents currently hold D.J.R.R. in their custody at Metropolitan Detention Center (or “MDC”) in Brooklyn, New York.

3. D.J.R.R. challenges his re-detention by bringing an Emergency Petition for Writ of Habeas Corpus and Complaint. Respondents’ actions violate the Due Process Clause of the Fifth Amendment, the Immigration and Nationality Act (“INA”) and implementing regulations, the Administrative and Procedure Act (“APA”), and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions. Additionally, absent intervention from this Court, D.J.R.R. faces imminent risk that Respondents will remove him to a third country, pursuant to the policies and practices of the current Administration, without affording him fundamental procedural protections in violation of the INA, the Foreign Affairs Reform and Restructuring Act (FARRA) of 1998, and the Due Process Clause of the Fifth Amendment.

4. D.J.R.R. thus brings this action requesting that this Court order Respondents to immediately release him and enjoin Respondents from re-detaining him without notice and an opportunity to be heard before a neutral arbiter and in which Respondents bear the burden to establish that D.J.R.R. is not a danger or a flight risk that cannot be mitigated by bond and in which alternatives to detention and ability to pay are considered.

5. D.J.R.R. further requests that this Court enjoin Respondents from removing him to a country not listed on his removal order. In the alternative, D.J.R.R. asks the Court to order

fundamental procedural protections in the event that Respondents seek to remove him to a third country.

### **JURISDICTION**

6. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 1331; Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; and the Administrative Procedure Act, 5 U.S.C. § 701.

7. This Court has additional remedial authority under 28 U.S.C. §§ 2201-02 (the Declaratory Judgment Act), to grant injunctive and declaratory relief.

8. Although only the Court of Appeals has jurisdiction to review removal orders directly through a petition for review, see 8 U.S.C. § 1252(a)(1), (b), district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See Jennings v. Rodriguez*, 583 U.S. 281, 292-96 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. at 687.

9. Additionally, district courts have jurisdiction to hear habeas corpus claims by noncitizens seeking adequate process before third country removal. *See, e.g., Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 947 (D. Colo. 2025) (finding 8 U.S.C. § 1252(g) did not bar “an injunction requiring [the government] to adhere to their non-discretionary obligation to provide [the noncitizen] with notice and opportunity to seek withholding of removal before he is deported to any third country”); *Sagastizado v. Noem*, 802 F. Supp. 3d 992, 1005 (S.D. Tex. 2025) (asserting jurisdiction over noncitizen’s “claim that he cannot be removed to a third country without sufficient notice and a meaningful opportunity to raise a claim, and that Respondents’ failure to provide him with review of his negative [fear interview] determination deprives him of his rights under the Due Process Clause of the Fifth Amendment”); *Aden v. Nielsen*, 409 F. Supp.

3d 998, 1006 (W.D. Wash. 2019) (asserting jurisdiction over noncitizen’s challenge to third country removal “without reopening his proceedings so that an IJ could make the designation in the first instance and/or determine whether petitioner’s life or freedom would be threatened in that country” because the claims were “independent of [the noncitizen’s] removal order” and the petitioner “could not have brought these claims during his immigration proceedings”); *D.V.D. v. U.S. Dep’t of Homeland Sec.*, 778 F. Supp. 3d 355, 367, 376 (D. Mass.), *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1323697 (D. Mass. May 7, 2025), and *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1453640 (D. Mass. May 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S. Dep’t of Homeland Sec.*, 786 F. Supp. 3d 223 (D. Mass. 2025); *see also Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023 WL 7130898, at \*2 (S.D.N.Y. Oct. 29, 2023) (“Courts can review ‘how’ Defendants exercise their discretion because such a claim does not ask ‘why the Secretary chose to execute the removal order’ but rather ‘whether the way [Defendants] acted accords with the Constitution and the laws of this country.’”).

10. Federal courts also have federal question jurisdiction, through the APA, to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). APA claims are cognizable in habeas. *See* 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by “any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus”). The APA affords a right of review to a person who is “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702. Respondents’ continued detention of Petitioner has adversely and severely affected Petitioner’s liberty and freedom.

11. Pursuant to 5 U.S.C. §§ 702, 706, Respondents have waived sovereign immunity and consented to suit.

12. Further, federal courts have broad power to fashion equitable remedies to address constitutional violations in prisons, *Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978), including “the power to order bail in habeas proceedings,” which is “a legal and logical concomitant of the court’s habeas jurisdiction.” *Leslie v. Holder*, 865 F. Supp. 2d 627, 634 (M.D. Pa. 2012).

### VENUE

13. Pursuant to 28 U.S.C. §2241(d) which states, “Where an application for a writ of habeas corpus is made by the person in custody. . . the application [for writ of habeas corpus] may be filed in the district court for the district wherein such person is in custody.” Further, pursuant to 28 U.S.C. § 1391, venue is also proper in the district where “a substantial part of events or omissions giving rise to the claim occurred.” *See also Vega v. Schneiderman*, 861 F.3d 72, 74 (2d Cir. 2017) (citing *Jones v. Cunningham*, 371 U.S. 236, 239–40 (1963)) (“The custody requirement may be satisfied by restraints other than ‘actual, physical custody’ incarceration.”); *Roba v. United States*, 604 F.2d 215, 219 (2d Cir. 1979) (“Petitioner need not wait until the marshals physically lay hands on him; he is entitled now to challenge the allegedly unlawful conditions of his imminent custody.”).

14. Venue is proper in this Court because Petitioner is detained within the jurisdiction of this Court at Metropolitan Detention Center in Brooklyn, New York. Venue is proper in this Court because Petitioner is under the custody of the New York Field Office for ICE. The New York Field Office, which operates within the District, is solely responsible for decisions regarding Petitioner’s custody, including any initial decision to take him into detention and any subsequent decision to continue detaining or removing him.

**PARTIES**

15. Petitioner D.J.R.R. is a native and citizen of Nicaragua, who was residing in Queens, New York. Petitioner was detained by ICE on May 21, 2026 at an OSUP check-in at 26 Federal Plaza, New York, New 10278. D.J.R.R. is at imminent risk of removal to a third country arbitrarily and without justification or procedural safeguards.

16. Respondent Antoine Frazier is named in his official capacity as the Acting Warden of MDC. He is an employee of the Federal Bureau of Prisons, which partners with ICE to accept immigrant detainees at MDC. Respondent Frazier's office is located at 80 29th St, Brooklyn, NY 11232.

17. Respondent Kenneth Genalo is named in his official capacity as the Field Office Director of the New York Field Office for ICE within DHS. In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent Genalo's address is New York ICE Field Office Director, 26 Federal Plaza, 9th Floor, Suite 9-10, New York, New York 10278.

18. Respondent Todd Lyons is sued in his official capacity as Acting Director of U.S. Immigrations and Customs Enforcement. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

19. Respondent Markwayne Mullin is sued in his official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security ("DHS"), the agency tasked with enforcing immigration laws, Secretary Mullin is Petitioner's ultimate legal custodian.

20. Respondent Todd Blanche is sued in his official capacity as Acting Attorney General of the United States. As head of the U.S. Department of Justice, the agency that oversees the Executive Office for Immigration Review ("EOIR"), Acting Attorney General Blanche is

responsible for administration of the immigration laws as exercised by EOIR, pursuant to 8 U.S.C. § 1103(g). He is legally responsible for the pursuit of Petitioner's detention and removal.

### **LEGAL FRAMEWORK**

#### **A. Due Process Requirements for Immigration Detention**

21. “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 (citation modified). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Id.* at 690.

22. “Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty,” like the decision to detain a noncitizen or revoke a noncitizen's order of supervision. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). “The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* at 333 (citation modified). The Second Circuit has applied the *Mathews* tripartite test when assessing due process challenges to civil immigration detention. *See, e.g., Black v. Decker*, 103 F. 4th 133, 147 (2d Cir. 2024); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020).

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

24. Courts have found due process violations where noncitizens who were previously released from detention by DHS—such as release on orders of supervision, orders of release on recognizance, bond, or parole—are re-detained without notice and an opportunity to be heard and without following governing regulations. *Zhu v. Genalo*, 2025 WL 2452352, at \*9 (S.D.N.Y. Aug. 26, 2025) (“ICE’s failure to follow its own regulations and provide Petitioner with notice or an interview violated Petitioner’s procedural due process rights.”); *Al-Thuraya v. Warden*, No. 25-cv-2582, 2025 WL 2858422, at \*6 (S.D.N.Y. Oct. 6, 2025); *Rojas Acevedo v. Almodovar*, No. 25-cv-7189, 2025 WL 3034183, at \*6 (S.D.N.Y. Oct. 30, 2025); *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1030 (N.D. Cal. 2025); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032-33 (N.D. Cal. 2025).

#### **B. Regulations Regarding Revocation of an Order of Supervision**

25. Consistent with the Due Process Clause’s mandate, regulations require notice and an opportunity to be heard before a noncitizen’s order of supervision can be revoked.

26. Release may be revoked if: (1) “the purposes of release have been served”; (2) the noncitizen “violates any condition of release”; (3) revocation “is appropriate to enforce a removal order or to commence removal proceedings against” a noncitizen; or (4) “[t]he conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2)(i)-(iv).

27. ICE is required to follow certain procedures when revoking orders of supervision. Upon revocation, the noncitizen must “be notified of the reasons for revocation of his or her release or parole” and “afforded an initial informal interview promptly after his or her return to Service custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification.” *Id.* § 241.4(l)(1). The notification must be in writing. *See Funes Gamez v. Francis*, 2025 WL 3263896, at \*14 (S.D.N.Y. Nov. 24, 2025).

**C. The APA Sets Minimum Standards for Final Agency Action**

28. The Administrative Procedure Act authorizes judicial review of final agency action. 5 U.S.C. § 704.

29. Final agency actions are those (1) that “mark the consummation of the agency’s decision-making process” and (2) “by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

30. ICE’s revocation of an order of supervision is a final agency action subject to this Court’s review.

**D. The *Accardi* Doctrine Requires Agencies to Follow Internal Rules**

31. 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.”).

32. *Accardi* is not “limited to rules attaining the status of formal regulations.” *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. See *Morton v. Ruiz*, 415 U.S. 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

33. Where a release notification issued alongside an order of supervision instructs that a non-citizen with a final order of removal will be given an opportunity to prepare for an “orderly departure,” ICE’s failure to follow that instruction is an *Accardi* violation. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 169; *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018), *vacated and remanded on other grounds sub nom. Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of petitioners to give an opportunity to prepare for orderly departure).

#### **E. Withholding of Removal**

34. Noncitizens in removal proceedings can seek three main forms of relief based on their fear of returning to their home country: asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”). Noncitizens may be ineligible for asylum for several reasons, such as applying for asylum more than one year after arrival in the United States. *See* 8 U.S.C. § 1158(a)(2). There are fewer restrictions on eligibility for withholding of removal, *id.* § 1231(b)(3)(B)(iii), and no restrictions on eligibility for CAT deferral of removal. 8 C.F.R. § 1208.16. Furthermore, withholding of removal and CAT are mandatory forms of relief without a discretionary component.

35. Withholding of removal embodies the binding principle of *non-refoulement* in international humanitarian law. This principle states that a state must not return a refugee to a state where the refugee will face persecution or torture. *See I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 429 (1987) (“Article 33.1 of the [1951 United Nations Convention Relating to the Status of Refugees] . . . imposed a mandatory duty on contracting States not to return [a non-citizen] to a country where his ‘life or freedom would be threatened’ on account of one of the enumerated reasons.”).

36. When an immigration judge grants withholding of removal, the immigration judge issues a removal order and simultaneously “withholds” that order with respect to the country or countries for which the non-citizen demonstrated a sufficient risk of persecution. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 524 (2021). Once withholding is granted, both parties have the right to appeal the decision to the Board of Immigration Appeals (BIA) within 30 days. *See* 8 C.F.R. § 1003.38(b). If both parties waive appeal or neither party appeals within the 30-day period, the withholding grant and the accompanying removal order become administratively final. *See id.* § 1241.1. At that point, removal to the designated country can only be effectuated if “the order of withholding is terminated.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 524; *see also* 8 CFR § 208.24(f) (Procedure for termination of an immigration judge’s grant of withholding of removal requires DHS to reopen immigration proceedings and demonstrate by a preponderance of evidence that the recipient no longer qualifies).

37. When a noncitizen has a final withholding grant, she cannot be removed to the country or countries for which she demonstrated a sufficient likelihood of persecution. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.17(b)(2). In addition to this statutory protection, the United States’ obligations under the CAT, codified by FARRA of 1988, prohibit the government from removing a noncitizen to any country where the noncitizen would be more likely than not to be tortured. Pub. L. No. 105-277, div. G, Title XXII, §2242, 112 Stat. 2681–822 (1998) (codified as Note to 8 U.S.C. § 1231).

38. Noncitizens granted withholding or deferral of removal are authorized to work in the United States. 8 C.F.R. § 742a.12(a)(10).

39. Individuals who have been granted withholding of removal also cannot be removed to an alternative or “third” country if it is likely they will suffer persecution or torture there as well.

*See D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv10676, 2025 WL 1142968, at \*3 (D. Mass. Apr. 18, 2025) (“[T]hird-country removals are subject to the same mandatory protections that exist in removal or withholding-only proceedings.”).

40. Both due process and the United States’ international obligations require that noncitizens have an opportunity to assert fear of persecution or torture in the third country. *See, e.g., Noem v. Abrego Garcia*, 604 U.S. ----, 145 S. Ct. 1017, 1018 (U.S. Apr. 10, 2025) (Sotomayor, J., concurring) (explaining that the Government has an “obligation to provide [the plaintiff who was subject to an order of removal and granted withholding of removal] with ‘due process of law,’ including notice and an opportunity to be heard” and ensure compliance with its “obligations under [CAT]” prior to removal); *see also Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999) (finding that “last minute designation” of removal country during formal proceedings “violated a basic tenet of constitutional due process: that individuals whose rights are being determined are entitled to notice of the issues to be adjudicated, so that they will have the opportunity to prepare and present relevant arguments and evidence”).

41. If ICE intends to deport an individual with a grant of withholding of removal to a third country, and that individual asserts a fear of removal to a third country, she thus must be provided with an opportunity to seek withholding of removal or protection under the Convention Against Torture from the third country. For example, for individuals who have removal orders that are reinstated, if they assert a fear of removal they are provided a “reasonable fear” interview, *see* 8 C.F.R. § 241.8(e), which is a screening interview at which the examiner determines if there is a “reasonable possibility” of persecution or torture, which has been found to mean a ten-percent chance. If found to have a reasonable fear of persecution, the individual then has the right to see an immigration judge to seek withholding of removal or deferral of removal, at which they will

ultimately bear the burden of demonstrating they merit withholding or deferral of removal due to persecution nor torture being “more likely than not.” *See* 8 C.F.R. § 208.31(e). If found by the agency to not have a reasonable fear of persecution, the individual has the right to seek review of that finding before an immigration judge. *See* 8 C.F.R. § 208.31(f). Ultimately, the individual may also petition a federal circuit court for review of the agency’s decision. 8 U.S.C. § 1252(a)(1).

**F. Noncitizens Granted Withholding of Removal May Only Be Detained for the Purpose of Effectuating Their Removal**

42. 8 U.S.C. § 1231 governs the detention of noncitizens “during” and “beyond” a 90-day “removal period.” 8 U.S.C. § 1231(a)(2)-(6).

43. The “removal period” begins once a noncitizen’s removal order “becomes administratively final.” 8 U.S.C. § 1231(a)(1)(B).<sup>2</sup> It lasts for 90 days, during which ICE “shall remove the [noncitizen] from the United States” and “shall detain the [noncitizen]” as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the noncitizen within the 90-day removal period, under the Immigration and Nationality Act (INA) the noncitizen “may be detained beyond the removal period” if they meet certain criteria. These criteria are being inadmissible under 8 U.S.C § 1182, or deportable under specified statutory categories relating to specific criminal convictions, violation of nonimmigrant status, and security related grounds that relate to espionage, criminal activity which endangers, “national security,” or activities that opposed or attempts to overthrow the United States Government by “force, violence, or other unlawful means.” 8 U.S.C. §§ 1231(a)(6), 1227(a)(2), 1227(a)(1)(c), (a)(4).

44. DHS regulations provide that, at or before the end of the 90-day removal period that begins when a noncitizen’s removal order becomes final, the local ICE field office with

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<sup>2</sup> Two other events may trigger the start of the removal period, which are not applicable here. *See* 8 U.S.C. § 1231(a)(1)(B).

jurisdiction over the noncitizen's detention must conduct a custody review to determine whether the noncitizen should remain detained or can be released on an Order of Supervision. *See* 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). In making a custody determination, ICE considers several factors, including whether the non-citizen is not likely to pose a danger to the community, violate the condition of release, or flee. § 241.4(e).

45. In its landmark decision *Zadvydas v. Davis*, the Supreme Court addressed the “serious constitutional concerns” that 8 U.S.C. § 1231(a)(6) raises by permitting potentially indefinite detention. 533 U.S. at 682. The *Zadvydas* Court thus construed §1231(a)(6) to contain an implicit time limit on post-order detention, finding that § 1231(a)(6) authorizes detention only for “a period reasonably necessary to bring about the [non-citizen]’s removal from the United States.” *Id.* at 689.

46. *Zadvydas*, however, was in the context of “continued detention” under § 1231(a)(6). *See Phommachak v. Wesling*, No. 25-cv-13894 (BEM), 2026 WL 157491, at \*6 (D. Mass. Jan. 20, 2026) (citing *Zadvydas*, 533 U.S. at 685, 686, 699, 700, 702); *accord Diallo v. Joyce*, 817 F.Supp.3d 202, 206 (S.D.N.Y. 2025). When a noncitizen is released on an OSUP but is later re-detained, the *Zadvydas* presumption does not apply, and the government bears the burden to show a substantial likelihood of removal in the reasonably foreseeable future. *See, e.g., Huang v. Albarran*, No. 25-cv-1308 (JLT), 2025 WL 3632673, at \*3 (E.D. Cal. Dec. 15, 2025) (“[T]he question presented here is not whether Petitioner has met his initial burden under *Zadvydas*, but rather whether Respondents can show a changed circumstance indicating a significant likelihood of removal.”); *Escalante v. Noem*, No. 9:25-cv-182 (MJT), 2025 WL 2206113, at \*3 (E.D. Tex. Aug. 2, 2025).

**G. ICE Has a Longstanding Policy in Favor of Releasing People Granted Withholding of Removal**

47. Recognizing that a grant of withholding of removal drastically reduces the likelihood of executing a removal order, the government has a binding policy (the “Release Policy”) favoring release of noncitizens granted withholding or deferral of removal. *See Exhibit A, Release Policy.*

48. The Release Policy goes back 25 years. Longstanding agency guidance states that, “[i]n general, it is ICE policy to favor release of [non-citizens] who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain.” Ex. A at 2. It goes on to state that “In all cases, the Field Office Director must approve a decision to keep [a non-citizen] granted protection relief in custody pending appeal, in consultation with the Chief Counsel.” *Id.*

49. In 2012, a follow-up message was sent on behalf of Gary Mean, then Executive Associate Director of Enforcement and Removal Operations, clarifying that this policy “applies at all times following a grant of protection, including during any appellate proceedings and throughout the removal period.” *Id.* at 3.

50. In 2021, then-Acting ICE Director Tae Johnson clarified that ICE personnel must “continue to follow this Directive,” emphasizing that release should occur even if the government was appealing a grant of fear-based relief. *Id.* at 4. Acting Director Johnson further stated that “prior convictions alone do not necessarily indicate a public safety threat or danger to the community” and “the individual facts and circumstances of the case, including extensiveness, seriousness, and recency of the criminal activity, along with any evidence of rehabilitation, should be considered in making such determination [to release a noncitizen granted withholding of removal].” *Id.*

## H. Removals to a Third Country Are Historically Rare and Subject to Constraints

51. Whereas historically third-country removals were exceptionally rare, the Government began intensifying its efforts to remove noncitizens to third countries in early 2025. *See D.V.D.*, 2025 WL 1142968, at \*3 (describing Executive Order 14165, entitled “Securing our Borders.” 90 Fed. Reg. 8467 and the February 18, 2025, DHS directive to the Enforcement and Removal Operations (“ERO”) division of ICE).<sup>3</sup> Particularly notable have been third-country removals to El Salvador—where people are indefinitely detained incommunicado and without process at the Terrorism Confinement Center (“CECOT”), a mega-prison notorious for inhumane treatment and torture,<sup>4</sup> and other foreign prisons—where both the U.N. and the U.S. State Department have issued warnings for armed conflict, human rights abuses, and violence.<sup>5</sup> Other countries that have recently agreed to accept third country removals from the United States, have

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<sup>3</sup> *See also* Whistleblower complaint filed on June 24, 2025, by Mr. Erez Reuveni, formerly the Acting Deputy Director for the Office of Immigration Litigation of the Department of Justice, [https://www.judiciary.senate.gov/imo/media/doc/06-24-2025\\_-\\_Protected\\_Whistleblower\\_Disclosure\\_of\\_Erez\\_Reuveni\\_Redacted.pdf](https://www.judiciary.senate.gov/imo/media/doc/06-24-2025_-_Protected_Whistleblower_Disclosure_of_Erez_Reuveni_Redacted.pdf).

<sup>4</sup> *See, e.g.*, Laura Romero, *Venezuelan migrants deported to El Salvador despite order barring removal to third countries*, ABC NEWS (Apr. 1, 2025), <https://abcnews.go.com/Politics/venezuelan-migrant-recently-deported-el-salvador-final-order/story?id=120353709>; Rebecca Ingber and Scott Roehm, *The Trump Administration’s Recent Removals to El Salvador Violate the Prohibition on Transfer to Torture*, JUST SECURITY (March 20, 2025), <https://www.justsecurity.org/109284/non-refoulement-alien-enemies-act/>; Bryan Avelar, *Inmates in El Salvador tortured and strangled: A report denounces hellish conditions in Bukele’s prisons*, EL PAÍS (May 29, 2023), <https://english.elpais.com/international/2023-05-29/inmates-in-el-salvador-tortured-and-strangled-a-report-denounces-hellish-conditions-in-bukeles-prisons.html>.

<sup>5</sup> *See, e.g.*, Beatrice Peterson et. al., *Judge rules DHS violated court order in deporting 8 migrants to South Sudan*, ABC NEWS (May 21, 2025), <https://abcnews.go.com/Politics/8-migrants-south-sudan-deportation-flight-officials-confirm/story?id=122033692>; Maya Yang and Maanvi Singh, *Judge rules White House violated order by deporting migrants to South Sudan*, THE GUARDIAN (May 21, 2025), <https://www.theguardian.com/us-news/2025/may/21/trump-deportations-south-sudan>.

stated they will repatriate such people despite having withholding of removal or CAT protection due to the risk of persecution or torture if repatriated.<sup>6</sup> *See Y.T.D. v. Andrews*, No. 1:25-cv-01100, 2025 WL 2675760, at \*2 (E.D. Cal. Sept. 18, 2025) (finding sufficiently imminent risk that petitioner will be subjected to improper process in relation to any third country removal to warrant imposition of an injunction requiring additional process).

52. There is also ample evidence of ICE forcibly removing noncitizens to third countries with no legal basis to do so—without a removal order to the third country being in place against the noncitizen. For example, advocates have documented that ICE agents at Camp East Montana, a detention center at Fort Bliss in El Paso, Texas “have beaten detainees and used threats of violence, criminal charges, and imprisonment in attempts to coerce people held at Ft. Bliss to leave the United States and cross the border into Mexico, even if they are not subject to a removal order to Mexico.”<sup>7</sup> Masked officers “have instructed detainees to cross the border by ‘jumping’ into Mexico. In some instances, these masked officers have beaten detainees who have refused to cross into Mexico or threatened them with criminal charges and long-term imprisonment.” *Id.*

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<sup>6</sup> *See, e.g., Why African Countries Keep Making Deals to Accept U.S. Deportees*, NY Times (Sept. 23, 2025), <https://www.nytimes.com/2025/09/23/world/africa/african-countries-us-deportees.html> (Eswatini took in five migrants from third countries in July but has said they will be sent home. The migrants are being held in prison.); *West Africans Deported by the U.S. Sue Ghana for Rights Violations*, NY Times (“Justice Department lawyers did not dispute that Ghana sending the migrants to their home countries would violate their court-ordered protections. The lawyers instead argued that once a migrant had been removed from the United States and was in foreign custody, the issue was out of their hands.”); *African Nation Says It Will Repatriate Migrants Deported by U.S.*, NY Times (July 17, 2025), <https://www.nytimes.com/2025/07/16/world/africa/eswatini-trump-migrants-deportation.html>.

<sup>7</sup> Letter from American Civil Liberties Union, et al. to Todd Lyons Immigration and Customs Enforcement, et al., *Coercive Third Country Deportations and Abusive Conditions of Confinement in Immigration Detention at Fort Bliss, TX (Camp East Montana)* (Dec. 28, 2025), <https://www.aclu.org/documents/ice-letter-re-fort-bliss>.

53. On March 30, 2025, the Department of Homeland Security issued a memorandum titled Guidance Regarding Third Country Removals (“March 30 Guidance”).<sup>8</sup> Under the protocol described in this memorandum, DHS first determines if a third country “has provided diplomatic assurances that [noncitizens] removed from the United States will not be persecuted or tortured.” March 30 Guidance at 1. If the Department of State is satisfied that the assurances are credible, DHS may deport the noncitizen to that country without any further procedure. However, if the Department of State does not believe the assurances are credible, DHS follows an alternate pathway. First, DHS notifies the noncitizen of its intent of deportation to the third country. “Immigration officers will not affirmatively ask whether the [noncitizen] is afraid of being removed to that country[,]” as DHS believes that affirmative questioning will provoke false claims of fear, which would create inefficiency, and will elicit accusations of torture against Government with which the United States has “diplomatic relationships.” *Id.* at 2. However, if the noncitizen affirmatively states that they have a fear, DHS will then refer them to a screening for withholding of removal and CAT protection before United States Citizenship and Immigration Services. USCIS then conducts a remote screening, at which the noncitizen has the burden to establish they will more likely than not be persecuted under a protected ground or subject to torture. If USCIS makes a negative finding, DHS then deports the person to the designated third country without any further process, including no review by a neutral adjudicator, no amendment of the order of removal to designate the alternate country, and no process for appeal.

54. On June 23, 2025, the U.S. Supreme Court granted the Government’s application to stay the district court’s nationwide preliminary injunction in *D.V.D. v. Department of Homeland*

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<sup>8</sup> Available at <https://immigrationlitigation.org/wp-content/uploads/2025/04/43-1-Exh-A-Guidance.pdf> [<https://perma.cc/6HER-YUCV>].

*Security*, No. 25-10676, 2025 WL 1142968 (D. Mass. Apr. 18, 2025). In response, ICE issued a July 9, 2025 memo, titled “Third Country Removals Following the Supreme Court’s Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. 23, 2025) (“July 9 Guidance”).<sup>9</sup> In this memo, ICE directed adherence to the March 30, 2025 Guidance while expanding upon details of the procedure. For non-citizens to whom ICE provides a written Notice of Removal to a third country, the July 9 Guidance directs ICE Enforcement and Removal Operations (“ERO”) to wait 24 hours before carrying out the deportation unless the noncitizen affirmatively states a fear or persecution or torture. However, the memo authorizes ICE to deport a person after six hours of service of the Notice of Removal in “exigent” circumstances with the approval of DHS General Counsel or the Principal Legal Advisor where the DHS General Counsel is not available. The USCIS screening of an individual’s fear—which is the only process by which the merits of the individual’s claim for withholding of removal or protection under CAT are to be heard under Respondents’ policies, and at which the non-citizen bears the burden of proof—are also directed to happen “within 24 hours.”

55. The March 30 and July 9 Guidance is inconsistent with due process and the United States’s non-refoulement obligations. *See Y.T.D.*, 2025 WL 2675760, at \*10; *see also Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (holding that “[t]he fundamental requisite of due process of law is the opportunity to be heard,” which includes “timely and adequate notice”) (citation omitted); *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950) (holding that due process requires “at a minimum . . . that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case”); *Oakes v. United*

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<sup>9</sup> Available at <https://immigrationlitigation.org/wp-content/uploads/2025/07/190-1-July-9-Guidance.pdf> [<https://perma.cc/KBE2-QGY9>].

*States*, 400 F.3d 92, 98 (1st Cir. 2005) (“The ubiquity of the ‘notice and opportunity to be heard’ principle as a matter of fundamental fairness is deeply engrained in our jurisprudence.”).

56. On February 25, 2026, the district court in *D.V.D.*, granted the plaintiff noncitizens’ partial motion for summary judgment, finding that the “third-country removal policy, as embodied in the March [30] Guidance, is contrary to section 1231(b)(2)–(3) and the Due Process Clause.” *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2026 WL 521557, at \*23, 27–40, 44 (D. Mass. Feb. 25, 2026); *id.* (also declaring unlawful the July 9 Guidance). The district court went on to declare that all noncitizens with a final order of removal whom DHS will deport to a country not listed on their final order, “have the right to meaningful notice before removal to any third country,” as well as “the right to a meaningful opportunity to raise a country-specific claim against removal before removal to any third country.” *Id.* at \*44 (emphasis added). The court declared unlawful and set aside the March 30 Guidance and the July 9 Guidance. *See id.*

57. On March 16, 2026, the First Circuit granted the government’s emergency motion to stay the February 25, 2026 *D.V.D.* summary judgment decision and ordered expedited briefing on the merits of the appeal. *See Order, D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. 26-1212 (1st Cir. Mar. 16, 2026).

58. In addition, CAT regulations implementing FARRA make clear that *individualized* CAT protections are mandatory. *See, e.g.*, 8 C.F.R. § 1208.16(c) (discussing IJs’ individualized assessment of applicants’ CAT claims); 8 C.F.R. § 1208.17 (same, as well as individualized notice to individuals with CAT protection).

59. Any blanket diplomatic assurances do not protect noncitizens against either chain *refoulement*, whereby the third country proceeds to return an individual to their country of origin, or torture by state or non-state actors. *See* 8 C.F.R. § 1208.18(a)(1); *see also Murillo Morochó v.*

*Garland*, 80 F.4th 61, 71 (1st Cir. 2023) (vacating decision denying CAT protection where the BIA failed to properly consider risk of torture by non-state actors); *cf.* United Nations High Commissioner for Refugees, Guidance Note on Bilateral and/or Multilateral Transfer Arrangements of Asylum Seekers ¶ 3(vi) (May 2013)<sup>10</sup> (requiring protection against refoulement in transfer agreements governing asylum seekers); *accord* United Nations Human Rights Committee, General Comment No. 31 ¶ 12, 2004, The Nature of the General Legal Obligation Imposed on States Parties to the International Covenant on Civil and Political Rights (“ICCPR”), CCPR/C/21/Rev.1/Add. 13 (May 26, 2004)<sup>11</sup> (explaining obligation against chain refoulement in ICCPR).

60. The regulation implementing the CAT states that “[t]he Secretary of State may forward to the Attorney General assurances that the Secretary has obtained from the government of a specific country that *an* alien would not be tortured there if *the* alien were removed to that country.” 8 C.F.R. § 1208.18(c)(1) (emphasis added); *see also id.* § 1208.18(c)(2), (c)(3) (referencing “the alien”); *Niz-Chavez v. Garland*, 593 U.S. 155, 161 (2021) (examining the “ordinary meaning” of statutory text and finding that “[t]o an ordinary reader—both in 1996 and today—‘a’ notice would seem to suggest just that: ‘a’ single document”).

61. Even if an individualized assurance is provided to a single individual in accordance with § 1208.18(c)(1), the regulation further instructs that one of only three officials, the Attorney General, Deputy Attorney General, or Commissioner of the Immigration and Naturalization Service (a position that no longer exists), must independently “determine, in consultation with the

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<sup>10</sup> Available at <https://www.refworld.org/policy/legalguidance/unhcr/2013/en/16943>.

<sup>11</sup> Available at <https://digitallibrary.un.org/record/533996?ln=en&v=pdf>.

Secretary of State, whether the assurances are sufficiently reliable” to allow deportation consistent with CAT. 8 C.F.R. § 1208.18(c)(2).

62. Although the regulation indicates that compliance with subsections (c)(1) and (c)(2) precludes further consideration of a CAT claim by an IJ, the BIA, or an asylum officer, *see* 8 C.F.R. § 1208.18(c)(3), it does not limit or eliminate judicial review regarding any such CAT claim. Indeed, a path to judicial review must be provided. *See* 8 U.S.C. § 1252(a)(4); *see also Nasrallah v. Barr*, 590 U.S. 573, 585 (2020) (“[Section] 1252(a)(4) now provides for direct review of CAT orders in the courts of appeals.”).

#### **STATEMENT OF FACTS**

63. D.J.R.R. is a 33-year-old man from Nicaragua. D.J.R.R. was granted withholding of removal under the Immigration and Nationality Act on September 3, 2024, due to the likelihood he would be persecuted if deported to Nicaragua.

64. D.J.R.R. was born in , in Managua, Nicaragua. He came to oppose President Daniel Ortega and the Sandinista party after his friend was accidentally killed by Sandinista soldiers and Nicaraguan police refused to intervene. As a university student, he participated in ant-Sandinista political protests in 2018. His friend was one of several protesters killed by government forces during one of these protests. D.J.R.R. then joined the Unidad Nacional to oppose the president and Sandinistas. The Nicaraguan government passed an anti-terrorism law that targeted the political opposition. In 2020, Sandinistas arrested D.J.R.R. They beat, interrogated and threatened him. In 2021, Sandinistas arrested D.J.R.R. again and physically abused him. They interrogated and threatened him again in a separate incident. Later in 2021, D.J.R.R. filed a complaint about his mistreatment to the Nicaraguan Center for Human Rights. Police then came to look for D.J.R.R. at his family home.

65. Following this, D.J.R.R. and his spouse fled Nicaragua and came to the United States in October 2021. They had a daughter, who is a U.S. Citizen. 

66. In June 2023, D.J.R.R. and his spouse had a second U.S. Citizen child.

67. ICE arrested D.J.R.R. on May 6, 2024 and detained him at Orange County Jail. His family struggled as a result of his detention.

68. D.J.R.R. was placed into detained removal proceedings. He filed an I-589 application for asylum, withholding of removal, and protection under the Convention Against Torture with the immigration court.

69. On September 3, 2024, the Immigration Judge granted D.J.R.R. withholding of removal under the Immigration and Nationality Act, due to the likelihood he would experience persecution or torture if removed to Nicaragua. *See Exhibit B, Grant of Withholding of Removal.* The government waived appeal.

70. ICE subsequently released D.J.R.R. from detention. ICE placed D.J.R.R. on an Order of Supervision (“OSUP”) on September 13, 2024. *See Exhibit C, 2024 OSUP.*

71. Since the release on OSUP, D.J.R.R. has been under ICE supervision. D.J.R.R. has complied with OSUP, periodically reporting to ICE at 26 Federal Place in Manhattan.

72. Prior to his initial detention by ICE in May 2024, D.J.R.R. was accused of assault. While he was detained by ICE, he could not face charges related to this accusation. Upon his release on OSUP on September 13, 2024, D.J.R.R. was formally charged with the prior allegations. That case, however, ultimately resulted in a dismissal.

73. D.J.R.R. has no additional criminal convictions following his release on OSUP in September 2024. Upon information and belief, although he may have faced accusations of petit

larceny in March 2025, he was not the subject of a custodial arrest and he has not been convicted of any such accusations.

74. While released, D.J.R.R. maintained consistent employment, with a job working for a union. With his earnings, D.J.R.R. was able to support himself and his spouse and two United States citizen daughters, who are three and four years old. D.J.R.R. applied for and was granted employment authorization as an individual who has a grant of withholding of removal. *See* Exhibit D, Employment Authorization Document (valid through November 2029).

75. On May 21, 2026, D.J.R.R. attended an OSUP check-in at 26 Federal Plaza, New York, NY 10728. ICE arrested and redetained D.J.R.R. at this appointment. D.J.R.R. received a Notice of Revocation of Release that alleged he violated the September 13, 2024 OSUP conditions. *See* Exhibit E, Notice of Revocation of Release. In this document, ICE purported that D.J.R.R. had “violated a condition” of his release. *Id.* at 1. ICE alleged: “On 09/13/23 you were arrested by NYPD for Criminal Possession Weapon-4<sup>th</sup>”; “On 09/13/24 you were arrested by NYPD for Assault 3rd Degree: With Intent”; and “On 03/23/25 you were arrested by NYPD for Petit Larceny.” The order further indicated that D.J.R.R.’s case was “under review for removal to an alternate country.” *Id.* at 1.

## **CAUSES OF ACTION**

### **COUNT ONE**

#### **Violation of the INA and Implementing Regulations**

76. D.J.R.R. repeats and re-alleges the allegations contained in all preceding paragraphs of this Amended Petition as if fully set forth herein.

77. 8 C.F.R. § 241.4(*I*) governs the procedures for the revocation of OSUPs. Release may only be revoked if: (1) “the purposes of release have been served”; (2) the noncitizen “violates any condition of release”; (3) revocation “is appropriate to enforce a removal order or to commence

removal proceedings against” a noncitizen; or (4) “[t]he conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2)(i)-(iv).

78. Respondents failed to comply with these requirements when they re-detained D.J.R.R. on May 21, 2026. The purpose of release has not been served because D.J.R.R. cannot be removed to Nicaragua nor is it reasonable to believe he would be removable to any other country, nor do Respondents identify a third country that has accepted D.J.R.R. or has issued travel documents.

79. Nor has D.J.R.R. committed a violation of the conditions of release that would warrant re-detention. When DHS initially released D.J.R.R. onto an order of supervision (OSUP), it determined that he was not a danger to the community or a flight risk. *See* Exhibit C, 2024 OSUP. On May 21, 2026, however, DHS alleged that D.J.R.R. violated the conditions of release, citing three arrests. *See* Exhibit E, Notice of Revocation of Release. The only relevant condition in his OSUP that this could relate to was the condition that he not commit any crimes. *See* Exhibit C, 2024 OSUP. However, the three arrests listed do not support a revocation of OSUP on this ground. First, Respondents list allegations from 2023 and 2024, which were known to Respondents prior to releasing Petitioner onto OSUP and preceded the OSUP, thus these cannot serve as violations of an order that had not yet issued. Second, as for the allegation of petit larceny in March 2025, upon information and belief D.J.R.R. was not subject to a custodial arrest for charges at that time and there has been no criminal conviction. A bare accusation of petit larceny does not indicate that D.J.R.R. violated the 2024 OSUP order by committing a crime. *See, e.g., Doe v. Moniz*, 800 F. Supp. 3d 203, 216–17 (D. Mass. 2025) (“The risk of erroneous deprivation of Petitioner’s liberty is high where ... his detention is based on an arrest for which no charges have been filed and the underlying conduct for which bears no relationship to dangerousness or flight risk.”). In addition,

D.J.R.R. attended at least one check-in with ICE following March 2025, at which ICE did not detain him, and nothing has changed since that time that would justify detention at the May 21, 2026 check-in.

80. The proper remedy for failure to comply with the regulations governing OSUP revocation is release. *See, e.g., Ceesay*, 781 F. Supp. 3d at 170 (ordering release); *Funes Gamez*, 2025 WL 3263896, at \*26 (same); *E.M.M. v. Almodovar*, 2025 WL 3077995, at \*6 (S.D.N.Y. Nov. 4, 2025) (same).

## **COUNT TWO**

### **Violation of Fifth Amendment Right to Procedural Due Process**

81. D.J.R.R. repeats and re-alleges the allegations contained in all preceding paragraphs of this Amended Petition as if fully set forth herein.

82. The procedural component of the Due Process Clause prohibits the government from depriving an individual of a protected interest without notice and an opportunity to be heard. *Mathews*, 424 U.S. at 333.

83. Due process requires that a noncitizen previously released from custody receive a pre-deprivation hearing before the government can re-detain them. *See Guillermo M. R.*, 791 F. Supp. 3d at 1036. Or, at the very minimum, due process requires DHS to follow its own regulations before re-detaining noncitizens who were previously released. *See Zhu*, 2025 WL 2452352, at \*9 (“ICE’s failure to follow its own regulations and provide Petitioner with notice or an interview violated Petitioner’s procedural due process rights.”). Petitioner’s detention violates the Due Process Clause because no change in Petitioner’s case compelled a change in his custody status. In re-detaining Petitioner, Respondents have offered no indication that any permissible statutory purpose is served. Their detention is not rationally related to any immigration purpose.

84. Respondents failed to provide D.J.R.R. with a pre-deprivation hearing when they re-detained D.J.R.R. in violation of his due process rights.

85. The proper remedy is to order release Petitioner.

**COUNT THREE**  
**Violation of Fifth Amendment Right to Substantive Due Process**

86. D.J.R.R. repeats and re-alleges the allegations contained in all preceding paragraphs of this Amended Petition as if fully set forth herein.

87. Congress has authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 833 (2018); *Zadyvdas v. Davis*, 533 U.S. 678, 690 (2001). The requirement that deprivation of liberty be specific and non-punitive was violated here. The Fifth Amendment guarantees that people in civil detention may not be subject to conditions of confinement or denial of medical care that “amount to punishment.” *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Civil detention is unconstitutionally punitive when it is not “reasonably related to a legitimate goal.” *Id.* at 538-39.

88. In the immigration context, the only legitimate government objectives for detaining a noncitizen are preventing danger to the community and flight risk. *Zadyvdas v. Davis*, 533 U.S. 678, 690-91 (2001).

89. Respondents have no legitimate, non-punitive basis for revoking Petitioner’s OSUP and detaining Petitioner. Therefore, D.J.R.R. ’s re-detention without notice and an opportunity to be heard before a neutral adjudicator is unconstitutionally punitive and violates his substantive due process rights.

**COUNT FOUR**  
**Violation of the APA**

**(Detention is Arbitrary and Capricious; Contrary to Constitutional Right; In Excess of Statutory Authority; and Without Observance of Procedure Required by Law)**

90. D.J.R.R. repeats and re-alleges the allegations contained in all preceding paragraphs of this Amended Petition as if fully set forth herein.

91. The APA enables courts to “hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law.” 5 U.S.C. § 706(2).

92. As explained, *supra*, D.J.R.R.’s re-detention violates the Constitution and the regulations governing revocation of release under OSUP and is therefore not in accordance with law and contrary to a constitutional right.

**COUNT FIVE**  
**Violation of the *Accardi* Doctrine**  
**(Respondents Failed to Follow 8 C.F.R. § 241.4(l))**

93. D.J.R.R. repeats and re-alleges the allegations contained in all preceding paragraphs of this Amended Petition as if fully set forth herein.

94. 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.”).

95. Here, as explained *supra*, Respondents' failure to follow the regulations governing revocation of release under 8 C.F.R. § 241.4(*I*) is inconsistent with and in violation of the Release Policy that applies to individuals with a grant of withholding or deferral of removal. This constitutes an *Accardi* violation. Because re-detention is inconsistent with the Release Policy, the proper remedy is release.

**COUNT SIX**  
**Violation of the INA and FARRA of 1998**  
**(As A Result of Any Imminent Removal to a Third Country Without Notice or Opportunity to Respond)**

96. D.J.R.R. repeats and re-alleges the allegations contained in all preceding paragraphs of this Amended Petition as if fully set forth herein.

97. The INA and the Foreign Affairs Reform and Restructuring Act of 1998 codify the principle of non-refoulement, guaranteeing noncitizens the non-discretionary protections of withholding of removal and withholding under the CAT, both of which prevent noncitizens from being removed to a country where they fear torture or persecution. *See* 8 U.S.C. § 1231(3)(A) (withholding of removal); Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681–822 (1998) (codified as Note to 8 U.S.C. § 1231) ("It shall be the policy of the United States not to 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"; *see also Moncrieffe v. Holder*, 569 U.S. 184, 187 n.1 (U.S., 2013) ("the Attorney General has no discretion to deny [withholding of removal or deferral of removal under the CAT] to a noncitizen who establishes his eligibility").

98. Noncitizens facing third country removal have the right to seek fear-based protections such as withholding of removal and deferral of removal under CAT. *See D.V.D.*, 778

F. Supp. 3d at 367 (D. Mass.); *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. June 25, 2025).

99. ICE, under its current procedures, removes noncitizens to third countries without any notice to that noncitizen or their counsel and without any opportunity for the noncitizen to seek fear-based protections such as withholding of removal and deferral of removal under CAT before an immigration judge. *See* March 30 Guidance; July 9 Guidance.

100. If D.J.R.R. is removed to a third country under these procedures, he will be denied sufficient opportunity to communicate with his counsel, prepare an application for protection under CAT or withholding of removal, and present his claims before an immigration judge. Such summary removal would constitute an unlawful deprivation of D.J.R.R.'s statutory right to apply for fear-based protection against removal to the third country.

**COUNT SEVEN**  
**Violation of Fifth Amendment Right to Procedural Due Process**  
**(As a Result of Imminent Removal to a Third Country Without Meaningful Notice or Opportunity to Respond)**

101. D.J.R.R. repeats and re-alleges the allegations contained in all preceding paragraphs of this Amended Petition as if fully set forth herein.

102. Noncitizens with a final order of removal have due process rights under the Fifth Amendment. *See Zadvydas*, 533 U.S. at 693 (“this Court has held that the Due Process Clause protects [a noncitizen] subject to a final order of deportation”) (citing *Wong Wing*, 163 U.S. at 238 (1986)); *Black*, 103 F.4th at 143 (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)). In the context of removal, procedural due process requires that noncitizens receive notice “within a reasonable time and in such a manner as will allow them to actually seek... relief in the proper venue before such removal occurs.” *See Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). Even if relevant statutes did not require notice and the meaningful opportunity to apply for fear-based protection for removal,

such process is constitutionally required. *See Mathews*, 424 U.S. 319 at 332; *Zhu*, 2025 WL 2452352 at \*9 n.4 (“Courts in this Circuit apply the three-factor balancing test set forth in [*Mathews*] in determining the adequacy of process in the civil immigration context”) (citing *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir, 2020)).

103. If ICE follows its current procedures in effectuating D.J.R.R.’s removal to a third country, it will likely remove him either without notice or with only twenty-four hours’ notice prior to removal. *See* July 9 Guidance. Such short notice is insufficient time for someone to contact counsel and prepare an application for withholding of removal or protection pursuant to CAT, particularly during which the individual bears the burden of proof and may have only 24-hours’ notice prior to being heard. The procedures also do not afford sufficient written notice or ability to seek judicial review or review by an impartial adjudicator with sufficient procedural protections. These procedures deny D.J.R.R. the meaningful opportunity to challenge the decision to remove him to a third country. They are a clear violation of his due process rights. *See Sagastizado v. Noem*, 802 F. Supp. 3d 992, 1005 (S.D. Tex. 2025); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006 (W.D. Wash. 2019); *Barka v. Mattos*, No. 2:25-CV-01781-GMN-MDC, 2025 WL 3723998, at \*8 (D. Nev. Dec. 23, 2025); *Nguyen v. Scott*, 796 F. Supp. 3d 703, 732 (W.D. Wash. 2025); *Y.T.D. v. Andrews*, No. 1:25-CV-01100 JLT SKO, 2025 WL 2675760, at \*13 (E.D. Cal. Sept. 18, 2025); *Portela-Hernandez v. Trump*, No. 25-1633-BAH, 2026 WL 74042, at \*12 (D. Md. Jan. 9, 2026); *Arenado-Borges v. Bondi*, No. 2:25-CV-02193-JNW, 2025 WL 3687518, at \*6 (W.D. Wash. Dec. 19, 2025).

104. ICE’s indication that D.J.R.R. is “under review for removal to an alternate country” is too vague to provide adequate notice or a meaningful opportunity for D.J.R.R. to seek relief from removal from a third country. ICE does not indicate whether this review will actually result

in an intent to remove D.J.R.R. to a third country, to which countries he might be removed, or when he might be removed. ICE's generic notice that there is some sort of "review" for an alternate country does not satisfy procedural due process.

**COUNT EIGHT**  
**Violation of Fifth Amendment Right to Substantive Due Process**  
**(As a Result of Imminent Removal to a Third Country)**

105. D.J.R.R. repeats and re-alleges the allegations contained in all preceding paragraphs of this Amended Petition as if fully set forth herein.

106. Under the Due Process Clause, the government may not impose punishment without "an adjudication of guilt in accordance with due process of law." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (collecting cases). The Supreme Court has long held that noncitizens subject to final orders of removal are subject to the guarantees of the Due Process Clause. *See Zadvydas*, 533 U.S. at 693. Moreover, the Due Process Clause prohibits the federal government from imposing punishment as part of its effectuation of noncitizen removal. *Wong Wing v. United States*, 163 U.S. 228, 237 (finding that Congress cannot add punishment to immigration detention or deportation without a prior adjudication of guilt).

107. The Trump Administration has expanded the use of third country removals in an explicit attempt to punish noncitizens and deter immigration. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at \*24 (W.D. Wash. Aug. 21, 2025) (citing official video of President Trump stating "[I]f illegal aliens choose to remain in America, they're remaining illegally and they will face severe consequences. Illegal aliens who stay in America face *punishments*, including significant jail time, enormous financial penalties, confiscation of all property, garnishment of all wages, imprisonment and incarceration, and sudden deportation in a place and manner solely of our discretion.") (emphasis added). The court in *Nguyen* found that the petitioner was likely to

succeed on his claim “that ICE’s practice of removing noncitizens to countries where they face imprisonment violates the Constitution’s prohibition on ‘punitive’ third country removal.” *Id.* at 23; *see also Abubaka v. Bondi*, No. C25-1889RSL, 2025 WL 3204369, at \*8 (W.D. Wash. Nov. 17, 2025) (finding that the “the government’s practice of third-country removal paired with imprisonment is intended to be punitive and thus violates due process under” *Wong Wing v. United States*, 163 U.S. 228 at 236–38 (1896), and *Zadvydas v. Davis*, 533 U.S. 678, 693–94 (2001), and ordering that the government not remove him “to any third country where he is likely to face imprisonment upon arrival”); *Baltodano v. Bondi*, No. C25-1958RSL, 2025 WL 3484769, at \*10 (W.D. Wash. Dec. 4, 2025) (same).

108. By subjecting D.J.R.R. to unconstitutionally punitive third country removal practices, Respondents violate his rights under the Due Process Clause.

**COUNT NINE**  
**Violation of the APA**  
**(As a result of third country removal policies)**

109. D.J.R.R. repeats and re-alleges the allegations contained in all preceding paragraphs of this Amended Petition as if fully set forth herein.

110. The APA entitles “a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . to judicial review.” 5 U.S.C. § 702.

111. The APA compels a reviewing court to “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary [or] capricious, . . . otherwise not in accordance with law,” *id.* § 706(2)(A), or “short of statutory right,” *id.* § 706(2)(C). *See also* § 706(1) (empowering federal courts to “compel agency action unlawfully withheld or unreasonably delayed”); *id.* § 706(2)(D) (empowering federal courts to “hold unlawful and set aside agency

action, findings, and conclusions found to be . . . without observance of procedure required by law”).

112. Respondents have a policy or practice of failing to provide noncitizens who have final removal orders with meaningful notice and opportunity to present a fear-based claim prior to deportation to a third country. *See, e.g.*, March 30 Guidance; July 9 Guidance.

113. Defendants’ policy or practice is arbitrary and capricious. It deprives individuals with final removal orders of meaningful notice of DHS’ intent to deport them to a third country and deprives them of an opportunity to present a fear-based claim to an immigration judge prior to deportation to a third country. It endangers their lives and safety by subjecting them to the very persecution and torture they fear in the third country. Here, DHS’s vague indication that it is “reviewing” alternate countries of removal is arbitrary and capricious because it fails to providing D.J.R.R. with any information about the process, indicate how long the process might take DHS while D.J.R.R. remains confined in a prison, or where DHS might someday try to send him.

114. Accordingly, the Court should hold unlawful and set aside Defendants’ policy or practice of failing to provide noncitizens who have final removal orders with meaningful notice and opportunity to present a fear-based claim prior to deportation to a third country.

#### **COUNT TEN**

#### **8 U.S.C. § 1231**

#### **(Detention despite removal not being reasonably foreseeable under *Zadvydas*)**

115. D.J.R.R. repeats and re-alleges the allegations contained in all preceding paragraphs of this Amended Petition as if fully set forth herein.

116. D.J.R.R.’s detention is governed by 8 U.S.C. § 1231 because a final order of removal was issued against him in addition to the grant of relief from removal through withholding. Because Mr. D.J.R.R.’s detention is governed by 8 U.S.C. § 1231, the *Zadvydas* framework applies

to Petitioner's detention. *Zadvydas* holds that 8 U.S.C. §1231 "implicitly limits a [noncitizen's] detention to a period reasonably necessary to bring about that [noncitizen's] removal from the United States, and does not permit indefinite detention." (*Zadvydas*, at 689). Accordance with *Zadvydas* is a matter of substantive due process. Post-order detention must be limited pursuant to the purpose of removal in order to avoid "indefinite detention" that would raise "serious constitutional concerns." *Id.*

117. With limited exceptions, the only permissible purpose for detaining an individual with a final order of removal is if they pose a flight risk which could interfere with effectuation of their removal. Because the sole permissible purpose of post-order detention is to facilitate removal, an individual may not be detained if the detention is not required to facilitate removal. Where an individual does not pose a flight risk, as D.J.R.R. does not, post-order detention violates the statute.

118. The circumstances of D.J.R.R.'s apprehension—a DHS check-in that he attended voluntarily despite the risk of re-detention—belies any claim that he is a flight risk. Furthermore, he has family ties, employment, and employment authorization. Each of these factors are strong indicia that Petitioner does not pose a risk of flight. *See Matter of R-A-V-P-*, 27 I&N Dec. 803, 805 (2020) (quoting *Matter of Guerra*, 24 I&N Dec. at 40) (setting forth relevant flight risk considerations including family ties and history in U.S.). Because D.J.R.R. does not pose a risk of flight, the government must release him from detention and may pursue any continued efforts to remove D.J.R.R. to a third country only in the non-detained context.

119. Because Petitioner was previously released and the removal period has long expired, the government must also demonstrate that his removal is now reasonably foreseeable in order to re-detain him. *See Huang*, 2025 WL 3632673, at \*2.

120. D.J.R.R.'s removal is not reasonably foreseeable. The government has not identified any specific third country that has accepted Petitioner for removal, nor does it claim to have travel documents. *See* Ex. C, Revocation Notice. In addition, Petitioner would exercise his rights to seek protection from removal to any third country where he would face persecution or torture, which means his removal would not be likely in the reasonably foreseeable future. *See Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398–99 (D.N.J. 2025). Therefore, his detention is not lawful under 8 U.S.C. § 1231 and *Zadvydas*. *See Zadvydas*, 533 U.S. at 699 (“[W]e conclude that, once removal is no longer reasonably foreseeable, continued detention is no longer authorized by [§ 1231(a)(6)].”).

#### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Issue a Writ of Habeas Corpus on the ground that Petitioner's re-detention violates the Constitution and the laws of the United States;
- 3) Enjoin Respondents from re-detaining Petitioner without notice and an opportunity to be heard before a neutral arbiter and in which Respondents bear the burden to establish that Petitioner is not a danger or a flight risk that cannot be mitigated by bond and in which alternatives to detention and ability to pay are considered.
- 4) Enjoin removal to a country not listed on Petitioner's removal order as punitive;
- 5) Alternatively, in the event that Respondents attempt to remove Petitioner to a country not listed on his order of removal, order Respondents and those with whom they contract to comply with the following in order to provide Petitioner with a meaningful

opportunity to seek withholding of removal and/or protection under the Convention Against Torture to a country not listed in his removal order:

- a. provide written notice to Petitioner and his counsel of the third country to which Petitioner may be removed, in a language that Petitioner can understand;
  - b. following notice, provide a minimum of 15 days for Petitioner to raise a fear of return for eligibility for CAT and withholding protections, and then provide meaningful notice and opportunity—a minimum of 60 days—prior to a screening interview at which USCIS would inquire as to “reasonable fear” of removal to the third country;
  - c. if Petitioner demonstrates “reasonable fear,” reopen his immigration proceedings in order to designate the third country as a country for removal and through which Petitioner can seek withholding and protection under CAT in immigration court, with all attendant procedural protections applicable in immigration court including the right to be represented by counsel of choice and right to submit evidence and take testimony, and to seek further judicial review; and,
  - d. if Petitioner is not found to have demonstrated “reasonable fear,” Respondents are enjoined/prohibited from removing Petitioner from the continental United States until 30 days after a neutral adjudicator reviews Petitioner’s denied Reasonable Fear Interview, and only if the neutral adjudicator affirms such denial after notice and a hearing in immigration court with all attendant procedural protections applicable in immigration court including the right to be represented by counsel of choice and right to submit evidence and take testimony, and only if there is no pending appeal of such denial.
  - e. Order Respondents not to remove Petitioner to any third country where he is likely to face imprisonment upon arrival;
- 6) Award Petitioner reasonable attorneys’ fees and costs for this act under the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- 7) Grant Petitioner any other relief this Court deems just and proper.

Dated: May 22, 2026  
Brooklyn, New York

Respectfully submitted,  
  
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\*Application *Pro Hac Vice* forthcoming