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**Pro Hac Vice application forthcoming*

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON

JOSE ROLANDO GIRON-DIAZ

Petitioner,

v.

TODD BLANCHE, Acting Attorney General; MARKWAYNE MULLIN, Secretary of Homeland Security; DAVID VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement; JULIO HERNANDEZ, Acting Field Office Director, ICE Seattle Field Office; BRUCE SCOTT, Warden, Northwest ICE Processing Center;

Respondents.

Case No.: 2:26-cv-2737

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

Agency File Number: [redacted]

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Jose Rolando Giron-Diaz is a citizen of Honduras. On June 15, 2016, an Immigration Judge granted him Withholding of Removal under Section 241(b)(3) of the Immigration and Nationality Act ("withholding of removal"), prohibiting Respondents from removing him to Honduras due to a clear probability of persecution. Should Respondents wish to remove Petitioner to Honduras, the law sets forth specific procedures by which they must move to reopen proceedings and seek to terminate the grant of withholding of removal. Should Respondents wish to remove Petitioner to any third country (such as Mexico), they must first provide him with adequate notice, a meaningful opportunity to articulate his fear of persecution or torture in that country, and an opportunity to seek protection before an Immigration Judge.

2. Despite these clear statutory, regulatory, and constitutional mandates, on or about July 20, 2026, Respondents arrested and detained Petitioner without warning, revoking his long-standing order of supervision in violation of required administrative regulations. Respondents are now actively seeking to execute his removal to a third country without completing a proper third-country fear screening or affording him judicial review. Such unlawful conduct and prolonged detention cry out for immediate judicial relief.

JURISDICTION AND VENUE

3. This Court has jurisdiction to hear this case under 28 U.S.C. § 2241 and 28 U.S.C. § 1331. In addition, the individual Respondents are United States officials or their agents.

4. No jurisdictional bar applies. 8 U.S.C. § 1252(g) strips jurisdiction only over claims arising from the Attorney General's decision or action to commence proceedings, adjudicate cases, or execute removal orders. Petitioner does not challenge Respondents' decision to execute his

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removal order. He challenges the lawfulness of his detention, and he challenges Respondents' failure to afford him the screening and review that the governing regulations require before any removal order may be executed as to a country never previously designated. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Nor do 8 U.S.C. §§ 1252(a)(5) and (b)(9) apply, because Petitioner does not seek review of an order of removal.

5. This Court also has federal question jurisdiction, through the Administrative Procedure Act ("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 review of a final agency action may proceed, absent a special statutory review proceeding, by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction." 5 U.S.C. § 703.

6. Venue lies in this District pursuant to 28 U.S.C. § 2241 and 28 U.S.C. § 1391(e)(1) because Petitioner is currently detained by Respondents at the Northwest ICE Processing Center in Tacoma, Washington, within this judicial district.

PARTIES

7. Petitioner Jose Rolando Giron-Diaz (A# [redacted]) is a native and citizen of Honduras. He is currently unlawfully detained by Respondents at the Northwest ICE Processing Center in Tacoma, Washington.

8. Respondent Bruce Scott, the Warden of the Northwest ICE Processing Center, is the immediate physical custodian of Petitioner for purposes of a federal habeas petition. *Braden v. 30th Judicial Cir. Ct. of Ky.*, 410 U.S. 484, 494–95 (1973); *Rumsfeld v. Padilla*, 542 U.S. 426, 434-435 (2004).

9. Respondent Julio Hernandez, the Acting Field Office Director of the Immigration

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and Customs Enforcement ("ICE") Seattle Field Office, is responsible for overseeing ICE operations pertaining to noncitizens within its territorial jurisdiction, such as Mr. Giron-Diaz, including detentions, enforcement, and removal operations. He is the legal custodian of Petitioner for purposes of a federal habeas petition.

10. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security ("DHS"). He is the cabinet-level secretary responsible for all immigration enforcement in the United States.

11. Respondent David Venturella is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). He is the head of the federal agency responsible for all immigration enforcement in the United States.

12. Respondent Todd Blanche is the Acting Attorney General of the United States. The Immigration Judges who decide removal cases and applications for relief from removal do so as his designees.

LEGAL BACKGROUND

13. Withholding of removal prohibits the government from removing a noncitizen to a country where his life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1231(b)(3)(A). The relief is mandatory if the applicant meets the standard, and it is distinct from asylum in that it confers no path to permanent residence.

14. For an immigration judge (serving as the designee of Respondent Blanche) to grant withholding of removal to a noncitizen, the noncitizen must prove that "it is more likely than not that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 C.F.R. § 1208.16(b)(2).

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15. The government may not remove an individual with a valid withholding order to that country unless the order is formally terminated following the procedures set forth in the regulations. *See* 8 C.F.R. § 1208.24(b), (f).

16. If a noncitizen is granted withholding of removal, "DHS may not remove the alien to the country designated in the removal order unless the order of withholding is terminated." *Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021).

17. Federal regulations provide a procedure by which a grant of withholding of removal issued by an immigration judge may be terminated: DHS must move to reopen the removal proceedings before the immigration judge and must prove, by a preponderance of the evidence, that the individual would no longer face persecution. 8 C.F.R. § 1208.24(f). Only after termination may removal to that country proceed.

18. However, withholding of removal, whether under the Convention Against Torture or under Section 241 of the Immigration and Nationality Act, 8 U.S.C. § 1231, is a country-specific form of relief. Should the government wish to remove an individual with a grant of withholding of removal to some other country, it must first provide that individual with notice and an opportunity to apply for withholding of removal as to that country as well, if appropriate. 8 U.S.C. § 1231(b)(3)(A) (prohibiting the Government from removing a noncitizen to a country where more likely than not, he would be persecuted). *See also Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) ("Failing to notify individuals who are subject to deportation that they have the right to apply for . . . withholding of deportation to the country to which they will be deported violates both [legacy-]INS regulations and the constitutional right to due process"); *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 removal to a third country only where individuals received "ample notice and an opportunity to be heard").

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19. Finally, for individuals with a removal order but who cannot be removed (because there is no country designated to which they can lawfully be removed, or because logistical or practical considerations prevent execution of an otherwise lawfully executable order), 8 U.S.C. § 1231(a) permits the government to detain noncitizens during the "removal period," which is defined as the 90-day period during which "the Attorney General shall remove the alien from the United States." 8 U.S.C. § 1231(a)(1)(A).

20. After the expiration of the removal period, 8 U.S.C. § 1231(a)(3) provides that the government may release unremovable noncitizens on an order of supervision (the immigration equivalent of supervised release, with strict reporting and other requirements). Pursuant to 8 U.S.C. § 1231(a)(6), even noncitizens with aggravated felony convictions may be "released" if "subject to the terms of supervision" set forth in 8 U.S.C. § 1231(a)(3).

21. Constitutional limits on detention beyond the removal period are well established. Government detention violates due process unless it is reasonably related to a legitimate government purpose. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). "[W]here detention's goal is no longer practically attainable, detention no longer 'bear[s][a] reasonable relation to the purpose for which the individual [was] committed.'" *Id.* at 690 (*quoting Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Additionally, cursory or pro forma findings of dangerousness do not suffice to justify prolonged or indefinite detention. *Zadvydas*, 533 U.S. at 691 ("But we have upheld preventative detention based on dangerousness only when limited to especially dangerous individuals [like suspected terrorists] and subject to strong procedural protections.").

22. As the Supreme Court explained, where there is no possibility of removal, immigration detention presents substantive due process concerns because "the need to detain the noncitizen to ensure the noncitizen's availability for future removal proceedings is weak or

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nonexistent." *Zadvydas*, 533 U.S. at 690-92. Detention is lawful only when "necessary to bring about that alien's removal." *See id.* at 689.

23. To balance these competing interests, the *Zadvydas* Court established a rebuttable presumption regarding what constitutes a "reasonable period of detention" for noncitizens after a removal order. *Id.* at 700-01. The Court determined that six months detention could be deemed a "presumptively reasonable period of detention," after which the burden shifts to the government to justify continued detention if the noncitizen provides a "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

24. When the petition has provided "good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to rebut that showing. *Zadvydas*, 533 U.S. at 701.

25. As discussed above, the government must detain a noncitizen during the removal period, the 90-day period that begins when the order of removal becomes administratively final. 8 U.S.C. §§ 1231(a)(1)(A)–(B), (a)(2). After the removal period, the noncitizen may be released on an order of supervision. *Id.* § 1231(a)(3); *see also* 8 C.F.R. §§ 241.4(j), 241.5.

26. Criteria for release include: "travel documents for the alien are not available or in the opinion of the Service, immediate removal, while proper, is not otherwise practicable or not in the public interest;" nonviolence, in detention or on release; likelihood to comply with conditions of release; and not a significant flight risk if released. *See* 8 C.F.R. § 241.4(e).

27. Conditions of supervised release include: reporting to an immigration officer; making "efforts to obtain a travel document and assist the [government] in obtaining a travel document"; reporting for physical and mental examinations; obtaining advance approval of travel; and providing ICE with written notice of any address changes. *See* 8 C.F.R. § 241.5(a).

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28. An order of supervision may be revoked under two circumstances. First, it may be revoked for violations of conditions of release. *See* 8 C.F.R. § 241.4(*l*)(1). Second, it may be revoked if the Service makes one of the four determinations: "(i) the purposes of release have been served; (ii) the alien violates any condition of release; (iii) it is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) the conduct of the alien, or any other circumstance indicates that release would no longer be appropriate." *See* 8 C.F.R. § 241.4(*l*)(2).

29. If the order of supervision is revoked upon a determination by the Service, only the Executive Associate Commissioner is authorized to make such a determination. *See* 8 C.F.R. § 241.4(*l*)(2). However, that authority can be delegated to the district director when "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." *Id.*

30. Additionally, the regulation provides that "[t]he alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.4(*l*)(1).

31. Further, if following the informal interview the noncitizen is not released, the HQPDU Director is required to "schedule the review process in the case of an alien whose previous release … has been or is subject to being revoked." 8 C.F.R. § 241.4(*l*)(3). This custody review affords the noncitizen an opportunity to contest any facts and otherwise respond to the reasons for the revocation. *Id.*

32. Following release on an order of supervision, the noncitizen is only eligible for work authorization if the immigration officer specifically determines that "(1) [t]he alien cannot be removed in a timely manner; or (2) [t]he removal of the alien is impracticable or contrary to public interest." 8 C.F.R. § 241.5(c); *see also* 8 C.F.R. § 274a.12(c)(18) ("An alien against whom a final

order of deportation or removal exists and who is released on an order of supervision under the authority contained in [8 U.S.C. § 1231(a)(3)] may be granted employment authorization in the discretion of the district director only if the alien cannot be removed due to the refusal of all countries designated by the alien or under [8 U.S.C. § 1231] to receive the alien, or because the removal of the alien is otherwise impracticable or contrary to the public interest").

33. For individuals with reinstated order of removal, regulations govern reasonable fear screenings: 8 C.F.R. § 208.31(a) provides that "[t]his section shall apply to any alien ordered removed under section 238(b) of the Act or whose deportation, exclusion, or removal order is reinstated under section 241(a)(5) of the Act who, in the course of the administrative removal or reinstatement process, expresses a fear of returning to the country of removal." The same provision states that "USCIS has exclusive jurisdiction to make reasonable fear determinations, and EOIR has exclusive jurisdiction to review such determinations."

34. The regulation keys the screening to "the country of removal." It does not say "the country designated in the order of removal," and it does not say that the screening may occur only once. The more natural reading is that the country of removal is the country to which DHS proposes to remove the noncitizen. When Respondents designate a new country, that becomes "the country of removal."

35. Section 208.31(c) sets the substantive standard. A noncitizen "shall be determined to have a reasonable fear of persecution if the alien establishes a reasonable possibility that he or she would be persecuted on account of his or her race, religion, nationality, membership in a particular social group or political opinion," and "shall be determined to have a reasonable fear of torture if the alien establishes a reasonable possibility that he or she would be tortured in the country of removal." 8 C.F.R. § 208.31(c). The standard is reasonable possibility, not more-likely-than-not.

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36. Section 208.31(c) further requires that the interview be conducted in a non-adversarial manner and separate from the general public, that the noncitizen "may be represented by counsel or an accredited representative at the interview, at no expense to the Government," and that he "may present evidence, if available, relevant to the possibility of persecution or torture." *Id.*

37. A positive determination requires referral to an Immigration Judge on a Form I-863 "for full consideration of the request for withholding of removal only," adjudicated under 8 C.F.R. § 208.16, with appeal to the Board. 8 C.F.R. § 208.31(e).

38. A negative determination triggers a right of review. Section 208.31(g) provides that "[t]he asylum officer's negative decision regarding reasonable fear shall be subject to review by an immigration judge upon the alien's request," and that "[t]he immigration judge's review shall proceed under the procedures set forth in 8 CFR 1208.31(g)." The corresponding EOIR regulation provides that the negative decision "shall be subject to de novo review by an immigration judge upon the alien's request," and that in the absence of exceptional circumstances the review shall occur within 10 days of the filing of the Form I-863. 8 C.F.R. § 1208.31(g).

39. Nothing in either regulation authorizes DHS to remove a noncitizen with a reinstated order to a country as to which no reasonable fear determination has been made and no opportunity for Immigration Judge review has been afforded.

FACTUAL ALLEGATIONS

40. Petitioner Jose Rolando Giron-Diaz was born in Honduras and has no legal immigration status or citizenship in any other country.

41. In 2009, Petitioner was ordered removed from the United States to Honduras by an immigration judge. Several times, Petitioner re-entered the United States and was removed pursuant to his prior removal order. Petitioner's most recent removal was on March 4, 2013.

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42. On June 15, 2016, after DHS had reinstated his removal order, an immigration judge granted Petitioner withholding of removal under 8 U.S.C. § 1231(b)(3), prohibiting his removal to Honduras. *See* Ex. 1, Order of the Immigration Judge granting Withholding of Removal. DHS did not appeal the decision. To date, Respondents have not taken any steps to reopen or rescind the grant of withholding of removal. *Id.*

43. After the Immigration Court granted Petitioner withholding of removal, DHS issued Petitioner an Order of Supervision requiring Petitioner to report to a local ICE office for check-ins. *See* 8 C.F.R. §§ 241.4(j)(1) (permitting DHS to impose conditions on the liberty of a noncitizen with an Order of Supervision, with those conditions including those noted in 8 C.F.R. § 241.5); 241.5(a)(1) (authorizing DHS to require such noncitizens to "report to a specified officer periodically and provide relevant information under oath as directed").

44. Upon information and belief, Petitioner has not received any notification on or before July 20, 2026, that DHS believed that he was not in compliance with his Order of Supervision. Nor had he been given any reason to believe that he would be taken into custody prior to July 20, 2026.

45. On Monday, July 20, 2026, Petitioner reported for his scheduled annual check-in at the ICE office in Miramar, Florida, as he has done for many years. There, ICE officers arrested him, detained him, and retained his personal belongings, including the physical copy of his Order of Supervision that he had brought to the appointment.

46. When Petitioner inquired about the basis for his arrest, ICE officers said to him that he was being detained due to a "judge's order" to find a third country for removal. Neither at his arrest nor thereafter did ICE show Petitioner an arrest warrant or a document authorizing his detention. Nor did ICE notify Petitioner orally or in writing that ICE had withdrawn or terminated his Order of Supervision or the document issued after his June 15, 2016, grant of withholding of removal. Respondents transferred Petitioner across the country to the Northwest ICE Processing Center in

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Tacoma, Washington. ICE officers informed Petitioner that they intend to execute his removal to Mexico (a third country in which he holds no citizenship or lawful status).

47. Upon information and belief, Respondents did not afford Petitioner the initial informal interview required by 8 C.F.R. § 241.4(l)(1) following his return to custody, and have not scheduled the custody review required by 8 C.F.R. § 241.4(l)(3). Upon information and belief, the decision to revoke Petitioner's Order of Supervision was made by an officer other than the Executive Associate Commissioner, and no determination was made that revocation was in the public interest and that circumstances did not reasonably permit referral to that official. Upon information and belief, Respondents have never provided Petitioner with written notice of the reasons for revocation.

48. On July 30, 2026, through his immigration counsel, Petitioner formally submitted a written request articulating his fear of persecution and torture in Mexico and demanding a stay of removal and a third-country fear screening. *See* Ex. 2 (containing Petitioner's request for a third-country screening). Accompanying this demand was Petitioner's sworn Affidavit detailing his fear that being removed to Mexico—or any other third country where he lacks legal status—will result in severe harm, persecution, or indirect chain refoulement back to Honduras, where his life remains in grave danger. *See* Ex. 3 (containing Petitioner's declaration in support of his request for a third-country screening).

49. To date, DHS has not conducted a third-country fear screening for Petitioner, nor has it referred his fear-based claim to an Immigration Judge for adjudication.

50. Respondents currently lack any factual or legal basis to detain Petitioner, since Respondents cannot establish that Petitioner will likely be removed from the United States in the reasonably foreseeable future. There are no active immigration court proceedings or pending motions to reopen or terminate Petitioner's withholding of removal.

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51. Mr. Giron-Diaz is currently detained at the Northwest ICE Processing Center in Tacoma, Washington, within the territorial jurisdiction of this Court. *See* ICE Detainee Locator information (available at https://locator.ice.gov/ (last visited on July 31, 2026)):



52. Petitioner's sudden and unlawful detention inflicts severe, irreparable hardship on both Petitioner and his family. For over a decade, Petitioner has resided peacefully in the United States, serving as the primary financial breadwinner and emotional anchor for his household, which includes his long-term partner and their three United States citizen children. His abrupt arrest during a routine annual check-in and subsequent cross-country transfer to Tacoma, Washington, has inflicted profound psychological trauma on his children and abruptly stripped his family of its sole financial support, leaving them in severe financial instability and distress.

53. Furthermore, attempting to remove Petitioner to a third country where he lacks legal status, social ties, or government protection exposes him to imminent physical danger, arbitrary

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detention, and the threat of indirect chain refoulement to Honduras—a country where an Immigration Judge has already determined his life is in grave peril.

54. Petitioner has exhausted all administrative remedies. No further administrative remedies are available to Petitioner.

FIRST CLAIM FOR RELIEF:
Violation of 8 U.S.C. § 1231(a)(6)

55. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-54.

56. Petitioner's continued detention by the Respondents violates 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas*. His 90-day removal period expired on September 13, 2016, and the six-month presumptively reasonable period expired on December 12, 2016.

57. Respondents' decision to re-detain Petitioner nearly ten years later does not restart the *Zadvydas* clock. Section 1231(a)(6) authorizes detention beyond the removal period, and the reasonableness of detention under that provision turns on whether removal remains significantly likely in the reasonably foreseeable future, not on how recently the government elected to take the noncitizen into custody. Reading the statute otherwise would let Respondents reset the presumptively reasonable period at will by releasing and re-detaining the same person, which is precisely the indefinite detention that *Zadvydas* construed the statute to avoid. 533 U.S. at 699. In any event, Petitioner's release on an Order of Supervision for nearly a decade is itself the government's own determination that his removal was not practicable, and Respondents have identified no change in circumstances.

58. Petitioner's order of removal became administratively final when it was first executed and retained that finality upon reinstatement. *See* 8 U.S.C. § 1231(a)(5) (the prior order "is reinstated from its original date"); *Padilla-Ramirez v. Bible*, 862 F.3d 881 (9th Cir. 2017), *amended by* 882 F.3d 826, 830-33 (9th Cir. 2018).

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59. No significant likelihood of removal in the reasonably foreseeable future exists.

60. Under *Zadvydas*, the continued detention of someone like Petitioner is unreasonable and not authorized by 8 U.S.C. § 1231(a)(6).

SECOND CLAIM FOR RELIEF:
Due Process/Detention

61. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-54.

62. Petitioner's detention during the post-removal period is only constitutionally permissible under the Due Process Clause of the Fifth Amendment of the U.S. Constitution when there is a significant likelihood of removal in the reasonably foreseeable future. Respondents have rearrested and detained Petitioner on the assumption that Petitioner will be removable to a third country (Mexico) but have not provided any factual basis to believe that such third-country removal will ever become practicable and legally permissible.

63. To the extent that Respondents intend to remove Petitioner to Mexico, Petitioner's fear of removal to Mexico undercuts Respondents' assumption. *See Rea-Hernandez v. Bondi*, 2026 WL 322874 at *5 (W.D. Wash. Feb. 6, 2026) (finding that DHS failed to show a significant likelihood that the petitioner could be removed to Mexico in the reasonably foreseeable future because the petitioner, who was not a citizen or national of Mexico, did not want to go to Mexico and removal of a non-Mexican national/citizen to Mexico requires that individual's consent).

64. Respondents' detention of Petitioner no longer bears any reasonable relation to a legitimate government purpose, and thus violates the Due Process Clause.

THIRD CLAIM FOR RELIEF:
Violation of Regulations/Accardi doctrine

65. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-54.

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66. Petitioner's supervised release was revoked in violation of the substantive and procedural requirements of 8 C.F.R. § 241.4(*l*), and was revoked by an individual who lacked the authority to do so under that regulation.

67. Section 241.4 is a regulation designed to protect the due process rights of noncitizens like Petitioner and – as this regulation pertains to continued detention, conditions for release, and revocation of release – it directly impacts Petitioner's individual liberty interest. *See Serpas v. Noem*, --- F. Supp. 3d ---, 2026 WL 1244544, at *5 (E.D. Va. 2026).

68. Second, Petitioner was arrested by an ICE officer without a warrant. Under 8 C.F.R. § 287.8(c)(2)(ii), an immigration officer must obtain a warrant of arrest unless the officer has reason to believe the person is likely to escape before a warrant can be obtained. Upon information and belief, no such determination was made. Because that subsection governs the authority to execute an arrest, it directly implicates Petitioner's liberty interest.

69. Third, even if Petitioner's warrantless arrest complied with general enforcement procedures, the arresting officer is required to comply with the procedures for a warrantless arrest under 8 C.F.R. § 287.3. *See* § 287.8(c)(2)(iv). Section 287.3 lays out who has the authority to examine the individual under warrantless arrest, which is not the arresting officer unless an exception applies. *See* § 287.3(a). Next, there must be a determination of what process should be afforded to the individual. *Id.* § 287.3(b). The individual must then be afforded notice, both of the reasons for his arrest and the process he is due. *Id.* § 287.3(c). Last, barring one exception not applicable here, a custody determination must be made regarding the individual within 48 hours of the arrest. *Id.* § 287.3(d). Outside of an oral communication from an ICE officer, Petitioner has not been provided notice of the reasons for his arrest or process he is now due. And it is not clear if a custody determination has been made, including consideration of release on "recognizance," as he was on his order of supervision. As Section 287.3 pertains to arrest procedures, access to

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immigration process, and custody determinations, it directly impacts Petitioner's individual liberty interest.

70. Accordingly, these violations of required procedures also violated Petitioner's due process rights under the Fifth Amendment to the U.S. Constitution.

71. Under the *Accardi* doctrine, "[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures." *See Immigrant Cen. for Women and Children v. Noem*, 2026 WL 1455004, at *39 (C.D. Cal. May 20, 2026) (quoting *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)).

72. Several federal district courts have held that where ICE revokes an Order of Supervision without following the procedures set forth in these regulations, such revocation violates due process and the post-removal-period statute. *See, e.g.*, *Saqib v. Andrews*, 2026 WL 350830 at *4 n.5 (E.D. Cal. Feb. 9, 2026) (finding that DHS unlawfully revoked the petitioner's order of supervision when it failed to follow the regulations governing the revocation of such orders). *See also Ceesay v. Kurzdorfer*, 2025 WL 1284720, at *20-*21 (W.D.N.Y. May 2, 2025) (finding violations of statute, regulations, and due process where ICE revoked Order of Supervision and detained noncitizen without advance notice and opportunity to be heard); *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017) (same).

73. This Court has recognized the violation of a similar regulation governing the custody of noncitizens with final orders of removal (8 C.F.R. § 241.13) as a violation of the *Accardi* doctrine. *See Phetsadakone v. Scott*, 2025 WL 2579569, at *4 (W.D. Wash. Sept. 5, 2025) (Whitehead, J.). Similarly, the Court has determined that noncompliance with such a regulation is a violation of the noncitizen's due process rights under the Fifth Amendment. *See Makuey v. Scott*, 2025 WL 3640900, at *5–6 (W.D. Wash. Dec. 16, 2025) (Estudillo, J.).

FOURTH CLAIM FOR RELIEF:

Violation of Due Process and Federal Regulations/Fear Interview Review

74. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1–54.

75. Withholding of removal is country-specific. Petitioner has been heard, and has prevailed, only as to Honduras. He has never had notice or an opportunity to be heard as to Mexico or any other country Respondents may designate.

76. The Due Process Clause requires that a noncitizen facing removal to a country as to which he has never been heard receive notice of the proposed country and a meaningful opportunity to apply for protection as to that country. *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004).

77. Respondents told Petitioner only that they intend to remove him to Mexico. They have provided no written notice of the designated country, no opportunity to apply for protection as to that country, and no adjudication of the fear he has expressed. Executing his removal on that record would violate the Fifth Amendment.

FIFTH CLAIM FOR RELIEF:

Violation of 8 C.F.R. § 1208.31(g)/third country removal

78. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-45.

79. Petitioner is an individual with a reinstated order of removal, and thus falls within the coverage of 8 C.F.R. §§ 208.31, 1208.31.

80. Petitioner has expressed a fear of removal to Mexico and has requested a reasonable fear determination as to that country. *See* Ex. 2. Respondents have neither referred him to an asylum officer under 8 C.F.R. § 208.31(b) nor conducted a determination under § 208.31(c). To the extent Respondents maintain that they have adopted procedures for third-country removal that dispense with reasonable fear screening or with Immigration Judge review under 8 C.F.R. §§ 208.31(g) and 1208.31(g), those procedures conflict with the regulations and cannot displace them. To the extent

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Respondents have adopted no procedures at all, their refusal to screen Petitioner violates the regulations directly.

81. Respondents' procedures for third-country removal also violate 8 C.F.R. §§ 208.31, 1208.31, to the extent they require Petitioner to establish more than a reasonable possibility of persecution or torture in the designated country, or place on him a burden the regulation does not impose.

PRAYER FOR RELIEF

82. Petitioner prays for judgment against Respondents and respectfully requests that the Court enters an order:

a. Preliminarily and permanently enjoining Respondents from removing Petitioner to Honduras unless and until his order of Withholding of Removal is terminated, including all appeals;

b. Preliminarily and permanently enjoining Respondents from removing Petitioner to any other country without first providing him notice and offering him adequate opportunity to apply for withholding of removal as to that country, in the form of a Reasonable Fear Interview as set forth in the governing regulations, including but not limited to review by an Immigration Judge;

c. Preliminarily enjoining Respondents from removing Petitioner from this District pending the outcome of this litigation;

d. Issuing a writ of habeas corpus, and ordering that Petitioner be released from physical custody forthwith;

e. Restoring Petitioner to his prior Order of Supervision;

f. Awarding reasonable costs and attorney's fees pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and,

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g. Granting such other relief at law and in equity as justice may require.

Respectfully submitted,

Dated: August 3, 2026

//s// Kelly Vomacka
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Attorney for Petitioner
**Pro Hac Vice application forthcoming*

TABLE OF EXHIBITS

Exhibit 1: Order of the Immigration Judge granting Withholding of Removal;

Exhibit 2: Third-Country Screening Request;

Exhibit 3: Petitioner's Declaration in Support of Third-Country Screening Request.

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VERIFICATION OF PETITIONER

On behalf of Jose Rolando Giron Diaz, the party in custody, I verify the facts contained in the Petition for Writ of Habeas Corpus, upon information and belief, having reviewed the relevant records and pleadings. Mr. Giron Diaz has not verified the petition himself because he is detained in a different county from my office and home.

Dated: July 31, 2026

//s// Simon Sandoval-Moshenberg
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Lead Attorney for Petitioner
**Pro Hac Vice application forthcoming*