

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW MEXICO**

[REDACTED]

Petitioner,

v.

MELISSA ORTIZ, Acting Warden, Torrance County Detention Facility; JOEL GARCIA, Field Office Director, El Paso Field Office, United States Immigration and Customs Enforcement; TODD M. LYONS, Acting Director, United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of Homeland Security; PAMELA JO BONDI, United States Attorney General, *in their official capacities,*

Respondents.

Civil Action No.: 1:26-cv-1

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

INTRODUCTION

1. Petitioner [REDACTED] came to the United States to seek protection after speaking out against the Iranian government and facing persecution as a result.

2. On July 15, 2024, Petitioner was granted withholding of removal under Section 241(b)(3) of the Immigration and Nationality Act (“INA”), prohibiting his removal back to Iran. *See* 8 U.S.C. § 1231(b)(3). Concurrently, the immigration judge issued him an order of removal.

3. On information and belief, ICE did not detain Petitioner because Respondents plan to remove him to an identified third country. Instead, Respondents detained Petitioner because of their interpretation of President Trump’s order that they “to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History.”¹ But Respondents’ power to detain remains checked by law, as this country remains “a government of laws and not of men.” *Cooper v. Aaron*, 358 U.S. 1, 23 (1958) (Frankfurter, J. Concurring) (cleaned up).

4. Respondent has now been in immigration detention at the Torrance County Detention Facility (“TCDF”) in Estancia, New Mexico, for over six months with no end in sight. Since being detained, Respondents have given Petitioner no indication that they actually intend to seek to remove him to a third country. Petitioner has also had no meaningful opportunity to contest his detention.

5. But Respondents cannot evade the law so easily. Petitioner challenges his indefinite detention as a violation of the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, and ICE’s own policies.

¹ Pres. Donald Trump, @realDonaldTrump, Truth Social (June 15, 2025, 5:43pm) (“ICE Officers are herewith ordered, by notice of this TRUTH, to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History.”).

6. To vindicate Petitioner's rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner asks this Court to find that Respondents' indefinite detention of Petitioner is arbitrary and capricious and in violation of the law.

JURISDICTION

7. This action arises under the Constitution of the United States and the Immigration and Nationality Act, 8 U.S.C. § 1101 et. seq.

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

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

VENUE

10. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (e)(1) because Petitioner is detained within the District of New Mexico and his immediate physical custodian is located within this District. *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *see also United States v. Scott*, 803 F.2d 1095, 1096 (10th Cir. 1986) (“A § 2241 petition for a writ of habeas corpus must be addressed to the federal district court in the district where the prisoner is confined.”).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

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

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

13. Petitioner is “in custody” for the purpose of § 2241 because he is detained by Respondents at TCDF, an immigration detention facility, in Estancia, New Mexico. Petitioner is under the direct control of Respondents and their agents.

PARTIES

14. Petitioner [REDACTED] is currently detained by Respondents at TCDF. He was granted withholding of removal on July 15, 2024. Petitioner was detained by Respondents when he reported for his scheduled ICE check-in in Santa Ana, California, on or around June 25, 2025. Respondents subsequently transferred him to New Mexico, where he remains detained.

15. Respondent **Melissa Ortiz** is the Acting Warden of the Torrance County Detention Facility, where Petitioner is currently detained. She is a legal custodian of Petitioner.

16. Respondent **Joel Garcia** is the Field Office Director for the ICE El Paso Field Office. As Field Office Director, Respondent Garcia oversees ICE’s enforcement and removal operations in West Texas and New Mexico. He is a legal custodian of Petitioner.

17. Respondent **Todd Lyons** is Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement. He has authority over the actions of Respondent Garcia and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

18. Respondent **Kristi Noem** is the Secretary of the Department of Homeland Security and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Noem is charged with faithfully administering the immigration laws of the United States and is a legal custodian of Petitioner.

19. Respondent **Pamela Bondi** is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

20. This action is commenced against all Respondents in their official capacities.

LEGAL FRAMEWORK

I. Withholding of Removal under the Immigration and Nationality Act

21. A noncitizen may not be removed to any country where it is more likely than not that they would be persecuted or tortured.

22. Under the INA, the Attorney General or the DHS Secretary may not remove a [noncitizen] to a country” where “the [noncitizen]’s life or freedom would be threatened in that country because of the [noncitizen]’s race, religion, membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3)(A). This form of protection is known as “withholding of removal.” *See* 8.C.F.R. § 208.16(a). It is mandatory.

23. When an Immigration Judge (“IJ”) grants withholding of removal to a noncitizen in removal proceedings, the IJ issues a removal order and simultaneously withholds that order with respect to the country or countries for which the noncitizen has demonstrated the requisite risk of persecution. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021).

24. Once withholding is granted, either party has the right to appeal that decision to the Board of Immigration Appeals (“BIA”) within 30 days. *See* 8 C.F.R. § 1003.38(b). If both parties

waive appeal or if neither party appeals within the 30-day period, the grant of withholding of removal and the accompanying removal order become administratively final. 8 C.F.R. § 1241.1. If the Respondent reserves appeal and the time allotted for an appeal expires, the order of the immigration judge becomes administratively final “upon the expiration of the time allotted for an appeal.” 8 C.F.R. § 1241.1(c).

25. When a noncitizen has a final withholding grant, they cannot be removed to the country or countries for which they demonstrated a sufficient likelihood of persecution. *See* 8 U.S.C. § 1231(b)(3)(A). While ICE is authorized to remove noncitizens granted withholding of removal to alternative countries, the INA specifies restrictive criteria for identifying appropriate countries. *See* 8 U.S.C. § 1231(b)(2)(D)-(E).

26. If ICE identifies an appropriate alternative country of removal, ICE must undergo further proceedings, including giving the noncitizen notice and an opportunity to express fear of deportation to that country, before ICE may effectuate the noncitizen’s removal. *See Jama v. ICE*, 543 U.S. 335, 348 (2005) (“If [noncitizens] would face persecution or other mistreatment in the country designated under § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture, *see* 8 C.F.R. §§ 208.16(c)(4), 208.17(a) (2004)[.]”); *Romero v. Evans*, 280 F. Supp. 3d 835, 848 n.24 (E.D. Va. 2017) (“DHS could not immediately remove petitioners to a third country, as DHS would first need to give petitioners notice and the opportunity to raise any reasonable fear claims.”), *rev’d on other grounds, Guzman Chavez*, 141 S. Ct. 2271.

II. Detention and Release of Noncitizens Granted Withholding of Removal

a. Statutory, Regulatory, and Constitutional Framework Limits Detention Beyond 90 Days

27. Section 1231 of Title 8 of the U.S. Code governs the detention of noncitizens “during” and “beyond” the “removal period.” 8 U.S.C. § 1231(a)(2)-(6). The “removal period” begins once a noncitizen’s removal order “becomes administratively final.” 8 U.S.C. § 1231(a)(1)(B).² The removal period lasts for 90 days, during which ICE “shall remove the [noncitizen] from the United States” and “shall detain the [noncitizen]” as it effectuates removal. 8 U.S.C. § 1231(a)(1)-(2).

28. If an individual is not removed within the 90-day removal period, the INA presumes that such individual should be released under conditions of supervision, such as periodic reporting and other reasonable restrictions. *See* 8 U.S.C. § 1231(a)(3) (directing that if a noncitizen is not removed with the removal period, the noncitizen “shall be subject to supervision under regulations prescribed by the Attorney General”).

29. The government may detain particular noncitizens beyond the 90-day removal period only if they meet certain conditions, such as being inadmissible or deportable under specified statutory categories, or if they are determined to be a “risk to the community.” 8 U.S.C. § 1231(a)(6). In making a post-removal period custody determination, qualified officials must consider a number of enumerated factors that speak to the individual’s danger to the community and risk of flight, “including ties to the United States.” 8 C.F.R. § 241.4(f).

30. In addition to these regulatory restrictions, the Fifth Amendment to U.S. Constitution requires that Respondents may not extend a noncitizen’s detention under 8 U.S.C. §

² There are two other events that trigger the start of the removal period, which are not applicable here. *See* 8 U.S.C. § 1231(a)(1)(B)(ii)-(iii).

1231 indefinitely beyond the 90-day period; “once removal is no longer foreseeable, continued detention is no longer authorized by statute.” *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001) (interpreting § 1231 in light of constitutional constraints). After the expiration of their removal period, noncitizens who believe their removal is no longer reasonably foreseeable may receive a special custody review process under 8 C.F.R. § 241.13.

31. If the government seeks to extend a noncitizen’s detention beyond six months, it is presumed that continued detention exceeds the “period reasonably necessary to effectuate removal.” *Zadvydas*, 533 U.S. at 699-701.

32. Where “the detention in question exceeds a period reasonably necessary to secure removal,” release is the proper remedy for unconstitutionally prolonged post-removal-order detention. *See Zadvydas*, 533 U.S. at 699-700.

a. ICE Policy Supports Prompt Release of Noncitizens Granted Withholding of Removal

33. Longstanding ICE policy favors the prompt release of noncitizens who have been granted protection, including withholding of removal. This policy was established and extended through multiple memoranda and directives over the past twenty-five years (collectively, the “Withholding Release Policy”).³

34. In 2004, ICE established a presumption of release for noncitizens who had received a grant of protection: “In general, it is ICE policy to favor release of [noncitizens] 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.”).

³ These memoranda and directives are available at: https://www.acluva.org/app/uploads/2023/10/all_ice_policies_on_post-relief_release_2000-20211.pdf.

Memorandum from Michael Garcia, ICE Ass't Sec'y, Detention Policy Where an Immigration Judge Has Granted Asylum and ICE Has Appealed (Feb. 9, 2004).

35. In 2012, ICE leadership stated that the 2000 and 2004 memoranda favoring release are “still in effect and should be followed” and underscored that “[t]his policy applies at all times following a grant of protection[.]” Message from Gary Mead, ICE ERO Executive Assoc. Dir., Reminder on Detention Policy Where an Immigration Judge Has Granted Asylum, Withholding of Removal, or CAT (Mar. 6, 2012).

36. Most recently, in 2021, Acting ICE Director Tae Johnson reiterated the agency’s position establishing a presumption of release for noncitizens granted protection and the exceptional circumstances standard: “Pursuant to this longstanding policy, absent exceptional circumstances ... noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge *should* be released[.]” Message from Tae Johnson, ICE Acting Dir., REMINDER: Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal, or Convention Against Torture Protection, and DHS has Appealed (Jun. 7, 2021) (hereinafter, “2021 ICE Withholding Release Policy Reminder”). Exceptional circumstances include “when the noncitizen presents a national security threat or a danger to the community, or any legal requirement to detain.” *Id.* “[I]ndividual facts and circumstances ... should be considered in making [an exceptional circumstances] determination.” *Id.*

37. On information and belief, the Withholding Release Policy has not been rescinded.

FACTUAL BACKGROUND

I. Petitioner's Grant of Withholding of Removal

38. Petitioner is a citizen and national of Iran. After participating in protests against the Iranian government and converting to Christianity, Mr. [REDACTED] left Iran and fled to the United States to seek protection.

39. Petitioner entered the United States in December 2023. He was apprehended by immigration officials, held in custody for about two days, and then released on his own recognizance. He was placed in removal proceedings in front of the Santa Ana Immigration Court.

40. Upon his release, Petitioner moved to Irvine, California. He attended all his immigration court hearings as well as his scheduled ICE check-in on December 26, 2024. After receiving his work authorization, Petitioner began working doing food delivery and at a medical company, where he hoped to use his skills as a mechanical engineer. He participated actively in his church and built ties with the community.

41. On July 15, 2024, the IJ granted Petitioner withholding of removal pursuant to 8 U.S.C. § 1231(b)(3), preventing his deportation to Iran because he had established that he was more likely than not to be persecuted in Iran if he were returned. Petitioner was also simultaneously denied asylum, and an order of removal was entered against him. Both his removal order and his grant of withholding became administratively final on August 15, 2024.

42. Petitioner has no criminal record in the United States and has never been arrested nor charged with any criminal offense.

43. Since Petitioner's grant of withholding and removal order have become final, ICE has never requested that Petitioner take any specific actions to obtain a travel document from any third country.

II. Respondents' Detention and Deportation Policies

44. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including “Protecting the American People Against Invasion,” an executive order (“EO”) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The “Protecting the American People Against Invasion” EO instructs the DHS Secretary “to take all appropriate action to enable” ICE to prioritize civil immigration enforcement procedures including through the use of mass detention.

45. On February 18, 2025, ICE issued a directive instructing ICE officers to review the cases of noncitizens granted withholding of removal “to determine the viability of removal to a third country and accordingly whether the [noncitizen] should be re-detained” and, in the case of those who previously could not be removed because their countries of citizenship were unwilling to accept them, to “review for re-detention . . . in light of . . . potential for third country removals.” In its February 2025 memo, ICE reiterated its regulatory obligations, including regarding the process for revocation of release pursuant to 8 C.F.R. §§ 241.4 and 241.13.

46. In late May 2025, Respondent Secretary Noem and White House Deputy Chief of Staff Stephen Miller met with ICE leadership, setting a new arrest quota of 3,000 arrests per day and reportedly threatening job consequences if officials failed to meet arrest quotas.⁴

⁴ Elizabeth Findell, et al., *The White House Marching Orders That Sparked the L.A. Migrant Crackdown*, The Wall Street Journal (June 9, 2025), <https://www.wsj.com/us-news/protests-los-angeles-immigrants-trump-f5089877>; Julia Ainsley, et al., *A sweeping new ICE operation shows how Trump's focus on immigration is reshaping federal law enforcement*, NBC News (June 4, 2025), <https://www.nbcnews.com/politics/justicedepartment/ice-operation-trump-focus-immigration-reshape-federal-lawenforcement-rcna193494>; Brittany Gibson & Stef W. Kight, Scoop: Stephen Miller, Noem tell ICE to supercharge immigration arrests, Axios (May 28, 2025), available at <https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller>.

47. On May 28, 2025, Miller confirmed that “[u]nder President Trump’s leadership, we are looking to set a goal of a minimum of 3,000 arrests for ICE every day, and President Trump is going to keep pushing to get that number up higher each and every single day.”⁵

48. Following the directive from Respondent Noem and Miller, ICE agents were instructed in an e-mail to “turn the creativity knob up to 11” and aggressively “push the envelope” in arrests, including by pursuing “collaterals”—individuals who by definition would not have warrants.⁶ As another e-mail put it: “If it involves handcuffs on wrists, it’s probably worth pursuing.”⁷

49. The overriding message, communicated by and to Respondents, is that agents and officers carrying out immigration operations on the ground must prioritize arrest numbers, regardless of the law. As one ICE official put it earlier this year, all that matters is “numbers, pure numbers, [q]uantity over quality.”⁸

50. On June 15, 2025, President Trump ordered ICE officers to “do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in

⁵ Hannity, *Stephen Miller says the admin wants to create the strongest immigration system in US History*, Fox News (May 28, 2025), available at <https://www.foxnews.com/video/6373591405112> (last visited Aug. 24, 2025).

⁶ José Olivares, *US immigration officers ordered to arrest more people even without warrants*, The Guardian (June 4, 2025), <https://www.theguardian.com/us-news/2025/jun/04/immigration-officials-increased-detentions-collateral-arrests>.

⁷ *Id.*

⁸ Jennie Taer, *Trump admin’s 3,000 ICE arrests per day quota is taking focus off criminals and ‘killing morale’: insiders warn*, NY Post, June 17, 2025, <https://nypost.com/2025/06/17/us-news/trump-admins-3000-ice-arrests-per-day-quota-is-taking-focus-off-criminals-and-killing-morale-insiders/>, <https://perma.cc/DB9R-MJUC> (last visited Oct. 15, 2025) (“The Trump administration’s mandate to arrest 3,000 illegal migrants per day is forcing ICE agents to deprioritize going after dangerous criminals and targets with deportation orders, insiders warn. Instead, federal immigration officers are spending more time rounding up people off the streets, sources said. ‘All that matters is numbers, pure numbers. Quantity over quality,’ one Immigrations and Customs Enforcement insider told The Post.”).

History.”⁹

51. Petitioner’s Arrest and Subsequent Detention at TCDF

52. On or about June 25, 2025, Petitioner reported to the Santa Ana ICE office for his scheduled ICE check-in.

53. At his June 2025 check-in, Petitioner was arrested and detained by ICE agents despite no material changes in his individual circumstances since he was granted withholding of removal. At the time of his arrest, the arresting officer acknowledged that Petitioner had a grant of withholding of removal but said that he was to remain in custody while his case was reviewed.

54. After his arrest in June 2025, Respondents transferred Petitioner to TCDF in Estancia, New Mexico, where he currently remains detained.

55. Since his detention, Petitioner has sent around 15-20 messages to his Deportation Officer inquiring as to why he was detained, the status of his case, and if he would be released. The only response he has received, if any, is that his case is being reviewed for third-country deportation.

56. In early December 2025, Deportation Officer Ulloa had Petitioner sign multiple documents that he believes were related to a custody review. Petitioner was only able to quickly skim the documents before being forced to sign them. Deportation Officer Ulloa told Petitioner that the documents had nothing to do with deportation, that he would review Petitioner’s case, and that Petitioner may be released. Petitioner was not given a copy of the documents he signed and has not been informed of the results of any custody review, or if one has even occurred.

⁹ Pres. Donald Trump, @realDonaldTrump, Truth Social (June 15, 2025, 5:43pm) (“ICE Officers are herewith ordered, by notice of this TRUTH, to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History.”).

57. Petitioner has now been in Respondents' custody at TCDF for over six months and a month since ICE purportedly advised him that they were reviewing his case.

58. On information and belief, Respondents have identified no third country of removal to which they are actually attempting to remove Petitioner.

59. Neither Petitioner nor his parents have citizenship from any country other than Iran. Petitioner has no legal ties to any country other than Iran and the United States.

CLAIMS FOR RELIEF

COUNT ONE

**Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A),
the Immigration and Nationality Act – 8 U.S.C. § 1231,
and the *Accardi* Doctrine with Respect to the Withholding Release Policy
Not in Accordance with Law, In Excess of Statutory Authority, Abuse of Discretion
(Unlawful Indefinite Detention)**

60. Petitioner restates and realleges all paragraphs as if fully set forth here.

61. Under the APA, a court shall “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). An agency must also follow its own procedures or regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *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.”).

62. First, as interpreted by the Supreme Court, 8 U.S.C. § 1231(a)(6) authorizes detention beyond the 90-day removal period only for a “period reasonably necessary to bring about the [noncitizen’s] removal from the United States.” *Zadvydas*, 533 U.S. at 701.

63. Here, Petitioner’s removal order became administratively final on August 15, 2024, over sixteen months ago. On information and belief, within that time, including in Petitioner’s more than six months of detention at TCDF, Respondents have made no actual efforts to remove Petitioner to a specifically identified third country.

64. On information and belief, Petitioner has not engaged in any conduct to trigger an extension of the removal period under 8 U.S.C. § 1231(a)(1)(C). Because it has been more than six months since Petitioner’s removal order became administratively final and more than six months since he was detained in June 2025, it is presumed that his removal is no longer reasonably foreseeable. *See Zadvydas*, 533 U.S. at 699-701.

65. Second, Respondents have provided Petitioner with no individualized custody determination as required to justify his detention beyond the 90-day removal period. *See* 8 U.S.C. § 1231(a)(3), (6); 8 C.F.R. §§ 241.4, 241.13. On information and belief, if Respondents conducted such a review, Petitioner would be released from immigration detention.

66. Third, pursuant to the “longstanding” Withholding Release Policy, “absent exceptional circumstances . . . noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge *should* be released[.]” Acting ICE Director Tae Johnson, 2021 ICE Withholding Release Policy Reminder (emphasis added).

67. Here, during and since Petitioner’s arrest in June 2025, Respondents have also not conducted an individualized review of Petitioner’s detention under the “exceptional circumstances” standard as required by the Withholding Release Policy. On information and belief, if Respondents conducted such a review, Petitioner would be released from immigration detention.

68. By detaining Petitioner beyond his removal period when removal is not reasonably foreseeable, Respondents have violated the APA. Respondents have also independently violated the APA by detaining Petitioner without providing any individualized custody determination under either the regulations or the Withholding Release Policy.

COUNT TWO

**Violation of Fifth Amendment Right to Substantive Due Process
(Unlawful Re-detention and Indefinite Detention)**

69. Petitioner restates and realleges all paragraphs as if fully set forth here.

70. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V.

71. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)); *see also Jimenez v. Bostock*, 2025 WL 2430381, at *6-7 (D. Or. Aug. 22, 2025). (“[F]reedom from government custody is fundamental.”). This protection applies regardless of a person’s immigration status. *See Zadvydas*, 533 U.S. at 690; *see also Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

72. “In the context of immigration, a period of detention must ‘bear[] a reasonable relation to the purpose for which the individual was committed.’” *Gamez Lira v. Noem*, 2025 WL 2581710, at *2 (D.N.M. Sept. 9, 2025) (finding likelihood of success on merits of substantive due process claim) (quoting *Demore v. Kim*, 538 U.S. 510, 516-17 (2003)); *see Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (similar). The purposes of post-order detention under 8 U.S.C. § 1231 are to ensure an individual’s presence for imminent removal and, secondarily, to prevent danger to the community. *See Zadvydas*, 533 U.S. at 690, 697. “[T]he first justification—preventing

flight—is weak or nonexistent where removal seems a remote possibility at best.” *Zadvydas*, 533 U.S. 678, 690.

73. Here, Petitioner’s detention is not reasonably related to the primary statutory purpose of ensuring imminent removal. On information and belief, Respondents re-detained him in June 2025 despite no identification of a third country for removal, let alone the imminence of such removal. His prolonged civil detention has now exceeded six months and will continue into the indefinite future.

74. In total, ICE has had over sixteen months to effectuate Petitioner’s removal, including more than six months since Petitioner’s re-detention. During that time, Respondents have not identified a viable third country of removal, let alone initiated any process to remove Petitioner to such a third country. There is no significant likelihood of his removal in the reasonably foreseeable future.

75. Additionally, no other facts or circumstances have changed for Petitioner that would change Respondents’ assessment of his danger to the community. To the contrary, since arriving in the United States in December 2023, Petitioner has developed strong ties to his community in Irvine, California, and has maintained a lack of any criminal history. Petitioner’s detention thus has not reasonable relation to the goal of community safety on the basis that he is a “particularly dangerous individual[.]” *Zadvydas*, 533 U.S. at 691.

76. Because Petitioner’s detention bears no rational relation to the purposes of immigration detention under 8 U.S.C. § 1231, his detention contravenes the Substantive Due Process protections of the Fifth Amendment.

COUNT THREE
**Violation of Fifth Amendment Right to Procedural Due Process
(Unlawful Re-detention and Indefinite Detention)**

77. Petitioner restates and realleges all paragraphs as if fully set forth here.

78. Basic due process doctrine provides that an individual must be afforded requisite process, including notice and an opportunity to be heard, before being deprived of a liberty interest. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). Prolonged civil detention violates procedural due process unless it is accompanied by strong procedural protections to guard against the erroneous deprivation of liberty. *Zadvydas*, 533 U.S. at 690-91; *Foucha*, 504 U.S. at 81-83; *Kansas v. Hendricks*, 521 U.S. at 346, 364-69 (1997); *United States v. Salerno*, 481 U.S. 739, 750-52 (1987).

79. While the government has discretion to detain individuals under 8 U.S.C. § 1231 and to revoke custody decisions pursuant to the same authority, this discretion is not “unlimited.” *See Zadvydas*, 533 U.S. at 698. Additionally, when agencies fail to adhere to their own policies as required by *Accardi*, the result can be a due process violation. *See Sameena, Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) (“An agency’s failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual’s constitutional right to due process.”) (internal quotations omitted).

80. Here, Mr. [REDACTED] has been deprived of his liberty without the process due at every stage of his detention and now indefinite detention, resulting in several independent violations of his due process rights.

81. First, Respondents have re-detained Petitioner in an arbitrary manner and without an individualized determination of custody as required by 8 U.S.C. § 1231(a)(6). Because Petitioner was afforded neither notice nor an opportunity to respond to the reasons for his detention

following his grant of withholding, Respondents' June 2025 detention of Petitioner violated his right to procedural due process.

82. Second, Respondents have continued to detain Petitioner without affording him the very process required either under its own regulations under 8 C.F.R. § 214.13 or the Withholding Release Policy, in further violation of due process. Despite Petitioner's repeated requests for information on his status and the documents he was asked to sign in December, on information and belief, ICE has not completed *any* post-order custody review, let alone constitutionally adequate review.

83. Petitioner's detention thus violates procedural due process.

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (3) In the event that the Court determines that a genuine dispute of material fact exists, promptly schedule an evidentiary hearing pursuant to 28 U.S.C. § 2243. *See Milton v. Miller*, 744 F.3d 660, (10th Cir. 2014) (holding that an evidentiary hearing is required to resolve factual disputes in a habeas petition); *Beckett v. Hudspeth*, 131 F.2d 195 (10th Cir. 1942); *see also Singh*, 945 F.3d at 1315 (“It is well-established that a court may not decide a habeas corpus petition based on affidavits alone when there are factually contested issues.”);

- (4) Declare that Petitioner's indefinite detention violates the APA, the INA, federal regulations, the Withholding Release Policy, and the Due Process Clause of the Fifth Amendment;
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody without any conditions or, alternatively, on an Order of Supervision that includes no physical restraints, such as an ankle monitor or GPS tracking watch;
- (6) Order Respondents to immediately return Petitioner's property to him upon his release;
- (7) Order that before any future re-detention of Petitioner, Respondents must provide Petitioner with written notice of the reasons for his re-detention and the formal processes required under 8 C.F.R. § 241.4(l), and that Respondents shall bear the burden of establishing, by clear and convincing evidence, that Petitioner is a particular danger to the community or that custody is appropriate to enforce an existing removal order to a named third country;
- (8) Alternatively, review Petitioner's custody under the standards articulated in federal statute, regulations, and the Withholding Release Policy, or order ICE to review Petitioner's custody accordingly;
- (9) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the Court's approval;
- (10) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (11) Grant any further relief this Court deems just and proper.

Dated: January 2, 2026.

Respectfully submitted,

By: /s/ Tiffany Wang

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Counsel for Petitioner

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of Petitioners because I am one of Petitioner's attorneys. I have discussed with Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

/s/ Tiffany Wang
Tiffany Wang

Date: January 2, 2026

CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2026, I filed the foregoing pleading electronically through the CM/ECF system which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/ Tiffany Wang
Tiffany Wang

Date: January 2, 2026