**UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION**

BRITANIA URIOSTEGUI RIOS *Petitioner*, v. DONALD J. TRUMP, in his official capacity as President of the United States; KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security, TODD LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; BRIAN S. ACUNA, in his official capacity as Acting Field Office Director of the New Orleans Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; and ELEAZAR GARCIA, in his official capacity as Warden, Winn Correctional Center, *Respondents*.	Civil Action No. 1:25-cv-1320

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. This case asks whether the federal government—herein, Respondents—can continue to detain someone who was granted deferral of removal under the Convention Against Torture ("CAT") when there is no substantial likelihood that Respondents will be able to carry out her removal to a third country in the foreseeable future.

2. Indeed, the United States has tried and repeatedly failed to deport Petitioner, Britania Uriostegui Rios, to six (6) third countries: El Salvador, Guatemala, Honduras, Nicaragua, Costa Rica, and Panama.

3. Britania, a transgender woman, had her immigration status adjusted to lawful permanent resident ("LPR") in 2011. On September 11, 2023, she pled guilty to assault with a deadly weapon in Las Vegas, Nevada. The judgment of conviction from her guilty plea was a suspended sentence of 18-60 months in prison and probation for an indeterminate period of time, not to exceed 36 months.

4. She has been in the custody of the Department of Homeland Security ("DHS") continuously since April 16, 2024, when Immigration and Customs Enforcement ("ICE") picked her up from Clark County Detention Center in Las Vegas, Nevada, where she was being held on the assault charge since August 28, 2023.

5. Once in ICE custody, she was placed in removal proceedings, wherein she was deemed incompetent by an immigration judge ("IJ") on August 20, 2024. On that same day, the IJ also determined that Britania was removable pursuant to her conviction; she then lost her LPR status.

6. The IJ subsequently granted her deferral of removal under CAT on March 14, 2025.

7. DHS presently claims authority to jail Britania under 8 U.S.C. § 1231(a)(6) ("Section 1231(a)"), which governs the detention of noncitizens who have been granted deferral of removal.

8. On information and belief, DHS does not presently have any travel documents it can use to remove Britania, and is unlikely to procure any in short order as its six prior failed removal attempts demonstrate.

9. Because Britania's removal from the United States is not reasonably foreseeable, she must be released from ICE custody. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). It is black letter law that Respondents cannot continue to indefinitely detain someone under Section 1231(a)(6) who it has no prospect of removing from the United States. *Id.* at 703. Doing so is unconstitutional and violates the due process clause of the Fifth Amendment. *See id.* In fact, *Zadvydas* held that Section 1231(a)(6) itself requires "release[]" when an individual cannot be repatriated to another country.

10. Even assuming, *arguendo,* that Respondents have a list of additional third countries to which they aspire to deport Britania, they are required to provide her with a lawful process to contest removal to any country that was not designated as a country for removal during her immigration proceedings. *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 CFR §§ 208.16(c)(4), 208.17(a) (2004) . . .").

11. Failing to provide such a process that results in an individual's indefinite detention violates that person's right to both substantive and procedural due process. *See, Zadvydas,* 533

U.S. at 690-691; *see also Boumediene v. Bush,* 533 U.S. 723, 739 (2008) ("The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty"). Accordingly, due process permits civil detention only when it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). *See also, Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (finding that "last minute" designation of alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process"); *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; *cf. Protsenko v. U.S. Att'y Gen.*, 149 F. App'x 947, 953 (11th Cir. 2005) (per curiam) (permitting designation of third country where individuals received "ample notice and an opportunity to be heard").

12. Release from ICE custody is the only appropriate remedy, as Britania's removal is not reasonably foreseeable.

13. Moreover, as a person with an established diagnosis of complex Post-Traumatic Stress Disorder ("PTSD") and Major Depressive Disorder ("MDD"), Britania is entitled to reasonable accommodations and services—which she is currently being denied—under Section 504 of the Rehabilitation Act ("Section 504") as a direct result of Sections 4(a) and 4(c) of Executive Order 14166, "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government" (the "Executive Order").[1] Section 504 prohibits

[1] This Executive Order was issued by President Donald Trump just hours after his inauguration on January 20, 2025. The Order directly targets transgender individuals by attempting to strip them of established legal protections. Under Sections 4(a) and 4(c) of the Order, all transgender women who are incarcerated in federal prisons will be transferred to men's facilities, regardless of safety concerns, and all transgender people who are incarcerated in federal prisons will be denied medically necessary healthcare for gender dysphoria.

discrimination based on a disability in programs, services, or activities conducted by United States federal agencies, including DHS. 29 U.S.C. § 794; 6 C.F.R. § 15.30, *et seq.* (applying to DHS). Under the Rehabilitation Act, covered entities must provide reasonable accommodations in order to afford persons with disabilities equal opportunity to obtain the same result as those who do not have disabilities. 45 C.F.R. § 84.4(b)(2)). Federal entities are prohibited from utilizing "criteria or methods of administration" that "have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons." 34 C.F.R. § 104.4(b)(4). In short, Respondents cannot deny people with disabilities access to services that prevent them from living a humane existence in ICE detention; and because the Executive Order prohibits Respondents from ensuring Britania's existence is humane, release is the only possible relief in this context.

14. Additionally, Britania was judicially declared and determined to be mentally incompetent in her immigration proceedings based on her PTSD and MDD diagnoses. And yet she is actively being discriminated against for her disabilities by Respondents because her mental health diagnoses are not being accommodated, rendering her existence in ICE detention inhumane. Respondents are both (a) denying her gender-affirming care treatment; and (b) housing her in an all-male unit when she identifies as a transgender woman in accordance with the Executive Order.

15. As a direct result of these actions, Britania's mental health will continue to deteriorate during the pendency of her incarceration—serving to exacerbate her PTSD and MDD diagnoses. *See* Ex. A, Declaration of Darien Combs, Ph.D. ("Combs Decl."). The exacerbation of her diagnoses—which are directly tied to Respondents failure to provide gender-affirming-care treatment and to also house Britania in an appropriate sex dorm—is resulting in Britania's severe mental health decompensation, significantly increasing her suicide risk. *Id.* The creation of this

risk by Respondents—which by Executive Order they refuse to correct—violates Section 504, entitling Britania to release as the prospect of suicide places her liberty interest at stake.

16. Britania respectfully asks this Court to declare that her continued detention is unlawful and to prohibit Respondents from further detaining her by ordering her release.

17. In order to make sure the relief she seeks pursuant to the writ of habeas corpus is not compromised, Britania asks this Court for an interim order prohibiting, during the pendency of this action, Respondents from transferring her out of the jurisdiction of this Court, or removing her to a third country, and ensuring that she maintains unobstructed access to her pro bono counsel.

18. Britania has the right to fully pursue her claim of mandatory protection from being removed to a third country that will torture her for being both transgender and incompetent, with the unobstructed assistance of her pro bono counsel. Maintaining her unobstructed access to her pro bono counsel includes not transporting her at any time to the Alexandria Staging Facility in Alexandria, Louisiana, or any other facility that denies clients access to their attorneys.

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, as Petitioner is currently in federal immigration custody and seeks habeas corpus relief for ongoing violations of the U.S. Constitution, federal statutes, and applicable regulations. Jurisdiction is also proper under 28 U.S.C. § 1331, as this action arises under the laws and Constitution of the United States. The case arises under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*; the regulations implementing the INA; the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 103-277, div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1998) (codified as Note to 8 U.S.C. § 1231); the regulations implementing the FARRA; and the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq*. Additional jurisdiction exists under

the Suspension Clause, U.S. Const. art. I, § 9, cl. 2, which guarantees the right to petition for habeas corpus to challenge unlawful executive detention. This Court also has jurisdiction to hear and adjudicate the claims brought pursuant to the Rehabilitation Act, 29 U.S.C. § 794, as well its inherent authority to grant equitable relief. *See, e.g., Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971).

20. Declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, and the Court has supplemental remedial authority under the All-Writs Act, 28 U.S.C. § 1651, to issue such writs as may be necessary to preserve its jurisdiction and protect Petitioner's rights. The government has waived its sovereign immunity pursuant to 5 U.S.C. § 702.

21. Venue properly lies with this Court under 28 U.S.C. §1391(e) because Petitioner is physically present and in the custody of Respondents at the Winn Correctional Center in Winnfield, Louisiana, within the jurisdiction of the Western District of Louisiana. *See* 28 U.S.C. § 2241(d).

22. Venue is proper within the Alexandria Division because Petitioner is detained by Respondents at the Winn Correctional Center in Winnfield, Louisiana, which is located in Winn Parish, within the Alexandria Division. *See* W.D. La. Local Civ. R. 77.3.

PARTIES

23. Petitioner, Britania Rios, is a judicially declared and determined mentally incompetent transgender woman who was appointed legal counsel in her immigration proceedings due to the fact that she is mentally incompetent. She has been in the custody of Respondents since April 16, 2024. Britania was made a lawful permanent resident on December 5, 2011, and detained by DHS on April 16, 2024, after pleading guilty to a Nevada Class B felony. She was ultimately

granted deferral of removal under CAT on March 14, 2025. She is currently detained at Winn Correctional Center, in Winnfield, LA, a men's detention center.

24. Respondent Donald J. Trump is named in his official capacity as President of the United States. In this role, he is ultimately responsible for the policies and actions of the executive branch, including those of DHS.

25. Respondent Kristi Noem is the Secretary of DHS. As such, Respondent Noem is responsible for the administration of immigration laws and policies pursuant to 8 U.S.C. § 1103. She supervises DHS's components including ICE and, as such, she is a legal custodian of Petitioner. She is sued in her official capacity.

26. Respondent Todd Lyons is the acting ICE Director and Senior Official Performing the Duties of the Director. In that capacity, he is a legal custodian of Petitioner. He is sued in his official capacity.

27. Respondent Brian S. Acuna is ICE's Acting Field Office Director for the New Orleans Field Office of ICE Enforcement and Removal Operations. As Field Office Director, Respondent Acuna oversees ICE's enforcement and removal operations in the New Orleans area of responsibility, which includes Louisiana. Petitioner is currently detained within this area of responsibility and, as such, Respondent Acuna is a legal custodian of Petitioner. He is sued in his official capacity.

28. Respondent Eleazar Garcia is the Warden of the Winn Correctional Center in Winnfield, Louisiana, where Petitioner is currently detained. Respondent Garcia is responsible for the operation of Winn Correctional Center. Respondent Garcia is employed by the LaSalle Corrections, the private prison company that operates Winn Correctional Center under a contract with ICE. He is sued in his official capacity.

EXHAUSTION OF REMEDIES

29. Exhaustion is not required in this case because no alternative forum exists in which Petitioner can obtain relief on the claims presented here, nor is there any statutory requirement that Petitioner exhaust administrative remedies before seeking habeas relief under 28 U.S.C. § 2241. Courts have consistently recognized that constitutional claims are exempt from exhaustion requirements in the immigration context.

30. Moreover, even if an exhaustion doctrine were arguably applicable, it would be excused here because requiring further exhaustion would be futile, unavailable, and unreasonable. Petitioner challenges the legality of her detention after succeeding in her deferral of removal claim under CAT as six attempts to remove her to a third country have already failed. None of her constitutional and federal claims can be meaningfully addressed or remedied through administrative processes.

FACTUAL BACKGROUND

31. Between 2011 and 2023, Britania was a long-term, lawful permanent resident of the United States. Her immigration status was adjusted to LPR in 2011.

32. Then, on August 28, 2023, Britania was detained at Clark County Detention Center in Las Vegas, Nevada, following an arrest on the same day. She pled guilty to assault with a deadly weapon on September 11, 2023. She was sentenced to a suspended sentence of 18–60 months and for probation thereafter that was not to exceed 36 months. After being sentenced, she was detained by Respondents on April 16, 2024 and placed into immigration removal proceedings on that date by service of a Notice to Appear ("NTA").

33. It is well-settled that ICE detention cannot be used as a legal substitute for criminal detention. *See Zadvydas*, 533 U.S. at 690 (Court explained that "the proceedings at issue here are

civil, not criminal, and we assume that they are nonpunitive in purpose and effect. There is no sufficiently strong special justification here for indefinite civil detention—at least as administered under this statute.")

34. On May 29, 2024, DHS submitted a notice of address change to Las Vegas EOIR letting them know that Britania was moved to the Denver Contract Detention Facility in Aurora, CO. She was detained in the transgender unit at that facility.

35. Britania was subsequently deemed incompetent by an IJ on August 20, 2024.

36. She succeeded on her CAT deferral claim on March 14, 2025.

37. Then, on March 20, 2025, ICE informed Britania that they would detain her for the following 90 days and explore third country removal.

38. On June 2, 2025, ICE provided Britania with a letter ("Decision to Continue Detention") notifying her that ICE had reviewed her custody status and had determined that she will continue to be detained, citing flight risk and dangerousness, but offering no indication of the country to which it was considering deporting her.

39. On June 14, 2025, ICE transferred Britania to a soft-sided men's detention facility in El Paso, Texas without notice to her or her attorney.

40. On June 19, 2025, Britania was transferred again, also without advanced notice, to Winn Correctional Center in Winnfield, Louisiana, where she is currently being detained with men.

41. As a transgender woman with serious mental health issues, including PTSD and MDD, continued detention with men significantly risks deterioration of Britania's mental health as well as further functional impairment—including cognitive decline, chronic mental and physical

health issues, and potential long-term disability. Most troublingly, continued detention significantly increases her risk of suicide. *See* Ex. A, Combs Decl.

LEGAL BACKGROUND

42. This section is divided into five parts. First, as relevant to this case, it discusses how fear-based protections operate in the United States and the protections they provide, including, as is relevant here, deferral of removal under CAT. Second, as applicable to Britania here, this section explains the process by which ICE can continue to detain individuals granted deferral of removal under CAT and the directives they must follow in seeking to do so. Third, removals to third countries and the specific due process protections that must accompany such removals (which are wholly missing in this case) are identified. Fourth, Respondents' unlawful March 30, 2025, Third Country Removal Policy Memo, which is directly being challenged here, is discussed in light of the previously discussed statutes and law governing third country removal. Finally, the contours of the Rehabilitation Act and its requirements are identified, as they are relevant to the accommodations being denied to Britania in this case and her right to substantive due process.

Fear-Based Protections from Removal

43. U.S. immigration law affords noncitizens in the United States three forms of protection from persecution and/or torture: (a) asylum; (b) withholding of removal; and (c) protection under CAT.

44. Asylum is a form of protection available in removal proceedings that may be granted in the exercise of discretion where the applicant demonstrates a well-founded fear of persecution in their home country on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. §§ 1101(a)(42), 1158(b)(1)(A).

45. For individuals determined to be ineligible for asylum, Congress further provided, with certain exceptions not relevant here, that "notwithstanding [8 U.S.C. §§ 1231(b)(1) and (2)], the Attorney General [i.e., DHS] may not remove [a noncitizen] to a country if the Attorney General [(i.e., an immigration judge)] decides that [the noncitizen's] life or freedom would be threatened in that country because of [the noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. This form of protection, known as withholding of removal, is mandatory—*i.e.*, it cannot be denied to eligible individuals in the exercise of discretion. The protection of withholding of removal is country specific.

46. While statutes place certain restrictions on eligibility to seek asylum and withholding of removal, *see e.g.* 8 U.S.C. § 1158(c)(2), 8 U.S.C. § 1231(b)(3)(B), there are no restrictions on eligibility to apply for CAT deferral of removal. *See* Foreign Affairs 11 Reform Restructuring Act of 1998 (FARRA) (codified as Note to 8 U.S.C. § 1231); 8 C.F.R. §§ 208.16(c), 208.17(a), 1208.16(c), 1208.17(a); 28 C.F.R. § 200.1. Like withholding of removal under 8 U.S.C. § 1231(b)(3), CAT protection is mandatory and country specific. *Id.* CAT prohibits removal to any country where there is a substantial risk of torture, 28 C.F.R. § 200.1, and individuals are eligible for CAT protection no matter the basis of their removal order. *See* 8 C.F.R. §§ 208.16–208.18, 208.31, 241.8(e), 1208.16–1208.18.

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

48. A noncitizen can appeal the denial of an application for asylum, withholding of removal, or CAT protection to the Board of Immigration Appeals ("BIA") and later to the federal courts of appeals. *See* 8 U.S.C. § 1252(a); 8 C.F.R. §§ 208.31(e), 1003.6(a), 1208.31(e), (g)(2)(ii), 1240.15; *Nasrallah v. Barr*, 590 U.S. 573, 575 (2020).

49. When an Immigration Judge ("IJ") grants a noncitizen withholding or CAT relief, the IJ issues a removal order and simultaneously withholds or defers that order with respect to the country or countries for which the non-citizen demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021). Once withholding or CAT relief is granted, either party has the right to appeal that decision to the 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 or CAT relief grant and the accompanying removal order become administratively final. *See id.* § 1241.1.

50. An IJ may only terminate a grant of CAT protection based on evidence that the person will no longer face torture. DHS must move for a new hearing and provide evidence "relevant to the possibility that the [noncitizen] would be tortured in the country to which removal has been deferred and that was not presented at the previous hearing." 8 C.F.R. §§ 208.17(d)(1), 1208.17(d)(1). If a new hearing is granted, the IJ must provide notice "of the time, place, and date of the termination hearing," and must inform the noncitizen of the right to "supplement the information in his or her initial [withholding or CAT] application" "within 10 calendar days of service of such notice (or 13 calendar days if service of such notice was by mail)." 8 C.F.R. §§ 208.17(d)(2), 1208.17(d)(2).

51. In the case at bar, Britania was granted deferral of removal under CAT and Respondents did not appeal.

Post-Removal Order Immigration Detention

52. 8 U.S.C. § 1231 governs the detention of non-citizens "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). The removal period lasts for 90 days, during which ICE "shall remove the [non-citizen] from the United States" and "shall detain the [non-citizen]" as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the non-citizen within the 90-day removal period, the non-citizen "may be detained beyond the removal period" if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6).

53. DHS regulations require that, before the end of the 90-day removal period, the ICE field office with jurisdiction over the noncitizen's detention must conduct a custody review to determine whether the noncitizen should remain detained. *See* 8 C.F.R. §§ 241.4(c)(1), (h)(1), (k)(1)(i). If the noncitizen is not released following the 90-day custody review, jurisdiction transfers to ICE Headquarters ("ICE HQ"), *id.* § 241.4(c)(2), which must then conduct a custody review before or at 180 days of post-removal order detention. *Id.* § 241.4(k)(2)(ii). In making these custody determinations, ICE considers several factors, including whether the non-citizen is likely to pose a danger to the community or a flight risk if released. *Id.* § 241.4(e). If the factors in § 241.4 are met, ICE must release the non-citizen under conditions of supervision. *Id.* § 241.4(j)(2).

54. To avoid indefinite post removal detention that would raise "serious constitutional concerns," the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), construed Section 1231(a)(6) to contain an implicit time limit. *Id.* at 682. The Court held that Section 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. Six months of post-removal order detention is

considered "presumptively reasonable." *Id.* at 701. However, after six months of post-removal order detention, when a noncitizen provides "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to justify continued detention. *Zadvydas*, 533 U.S. at 701.

55. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that established "special review procedures" to determine whether detained noncitizens with final removal orders are likely to be removed in the reasonably foreseeable future. *See Continued Detention of Aliens Subject to Final Orders of Removal*, 66 Fed. Reg. 56,967 (Nov. 14, 2001). While 8 C.F.R. § 241.4's custody review process remained largely intact, subsection (i)(7) was added to include a supplemental review procedure that ICE HQ must initiate when "the [noncitizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [noncitizen] is not significantly likely in the reasonably foreseeable future." *Id.* § 241.4(i)(7). Under this procedure, ICE HQ evaluates the foreseeability of removal by analyzing factors such as the history of ICE's removal efforts to third countries. *See id.* § 241.13(f). If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on "special circumstances," it must justify the detention based on narrow grounds such as national security or public health concerns, *id.* §§ 241.14(b)-(d), or by demonstrating by clear and convincing evidence before an IJ that the non-citizen is "specially dangerous." *Id.* § 241.14(f). Upon information and belief, no required justifications for continued detention have been provided by ICE HQ.

Background on Protection Claims and Third-Country Removals

56. As relevant here, 8 U.S.C. § 1231(b)(2) governs to which countries DHS is authorized to remove noncitizens with final removal orders, and the statute requires DHS to pursue removal to countries in a specific sequence. *See Jama v. ICE*, 543 U.S. 335, 341 (2005).

a. First, DHS must attempt removal to the country designated on the noncitizen's order of removal. 8 U.S.C. §§ 1231(b)(2)(A)-(C).

b. If this fails, DHS may next seek removal to an alternative country of which the noncitizen is a subject, national or citizen, followed by other countries to which the noncitizen has more limited connections, such as by birth or prior residence. 8 U.S.C. §§ 1231(b)(2)(D)-(E).

c. Last, DHS may seek to removal to a willing country where the noncitizen has no connections, but this kind of third-country removal is allowed only when removal to all the other categories of countries prioritized by the statute is "impracticable, inadvisable, or impossible." 8 U.S.C. § 1231(b)(2)(E)(vii).

57. Paragraphs (b)(1) and (b)(2) of 8 U.S.C. § 1231 make any designation of the country of removal, whether by DHS or an IJ, "[s]ubject to paragraph (3)." *Id.* Paragraph (3), entitled "Restriction on removal to a country where [noncitizen's] life or freedom would be threatened," reads:

> Notwithstanding paragraphs (1) and (2), the Attorney General may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion.

Id. § 1231(b)(3)(A); *see also Jama*, 543 U.S. at 348. Likewise, where DHS seeks to remove a noncitizen to a country where the noncitizen has a lesser connection (or no connection), regulations implementing CAT prohibit deportation to a country where the noncitizen will face torture. 8 C.F.R. §§ 208.16(c)–208.18, 1208.16(c)–1208.18.

58. The statute and regulations implement Congress' designation scheme in a way that ensures that noncitizens receive meaningful notice and an opportunity to present a fear-based claim regarding *any and every* country designated for removal. In removal proceedings under 8 U.S.C. § 1229a (commonly referred to as "Section 240" proceedings), individuals receive notice of all countries to which they may be deported. The regulations mandate that the IJ "shall notify" the individual of the designated country of removal and "shall identify for the record" all alternative countries to which the person may be removed. 8 C.F.R. § 1240.10(f). Those who have been deported and subsequently return to the United States without inspection can have their removal orders reinstated by DHS officers. *See* 8 U.S.C. § 1231(a)(5); 8 C.F.R. § 241.8. The reinstatement regulations contemplate notice of a designated country. *See* 8 C.F.R. § 241.8(e) (referring to "the country designated in [the reinstatement] order").

59. Likewise, DHS officers can issue an administrative removal order to nonpermanent residents with an aggravated felony conviction. *See* 8 U.S.C. § 1228(b); 8 C.F.R. § 238.1. In this process, the noncitizen may designate "the country to which he or she chooses to be deported" and the "deciding [DHS] officer shall designate the country of removal." 8 C.F.R. §§ 238.1(b)(2)(ii), (f)(2). Consistent with the United States' commitment to non-refoulement, DHS must provide individuals who express a fear of return to the designated country with an opportunity to demonstrate a reasonable fear of persecution or torture in interviews before asylum officers, and those who do so, are eligible to apply for withholding of removal under 8 U.S.C. § 1231(b)(3) and/or CAT protection in what are known as withholding-only proceedings. *See* 8 C.F.R. §§ 241.8(e), 238.1(f)(3); *see also* 8 C.F.R. §§ 208.31, 1208.31.

60. Providing such notice and opportunity to present a fear-based claim prior to deportation also implements the United States' obligations under international law. *See* United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8 U.S.C. § 1231(b)(3)); *INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting that the Refugee Act of 1980 "amended the language of [the predecessor statute to § 1231(b)(3)], basically conforming it to the language of Article 33 of the United Nations Protocol").

61. Meaningful notice and opportunity to present a fear-based claim prior to deportation to a country where a person fears persecution or torture are also fundamental due process protections under the Fifth Amendment. *See e.g. Andriasian v. I.N.S.*, 180 F.3d 1033, 1042-43 (9th Cir. 1999). The federal government has repeatedly acknowledged these obligations in model notices of removal to other than designated countries. And, consistent with the above authorities and practices, at oral argument in *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), the Assistant to the Solicitor General represented that the government must provide a noncitizen with notice and an opportunity to present fear-based claims, including claims for mandatory CAT protection, before that noncitizen can be deported to a non-designated third country. *See* Transcript of Oral Argument at 20-21, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021).

62. And yet, on information and belief, no meaningful notice and opportunity to present her fear-based claims to any of the six third countries that Respondents tried to deport Britania was ever provided.

Current Practice for Third-Country Removals and Status of Legal Challenge

63. Furthermore, in a break from decades of policy and practice, DHS under the current administration has abandoned its legal obligations and it has been unilaterally choosing where to remove people without providing them meaningful notice and an opportunity to contest removal on the basis of a fear prior to removal to that third country.

64. On March 23, 2025, a putative nationwide class challenged this government practice in *D.V.D. v. DHS* and obtained a temporary restraining order, and later a preliminary injunction, for a certified class, blocking third country removals without notice and a meaningful opportunity to seek CAT protection. Under the *D.V.D.* injunction, the government was required to provide class members the following:

- Written notice of the third country in a language that the noncitizen can understand to the individual and their attorney, if any,
- An automatic 10-day stay between notice and any actual removal,
- Ability to raise a fear-based claim for CAT protection prior to removal, and:
  - If the noncitizen demonstrates "reasonable fear" of removal to the third country, DHS must move to reopen the noncitizen's immigration proceedings.
  - If the noncitizen does not demonstrate a "reasonable fear" of removal to the third country, DHS must provide a meaningful opportunity, and a minimum of fifteen days, for the noncitizen to seek reopening of their immigration proceedings.

See D.V.D. v. DHS, 778 F. Supp. 3d 355, 392–93(D. Mass. 2025).

65. Soon after the *D.V.D.* complaint had been filed and one week after the district court entered its TRO, DHS responded with an informal policy memo implementing new procedures for conducting reasonable fear screenings and third-country removals that violate the binding statutory, regulatory, and due process protections described above and enforced by the district court's TRO. *See* Mem. of DHS Secretary Noem, Guidance Regarding Third Country Removals,

March 30, 2025 ("Third Country Removal Policy Memo"). Available at: https://immigrationlitigation.org/wp-content/uploads/2025/04/43-1-Exh-A-Guidance.pdf.

66. At multiple points when the TRO and then later the injunction were in place, the government failed to comply with the district court's orders by not providing the required fear-based protections.

67. On March 31, 2025, at least six *D.V.D.* class members were removed from Guantánamo to El Salvador on a Department of Defense plane without having been afforded at fear-based protections, in violation of the TRO. The district court subsequently amended its preliminary injunction to clarify that Defendants must comply with the injunction prior to removing any class member from Guantánamo and prior to ceding custody or control to another agency in a manner that prevents provision of the procedural protections in the injunction. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. Apr. 30, 2025), ECF No. 86.

68. On May 7, 2025, the government attempted to deport a flight of class members to Libya without providing fear-based protections in compliance with the preliminary injunction, leading to an emergency TRO motion. The district court promptly issued a memorandum reiterating the terms of its preliminary injunction and making clear that any removals without fear-based protections would violate it. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. May 7, 2025), ECF No. 91.

69. On May 20, 2025, while the government was again in the process of removing class members without fear based protections , in violation of the preliminary injunction (this time to South Sudan), the plaintiffs moved for another emergency TRO, leading the district court to order the federal government to retain custody of the class members and provide for the preliminary

injunction's protections. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. May 20, 2025), ECF No. 116.

70. On June 23, 2025, the Supreme Court, issued a summary order that did not provide reasoning, but granted the government's request to stay the *D.V.D.* district court's preliminary injunction. *See DHS v. D.V.D.*, 145 S. Ct. 2153 (U.S. 2025). As a result, at this time, the district court's class-based preliminary injunction in *D.V.D.* is no longer constraining the government from carrying out more unlawful third country removals, as it had both during and after the district court entered and restated its injunctive order.[2]

71. The Supreme Court's stay order of June 23, 2025, means there is no longer a separate court order in place right now to help protect the rights of *D.V.D.* class members (like Britania) seeking to fully present their mandatory protection claims.

72. The Supreme Court's stay order does not prevent this Court from acting to protect Britania's rights. Respondents' lead argument in seeking a Supreme Court stay of the *D.V.D.* injunction was that 8 U.S.C. § 1252(f)(1) deprived the district court of jurisdiction to enter *class-based* relief on a national basis, which Respondents characterized as unlawfully enjoining the operation of the removal statute 8 U.S.C. § 1231. Individuals, however, face no such jurisdictional obstacle, and neither the *D.V.D.* complaint nor the Supreme Court stay of the *D.V.D.* injunction encompass Britania's habeas petition challenging DHS's unlawful Third Country Removal Policy Memo.

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[2] On June 24, 2025, a former high-level official with the Department of Justice's Office of Immigration Litigation filed a protected whistleblower claim alleging that high-level DOJ officials conspired to violate the *D.V.D.* TRO. The disclosure describes efforts to feign ambiguity in an unambiguous order, failing to disseminate the fact and terms of the injunction, and purposefully failing to respond to Plaintiffs' inquiries. *Protected Whistleblower Disclosure of Erez Reuveni Regarding Violation of Laws, Rules & Regulations, Abuse of Authority, and Substantial and Specific Danger to Health and Safety at the Department of Justice* at 16- 21. Available at: https://www.judiciary.senate.gov/imo/media/doc/06-24-2025_-_Protected_Whistleblower_Disclosure_of_Erez_Reuveni_Redacted.pdf.

The Rehabilitation Act

73. The Rehabilitation Act defines "disability" as "a physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1). This definition includes chronic illness, as well as physical, intellectual, developmental, psychiatric, visual, and auditory disabilities. Margo Schlanger, Elizabeth Jordan, Roxana Moussavian, *Ending the Discriminatory Pretrial Incarceration of People with Disabilities: Liability Under the Americans with Disabilities Act and the Rehabilitation Act*, 17 Harv. Law & Pol. Rev. 1, 237–48 (2022). Under the Rehabilitation Act, "[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity . . . conducted by any Executive agency." 29 U.S.C. § 794. The Rehabilitation Act forbids not only facial discrimination against individuals with disabilities, but also requires that executive agencies and departments, such as DHS, alter policies and practices to prevent discrimination on the basis of disability.

74. Regulations implementing the Rehabilitation Act further prohibit any entity receiving federal financial assistance from using "criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons . . . ." 34 C.F.R. § 104.4(b)(4).

75. ICE adopted binding regulations to ensure that the Rehabilitation Act is implemented within the agency. 6 C.F.R. § 15.30, et seq. Moreover, in *Alexander v. Choate*, the Supreme Court created the "meaningful access" standard—in short, that "otherwise qualified"

people with disabilities must be granted reasonable modifications to ensure they are "provided with meaningful access" to the program at issue. 469 U.S. 287, 300–02 n. 21 (1985).

76. The terms "benefit, programs, and services" are construed broadly. *Pennsylvania Dep't of Corr. V. Yeskey*, 524 U.S. 206, 210 (1998) ("Modern prisons provide [people who are incarcerated] with many recreational 'activities,' medical 'services,' and educational and vocational 'programs,' all of which at least theoretically 'benefit'" the people imprisoned); *see also Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967) (recognizing the "familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its purposes").

77. Accordingly, reasonable accommodations necessary to prevent disability discrimination are required unless such modifications would create a "fundamental alteration" of the relevant program, service, or activity, or would impose an undue hardship. *See Sch. Bd. of Nassau Cty., Fla. V. Arline*, 480 U.S. 273, 287-88 n.17 (1987) (modification not required if it would require "a fundamental alteration in the nature of [the] program") (citation omitted); *Alexander*, 469 U.S. at 300; see also 28 C.F.R. § 35.130(b)(7) ("A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.").

78. Here, by virtue of the Executive Order at issue in this case, Respondents are denying Britania, a transgender woman who has been adjudicated incompetent and suffers from PTSD and MDD reasonable accommodations that, include a failure to meet any of her gender affirming care needs, including ensuring she receives necessary medication and is not housed with

men. This violation requires release because there is no manner for Respondents to comply in light of the Executive Order.

ARGUMENT

I. Britania Should Be Released Forthwith Because Her Removal is Not Reasonably Foreseeable, Such That Her Continued Detention Violates 8 U.S.C. § 1231(a) and Both the Procedural and Substantive Due Process Protections Enshrined in the Fifth Amendment.

79. This Court should grant the petition and order release. Six (6) countries have already denied Britania entry, and the government has not named any country willing to accept her. *See supra* at ¶¶ 2, 8. Moreover, on information and belief, Britania has no immigration status, citizenship, or other claim or right to travel or live in any third country from which the United States may procure documents. In sum, it is evident that DHS is unlikely to obtain travel documents to any third country for Britania anytime in the foreseeable future, regardless of any ongoing efforts.

80. Nevertheless, DHS claims ongoing authority to detain Britania under 8 U.S.C. § 1231(a), which governs the detention of noncitizens with withholding of removal under CAT. Accordingly, Britania's detention violates both the due process clause of the United States Constitution—the Fifth Amendment—and Section 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001). This is so because there is not a substantial likelihood DHS will be able to carry out Britania's removal in the reasonably foreseeable future, as the government's persistent inability to remove her, and their failure to specify a third country to which they plan on removing her, demonstrate. *See supra* at ¶¶ 37–38.

81. The legal protection that DHS must afford Britania to seek mandatory protection from torture and persecution in a third country is another reason to believe that Petitioner's removal is not reasonably foreseeable. Britania fears persecution and torture if she is removed to a country

that does not respect the rights of transgender people[3], particularly those who are also incompetent.[4]

82. She also contends that the binding regulations, statutes, and due process requirements discussed above, *see supra* ¶¶ 56–62, obligate the Government to provide her—*as an individual*—with process as robust as that set forth in the now stayed *D.V.D.* class injunction. *Id.* at ¶¶ 64–72. Therefore, not only would Respondents need to identify a country willing to accept Britania, which is already unlikely after six failed attempts, they also must then (a) provide her the opportunity to raise a fear-based claim seeking relief from removal to that country and (b) if Britania succeeds in showing a reasonable fear, allow her an opportunity to reopen her

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[3] BBC News, "Homosexuality: The countries where it is illegal to be gay." (March 31, 2023), available at: https://www.bbc.com/news/world-43822234 (citing data cataloguing 64 countries that currently criminalize LGBTQ+ identities); Human Rights Watch, *"Every Day I Live in Fear" Violence and Discrimination Against LGBT People in El Salvador, Guatemala, and Honduras, and Obstacles to Asylum in the United States* (October 2020), https://www.hrw.org/sites/default/files/media_2020/10/centralamerica_lgbt1020_web_0.pdf (documenting pervasive violence against transgender people in El Salvador, Guatemala, and Honduras); Human Rights Watch, *"My Life Passed Before My Eyes," Violence and Discrimination Against LGBT People in Honduras* (November 2020), https://www.hrw.org/sites/default/files/media_2021/03/My%20Life%20Passed%20Before%20My%20Eyes.pdf (finding that "violence against transgender people in Honduras, along with lesbian, gay, and bisexual people, has continued unabated in the years following the coup" where Honduras now has one of the world's highest rates of homicides of transgender people); Amnesty International, *No Safe Place: Salvadorans, Guatemalans and Hondurans seeking asylum in Mexico based on their sexual orientation and/or gender identity* (November 2017), https://www.amnesty.org/en/documents/amr01/7258/2017/en/ (finding that violence against LGBTQ+ people in El Salvador, Guatemala, and Honduras is systemic and institutional).

[4] In the immigration court context, incompetence refers to a noncitizen's inability to participate in their removal proceedings due to, for example, cognitive impairment or serious mental health issues. *See Matter of M-A-M-*, 25 I&N Dec. 474, 479 (BIA 2011) ("[T]he test for determining whether an alien is competent to participate in immigration proceedings is whether he or she [1] has a rational and factual understanding of the nature and object of the proceedings, [2] can consult with the attorney or representative if there is one, and [3] has a reasonable opportunity to examine and present evidence and cross-examine witnesses."); *see also* INA § 240(b)(4)(B); 8 C.F.R. § 1240.10(a)(4). Potential indicators of serious mental disorders, which may give rise to competency issues, include difficulty communicating thoughts completely or coherently, perseveration, overly simplistic or concrete thinking, words or actions that do not make sense or suggest that the person is experiencing hallucinations or an altered version of reality, memory impairment, disorientation, an altered level of consciousness or wakefulness, or a high level of distraction, inattention or confusion. *Matter of M-A-M-*, 25 I&N Dec. at 479. If a noncitizen is found incompetent, safeguards, such as the appointment of a qualified representative or an attorney, are implemented to protect the noncitizen's due process rights and ensure their access to a full and fair hearing. *Id.* at 481 ("If an Immigration Judge determines that a respondent lacks sufficient competency to proceed with the hearing, the statute provides that the Immigration Judge 'shall prescribe safeguards to protect the rights and privileges of the alien.'"); *see also* Santos-Alvarado v. *Barr*, 967 F.3d 428, 439 (5th Cir. 2020) ("The Fifth Amendment's Due Process Clause protects individuals in removal proceedings.").

proceedings. Ultimately, then, the government cannot remove Britania until it finds a country that is both willing to accept her and safe for her as a transgender, incompetent woman. Together, these factors make her removal in the reasonably foreseeable future significantly less likely.

83. The Supreme Court's stay order of June 23, 2025 means there is no longer a separate court order in place right now to help protect the rights of *D.V.D.* class members like Britania. However, the Supreme Court's stay order does not prevent this Court from acting to protect Britania's rights. *See supra* at ¶ 72 (explaining that Respondents' lead argument in seeking a Supreme Court stay of the *D.V.D.* injunction was that 8 U.S.C. § 1252(f)(1) deprived the district court of jurisdiction to enter *class-based* relief on a national basis; individuals, however, face no such jurisdictional obstacle).

84. Because Britania's removal is not reasonably foreseeable and Respondents have failed to respect her due process rights by omitting any mention of where they seek to deport her, her detention runs headlong into the holding in *Zadvydas*, 533 U.S. at 690, which precludes Respondents from using immigration detention as some form of permanent, indefinite civil detention. *Id.* Release is the only appropriate remedy at this juncture where both Britania's statutory, procedural due process, and substantive due process rights are being violated. *Id.; Boumediene,* 533 U.S. at 739 (2008) ("The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty…"); *Kansas,* 521 U.S. at 363 (due process permits civil detention only when it serves a "legitimate nonpunitive objective.").

II. Britania's Substantive Due Process Right To Liberty Is Further Being Violated Because She Is Being Denied Necessary Accommodations to Treat her PTSD and MPP Increasing Her Risk of Suicide, Running Headlong Into Her Liberty Interest.

85. Respondents are not (and can never be) in compliance with the Rehabilitation Act because the Executive Order at issue in this case precludes them from accommodating Britania's

mental health needs. *See, e.g.,* Exec. Order No. 14169, 90 C.F.R 8615 sec. 4(a) (2025) ("The Attorney General and Secretary of Homeland Security shall ensure that [individuals classified as] males are not detained in [agency-classified] women's prisons or housed in [agency-classified] women's detention centers"). In failing to provide her with gender affirming care and housing her in a male dorm, they are exacerbating her PTSD and MDD and increasing her suicide risk. *See* Ex. A, Combs Decl. As such, release is the only appropriate remedy and reasonable accommodation that can be afforded to her at this time.

86. Britania's continued detention is already exacerbating her disability, leading to further mental deterioration and functional impairment, including cognitive decline, chronic mental and physical health issues, potential long-term disability, and the increased likelihood of suicide. *Id.* As such, continued detention renders her unable to maintain a humane existence and meaningfully engage with the reasonable fear process that she has the right to assert against any of the third countries to which Respondents may attempt to remove her. *See, e.g., Dada v. Witte*, No. 1:20-CV-00458, 2020 WL 5510706, at *10 (W.D. La. Apr. 30, 2020), *report and recommendation adopted in part, rejected in part*, No. 1:20-CV-00458, 2020 WL 2614616 (W.D. La. May 22, 2020) ("Petitioners' claims challenge extended, pervasive circumstances that [. . .] are subject to the reasonable relationship test [. . . thus] Petitioners may succeed on their substantive due process claims by establishing that detention does not reasonably relate to a legitimate governmental purpose").

CONCLUSION

87. DHS's Third Country Removal Policy Memo as applied to Britania is inconsistent with the required legal protections for mentally disabled individuals and the legal standards for processing third-country protection claims. Release is the only appropriate remedy here—

additionally so because Britania's mental health needs require accommodations that Respondents refuse to provide in accordance with the Executive Order placed at issue in this case. For this reason, the Court should enter a temporary order enjoining DHS during the pendency of this action from applying the Third Country Removal Policy Memo to Britania, and from transferring her out of the district or removing her from the United States.

CLAIMS FOR RELIEF

CLAIM ONE

Britania's Detention Violates Her Rights Under the Fifth Amendment's Guarantee of Procedural Due Process

88. Britania realleges and incorporates by reference the paragraphs above.

89. *Zadvydas* authorizes detention only for "a period reasonably necessary to bring about the alien's removal from the United States." 533 U.S. 678 at 679. As explained above, Britania's continued detention has become unreasonable because her removal is not reasonably foreseeable.

90. 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for "a period reasonably necessary to bring about the alien's removal from the United States." *Id.* Britania's continued detention has become unreasonable, is not reasonably foreseeable, and therefore violates §1231(a)(6). As is clear from the record in this case, six (6) failed attempts at removal—with no country currently designated for removal—supports a finding in favor of Britania that removal is not reasonably foreseeable and thus, she must be released.

91. Britania's continued detention pending supposed third country removal efforts, without notice of whether and to which countries ICE is attempting to remove her, so that she may contest such removal, also violates her procedural due process rights.

92. Her continued detention therefore violates both 8 U.S.C. § 1231(a) and her right to procedural due process.

93. Her immediate release is appropriate.

CLAIM TWO

Britania's Detention Violates Her Rights Under the Fifth Amendment's Guarantee of Substantive Due Process

94. Britania realleges and incorporates by reference the paragraphs above.

95. Civil detention is a severe encumbrance on the liberty guaranteed by the Due Process Clause. Indeed, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

96. At all times, detention must be reasonably related to that objective, and "where detention's goal is no longer practically attainable, detention no longer bears reasonable relation to the purpose for which the individual was committed." *Id.* (internal citations and quotations omitted). At that point, otherwise permissible detention becomes "the exercise of power without any reasonable justification" and a violation of due process. *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

97. Continuing to detain Britania while there is no significant likelihood of her removal in the reasonably foreseeable future violates the Fifth Amendment because it deprives her of her "strong interest in liberty." *United States v. Salerno*, 481 U.S. 739, 750 (1987); *see Zadvydas*, 533 U.S. at 689–701 (interpreting 8 U.S.C. § 1231(a) to preclude indefinite detention so as to avoid "a serious constitutional problem").

98. The government must now bear the burden to justify Britania's continued detention because there are multiple "good reason[s] to believe that there is no significant likelihood of

removal in the reasonably foreseeable future. . ." *Zadvydas*, 533 U.S. at 701; 5 U.S.C. § 706(2)(A), (C) (APA authorizes courts to set aside agency action not in accordance with the law).

99. First, Britania cannot be deported to Mexico, the only county of which she is a citizen, because she has been granted CAT relief with respect to Mexico.

100. Second, Britania has no legal status or connections to any alternate country. The government's previous attempts to remove her to six alternate countries have failed. *See supra,* ¶¶ 2, 8, 79.

101. Third, should Respondents seek to remove Britania to any third country, it must afford her mandatory protection from torture and persecution. As discussed *supra*, binding regulations, statutes, and due process requirements obligate Respondents to provide Britania with an individualized and robust process, as set forth in the now stayed *D.V.D.* class injunction. Therefore, not only would Respondents need to identify a country willing to accept Britania, which is already unlikely after six failed attempts, they must then (a) provide her the opportunity to raise a fear-based claim seeking relief from removal to that country and (b) if Britania is successful in showing a reasonable fear, allow her an opportunity to reopen her proceedings.

102. Together, these three factors make Britania's removal significantly less foreseeable.

103. The government's interest in "preventing flight is weak or nonexistent where removal seems a remote possibility at best." *Zadvydas*, 533 U.S. at 690.

104. Accordingly, this Court should order Respondents to immediately release Britania from their custody because her "continued detention [has become] unreasonable and [is] no longer authorized by statute." *Zadvydas*, 533 U.S. at 699; *Vaskanyan v. Janecka* , 5:25-cv-01475-MRA-AS, 2025 U.S. Dist. LEXIS 137846, at *16 (C.D. Cal., Jul 18, 2025) (granting a writ of habeas

corpus where the countries designated for removal would not accept petitioner and "ICE d[id] not know whether and when the information requested by the [alternate third country] Consulate can be obtained or when it can expect to receive a response from the [alternate third country] consulate").

105. Moreover, Britania has been diagnosed with PTSD and MDD. These diagnoses qualify as disabilities under the Rehabilitation Act. These disabilities are not being accommodated because Britania is not being provided specific services—gender-affirming care and an appropriately gendered dorm—that the Executive Order at issue in this case unlawfully prohibits Respondents from providing. Release is the only appropriate remedy because Britania's disabilities that Respondents refuse to accommodate increase her suicide risk, and thus her individual desire to protect her own life (including by asserting fear-based protections that others without disabilities could assert concerning third country removal to a place that persecutes transgender and incompetent people).

106. As Britania's mental health continues to deteriorate and increase her risk of suicide, her liberty interest is being further compromised as her unconstitutional indefinite detention—which in and of itself is a violation of substantive due process—has the very real prospect of leading to her death, which cannot be considered a legitimate governmental purpose for detention. *See* Ex. A, Combs Decl.; *see, e.g., Dada*, 2020 WL 5510706, at *10 (W.D. La. Apr. 30, 2020), *report and recommendation adopted in part, rejected in part*, 2020 WL 2614616 (W.D. La. May 22, 2020) ("Petitioners' claims challenge extended, pervasive circumstances that [. . .] are subject to the reasonable relationship test [. . . thus] Petitioners may succeed on their substantive due process claims by establishing that detention does not reasonably relate to a legitimate governmental purpose").

PRAYER FOR RELIEF

Accordingly, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Issue an order prohibiting Respondents from applying their unlawful Third Country Removal Policy Memo to Britania, transferring her outside of this judicial district or removing her from the United States during the pendency of this action;

3) Grant a writ of habeas corpus directing Respondents to immediately release Petitioner from custody;

4) In the alternative, issue an order requiring Respondents to identify any potential third country (or countries) for removal and, if requested, provide Petitioner with a Reasonable Fear Interview as to any of the countries listed, and thereafter provide a fair opportunity (and no less than 15 days) to file a motion to reopen for a hearing before an immigration judge regarding any protection claims she may have concerning removal to said designated third country, followed by the adjudication of that motion to reopen;

5) Grant any other and further relief as the Court deems just and proper.

Dated: September 8, 2025

Respectfully submitted,

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28 U.S.C. § 2242 VERIFICATION STATEMENT

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

Dated: September 8, 2025

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