IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

ATEF KHALED ATEF RASHAD MOHAMED *Petitioner,* *v.* **JUAN BALTAZAR**, Warden of the Aurora Contract Detention Facility owned and operated by GEO Group, Inc.; **GEORGE VALDEZ**, Acting Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary, U.S. Department of Homeland Security; **TODD LYONS** Acting Director of U.S. Immigration and Customs Enforcement (ICE); **PAMELA BONDI**, Attorney General, U.S. Department of Justice. *Respondents.*	**Case No. 1:26-cv-1034** **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. This case concerns the indefinite—and potentially permanent—civil detention of a young man and trauma survivor, who has been held for nearly nine months following the issuance of a final removal order at the Immigration and Customs Enforcement (ICE) Denver Contract Detention Facility in Aurora, Colorado.
2. Petitioner Atef Kaled Atef Rashad Mohamed ("Mr. Mohamed") has never been arrested or convicted of a crime. Nonetheless, the Department of Homeland Security ("DHS," "the Department," "the government") jailed him for being unlawfully present in the United States on or about October 15, 2024, and placed him in removal proceedings.
3. Mr. Mohamed was subjected to mandatory detention pursuant to 8 U.S.C. § 1225(b) and unable to request a bond hearing before an Immigration Judge ("IJ"). He has maintained a spotless record during his time in detention.
4. On June 18, 2025, the IJ entered a final order of removal against Mr. Mohamed, which was simultaneously withheld upon his decision to grant Mr. Mohamed withholding of removal to Egypt ("Withholding"). Exh. A, Order of the IJ. The judge found it "more likely than not" that Mr. Mohamed will face persecution in Egypt. *See id.*; *see also* 8 U.S.C. § 1231(b)(3) / I.N.A. § 241(b)(3). Both parties waived their right to appeal. *See,* Exh. A, Order of the IJ.
5. Under the Department's own longstanding policies, Respondents should have released Mr. Mohamed on an order of supervision given that he has no criminal history whatsoever and lacks any "exceptional" circumstances that would justify continued detention. *See* Exh. C, Fear-Based Grant Release Policy.
6. Under 8 U.S.C. § 1231, which governs the detention and removal of noncitizens who have been issued final orders, DHS's alleged purpose for continuing to detain Mr. Mohamed is to

effectuate removal to a third country. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (holding that the government may not detain a noncitizen indefinitely and that post-removal-order detention is limited to the period of time reasonably necessary to facilitate removal). Third country removal alone does not suffice to justify continued detention because Respondents may pursue such action after a noncitizen has been released under supervision.

7. Additionally, the Department's failure to identify a viable third country for removal confirms that Mr. Mohamed continued detention no longer serves any legitimate statutory purpose. The Supreme Court in *Zadvydas* made clear that due process is violated where civil detention is no longer related to its purpose. 533 U.S. at 690. Far from authorizing indefinite detention, *Zadvydas* establishes a presumption of release once removal is not reasonably foreseeable. Under this well-established Supreme Court precedent, the government's authority to detain noncitizens pursuant to § 1231 is limited in the absence of a significant likelihood of removal in the reasonably foreseeable future. *Id.* Because that likelihood is nonexistent, Mr. Mohamed's continued detention is not only unauthorized, but unconstitutional.

8. Moreover, in nearly nine months since Mr. Mohamed was issued a final removal order, DHS has failed to provide a proper custody review as required by DHS's own policies and federal regulations. *See* 8 C.F.R. § 241.4. DHS provided one, untimely custody review a month after the initial 90-day review period and subsequently issued a custody determination two days later and several days before the deadline for a response from Mr. Mohamed. More egregious, DHS has not provided a second custody review, which should have been done at the 180-day mark, despite Mr. Mohamed being in detention for 267 days post-order.

9. The gravity of the matter is heightened by Mr. Mohamed's placement in an overcrowded and unsafe dorm. As a young man and the victim of assault and sexual trauma at the hands of

authorities in his own country, Mr. Mohamed is at serious risk of both repeated trauma and mental health trauma. At this point, he has spent nearly seven percent of his life in this detention center; continued detention without release would only serve to heighten the trauma he has already sustained. Furthermore, his status as an Egyptian Muslim speaking Arabic makes it very unlikely other countries would accept him or for him to be safely deported to those countries. His language, nationality and religion, and identity as a male survivor of sexual abuse, would make him a target for abuse in many countries to which he may be deported.

10. Where DHS has failed—over nearly nine months—to take the procedural steps written in its own policies, and where the facts suggest that third country removal is unlikely to succeed even if initiated, removal cannot be considered reasonably foreseeable.

11. Accordingly, Mr. Mohamed respectfully asks this Court to declare that his continued detention by Respondents is unlawful and order his immediate release from custody.

12. Pursuant to 28 U.S.C. § 2243, Mr. Mohamed respectfully requests an order to show cause be issued within three days. Petitioner has submitted a motion to that effect contemporaneously with this petition.

JURISDICTION AND VENUE

13. Mr. Mohamed brings this action under Art. I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1651 (the All Writs Act).

14. District courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their civil immigration detention. *See Zadvydas*, 533 U.S. at 687.

15. This Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the laws of the United States.

16. Venue is proper in the District of Colorado because at least one of the Respondents resides in this District and Respondents imprison Mr. Mohamed in this District. As such, Mr. Mohamed is a resident of this District, and a substantial part of the events giving rise to the claims in this action took place within this District. 28 U.S.C. § 1391(b).

PARTIES

Petitioner

17. Mr. Mohamed is a 21-year-old man from Egypt who ICE has jailed for over 500 days. He has spent roughly 6.6% of his entire life in the Aurora detention facility.
18. Despite being granted withholding by the immigration judge in June 2025, ICE has refused to release him, continuing to hold him for the past 267 days post-final-order without legal justification.

Respondents

19. Juan Baltazar is the Warden of the Aurora Facility where ICE jails Mr. Mohamed. Accordingly, Juan Baltazar is an employee of the GEO Group—the private, for-profit prison company that operates the facility—and is therefore a legal custodian of Mr. Mohamed. He is sued in his official capacity.
20. George Valdez is the interim Field Office Director of the Denver Field Office of ICE Enforcement and Removal Operations ("ERO"), which has administrative jurisdiction over Mr. Mohamed detention and removal. He is a legal custodian of Mr. Mohamed and is sued in his official capacity
21. Kristi Noem is the Secretary of DHS through March 31, 2026. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA). She has ultimate custodial authority over Mr. Mohamed because ICE is a sub-agency of DHS. She is

sued in her official capacity.

22. Todd M. Lyons is the Acting Director of ICE. He has the authority to make decisions related to detaining and removing noncitizens. As such, Mr. Lyons is responsible for Mr. Mohamed unlawful detention. He has custodial authority over his and is sued in his official capacity.

23. Pamela Bondi is the Attorney General of the United States. She is responsible for the actions of the Department of Justice (DOJ). The Executive Office for Immigration Review (EOIR) and the immigration court system are a component agency of the DOJ. Ms. Bondi routinely transacts business in the District of Colorado and has custodial authority over Mr. Mohamed. She is sued in her official capacity.

EXHAUSTION OF REMEDIES

24. Habeas petitions under 28 U.S.C. § 2241 are not subject to statutory exhaustion requirements. *See* 28 U.S.C. § 2241; *see also Brandon v. 30th Judicial Cir. Ct. Of Ky.*, 410 U.S. 484 (1973). Moreover, there is no exhaustion requirement because no administrative agency exists to adjudicate a petitioner's constitutional challenges. *See Matter of C--*, 20 I. & N. Dec. 529, 532 (BIA 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations.").

25. Courts have, however, imposed a prudential exhaustion requirement in which petitioners are generally expected to exhaust administrative remedies before seeking habeas relief. *See McCarthy v. Madigan*, 503 U.S. 140, 144-45 (1992). This requirement is not absolute, however.

26. Because this expectation is judicially created rather than statutorily required, courts retain discretion to excuse exhaustion in certain circumstances, including in the immigration context "when it would be futile. . . or when 'the interests of the individual in retaining prompt access

to a federal judicial forum outweigh the interest of the agency in protecting its own authority." *Quintana Casillas v. Sessions*, No. CV 17-01039-DME-CBS, 2017 WL 3088346, at *9 (D. Colo. July 20, 2017) (citing *Son Vo v. Greene*, 109 F. Supp. 2d 1281, 1282 (D. Colo. 2000) and *Gonzalez-Portillo v. U.S. Attorney Gen., Reno,* No. CIV. A. 00-Z-2080, 2000 WL 33191534, at *4 (D. Colo. Dec. 20, 2000)).

27. Since first being detained, Mr. Mohamed has submitted requests for his release by ICE. *See* Exh. B.(a)-(b).

28. On October 8, 2025, Mr. Mohamed received a "Notice to Alien of File Custody Review" from ICE that informed him that his status would be reviewed "on or about 10/17/2025" and invited him to submit documentation he wished to be reviewed. *See* Exh. B(c) However, two days later – and five days before the date specified to Mr. Mohamed for his review – he received a "Decision to Continue Detention" from ICE that his "custody status has been reviewed, and it has been determined that you will not be released from the custody of U.S. Immigration and Customs Enforcement (ICE) at this time." *See* Exh. B(d). Furthermore, the second letter explained that "ICE has made such determination based upon: The Significant Likelihood of Removal in the Reasonably Foreseeable Future." More than five months later, Mr. Mohamed remains in ICE custody.

29. Despite Mr. Mohamed's continued detention and requests for release, ICE has yet to undertake the mandatory 180-day custody review to which he is entitled. *See* 8 C.F.R. § 241.4.

30. Mr. Mohamed has exhausted all possible remedies available to him. *See, Zadvydas*, 533 U.S. at 685. He is detained under 8 U.S.C. § 1231(a) and thus cannot request a bond hearing before an immigration judge. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022).

STATEMENT OF THE FACTS

Mr. Mohamed's Background and Immigration History

31. Mr. Mohamed was nineteen (19) years old when he was forced to flee his home in Egypt. Subject to beatings, kidnap, and sexual assault at the hands of government officials in Egypt, forced to make incriminating anti-government statements under the threat of death, and subject to multiple death threats and arrest warrants, Mr. Mohamed fled Egypt in August 2024. With family and a sponsor willing to provide housing and job support in New Jersey and New York, he eventually made his way to the United States in October 2024 seeking safety.

32. He has spent nearly his entire time in the United States in ICE custody. Upon entering the country, he was taken into custody on or about October 15, 2024. From detention, Mr. Mohamed filed an application for asylum (which he later withdrew due to the nature of his entry), withholding of removal, and protection under the Convention Against Torture.

33. After his merits hearing held June 5, 2025, IJ Alison Kane issued a written decision on June 18, 2025, which granted Mr. Mohamed's request for withholding of removal under 8 U.S.C. § 1231(b)(3), INA § 241(b)(3), to Egypt. Judge Kane found that he would "more likely than not" face persecution and harm at the hands of government officials in Egpyt if he returned. Exh. A, Order of the IJ; 8 U.S.C. § 1231(b)(3). Alternatively, Judge Kane also granted Mr. Mohamed's request for protection under the Convention Against Torture pursuant to 8 C.F.R. §§ 1208.16(c), 1208.17, and 1208.18.

34. Neither Mr. Mohamed nor DHS reserved the right to appeal. Exh. A, Order of the IJ. As such, the immigration judge's order became administratively final that same day.

35. The IJ granted Mr. Mohamed withholding and protection against torture rather than asylum solely because of the Circumvention of Lawful Pathways Rule, which bars asylum eligibility for noncitizens who enter the United States at the southern border without using a lawful

process. *See* 8 C.F.R. § 1208.33. This regulation only applies to noncitizens who entered the country on or after May 11, 2023. *Id.*

DHS Has Failed to Conduct Proper, Mandatory Post-Order Custody Reviews.

36. DHS has held Mr. Mohamed in post-final-order detention for nearly nine months while conducting a single, untimely and cursory custody review that failed to provide due process as required by regulation. *See* 8 C.F.R. § 241.4(k).

37. Although removal to Egypt is legally prohibited by the grant of withholding, DHS may still pursue removal to a third country 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16. Under § 1231(a), DHS has 90 days to facilitate removal.

38. Mr. Mohamed's removal order became administratively final on June 18, 2025, meaning this 90-day period in which DHS was expected to effectuate removal expired on September 16, 2025. *See* Exh. A, Order of the IJ. DHS failed to provide Mr. Mohamed with the required written notice of an upcoming 90-Day Post-Order Custody Review ("POCR") at least 30 days in advance, pursuant to § 241.4(k). The notice Mr. Mohamed received was sent on October 8, 2025, nearly a month late, and informed him that his "custody status will be reviewed on or about 10/17/2025" and that he could "submit documentation you wish to be reviewed in support of your release, prior to the date listed above." *See* Exh. B(a). Yet DHS subsequently issued a "Decision to Continue Detention" only two days after it sent its notice and five days before the DHS deadline (which itself was far short of the 30 days to prepare set in statute). *See* Exh. B(b)).

39. Instead of providing Mr. Mohamed with timely notice and the statutory time to prepare, DHS provided Mr. Mohamed notice almost a month late and then issued a custody decision two days later.

40. ICE's conduct has continued to raise concerns regarding compliance with post-final-order procedures.

41. As of March 11, 2026, Mr. Mohamed has been in post-final-order custody for nearly nine months – or 267 days – yet ICE has failed to notify him of any pending 180-Day POCR, as required by regulation. *See* 8 C.F.R. § 241.4(k)(2)(ii). DHS simply has ignored its statutory requirements and Mr. Mohamed's rights.

42. This is not merely an issue of lack of notice. As of the date of this petition, ICE has failed to conduct the 180-Day POCR to which Mr. Mohamed is entitled. DHS continues to detain him without cause or explanation and in violation of his statutory and constitutional rights.

LEGAL FRAMEWORK

Constitutional Limits to Post-Final Order Detention

43. The statutes and regulations governing post-final-order detention make it clear that continued detention is meant to serve a single purpose: removal from the United States. *See* 8 U.S.C. § 1231; *see also* 8 C.F.R. § 241.4. And removal is expected to occur within the 90-day removal period. *See* 8 U.S.C. § 1231(a)(1)(A). Although situations in which continued detention beyond this period may be permissible are contemplated, such detention is subjected to constitutional constraints. [1]

44. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690. Indefinite detention raises a particularly

[1] See *Zadvydas*, 533 U.S. at 678, 690-91 (holding that indefinite detention of a noncitizen ordered removed is unconstitutional where removal is not reasonably foreseeable, but recognizing exceptions for individuals who are "specially dangerous" or pose a risk to national security).

"serious constitutional problem" and directly violates the Due Process Clause. *Id.* at 689-90.

45. Any deprivation of the liberty interests protected by the Due Process Clause must be closely related to a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"). Accordingly, any period of post-final-order detention must be strictly limited to what is necessary to achieve the goal of removal.

46. In *Zadvydas*, the Supreme Court limited post-final-order detention to "a period reasonably necessary to secure removal." 533 U.S. 678, 699 (2001). Where removal is not reasonably foreseeable, continued detention is deemed unreasonable and "no longer authorized by statute." *Id.* The Court held that a noncitizen may not be held in post-final-order detention beyond six months unless there is a significant likelihood of removability in the reasonably foreseeable future. *Id.* at 699.

47. "[F]or detention to remain reasonable, as the period of post-removal confinement grows, what counts as 'the reasonably foreseeable future' conversely would have to shrink," meaning the longer the noncitizen remains in post-final-order detention, the shorter the window the government has to demonstrate that removal is reasonably foreseeable. *Id.* at 701.

48. Following the six-month period, "once the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to "respond with evidence sufficient to rebut that showing." *Id.*

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

would violate both §1231(a)(6) and the Due Process Clause of the Fifth Amendment. *See Zadvydas*, 533 U.S. at 701; *Morales-Fernandez v. INS,* 418 F.3d 1118 (10th Cir. 2005).

DHS's Longstanding Release Practices for Withholding Grantees

50. The Department's longstanding practice is to release noncitizens, like Mr. Mohamed, following a grant of withholding absent "exceptional circumstances." *See, e.g.*, Exh. C, Fear-Based Grant Release Policy.

51. This longstanding practice is exemplified by the 2004 Fear-Based Grant Release Policy. Id. That document states its purpose is to "reiterate[]" an earlier memorandum from the then Immigration and Naturalization Service (INS) outlining the government's policy of releasing individuals granted asylum or other fear-based protection relief, such as withholding. *Id.* ("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.").

Third Country Removal

52. Under 8 U.S.C. § 1231, DHS has the authority to remove noncitizens granted withholding to a third country. 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f). The term "third country" refers to one not previously designated by an IJ or DHS during the underlying removal proceedings. *D.V.D. v. Dep't of Homeland Sec.,* No. 1:25-cv-10676, 2025 WL 942948 (D. Mass. Mar. 28, 2025), ECF No. 34.

53. Although the statutory framework for third country removal has long existed, DHS rarely pursued this option in the past. Individuals granted withholding were generally released from detention following the conclusion of their immigration proceedings. *See* Exh. C, Fear-Based Grant Release Policy.

54. Under the current administration, however, DHS has demonstrated a renewed interest in pursuing third country removal. [2] As a result, individuals who would have been released in the past are now being held in ICE custody for extended periods so that DHS may assess the viability of removal to a third country, despite having won on the merits of their fear-based claims.

55. To justify such removals, DHS must meet the narrow criteria outlined by 8 U.S.C § 1231(b)(2)(D)-(E). For example, DHS may pursue third country removal to countries in which a noncitizen is a citizen, was born, or resided immediately before entering the United States. *Id.*

56. DHS is legally barred, however, from removing individuals to countries where they have been granted protection under withholding due to the risk of persecution or torture they face in those countries. *Id.* As a result, when removal to an individual's country of origin is not an option, DHS must either release the individual or assess whether removal to a safe third country is legally viable. *See* 8 U.S.C. § 1231(b)(1)(C)(4).

57. On March 30, 2025, DHS issued a memorandum entitled *Guidance Regarding Third Country Removals*, clarifying key procedural elements of third country removal ("March Memo"). Exh. D, March Memo at ¶¶ 1, 2. The March Memo requires DHS to first "determine whether [a] country has provided diplomatic assurances that [noncitizens] removed from the United States will not be persecuted or tortured" in that country before removal may occur. *Id.* at ¶

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

1. If the Department is unable to obtain the necessary individualized diplomatic assurances, it must notify the noncitizen of its intent to remove them to that country to ensure the individual has an opportunity to contest removal, seek relief under available immigration laws, or make logistical arrangements. *Id.* at ¶ 2.

58. While these procedures are clearly stated in the March Memo, the extent to which DHS implements them in practice remains of concern, particularly considering the high potential for due process violations. *See D.A. v. Noem*, No. 1:25-cv-03135 (D.D.C. Sept. 12, 2025) (a case challenging failures in DHS's adherence to third country removal procedures, resulting in due process violations).

59. In the context of third country removal, where the risk of future persecution or torture is significant, the requirements of notice and a meaningful opportunity to respond are not merely procedural technicalities, but fundamental components of due process protections.

60. On July 9, 2025, in response to litigation in *DHS v. D.V.D.*, 606 U.S. ___ (2025) Acting ICE Director Todd M. Lyons issued a memorandum clarifying key procedural requirements and confirming that ICE officers should adhere to the March Memo. Exh. E, Lyons Memo at ¶¶ 1, 2. Among these requirements is the obligation to serve the noncitizen with a Notice of Removal written in a language they can understand that names the third country DHS intends to remove them to. *Id.* at ¶ 1. Without notice and a chance to respond, individuals are at risk of being deported to countries where they face persecution or torture, in direct violation of federal law. These procedural requirements—while they are basic—are essential to protecting the fundamental rights at stake.

61. Although DHS is not required to affirmatively ask whether the noncitizen fears removal to an indicated country, the individual may still raise such fear and contest their removal. *Id.* If fear

is expressed, the individual must be screened for eligibility for protection under 8 U.S.C. § 1231(b)(3) and CAT. *Id.* at ¶ 2.

Mandatory Post-Final-Order Custody Reviews

62. The government may not remove a noncitizen to a country where the noncitizen's life or freedom would be threatened in that country because of their race, religion, nationality, membership in a particular social group, or political opinion. *See* 8 U.S.C. § 1231(b)(3).

63. When an IJ determines that a noncitizen has met the criteria of 8 U.S.C. § 1231(b)(3) with respect to a particular country, a removal order is issued and simultaneously withheld with respect to the country for which the noncitizen demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 531-31 (2021). This form of relief is called withholding of removal, a status which allows a noncitizen to legally live and work in the United States, and one that has historically led to release under supervision. *See* Exh. A, Fear-Based Grant Release Policy.

64. Under § 1231(a)(2), the government is given 90 days to carry out the removal. This is known as the "removal period" and it commences once a noncitizen's removal order "becomes administratively final." *See* 8 U.S.C. § 1231(a)(1)(B). During this time, detention is mandatory. *See* 8 U.S.C. § 1231(a)(2)(A).

65. If the removal period lapses before removal occurs, the noncitizen "*may* be detained beyond the removal period" if they are inadmissible or deportable under specified categories. 8 U.S.C. § 1231(a)(6) (emphasis added). The discretionary language of § 1231(a)(6) implies the necessity of an individualized determination on whether a noncitizen meets this specified criteria.

The 90-Day Post-Order Custody Review

66. As is set forth *infra,* the Court in *Zadvydas* found that the presence of a unilateral custody review by Respondents did not cure the Constitutional violation that results when the government indefinitely detains an individual in civil immigration detention. The continued detention of noncitizens beyond the removal period is also governed by 8 C.F.R. § 241.4, which establishes the procedures DHS must follow with regards to reviewing a noncitizen's custody.

67. Where removal "cannot be accomplished during the period, or is impracticable or contrary to the public interest," 8 C.F.R. § 241.4(k), DHS regulations provide that "prior to the expiration of the removal period" the local ICE field office "shall conduct a custody review" to determine whether a noncitizen should remain detained. *See* 8 C.F.R. §§ 241.4(c)(1), (k)(1)(i).

68. At a 90-day POCR, DHS considers multiple factors, including the availability of travel documents for removal. *Id.* §§ 241.4(e)-(f). At this stage, ICE may release the noncitizen under conditions of supervision as it deems appropriate. *Id.* § 241.4(j).

69. DHS is obligated to provide the noncitizen with written notice approximately 30 days before the impending 90-Day POCR so that the noncitizen may submit information in writing to support their release. *See* 8 C.F.R. § 241.4(h)(2).

70. If DHS finds that removal is not reasonably foreseeable yet seeks to extend the removal period of a detained noncitizen based on "special circumstances," it must demonstrate that continued detention is based on narrow circumstances, such as national security or public health concerns, 8 C.F.R. §§ 241.4(b)-(d). Alternatively, the government must demonstrate by clear and convincing evidence before an IJ that the noncitizen is "specially dangerous." Id. § 241.14(f).

71. At the 90-Day POCR, the noncitizen seeking release must convince DHS they are not a flight

risk or danger to the community. *See* 8 C.F.R. § 241.4(d)(1). DHS should find release is appropriate where travel documents are unavailable, making removal "not practicable or not in the public interest." *See* 8 C.F.R. § 241.4(f). Additionally, DHS may weigh factors, such as the person's disciplinary record while in detention, their criminal history and any immigration history indicating a likelihood that they are "a significant flight risk." 8 C.F.R. § 241.4(f).

72. After the 90-Day POCR, DHS must advise the noncitizen in writing whether they are to be released or remain in detention pending removal or further custody review. *See* 8 C.F.R. § 241.4(k)(1)(i).

The 180-Day Post-Order Custody Review

73. In response to *Zadvydas*, DHS issued additional regulations establishing "special review procedures" to determine whether noncitizens in post-final-order detention 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). Subsection (i)(7) was incorporated to 8 C.F.R. § 241.4's preexisting POCR process to include an additional review procedure that ICE headquarters 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." 8 C.F.R. § 241.4(i)(7).

74. The Supreme Court underscored that post-final-order detention under § 1231(a)(6) is limited to "a period reasonably necessary to bring about a [noncitizen's] removal from the United States." *Zadvydas*, 533 U.S. at 689. The Court considered the purported purpose of post-final-order detention: to "assur[e] the [noncitizen's] presence at the moment of removal," *Id.* at

699, and held that the government interest in preventing flight is "weak or nonexistent where removal seems a remote possibility at best." *Id.* at 690.

75. Accordingly, in habeas proceedings, if a noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the government must either "respond with evidence sufficient to rebut that showing," or release them from detention under supervision." *Id.* at 701.

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

77. Custody reviews are to be conducted within these specified timeframes or "as soon as possible thereafter, allowing for any unforeseen circumstances or emergent situation." *See* 8 C.F.R. § 241.4(k)(2)(iv). The District Director or HQPDU Director may postpone the custody review process for "good cause," such as a noncitizen's imminent removal, but must document this decision and specify the reasons for the delay in the noncitizen's custody review file or A file. *See* 8 C.F.R. § 241.4(k)(3). As soon as the reason for the delay is remedied, DHS must exercise "[r]easonable care" to ensure that the 180-Day POCR occurs. *Id.*

78. Although the addition of the180-Day POCR was intended to address concerns surrounding indefinite detention of noncitizens for whom there is no significant likelihood of removal in the reasonably foreseeable future, the POCR process itself is inadequate to protect against substantial due process violations. *See* Elizabeth Hannah, *Immigration Detention is Never*

"Presumptively Reasonable": Strengthening Protections for Immigrants with Final Removal Orders, 65 ARIZ. L. REV. 505, 519 (2023).

79. Only when the government determines that a noncitizen's request for release has merit—meaning it agrees there is no significant likelihood of removal in the foreseeable future—will the government refer the request to the State Department for further review. *Id.* The State Department will provide a report to DHS regarding the likelihood of removal; however, DHS is still the ultimate decision maker as to whether removal is likely to occur within the reasonably foreseeable future. *Id.* Thus, the POCR process fails to ensure fair and impartial review. *See id.*

ARGUMENT

Mr. Mohamed's Removal Is Not Reasonably Foreseeable and As Such his Continued Detention Violates *Zadvydas*

80. In *Zadvydas*, the Supreme Court held that under 8 U.S.C. § 1231(a)(6), post-final-order detention is presumptively reasonable for a period of six months. 533 U.S. at 678. After the expiration of six months, if removal is not reasonably foreseeable, continued detention is no longer authorized. *Id.* at 699-700. At this stage, the burden shifts to the government to show that there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* at 701.

81. Here, that burden shifted to the government months ago and it cannot be met. First, Mr. Mohamed has been detained for significantly longer than six months following the IJ's grant of withholding. See Exh. A, IJ Order. Having been granted this form of relief, Mr. Mohamed cannot be deported to Egypt, the only country to which he is a citizen. 8 U.S.C. § 1231(b)(3). He has no legal status, no ties, and has never resided in any other country.

82. Although third country removal provides DHS with the legal framework to remove noncitizens who have been granted withholding, that purpose cannot justify continued

detention where the removal process remains entirely dormant. Upon information and belief, DHS has taken no steps to initiate—let alone effectuate—removal to a third country. In fact, the record supports the conclusion that DHS has allowed for the removal period to expire without so much as looking for a viable third country. No country has been identified, no assurances sought, and no notice issued. Under DHS's own guidance, this is a clear failure to effectuate third country removal. Exh. D, March Memo.

83. Moreover, the fact that Mr. Mohamed is an Egyptian Muslim and sexual abuse survivor, an identity that significantly increases his risk of facing persecution in many parts of the world, further complicates the viability of third country removal as a legitimate option. An intent to remove his to a third country would require the government to provide advance notice, a meaningful opportunity to respond, and litigation of fear-based protection claims, which would further delay any attempt at removal.

84. When combined, his withholding order, the lack of a viable third country, and Mr. Mohamed's heightened risk as an Egyptian Muslim and sexual abuse survivor renders his removal not merely unlikely, but functionally impossible in the foreseeable future.

85. Under *Zadvydas*, where removal is not reasonably foreseeable, it no longer serves its intended purpose under § 1231(a)(6). Without this Court's intervention, Mr. Mohamed is at risk of remaining permanently detained.

86. Accordingly, Mr. Mohamed detention has exceeded constitutional and statutory limits. Where the government cannot demonstrate the significant likelihood of removal in the reasonably foreseeable future, it must turn to release.

DHS's Has Failed to Even Abide by the Requirement to Conduct Proper POCRs

87. The government has held Mr. Mohamed in post-final-order detention for nearly nine months

yet has failed to conduct even a single, proper custody review as required by law. *See* 8 U.S.C. § 1231(a); *see also* 8 C.F.R. § 241.4.

DHS Failed to Conduct a Proper 90-Day Post-Order Custody Review

88. The 90-day removal period expired for Mr. Mohamed on September 16, 2025. Pursuant to 8 C.F.R. § 241.4(h)(2), DHS should have issued written notice to Mr. Mohamed of an upcoming 90-Day POCR on or about August 17, 2025.

89. On October 8, 2025, nearly two months late, DHS sent Mr. Mohamed a "Notice to Alien of File Custody Review". *See* Exh. B(a). In the document, DHS informed Mr. Mohamed that his "custody status will be reviewed on or about 10/17/2025" and that he could "submit any documentation you wish to be reviewed in support of your release, prior to the date listed above." Even at face value, the notice did not provide a proper period for Mr. Mohamed to prepare for review; DHS gave him only nine days, not the required 30 days.

90. Making the untimely, improper notice even more egregious, DHS subsequently sent Mr. Mohamed a "Decision to Continue Detention" on October 10, 2025. *See* Exh. B(b). In other words, DHS sent its decision only two days after it sent Mr. Mohamed notice of the review. Furthermore, that decision came a week before the self-imposed (and statutorily inadequate) deadline DHS set for Mr. Mohamed.

91. The multiple failures by DHS during the 90-day POCR process rendered it effectively null. DHS did not provide Mr. Mohamed the proper due process owed to him due to his continuing detention.

DHS Failed to Conduct a 180-Day Post-Order Custody Review

92. As of March 11, 2026, Mr. Mohamed has been in post-final-order custody for nearly nine

months, or 267 days.

93. Pursuant to 8 C.F.R. § 241.4(k)(2)(ii), he should have received written notice by November 15, 2026, of a 180-Day POCR by December 15, 2025.

94. As of the time of filing, Mr. Mohamed has not received notice of a 180-day POCR. There is no indication that ICE has taken any steps to schedule or conduct a 180-Day POCR.

95. Given that DHS conducted a fatally flawed, untimely 90-Day POCR and entirely failed to notice or conduct a 180-day POCR, it is highly unlikely that DHS has any intention of reviewing Mr. Mohamed custody in the reasonably foreseeable future. Even assuming, *arguendo,* that DHS did conduct a review of Mr. Mohamed's continued custody, that does not cure the constitutional violation at issue in the case. This violation cannot be resolved by a unilateral review of continued confinement in civil immigration detention by an agency that has made clear it won't release him. Thus, the POCR process does not serve the legitimate purposes that can justify the denial of the right to liberty as explained by the Court in *Zadvydas.*

Removal to a Safe Third Country is Not Viable Due to Mr. Mohamed's Identity

96. Even if DHS were to assert a legitimate interest in effectuating third country removal, Mr. Mohamed's identity as an Egyptian Muslim, Arabic speaker, and male trauma and sexual abuse survivor makes it highly unlikely that such removal could legally occur. Moreover, a legitimate government interest in third country removal does not mean that removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 699.

97. Mr. Mohamed faces significant risk of persecution or torture in the limited list of countries

that accept non-nationals deported from the United States[3]. For example, it is impractical to send Mr. Mohamed to a country like El Salvador, where he does not speak the language, practices a minority religion, and could be harassed due to his past sexual abuse history. Accordingly, counsel for Mr. Mohamed is prepared to initiate full litigation to vindicate Mr. Mohamed's procedural rights to challenge removal to any country DHS could designate, as deportation to a country where people like him are routinely targeted would constitute a clear violation of federal law, including the protections available under the Convention Against Torture (CAT).

98. Even if DHS attempted to secure diplomatic assurances, their credibility should be questioned.[4] The problematic nature of diplomatic assurances has been exposed in cases such as *D.A. v. Noem*, where individuals granted fear-based relief from various West African countries were removed to Ghana presumably under such assurances and ultimately returned to the same countries where adjudicators had determined they would face persecution, rendering any "assurances" effectively meaningless. No. 1:25-cv-03135, 2025 WL 2646888 (D.D.C. Sept. 12, 2025). In Mr. Mohamed's case, this is a significant feat; sending him to another African country could eventually lead to him being forced to return to Egypt.

The Appropriate Remedy for this Due Process Violation is Immediate Release.

99. The indefinite nature of Mr. Mohamed's detention is a grave and ongoing violation of his due

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[3] *See* Edward Wong et al., *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times (Jun. 25, 2025), available at: https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html?smid=url-share).

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

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

100. Courts in this District regularly order release in these circumstances. *See, e.g.*, *El Ahrach v. Baltazar*, 1:25-cv-03195-PAB (D. Colo. Nov. 19, 2025)(ordering release of noncitizen held indefinitely in post-final-order detention).

CLAIMS FOR RELIEF

COUNT I

Unlawful Post-Final Order Detention Under 8 U.S.C. § 1231(a)(6) and *Zadvydas v. Davis*

101. Mr. Mohamed realleges and incorporates by reference the paragraphs above.

102. The government detains Mr. Mohamed pursuant to 8 U.S.C. § 1231(a)(6), which governs the detention of noncitizens who have administratively final orders of removal.

103. In *Zadvydas*, the Supreme Court interpreted section 1231(a)(6) to contain an implicit timeframe, authorizing detention only for "a period reasonably necessary to bring about the [noncitizen's] removal from the United States. 533 U.S. at 589. The Court established a six-month period of post-final-order detention, after which the government must provide evidence that removal is likely in the reasonably foreseeable future. *See id.* at 701.

104. In the nearly nine months since Mr. Mohamed's removal order became administratively final, the government has failed to identify a single country for removal—and upon information and belief, has not even begun its search for a third country that would accept Mr. Mohamed.

105. Mr. Mohamed cannot be deported to Egypt—the only country where he is a citizen—because

he has a final grant of withholding of removal to Egypt. Exh. A, IJ Order. He has no legal status in or connections to any other country.

106. Before initiating removal to any third country, the government must first afford Mr. Mohamed notice and the opportunity to raise a fear-based protection claim seeking relief from removal to that country. If Mr. Mohamed successfully demonstrates reasonable fear, the government must allow him an opportunity to reopen his proceedings. Mr. Mohamed's identity as an Egyptian Muslim speaking only Arabic and a male sexual abuse survivor makes it highly improbable that DHS would succeed in identifying a country that would be a safe destination for him and that would accept him. Accordingly, Mr. Mohamed, through undersigned counsel, is prepared to litigate his procedural rights to challenge any country which DHS identifies. Together, these factors render his removal more remote than ever.

107. Because Mr. Mohamed cannot be removed from the United States in the "reasonably foreseeable future," his continued detention violates 8 U.S.C. § 1231(1). *See* Zadvydas, 533 U.S. at 701.

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

COUNT II

Violation of the Procedural Due Process Clause of the Fifth Amendment of the United States Constitution

109. Mr. Mohamed realleges and incorporates by reference the paragraphs above.

110. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Cont. amend. V. To comply with the Due Process Clause, civil detention must "bear[] a reasonable relation to the purpose for which the individual was committed," which for immigration detention pursuant to § 1231 is removal

from the United States. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690).

111. The government's alleged justification for continuing to detain Mr. Mohamed absent any indication it has even begun the preliminary research that third country removal requires over the past nine months violates his procedural due process rights and renders his detention indefinite. Moreover, without notice of the government's intent to deport him to a single country, Mr. Mohamed cannot have a meaningful opportunity to challenge the viability of his removal, further depriving his of the due process rights to which she is entitled under the United States Constitution.

112. Lastly, the government has failed to conduct conducted a fatally flawed 90-day POCR and did not conduct a 180-day POCR as required by 8 C.F.R. § 241.4 during this prolonged period of detention, further violating his right to due process.

COUNT III

Violation of the Substantive Due Process Clause of the Fifth Amendment of the United States Constitution

113. Mr. Mohamed realleges and incorporates by reference the paragraphs above.

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

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

116. More than six months – indeed almost nine months – have lapsed since Mr. Mohamed was

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

117. The indefinite nature of Mr. Mohamed detention under Section 1231 violates his substantive due process rights under the Fifth Amendment by depriving his of his "strong liberty interest." *United States v. Salerno*, 481 U.S. 739, 750 (1987).

118. At nine months post-final-order and with numerous "good reason[s] to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the government must now carry the burden of justifying Mr. Mohamed continued imprisonment. *Zadvydas*, 533 U.S. at 701. With no history of arrests or convictions to point to, family and a sponsor waiting to aid him in New Jersey and New York, the government will be unable to produce evidence that Mr. Mohamed poses any danger to the community.

119. Moreover, the government interest in "preventing flight [] is weak or nonexistent where removal seems a remote possibility at best." *Id.* at 690.

120. Accordingly, Mr. Mohamed respectfully requests this Court order Respondents to immediately release him.

PRAYER FOR RELIEF

WHEREFORE Mr. Mohamed respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Issue an order prohibiting Respondents from transferring Mr. Mohamed outside of the jurisdiction of the District of Colorado pending the resolution of this case;

c. Issue an order to show cause or order to answer pursuant to 28 U.S.C. § 2243, ordering Respondents to show cause within three days of why the writ should not be granted;

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

e. Award Mr. Mohamed his costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

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

Dated: March 13, 2026

s/ Mario Nicolais

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VERIFICATION

I, s/ Mario Nicolais, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in Mr. Mohamed Petition for Writ of Habeas Corpus are true and correct.

Dated: March 13, 2026

EXHIBITS

A. Order of the Immigration Judge Granting Withholding of Removal (Dated June 18, 2025) ("IJ Order").

B. Communications with the Supervising Deportation Officer (DO) at the Aurora Facility

   a. DHS "Notice to Alien of File Custody Review" dated October 8, 2025

   b. DHS "Decision to Continue Detention" dated October 10, 2025

   c. Mr. Mohamed's Request for Release dated January 15, 2025

   d. Mr. Mohamed's Request for Release dated January 21, 2025

C. ICE Memorandums & Communications Re: Detention and Release during the Removal Period of Aliens Granted Withholding or Deferral of Removal (Dated: April 21, 2000; February 9, 2004; March 6, 2012; June 7, 2021) ("Fear-Based-Grant Release Policy").

D. Department of Homeland Security, U.S. Immigration and Customs Enforcement Memorandum from Kristi Noem titled Guidance on Third Country Removals (Dated March 30, 2025) ("The March Memo").

E. U.S. Immigration and Customs Enforcement Memorandum from Todd Lyons titled, Third Country Removals Following the Supreme Court's Order in Department of Homeland Security v. D.V.D., No 24A1153 (U.S. June 23, 2025) (Dated July 9, 2025) ("The Lyons Memo").