UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

FNU Nidyawati, **Petitioner,** **v.** JUAN BALTASAR, Warden, GEO Group ICE Processing Center; ROBERT HAGAN, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement; TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, Acting Secretary, U.S. Department of Homeland Security; and PAMELA BONDI, U.S. Attorney General, in their official capacities, **Respondents.**	Case No.: 1:26-cv-1110 **EXPEDITED CONSIDERATION UNDER 28 USC § 1657(a) REQUESTED**

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner FNU Nidyawati[1] (aka Nidyawati; Nidyawati Susanto; Kusuma Nidyawati)) sought protection in the U.S. and was granted withholding of removal by an immigration judge on May 24, 2005, barring removal to her native country of Indonesia. Exs. 1-1; 1-2. As a withholding of removal grantee, she has regularly applied for and was granted employment authorization by the Department of Homeland Security. At no time has it been alleged that Petitioner was not compliant with terms of the Order of Supervision. Without warning, when Petitioner attended a check-in at the Immigration and Customs Enforcement ("ICE") offices on March 11, 2026, ICE arrested her. ICE then transported her to the Aurora ICE Processing Center, where she remains in custody.

2. Because her detention violates Petitioner's constitutional, statutory, and regulatory rights, this Court should grant the instant petition for a writ of habeas corpus and order release.

CUSTODY

3. Petitioner is in the physical custody of Respondents, imprisoned at the Aurora ICE Processing Center, an immigration detention center in Aurora, Colorado. Petitioner is under direct control of Respondents.

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[1] Petitioner has a single legal name. *See* Ex. 1-1, Petitioner's passport and Colorado driver's license. On certain immigration documents and forms, including her U.S. visa, she has been identified with "FNU" as her given name and "Nidyawati" as her surname. *See* U.S. Department of State, 9 Foreign Affairs Manual, 403.9-2(A)(4), Sept. 20, 2023, *available at* https://fam.state.gov/FAM/09FAM/09FAM040309.html#M403_9_2_A ("In certain countries where many nationals have only a surname, the applicant's first name should be entered as FNU . . . the 'FNU' stands for "First Name Unknown.")

JURISDICTION

4. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and 28 U.S.C. § 1331 (federal question) because this action arises under federal law, including the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq*., and Administrative Procedure Act, 5 U.S.C. § 551, *et seq*.

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

VENUE

7. Venue is proper because Petitioner is detained at the GEO Group's ICE Processing Center in Aurora, Colorado, which is within the jurisdiction of this District. In addition, venue is proper in this District because a substantial part of the events giving rise to Petitioner's claims occurred in this District, Petitioner resides in this District, and no real property is involved in this action. 28 U.S.C. § 1391(e).

EXPEDITED TREATMENT OF HABEAS CLAIMS

8. Federal law provides that each court of the United States shall determine the order in which civil actions are heard and determined, except that the court shall expedite consideration of certain actions including any action brought under chapter 153 of Title 18 (habeas corpus cases). 28 U.S.C. § 1657(a).

9. Congress has directed courts to grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

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

PARTIES

11. Petitioner Nidyawati is a native and citizen of Indonesia. She resides in the United States with her son, a United States citizen. On May 24, 2005, an immigration judge granted her withholding of removal from Indonesia. Ex. 1-2. Prior to her current detention, she resided in [redacted] Colorado. She is being detained at the GEO Group's ICE Processing Center in Aurora, Colorado. She is in custody, and under the direct control, of Respondents and their agents.

12. Respondent Baltasar is sued in his official capacity as the Warden of the GEO Group's ICE Processing Center in Aurora, Colorado. He has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain non-citizens. Respondent Baltasar is a legal custodian of Petitioner.

13. Respondent Hagan is sued in his official capacity as Field Office Director of the Denver Office of U.S. Immigration and Customs Enforcement (ICE). Respondent Hagan is a legal custodian of Petitioner and is responsible for detaining her.

14. Respondent Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement (ICE). Respondent Lyons is responsible for Petitioner's detention.

15. Respondent Mullin is sued in his official capacity as the Acting Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Mullin is responsible for the implementation and enforcement of the Immigration and Nationality Act ("INA"), and oversees ICE, the component agency responsible for Petitioner's detention. Respondent Mullin has ultimate custodial authority over Petitioner.

16. Respondent Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, she has the authority to adjudicate removal cases and oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals. Respondent Bondi is a legal custodian of Petitioner.

LEGAL FRAMEWORK

Detention During the Removal Period

17. The government's authority to detain noncitizens, including those who are subject to final orders of removal, is subject to constitutional limits. "It is well

established that [t]he Due Process Clause applies to all persons within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see also Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097, at *2 (Apr. 7, 2025) (per curiam) ("[t]he Fifth Amendment entitles [noncitizens] to due process of law in the context of removal proceedings.").

18. For noncitizens as well as citizens "Freedom 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 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

19. Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the [incarcerated] individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal citation omitted). Civil immigration detention is therefore constitutional only in "certain special and 'narrow' nonpunitive 'circumstances.'" *Id.* at 690 (quoting *Foucha*, 504 U.S. at 80). The Supreme Court identified those limited circumstances as mitigating the risk of danger to the community and preventing flight. *Id.* at 690–91; *see also Demore v. Kim*, 538 U.S. 510, 527-28 (2003).

20. In addition to Constitutional requirements, for detention to be lawful the government must comply with both the applicable statutory provisions and its agency regulations. *See United States v. Caceres*, 440 U.S. 741, 759-60 (1979).

21. Pursuant to 8 U.S.C. § 1231(a) ICE has authority to detain noncitizens with a final order of removal for 90 days after the removal order becomes final—a time frame known as the "removal period." *See* 8 U.S.C. § 1231(a)(1)(A). When the 90-day period expires the non-citizen may be released under supervision or the government may continue detention if the non-citizen is found to be "a risk to the community or unlikely to comply with the order of removal" or if the order of removal was on specified grounds. *Id.* § 1231(a)(2); (a)(6).

22. To extend detention after the removal period, DHS must follow regulations outlining post custody review procedures intended to provide due process. 8 U.S.C. § 1231(a)(6), 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i) § 241.4(k)(2)(ii). 241.4(j)(2).

23. In addition to these regulatory requirements, the Constitution further "limits a [noncitizen]'s post-removal-period detention to a period reasonably necessary to bring about that [noncitizen]'s removal from the United States." *Zadvydas*, 533 U.S. at 689. As the Court explained, post-removal detention "has two regulatory goals: ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community." *Id.* at 690 (internal quotation marks and citation omitted). Neither purpose, the Court determined, provided grounds sufficient to authorize indefinite detention. *Id.* "[B]y definition the first justification—preventing flight—is weak or nonexistent where removal seems a remote possibility at best . . . [because] where detention's goal is no longer practically attainable, detention no longer 'bear[s] [a] reasonable relation to the purpose for which the individual [was] committed.'" *Id.* at 690 (quotations and ellipses in original) (quoting *Jackson v. Indiana*, 406 U.S. 715,

738 (1972). Thus, the Court concluded "once the flight risk justification evaporates, the only special circumstance present is the alien's removal status itself, which bears no relationship to a detainee's dangerousness." *Id.* at 691 (citations omitted).

24. After *Zadvydas*, DHS added new regulations creating "special review procedures" to determine whether detained noncitizens 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). 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 immigration judge that the noncitizen is "specially dangerous."

Withholding of Removal and Third Country Removal

25. Petitioner was granted withholding of removal. Withholding and deferral of removal under the Convention Against Torture (CAT) are both mandatory forms of protection preventing deportation to the country or countries where an immigration judge finds that the individual is more likely than not to be persecuted or tortured. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16–18, 1208.16–18; *see also Moncrieffe v. Holder*, 569 U.S. 184, 187 n.1 (2013). Specifically, the withholding statute implements the United States's obligations under Article 33 of the 1951 United Nations Refugee Convention, incorporated into its 1967 Protocol by which signatory countries may not "expel or return ('refouler') a refugee in any manner whatsoever to

the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." *INS v. Aguirre Aguirre*, 526 U.S. 415, 427 (1999).

26. Withholding and deferral of removal do not prevent a noncitizen from being removed from the United States, but rather prohibit removal to the specific country where a noncitizen has established they are likely to be persecuted.

27. Under certain circumstances, noncitizens can be removed to a "third country" that is not their country of citizenship or nationality, provided the foreign government will accept them. 8 U.S.C. § 1231(b)(1)-(3). 8 U.S.C. § 1231(b)(2)(E)(vii). However, "the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A).

28. To remove a foreign national to a third country, the INA requires that the Attorney General—by and through a delegate, such as an immigration judge—first determine that it is "impracticable, inadvisable, or impossible" to remove the foreign national country of which the foreign national is a citizen, where they were born, or in which the noncitizen has a residence, and that the designated third country "will accept [Petitioner] into that country." 8 U.S.C. § 1231(b)(2)(E)(vii); *see Himri v. Ashcroft*, 378 F.3d 932, 939 n. 4 (9th Cir. 2004) (8 U.S.C. § 1231(b)(E)(vii) "indisputably requires the Attorney General to prove that the proposed country of

removal is willing to accept the alien"); *see also Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 344 (2005).

29. The statute delegates the authority to the Attorney General, not DHS. 8 U.S.C. § 1231(b)(2)(E)(vii) ("the Attorney General shall remove the alien to. . ."); *see also* 8 C.F.R. § 1240.10(f) (in removal proceedings the immigration judge "shall... identify for the record a country, or countries in the alternative, to which the alien's removal may be made").

30. To remove a foreign national to a third country, the Attorney General would need to move to reopen removal proceedings to designate a third country for removal under the statutory process. *See, e.g., Sadychov v. Holder*, 565 F. App'x 648, 651 (9th Cir. 2014) (unpublished) (holding that should a new country of removal be designated, "the agency must provide [the noncitizen] with notice and an opportunity to reopen his case for full adjudication of his claim of withholding of removal from" the third country); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009, 1011 (W.D. Wash. 2019) (finding that removal proceedings "shall be reopened and a hearing shall be held before the immigration judge so that petitioner may apply for relief from removal" as to a country not designated in prior proceedings).

31. Adherence to that process is necessary to ensure the foreign national has a statutory right to claim protection in immigration court against removal to a third country where she may be persecuted or tortured, a form of protection known as withholding of removal, 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16, as well as his right to claim deferral of removal under CAT. *See* 28 C.F.R. § 200.1 ("A

removal order. . . shall not be executed in circumstances that would violate [the CAT]"); 8 C.F.R. §§ 208.17-18, 1208.17-1208.18.

32. Due process requires the government to "ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with § 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said]." *Aden*, 409 F. Supp. 3d at 1019.

33. Any unannounced attempt at a third country removal would violate these statutory and constitutional procedural protections.

Due Process and Decisions to Revoke an Order of Supervision

34. "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 (citation modified). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.* at 690 (2001).

35. Under substantive due process doctrine, revocation of a noncitizen's Order of Supervision is a restraint on liberty that is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention; preventing danger to the community or preventing flight prior to removal. *See Zadvydas*, 533 U.S. at 690-92 (discussing constitutional limitations on civil detention).

36. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty," like the decision to revoke a noncitizen's Order of Supervision or to detain a noncitizen without warning. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (citation modified).

Procedures After a Final Order of Removal

37. A noncitizen with a final order of removal "who is not removed within the [90-day] removal period . . . shall be subject to [a order of] supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3) (titled "Supervision after 90-day period").

38. A noncitizen may only be detained past the 90-day removal period following a removal order if found to be "a risk to the community or unlikely to comply with the order of removal" or if the order of removal was on specified grounds. *Id.* § 1231(a)(6).

39. But even where initial detention past the 90-day removal period is authorized, if "removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances . . . ." *Zadvydas*, 533 U.S. at 699-700.

40. Regulations provide the following additional circumstances, beyond those listed at § 1231(a)(6), which allow for the revocation of an order of supervision and

re-detention of a noncitizen: "(1) the purposes of release have been served; (2) the alien violates any condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2); *see also id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen "violates any of the conditions of release").

41. These regulations are intended to provide noncitizens with an Order of Supervision with due process protections. *Minh Nhat Phan v. Noem*, 3:25-cv-02422-RBM-MSB, 2025 U.S. Dist. LEXIS 201411, *8-9 (S.D. Cal. Oct. 10, 2025).

42. The detention of a noncitizen in violation of the regulations is unlawful. *Id.* at 8-9 (citing cases).

The APA Sets Minimum Standards for Final Agency Action

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

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

45. ICE's decision to detain Petitioner without prior revocation of her Order of Supervision or without written notice is a final agency action subject to this Court's review.

46. Here, Petitioner's detention marked the consummation of ICE's decision-making process regarding her custody.

47. Petitioner's detention was an action by which rights or obligations have been determined, or from which legal consequences flowed, as ICE detained Petitioner in violation of her rights under the Constitution, statute, and regulations.

Agencies Must Follow Lawful Rules and Policy

48. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

STATEMENT OF FACTS

49. Nidyawati is a 49-year-old citizen of Indonesia. She has one United States citizen child, age 23.

50. On May 24, 2005, an immigration judge pretermitted Petitioner's application for asylum and ordered her removed to Indonesia. No alternative country for removal was designated in the order. While the asylum application was denied, the immigration judge granted Petitioner withholding of removal as to Indonesia, barring

the execution of her removal order to that country. Both petitioner and the Department of Homeland Security waived appeal of the order. Ex. 1-2

51. The government did not remove Petitioner in the wake of the immigration judge's 2005 order.

52. Petitioner regularly applied for and obtained employment authorization documents after the immigration judge's 2005 order.

53. There is no allegation in her records that Petitioner missed any appointments or was otherwise not compliant with any terms set by ICE. Petitioner has consistently applied for and received documentation of her employment authorization. Petitioner currently has a valid Department of Homeland Security-issued employment authorization document.

54. In November 2025 Petitioner received a letter in the mail from ICE requesting that she appear for an appointment on or about November 22, 2025, at the ICE office in Centennial, CO. Petitioner attended the appointment and provided her current address and her photo ID to the ICE officer.

55. At the November 22, 2025, appointment, ICE issued Petitioner an Order of Supervision, ordering that she next report in person on December 1, 2026. Ex. 1-3

56. Several months later, Petitioner received another letter from ICE requesting that she appear for an appointment at the ICE office in Florence, CO on March 11, 2026, rather than her scheduled December 1, 2026, appointment. Petitioner attended the appointment as instructed, and without explanation ICE officials arrested her at that time.

57. During her arrest and her ongoing detention, no ICE officer has alleged that she ever failed to check in with ICE as required or violated the terms of her supervision. No ICE officer has alleged or indicated that she has any criminal record or that for any reason she is a threat to public safety. And no ICE officer has indicated that the agency has identified a third country for removal where the agency intends to send her.

58. Petitioner is subject to a final order from an immigration judge, ordering her removed from the United States but precluding removal to her native Indonesia due to a grant of withholding of removal. As such, she is not scheduled for any future immigration court hearings at this time.

59. Petitioner's son filed an I-130 petition for her on November 30, 2023, and it was approved on December 5, 2025. After this approval, Petitioner was in communications with her then-attorney regarding the possibility to file a motion with the immigration court to re-open removal proceedings so that she could apply for adjustment of status and seek lawful permanent residence. Ex. 1-4

CLAIMS FOR RELIEF

COUNT ONE

Violation of 8 U.S.C. § 1231 and Fifth Amendment Right to Due Process (Unlawful Indefinite Detention)

60. Petitioner incorporates by reference the above paragraphs of this petition.

61. The Due Process Clause of the Fifth Amendment to the U.S. Constitution forbids the government from depriving any person of liberty "without due process of law." *Zadvydas* authorizes detention only for "a period reasonably necessary to bring

about the [noncitizen's] removal from the United States." 533 U.S. at 689, 701. Petitioner's detention beyond the statutory removal period is unlawful because there is no significant likelihood of removal in the reasonably foreseeable future. Therefore, her continued detention violates due process, and she must be immediately released.

62. When courts find a noncitizen's removal is not reasonably foreseeable under *Zadvydas*, the remedy provided is release. *See, e.g., Morales-Fernandez v. INS*, 418 F.3d 1116, 1124 (10th Cir. 2008) (ordering petitioner's release where "[t]here is no contention that conditions in Cuba have changed so that [the petitioner's] removal to Cuba is reasonably foreseeable," and therefore she must "be released and paroled into the United States.") (citing *Clark v. Martinez*, 543 U.S. 371, 386–87 (2005); *Nzayikorera v. Fabbricatore*, No. 1:21-CV-02037-RMR, 2021 WL 9385836, at *2 (D. Colo. Sep. 9, 2021). District courts across the country recognize immediate release as the remedy to a *Zadvydas* violation. *Zhuzhiashvili v. Carter*, No. 25-3189-JWL, 2025 WL 2837716, at *3 (D. Kan. Oct. 7, 2025); *Manago v. Carter, et. al.*, No. 5:25-cv-03183-JWL, 2025 WL 2841209, at *2 (D. Kan. Oct. 7, 2025); *Vargas v. Noem*, No. 25-3155-JWL, 2025 WL 2770679, at *2 (D. Kan. Sept. 29, 2025); *Zavvar v. Scott, et. al.*, No. 1:25-cv-02104-TDC, 2025 WL 2592543, at *8 (D. Md. Sept. 8, 2025); *Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO), 2025 WL 1750346, at *8 (D.N.J. June 24, 2025); *Tadros v. Noem*, No. 2:25-cv-04108-EP, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025); *see also Tadros v. Noem*, No. 2:25-cv-04108-EP, Order (D.N.J. June 17, 2025), ECF No. 17 (granting habeas petition).

63. Respondents have not and cannot credibly allege that Petitioner poses any danger. She is also not a flight risk, as evidenced by her U.S. citizen son, her long-term residence in Colorado, her future potential options to seek re-opening of her removal proceedings, and her record of consistent reporting to ICE when requested.

64. Moreover, the Supreme Court has determined that "preventing flight" is a "weak or nonexistent" justification for detention when removal is not reasonably foreseeable, as is the case here. *Zadvydas*, 533 U.S. at 690. Respondents have not pointed to any valid justification for ongoing detention. Therefore, the Court should order her release.

COUNT TWO

Violation of Fifth Amendment Right to Due Process (As-Applied Challenge)

65. Petitioner incorporates by reference the above paragraphs of this petition.

66. The Due Process Clause of the Fifth Amendment to the U.S. Constitution guarantees protection to all "persons" in the United States, including noncitizens, regardless of immigration status. *See Zadvydas*, 533 U.S. at 693. It further prohibits the government from depriving any person of liberty without due process of law. U.S. Cont. amend. V.

67. To comport with the due process clause, civil detention must "bear[] a reasonable relation to the purpose for which the individual was committed," which for detention under §1231 is removal from the United States. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690).

68. The indefinite nature of Petitioner's detention under section 1231 violates her substantive due process rights under the Fifth Amendment by depriving her of her "strong liberty interest." *United States v. Salerno*, 481 U.S. 739, 750 (1987).

69. There is no indication that the government has made any effort towards securing removal in the twenty years since her removal order became final. The 90-day removal period at 8 U.S.C. § 1231(a) ran over two decades ago. The government is barred from removing Petitioner to Indonesia and there is no indication the government has found—or even worked towards finding—a third country which would accept her. Nor, if the government intends to remove Petitioner to a third country, has it afforded her any notice or opportunity to express a fear of removal to that country. At this stage in the process, there is no likelihood that she will be removed in the near future. This violates her procedural due process rights and renders her detention indefinite.

70. Petitioner's detention is thus in violation of Petitioner's Fifth Amendment rights.

COUNT THREE

Violation of Fifth Amendment Rights (Substantive Due Process)

71. Petitioner incorporates by reference the above paragraphs of this petition.

72. The Due Process Clause of the Fifth Amendment protects against punitive detention and similar restrictions on a person's liberty.

73. ICE has unlawfully detained Petitioner, because she had a valid Order of Supervision and did not receive notice and an opportunity to be heard, as required by the regulations and the Due Process Clause of the Fifth Amendment.

74. Petitioner has complied with all terms and conditions of her Order of Supervision.

75. No change in circumstances has warranted Petitioner's detention.

76. Petitioner's arrest and detention, therefore, did not bear a reasonable relationship to the two recognized purposes of immigration detention: preventing danger to the community, or flight prior to removal.

77. Because Respondents had no legitimate, non-punitive objective in detaining Petitioner, her detention violated her substantive due process rights under the Fifth Amendment of the U.S. Constitution.

COUNT FOUR

Violation of Fifth Amendment Rights
(Procedural Due Process)

78. Petitioner incorporates by reference the above paragraphs of this petition.

79. The Supreme Court's decision in *Matthews*, 424 U.S. at 333, instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail.

80. All three factors demonstrate Respondents have violated Petitioner's rights to due process.

81. The first factor, the private interest at issue, favors Petitioner. "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.

82. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner.

83. To safeguard against erroneous deprivations of liberty, the statute specifies the limited number of reasons that supervision can be revoked. Regulations specify who may lawfully revoke the supervision and detain an individual, and the procedures that must be followed when doing so, including giving notice and an opportunity to be heard. 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(l)(2); *see also id.* § 241.13(i).

84. Here, Respondents unlawfully detained Petitioner in violation of her procedural due process protections under the statute, regulations, and the Fifth Amendment. The failure to follow the requisite procedural safeguards has led to the deprivation of Petitioner's liberty.

85. The third factor, the government's interest, also favors Petitioner.

86. When the government does not provide the required notice and an opportunity for a person with an Order of Supervision to respond, the government is more likely to waste limited financial and administrative resources on the unnecessary detention

of people who are neither flight risks nor dangerous to the community, as is the case with Petitioner. Further, because the government must also allocate resources defending against a habeas corpus petition in federal court to compel Respondents to comply with the law, requiring Respondents to instead provide notice and a meaningful opportunity to respond, prior to revoking an Order of Supervision, reduces the fiscal and administrative burdens on the government.

87. Respondents' detention of Petitioner, prior to the revocation of her Order of Supervision and without providing her with the requisite notice and a meaningful opportunity to respond, violated her procedural due process rights under the Fifth Amendment of the U.S. Constitution.

COUNT FIVE

Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B) (Contrary to Law and Constitutional Right)

88. Petitioner incorporates by reference the above paragraphs of this petition.

89. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).

90. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, any law, and not merely those laws that the agency itself is charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

91. ICE failed to comply with 8 C.F.R. §§ 241.4 and 241.13 at the time of Petitioner's detention.

92. ICE never revoked Petitioner's Order of Supervision prior to taking her into custody.

93. ICE never indicated that it had made a determination that there is a significant likelihood that Petitioner may be removed in the reasonably foreseeable future, nor did ICE notify Petitioner of the reasons for revocation of her release as required by the regulations.

94. Respondents' detention of Petitioner was, therefore, arbitrary and capricious because it violated statute, regulation, and the Constitution.

95. An agency decision that "runs counter to the evidence before the agency" is also arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

96. Respondents' decision to arrest and detain Petitioner was unlawful, and must be set aside. 5 U.S.C. § 706(2)(A).

COUNT SIX

Violation of Fifth Amendment Rights to Procedural Due Process and Administrative Procedure Act, 5 U.S.C. § 706(2) (Adequate Notice and a Meaningful Opportunity to Present a Fear-Based Claim)

97. Petitioner incorporates by reference the above paragraphs of this petition.

98. The INA and implementing regulations as well as the Constitution mandate meaningful notice and an opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country.

99. The Administrative Procedure Act empowers courts to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance

with law," or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C).

100. The APA compels a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

101. Agencies must follow their own policies and procedures, particularly when they impact individual rights. *See Accardi*, 347 U.S. at 268.

102. Petitioner has been given no notice regarding any intended removal to a third country. She has not had any opportunity to present a fear-based claim to an immigration judge.

103. Petitioner has no adequate remedy at law.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court grant the following:

(1) Assume jurisdiction over the matter;

(2) Enjoin Petitioner's removal or transfer outside of this Court's jurisdiction during the pendency of this case;

(3) Pursuant to 28 U.S.C. § 2243, forthwith award the writ or issue an order directing respondents to show cause why the writ should not be granted within three days;

(4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment; the INA and implementing regulations, the APA, and the *Accardi* doctrine;

(5) Grant a writ of habeas corpus directing Respondents to immediately release Petitioner on her own recognizance and enjoining Respondents from removing or attempting to remove Respondent to a

third country or a country to which her removal has been withheld in violation of the Constitution as well as statutory and regulatory procedures;

(6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(7) Grant any further relief this Court deems just and proper.

Dated: March 18, 2026

/s/ Luke H. Niermann

Luke H. Niermann
Colorado Reg. No. 55462
Joseph & Hall, P.C.
12203 East Second Avenue
Aurora, CO 80011
303-297-9171
luke@immigrationissues.com

Attorney for Petitioner

28 U.S.C. § 2242 VERIFICATION STATEMENT

I, Luke Niermann, submit this verification on behalf of the Petitioner because I am Petitioner's attorney. On the basis of documents reviewed and discussions with Petitioner and Petitioner's family, I hereby verify that statements made in this petition are true and correct to the best of my knowledge.

Dated: March 18, 2026

/s/ Luke Niermann
Attorney for Petitioner