IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

AZARNEZHAD, Arash *Petitioner*, v. **Pamela Bondi,** Attorney General, U.S. Department of Justice; **Markwayne Mullin**, Secretary, Department of Homeland Security; **Todd Lyons,** Director, Immigration and Customs Enforcement; **Sam Olson,** Director of Enforcement and Removal Operations, St. Paul Field Office, Immigration and Customs Enforcement; **Crystal Carter**, Warden, FCI Leavenworth; *Respondents*.	Civil No.: 26-3073-JWL

PETITION FOR A WRIT OF HABEAS CORPUS

1. Petitioner, Arash Azarnezhad ("Petitioner" or "Mr. Azarnezhad") petitions this Court to issue a Writ of Habeas Corpus or, alternatively, order Respondents to show cause for his continued detention within 3 days, or no later than 10 days, in accordance with 28 U.S.C. § 2243. Mr. Azarnezhad's continued detention bears no reasonable relation to *any* legitimate government purpose and is therefore unconstitutional. Because Respondents cannot justify Mr. Azarnezhad's detention under the U.S. Constitution, he urges this Court to grant his petition and order Respondents to immediately release him from custody. 28 U.S.C. § 2241.

2. The Immigration and Nationality Act (INA) and the U.S. Constitution do not authorize the Department of Homeland Security (DHS) to detain Mr. Azarnezhad indefinitely while it searches for a suitable country that will consent to receive him— an outcome that is not reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("A statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem.").

STATEMENT OF THE CASE

3. Mr. Azarnezhad is an Iranian citizen who received an administratively final grant of withholding of removal to Iran under the Immigration and Nationality Act (INA) by an Immigration Judge (IJ) on April 7, 2025. *See* Exh. A, Order of the Immigration Judge, April 7, 2025; 8 U.S.C. § 1231(b)(3)(A). The IJ designated Iran as the sole country of removal. Exh. A. That decision became administratively final as of the IJ's decision date, April 7, 2025, when the Department of Homeland Security (DHS) waived appeal. *Id.*; *see* 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(1)(B), 1101(a)(47)(B)(ii).

4. Withholding of removal is a form of protection that prohibits the government from removing a noncitizen to a country where he has demonstrated it is more likely than not that he would be persecuted. 8 U.S.C. § 1231(b)(3)(A).

5. DHS detained Mr. Azarnezhad soon after he entered the United States in October 2024, and he has remained in DHS custody since then. Exh. B, Declaration of Olga Guerrero Gonzalez ¶ 6.

6. The IJ designated Iran as the only country of removal, ordered Mr. Azarnezhad removed to Iran, and simultaneously granted his application for withholding with respect to Iran. Exh. A. As such, Mr. Azarnezhad has no removal order to any country apart from Iran, where he cannot go. *Id.*

7. Despite waiving appeal more than six months ago, DHS continues to perpetually detain Mr. Azarnezhad in civil immigration detention, without justification, at the Leavenworth Federal Correctional Institution (FCI) in Leavenworth, Kansas. FCI Leavenworth is primarily a prison for individuals serving federal criminal sentences.

8. On March 30, 2025, DHS issued a memorandum establishing new procedures for third country removals. *See* DHS, Guidance Regarding Third Country Removals, March 30, 2025 [hereinafter "March ICE Memo"].[1] Under this policy, if a country provides the United States with what DHS believes to be "credible" "assurances that noncitizens removed from the United States will not be persecuted or tortured," then DHS may remove the noncitizen to that country without any process. *Id.* If there are no such "assurances," the policy instructs DHS to "first inform the [noncitizen] of removal to that country" but it explicitly prohibits officers from affirmatively inquiring about the noncitizen's fear of removal to said country. *Id.* Only where a noncitizen "states a fear of removal," unprompted, will they be given a "screening" interview, which U.S. Citizenship and Immigration Services (USCIS) will conduct "within 24 hours of referral." *Id.* If USCIS determines that the noncitizen has not established that it is "more likely than not" that the noncitizen will be "persecuted on a statutorily protected ground or tortured in the country of removal," the policy allows for the noncitizen to be immediately removed without any opportunity to provide evidence or seek judicial review. *Id.*

9. On June 23, 2025, a nationwide preliminary injunction halting DHS from carrying out illegal third-country removals was stayed by the Supreme Court. *See Dep't. of Homeland Sec.*

[1] U.S. Dep't. of Homeland Sec., *Guidance Regarding Third Party Removals*, (Mar. 30, 2025), https://iptp-production.s3.amazonaws.com/media/documents/2025.03.30_DHS_Guidance_Regarding_Third_Country_Removals.pdf

v. D.V.D., 145 S. Ct. 2153 (2025). The Supreme Court's decision does not, however, eliminate DHS' obligations under the Immigration and Nationality Act, the U.S. Constitution, and binding treaty obligations, to provide adequate notice and a meaningful opportunity to be heard, nor does it preclude the availability of individual habeas actions challenging unlawful third country removals. *See infra* ¶¶ 67-69.

10. Nevertheless, following the Supreme Court's decision, on July 9, 2025, ICE issued a second memorandum instructing staff to adhere to its March ICE Memo when seeking to remove a noncitizen to a third country. *See* ICE, 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) [hereinafter "July ICE Memo"].[2] In addition, the July ICE Memo adds that, where the country of removal has not provided "assurances," ICE will "generally wait at least 24 hours" before removing a noncitizen, but that "[i]n exigent circumstances, [ICE] may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the [noncitizen] is provided reasonable means and opportunity to speak with an attorney prior to removal." *Id.*

11. However, a federal district court recently held that the government's third-country removal policy, pursuant to the March ICE Memo and the July ICE Memo, was unlawful because DHS must provide a meaningful opportunity for noncitizens to contest their removal to third countries by raising a country-specific claim. *D.V.D. v. U.S. Dep't. of Homeland Sec.*, No. 25-10676-BEM, 2026 WL 521557, at *44 (D. Mass. Feb. 25, 2026).[3]

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[2] U.S. Immigration and Customs Enforcement, *Third Country Removals Following the Supreme Court's Order in* Department of Homeland Security v. D.V.D., No. 24A1153 (June 23, 2025), https://iptp-production.s3.amazonaws.com/media/documents/2025.07.09_ICE_-_Third_Country_Removals_Following_Dept_of_Homeland_Sec._v._D.V.D..pdf.

[3] The First Circuit stayed this decision pending appeal.

12. On information and belief, DHS purports to detain Mr. Azarnezhad while it seeks to remove him to an alternate country. *See* March ICE Memo; July ICE Memo.

13. Historically, the Government has rarely removed individuals to alternate countries. Mr. Azarnezhad has no ties to any third country that could plausibly prevent his eventual removal to Iran – where an immigration judge has already determined he faces likely persecution. Despite the unlikelihood of removal to any third country, the Government continues to detain Mr. Azarnezhad in conditions indistinguishable from criminal confinement.

14. As no country aside from Iran is currently designated for removal, the Government cannot remove Mr. Azarnezhad to a third country without properly giving him notice and an opportunity to be heard regarding removal to that country. Even assuming the Government would be allowed by statute to remove him to a third country, and that it could find a country willing to accept him, the Government would be obliged to give him a hearing before removal, which would mean restarting his removal proceedings. The mere possibility of removal after hypothetical future additional proceedings cannot justify continued detention now.

15. Accordingly, because the Government lacks constitutional authority to detain Mr. Azarnezhad, he asks this Court to order his immediate release from detention via a writ of habeas corpus. Alternatively, this Court should schedule a hearing at the earliest practicable opportunity to hear argument and, if necessary, receive evidence on Mr. Azarnezhad's Petition.

JURISDICTION AND VENUE

16. This Court has jurisdiction under Art. I, § 9, cl. 2 of the United States Constitution; 28 U.S.C. § 2241 (the general grant of habeas authority to the district courts); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).

17. The district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *See Zadvydas*, 533 U.S. at 687; *Demore v. Kim*, 538 U.S. 510, 516–17 (2003).

18. This action also arises under the Due Process Clause of the Fifth Amendment to the United States Constitution.

19. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; 28 U.S.C. § 2241(a); and Fed. R. Civ. P. 57 and 65.

20. Venue is proper under 28 U.S.C. § 1391(e) because Mr. Azarnezhad is presently detained at FCI Leavenworth, in Leavenworth, Kansas, within the jurisdiction of the District of Kansas. *See* 28 U.S.C. § 2241(d).

THE PARTIES

21. Petitioner, Mr. Azarnezhad, is a 39-year-old citizen of Iran who identifies as a protestant Christian. He is currently detained at the Leavenworth Federal Correctional Institution in Leavenworth, Kansas.

22. Respondent Pamela Bondi is named in her official capacity as U.S. Attorney General. Respondent Bondi is a legal custodian of Petitioner.

23. Respondent Markwayne Mullin is named in his official capacity as Secretary of the Department of Homeland Security. Respondent Mullin is responsible for the enforcement of immigration laws and supervises Respondent Olson. He is a legal custodian of Petitioner.

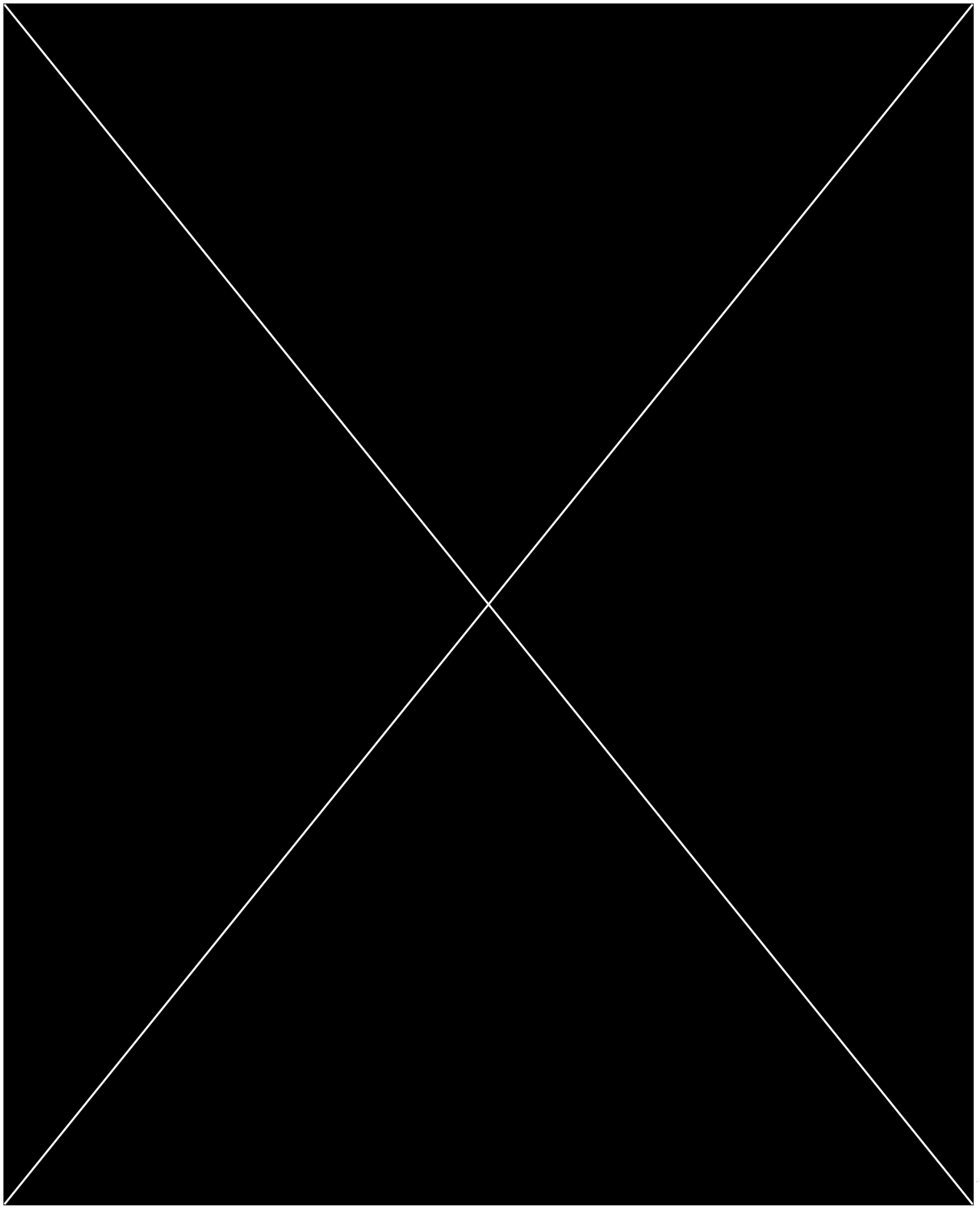
24. Todd Lyons is named in his official capacity as Director of Immigration and Customs Enforcement. Respondent Lyons is responsible for overseeing immigration detention, supervises Respondent Olson, and is a legal custodian of Mr. Petitioner.

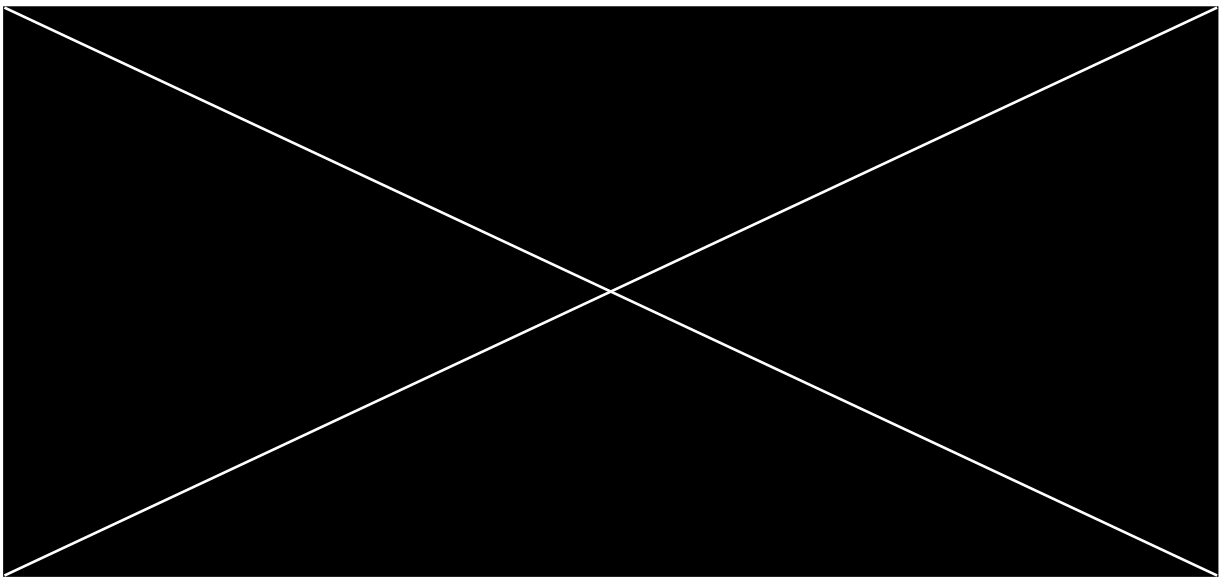
25. Respondent Sam Olson is named in his official capacity as the Director of Enforcement and Removal Operations of the Chicago Field Office of U.S. Immigration and Customs Enforcement (ICE), which has administrative jurisdiction over Petitioner's detention and which contracts with the Leavenworth prison where Petitioner is held. Mr. Olson is a legal and immediate custodian of Petitioner with authority to authorize his release.

26. Respondent Crystal Carter, is named in her official capacity as Warden of FCI Leavenworth, where Petitioner is detained. Ms. Carter is an immediate custodian of Petitioner.

FACTS AND PROCEDURAL HISTORY

27. Mr. Azarnezhad is a 39-year-old Iranian citizen. *See* Exh. C, Affidavit filed with request for asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* ¶ 1. He was born in Jolfa, Iran as the youngest of five siblings. *Id.* ¶ 4. [redacted]





36. Mr. Azarnezhad traveled to the United States by flying to Dubai, then to Brazil, and traveling through Peru, Bolivia, Colombia, Costa Rica, Nicaragua, Guatemala, and Mexico to reach the United States. *Id.* ¶ 27. While in Mexico, he tried to obtain an appointment to enter the United States through the CBP One App, but the process was slow and he was terrified of deportation back to Iran. *Id.* ¶ 29. Mr. Azarnezhad ultimately decided it was safest to cross the border to the United States near Hildago, Texas and was detained by immigration officials on or around October 13, 2024. *Id*; Exh. B, Declaration ¶ 6. Mr. Azarnezhad told officials that he feared returning to Iran because he [redacted] Exh. C, Affidavit ¶ 30.

37. Mr. Azarnezhad was initially detained in Texas and transferred to Kentucky. Exh. B, Declaration ¶ 6. He was transferred again to Leavenworth, Kansas, where he is currently detained. *Id.*

38. On December 9, 2024, DHS served Mr. Azarnezhad with a Notice to Appear (NTA), alleging that he is a citizen and national of Iran. Exh. D, Notice to Appear.

39. On February 24, 2025, through counsel, he filed an amended Form I-589, Application for Asylum, Withholding of Removal, and protection under the Convention Against Torture with the immigration court. Exh. E, I-589 filing.

40. On April 7, 2025, Mr. Azarnezhad appeared at an individual hearing on the merits of his asylum application before the Chicago Immigration Court. The IJ ordered Mr. Azarnezhad removed to Iran and simultaneously granted his application for withholding of removal under the INA. Exh. A. This approach—issuing a removal order and adjudicating a claim for withholding of removal at the same time—is standard approach for such cases. *See, e.g.*, *Nasrallah v. Barr*, 590 U.S. 573 (2020). The IJ order acknowledges that Iran is the only country to which removal has been designated. Exh. A.

41. DHS waived appeal of the IJ's decision. *Id.* Thus, Mr. Azarnezhad's grant of withholding became administratively final as of the date of the IJ's decision, April 7, 2025. *See* 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(1)(B), 1101(a)(47)(B)(ii).[4]

42. ICE has not approached Mr. Azarnezhad or his legal representative regarding any possible third-country removal. *See* Exh. B, ¶ 7. ICE has not asked Mr. Azarnezhad to complete any paperwork or meet with any consular officials relating to removal to any third country. Despite this order prohibiting DHS from removing Mr. Azarnezhad to the only country designated as a country of removal, the Government has detained Mr. Azarnezhad for 16 months in conditions that are indistinguishable from penal confinement.

[4] The removal period begins on the latest of three possible dates. 8 U.S.C. § 1231(a)(1)(B). For Mr. Azarnezhad, his removal period began as soon as his removal order became "administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). A removal order becomes "final upon … the expiration of the period in which the [noncitizen] is permitted to seek review of" the removal order. 8 U.S.C. § 1101(a)(47)(B). Because both Mr. Azarnezhad and DHS waived appeal, Mr. Azarnezhad's removal order became administratively final on April 7, 2025, the date of the immigration judge's decision.

43. Per regulation, DHS was required to conduct a Post Order Custody Review ("POCR") of Mr. Azarnezhad's continued detention before July 6, 2025. 8 C.F.R. § 241.4(h)(1). However, DHS has not provided any notice of a decision. 8 C.F.R. § 241.4(d) ("A copy of any decision. . .to release or to detain a [noncitizen] shall be provided to the detained [noncitizen]."). *See* Exh. B, ¶ 7.

44. During the 16 months that Mr. Azarnezhad has been in DHS's custody, he has lived in conditions akin to those of penal confinement.

45. Upon release, Mr. Azarnezhad intends to relocate to Ina, Illinois, where a volunteer from [redacted] has offered to assist him with housing and employment. Exh. B, ¶ 8. The church will also assist Mr. Azarnezhad in relocating from Leavenworth to Ina, Illinois. Mr. Azarnezhad would like to work, if he receives a work permit. Exh. C, Affidavit ¶ 39. He would be willing to do any kind of work, although he has experience and skills as a truck driver. *Id.*

LEGAL BACKGROUND

A. Statutory and Constitutional Limits to Detention.

45. The Due Process Clause provides that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that" the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. The Due Process Clause ensures that "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). That fundamental constitutional protection applies to citizens and noncitizens alike. *See Zadvydas*, 533 U.S. at 679 ("Once an [undocumented immigrant] enters the country, the legal circumstance changes, for the

Due Process Clause applies to all persons within the United States, including [undocumented immigrants], whether their presence is lawful, unlawful, temporary, or permanent."). *see also Wong Wing v. United States*, 163 U.S. 228, 237–38 (1896); *Landon v. Plasencia*, 459 U.S. 21, 32–34 (1982).

46. When a noncitizen is ordered removed, the government ordinarily must secure the noncitizen's removal from the United States within a period of 90 days, known as the "removal period." 8 U.S.C. § 1231(a)(1)(A). As relevant here, the removal period begins on "[t]he date the order of removal becomes administratively final." *Id.* § 1231(a)(1)(B)(i)-(iii). If not removed within the removal period, the noncitizen is normally to be released under the government's supervision. *Id.* § 1231(a)(3). The Court in *Zadvydas* determined that this statute governing the post-removal period does not authorize the Attorney General to detain a noncitizen indefinitely, but only for the period "reasonably necessary to bring about that [noncitizen's] removal." 533 U.S. at 689. Thus, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

47. Once a six-month period expires, and once the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701. The individual need not show "the absence of any prospect of removal—no matter how unlikely or unforeseeable[,]" but merely that removal is not reasonably foreseeable. *Id.* at 702. The Court also noted that "as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* at 701.

48. Detention beyond the 90-day removal period must comport with a legitimate government purpose. Absent a legitimate government purpose for detention, immigration

detention violates a noncitizen's substantive due process rights. *See Zadvydas*, 533 U.S. at 689–90; *see also Hussain v. Mukasey*, 510 F.3d 739, 743 (7th Cir. 2007).

49. The Supreme Court has stated that the purpose of Section 1231 post-final-order detention is to "bring about that [noncitizen's] removal from the United States." *Zadvydas*, 533 U.S. at 689.

50. Although the "basic purpose [of] effectuating [a noncitizen's] removal" is a legitimate government purpose, *Zadvydas*, 533 U.S. at 697, detention for this purpose may only be for a "very limited time." *Demore*, 538 U.S. at 529 n.12; *see also Tijani v. Willis*, 430 F.3d 1241, 1242 (9th Cir. 2005). In *Zadvydas*, the Supreme Court cast doubt on the "constitutionality of detention for more than six months" after a removal order became administratively final. 533 U.S. at 701.

51. Additionally, the Supreme Court has repeatedly affirmed that detention must be constitutional as applied to individuals regardless of what is authorized or even mandated by a detention statute. *Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018) (explicitly declining to reach "constitutional arguments on their merits" after finding no statutory limit on the length of mandatory immigration detention under 8 U.S.C. § 1226(c)); *see also Nielsen v. Preap*, 586 U.S. 392, 420 (2019) ("Our decision today on the meaning of [section 1226(c)] does not foreclose as-applied challenges—that is, constitutional challenges to applications of the statute as we have now read it.").

52. Accordingly, if the Government is purporting to detain an individual beyond the 90-day period, it must show a legitimate government purpose; namely, that it is seeking to effectuate the individual's removal and that removal is likely to occur in the "reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Further, "for detention to remain reasonable, as

the period of [] postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.*

53. Where there is no possibility of removal—or only a small possibility of removal—there are substantive due process concerns in continuing an immigrant's detention.

54. It is incredibly rare for DHS to remove individuals who have been granted protection from removal to their home country. In such circumstances, removal to a third country has historically been highly unlikely. For example, the Supreme Court previously noted that in 2017, only 1.6% of noncitizens who were granted withholding of removal (a form of relief with similar consequences to CAT) were removed to an alternative country. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 537 (2021).

55. Here, the Immigration Court designated only Iran for Mr. Azarnezhad's removal. Exh. A. This was proper as Mr. Azarnezhad has no legal status in any other country.

56. Since the IJ's grant of withholding, the Government has not so much as sought to designate an alternative country for removal, much less initiate removal proceedings regarding an alternative country. *Supra* at ¶ 42. Furthermore, ICE has not requested that Mr. Azarnezhad complete any paperwork for another country or meet with consular officials from any alternative country. *Supra* at ¶ 42. And DHS itself has, contrary to the regulations, either failed to conduct a timely POCR or failed to serve Mr. Azarnezhad with the required notice and decision of a POCR. *Supra* at ¶ 43.

57. Thus, Mr. Azarnezhad's continued detention is no longer reasonably related to its limited purpose and is therefore unlawful, under both the INA and the Constitution.

58. Additionally, even assuming DHS had the ability to eventually remove Mr. Azarnezhad to a third country, his continued detention is not reasonably related to its stated

purpose when alternative conditions of release could mitigate flight risk. *Bell v. Wolfish*, 441 U.S. 520, 536–39 (1979) (observing that pretrial detention not reasonably related to a legitimate government purpose would constitute punishment in violation of Due Process).

59. DHS regularly utilizes orders of supervision when releasing individuals from its custody when a final order of removal is in place. An order of supervision operates like terms of probation, with the ability to impose "conditions of supervision" on individuals. *See* 8 C.F.R. § 241.5(a). For example, noncitizens released on such orders regularly are prohibited from leaving the state in which they reside without advance permission from an ICE officer. *Id.*(a)(4). They may also be required to report to an ICE officer in person or by telephone on a periodic basis. *See Fernandez Aguirre v. Barr*, No. 19-CV-7048 (VEC), 2019 WL 4511933, at *5 (S.D.N.Y. Sept. 18, 2019) (listing alternatives to detention, "such as home detention, electronic monitoring, and so forth[.]"); *Mathon v. Searls*, 623 F. Supp. 3d 203, 218 (W.D.N.Y. 2022) ("[T]he form used by ICE to list the terms of supervision (Form I-220B) includes a section for 'other specified conditions', which implies that ICE has flexibility in imposing release terms.").

60. Such conditions of release would be sufficient to ensure Mr. Azarnezhad's presence in the unlikely event that removal to a third country becomes possible. If released, the Rend Lake Mennonite Church in Ina, Illinois expressed its interest in assisting him with housing and employment. Exh. B, ¶ 8.

61. Finally, as discussed below, while ICE has attempted to expand its third country removal practices, these practices fail to follow statutory procedures outlined in the INA, the requirements of due process, and binding treaty obligations under the CAT, which ensure an individual has a meaningful notice and an opportunity to make a fear-based claim against removal to that country. Where, as here, the Petitioner has been detained for over six months with a final

order of removal, no ICE memo or practice authorizes the noncitizen's indefinite detention while the government endlessly pursues removal to a third country. ICE's efforts to expand third country removals do not displace the Supreme Court's decision in *Zadvydas* nor the requested relief in this case.

B. Procedural Due Process Limits to Detention

62. The Due Process Clause and the INA require the Government to give a noncitizen notice and a hearing where they can present evidence on their behalf to defend against his or her removal. *See* U.S. Const., Amend. V; 8 U.S.C. § 1229a(b)(4) (a noncitizen in removal proceedings "shall have a reasonable opportunity to examine the evidence against the [noncitizen], to present evidence on the [noncitizen's] own behalf, and to cross-examine witnesses presented by the Government"); *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings."); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Mathews v. Eldridge*, 424 U.S. 319, 332–33 (1976).

63. Further, "[n]oncitizens facing removal of any sort are entitled under international and domestic law to raise a claim under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2154 (2025) (Sotomayor, J., dissenting) (citing Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U. N. T. S. 113). "Article 3 of the Convention prohibits returning any person 'to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.'" *Id.* The United States is a party to the Convention and passed the Foreign Affairs Reform and Restructuring Act (FARRA) and subsequent regulations "to implement its commands." *Id.* Regulations implementing the Convention provide, among other things, that "[a] removal order .

. . shall not be executed in circumstances that would violate Article 3 . . . ." 28 C.F.R. § 200.1 (2024).

64. As multiple courts have recognized, due process is required as much for third country removals as for removal to a noncitizen's country of origin. *See Kuhai v. I.N.S.*, 199 F.3d 909, 913 (7th Cir. 1999) (holding that a noncitizen must be given the opportunity to brief removal to a third country when there was no indication during removal proceedings that the noncitizen could be removed there); *Mahdejian v. Bradford*, No. 25-cv-00191, 2025 WL 2269796, at *5 (E.D. Tex. July 3, 2025) (issuing temporary restraining order, where petitioner had been granted withholding of removal as to Iran, prohibiting DHS from removing him to a third country without notice and a meaningful opportunity to establish that his life or freedom would be threatened there); *Ortega v. Kaiser*, No. 25-cv-05259, 2025 WL 1771438, at *3 (N.D. Cal. June 26, 2025) (finding that where petitioner was granted CAT relief as to El Salvador, "there are no countries to which [petitioner] could currently be removed without his first being afforded notice and opportunity to be heard on a fear-based claim as to that country, as the Fifth Amendment Due Process Clause requires."); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (W.D. Wash. 2019) ("ICE's authority to remove a noncitizen to a country not specified in the immigration judge's order of removal" comes with "an affirmative obligation to make a determination regarding a noncitizen's claim of fear before deporting him."); *Su Hwa She v. Holder*, 629 F.3d 958, 965 (9th Cir. 2010) ("It follows that a failure to provide notice and, upon request, stay removal or reopen the case for adjudication of [the noncitizen's] applications as to Burma would constitute a due process violation *if* Burma becomes the proposed country of removal (as opposed to an alternative country of removal).") (superseded by statute on other grounds).

65. A fair hearing provides a noncitizen "an adequate opportunity to defend themselves against ... deportation[,]" including seeking protection from removal to an alternative country. *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998).

66. Recently, DHS introduced an unconstitutional policy for removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country. *See* March ICE Memo; July ICE Memo.

67. DHS's new third-country removal policy, as memorialized in its March and July ICE Memos, purports to expand DHS's authority as to third country removals. However, both memos fail to uphold DHS's constitutional obligations to provide adequate notice and the opportunity to be heard and are therefore unlawful. For example, the March ICE Memo provides no notice and no opportunity to apply for protection to noncitizens whom DHS seeks to remove to a country that it determines has provided "credible" "diplomatic assurances." *See* March ICE Memo. Meanwhile, the July ICE Memo purports to allow ICE to move forward with a third country removal with as little as six-hours' notice to the noncitizen. *See* July ICE Memo. As such, DHS' third-country removal policy fails to provide noncitizens with adequate notice and an opportunity to be heard, as is required by the INA, FARRA, and the Due Process Clause. The Massachusetts District Court recently reiterated this in *D.V.D. v. U.S. Department of Homeland Security*, holding specifically that the government's third-country removal policy, embodied in the March ICE Memo and the July ICE Memo, was unlawful because noncitizens have the "right to meaningful notice before removal to any third country" and the "right to a meaningful opportunity to raise a country-specific claim against removal before removal to any third country." 2026 WL 521557, at *44 (D. Mass. Feb. 25, 2026).

68. In April 2025, the U.S. District Court for the District of Massachusetts issued a nationwide preliminary injunction blocking such third country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture, in recognition that the government's policy violates due process and the United States' obligations under the Convention Against Torture. *D.V.D. v. Dep't. of Homeland Sec.*, 778 F.Supp.3d 355 (D. Mass. 2025).

69. In June 2025, the Supreme Court of the United States granted the government's motion to stay the district court's nationwide preliminary injunction. *See Dep't. of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). However, the Supreme Court's decision neither precludes the availability of individual habeas actions to challenge illegal third-country removals nor eliminates ICE's existing obligations under binding constitutional, statutory, and international law.

70. The Supreme Court's order in *D.V.D.*, which is not accompanied by an opinion, signals only disagreement with the nature, and not the substance, of the nationwide preliminary injunction.[5] The government's lead argument—that 8 U.S.C. § 1252(f)(1) deprived the district court of jurisdiction to enter class-based relief on a national basis—has no bearing on individual, as-applied habeas claims. *See* Application for a Stay at 19, *Dep't. of Homeland Sec. v. D.V.D.*, No. 24A1153 (U.S. May 27, 2025); 8 U.S.C. § 1252(f)(1) (limiting injunctive power "other than with respect to the application of such provisions to an individual [noncitizen]").

71. Moreover, the Supreme Court's stay of the nationwide injunction does not eliminate ICE's obligation to follow the law, despite its unenforceable policy. The Due Process Clause, the INA, and FARRA still require ICE to provide noncitizens with adequate notice and a

[5] Just days later, the Supreme Court published *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), in which it limited nationwide injunctions.

meaningful opportunity to raise any reasonable fear claims before it can send them to far corners of the planet where they have absolutely no connection whatsoever.

72. Recently the U.S. District Court issued another opinion in *D.V.D. v. U.S. Department of Homeland Security*, 2026 WL 521557 There, the court held that 8 C.F.R. § 1240.12(d) and requires the government "to first seek removal to the [noncitizen's] designated country of removal or specified alternative country or countries of removal, as provided in that [noncitizen's] final order of removal" prior to removing that noncitizen to any third country. *Id.*, at *44. Further, the court also held that 8 U.S.C. § 1231(b) requires the government "to first seek removal to that noncitizen's designated country of removal or country or countries of citizenship, if any," prior to removing a noncitizen. *Id.* The court also held that noncitizens have the "right to meaningful notice before removal to any third country," and "have the right to a meaningful opportunity to raise a country-specific claim against removal before removal to any third country." *Id.* The Court further held that the government's "third-country removal policy, as embodied in the [March ICE Memo] and the [July ICE Memo], is unlawful," and the Court set aside that policy. *Id.* The Court stayed this judgment for 15 days from the date the decision was issued on February 25, 2026. The government filed an emergency motion for stay pending appeal, and the First Circuit granted that motion on March 16, 2026. Here, Mr. Azarnezhad is stuck in perpetual, unconstitutional detainment. He is only designated to be removed to one country, Iran, but also has a final grant of withholding of removal as to Iran. The Government has not identified a potential third country for removal and has not indicated that it is even attempting to do so at this time. A detained noncitizen may not seek protection from any theoretical third country until the Government has affirmatively designated that country for removal. *See Hwa She*, 629 F.3d at 965 ("Under the plain wording of 8 C.F.R. § 1208.16, an applicant is not entitled to adjudication of an

application for withholding of removal to a country that nobody is trying to send them to.") (affirming pretermission of applications for asylum, withholding of removal, and CAT relief regarding Burma where the IJ had previously designated Burma and ultimately ordered the respondent removed to Taiwan) (superseded by statute on other grounds); *Yakubov v. Att'y Gen.*, 586 F. App'x 86, 87 (3d Cir. 2014) ("Yakubov's claim for [CAT] deferral [to Russia] will not become ripe unless and until the Government's efforts to remove him to Israel prove unsuccessful.").

73. Even in the extraordinary and, in this case, entirely hypothetical circumstance that the Government located a third country willing to accept Mr. Azarnezhad, and even if Mr. Azarnezhad's proceedings were reopened to seek protection from that alternative country, the Government would be months if not years away from being able to remove Mr. Azarnezhad to a third country upon completion of removal proceedings for that country. Absent this Court's intervention, Mr. Azarnezhad remains detained solely on the pretext of this hypothetical scenario.

74. The appropriate remedy for these violations of Mr. Azarnezhad's substantive and procedural due process rights is to order the government to immediately release him. *See Malam v. Adducci*, 452 F. Supp. 3d 643, 661 (E.D. Mich. 2020), as amended (Apr. 6, 2020) (*citing Swann v. Charlotte–Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15–16 (1971) ("Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.")).

CLAIMS FOR RELIEF

COUNT ONE

Respondents' Detention of Petitioner Violates the INA

75. Mr. Azarnezhad realleges and incorporates the allegations of all preceding paragraphs.

76. An Immigration Judge ordered Mr. Azarnezhad removed to Iran but simultaneously granted him withholding of removal to that country under INA § 241(B)(3), 8 U.S.C. § 1231(b)(3).

77. The Government waived appeal of the Immigration Judge's decision, rendering the Immigration Judge's withholding of removal grant administratively final as of the date it was issued. Thus, Mr. Azarnezhad has been detained with a final order of removal for longer than the six-month period contemplated by the Supreme Court.

78. The Government is now continuing to detain Mr. Azarnezhad while it purportedly explores removal to an alternative country.

79. Mr. Azarnezhad does not have citizenship, legal status, or any connections with another country that might make his removal to an alternative country even remotely likely. *See* 8 U.S.C. § 1231(b)(2)(D)-(E).

80. The Government cannot plausibly show that it will remove Mr. Azarnezhad to an alternative country in the reasonably foreseeable future.

81. Detention is only lawful when "necessary to bring about that [noncitizen's] removal." *Zadvydas*, 533 U.S. at 689.

82. Mr. Azarnezhad has presented "good reason to believe that there is no significant likelihood of [his] removal in the reasonably foreseeable future." *Id.* at 701.

83. The burden is on the government to provide "evidence sufficient to rebut that showing." *Id.*

84. The INA does not permit the government to detain Mr. Azarnezhad more than 180 days if there is none while it endlessly pursues removal to a third country, and such detention violates Mr. Azarnezhad's statutory rights. *See Zadvydas*, 533 U.S. at 689–90.

85. Additionally, detention is not reasonably related to its purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell*, 441 U.S. at 538. If necessary, an Order of Supervision would mitigate any risk of flight such that, in the highly unlikely event that the Government identifies an alternative country for removal, the Government would be able to effectuate removal.

COUNT TWO

Respondents' Detention of Petitioner Violates His Fifth Amendment Substantive Due Process Rights

86. Mr. Azarnezhad realleges and incorporates the allegations of all preceding paragraphs.

87. An Immigration Judge ordered Mr. Azarnezhad removed to Iran but simultaneously granted him deferral of removal to that country under the INA § 241(B)(3), 8 U.S.C. § 1231(b)(3).

88. The Government waived appeal of the Immigration Judge's decision, rendering the Immigration Judge's withholding of removal grant administratively final as of the date it was issued.

89. The Government is now continuing to detain Mr. Azarnezhad while it purportedly explores removal to an alternative country.

90. Mr. Azarnezhad does not have citizenship, legal status, or any connections with another country that might make his removal to an alternative country even remotely likely. *See* 8 U.S.C. § 1231(b)(2)(D)-(E).

91. The Government cannot plausibly show that it will remove Mr. Azarnezhad to an alternative country.

92. Detention is only lawful when "necessary to bring about that [noncitizen's] removal." *Zadvydas*, 533 U.S. at 689.

93. The due process clause does not permit the government to detain Mr. Azarnezhad indefinitely while it endlessly pursues removal to a third country, and such detention violates Mr. Azarnezhad's substantive due process rights. *See Zadvydas*, 533 U.S. at 689–90.

94. Additionally, detention is not reasonably related to its purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell*, 441 U.S. at 538. If necessary, an Order of Supervision would mitigate any risk of flight such that, in the highly unlikely event that the Government identifies an alternative country for removal, the Government would be able to effectuate removal.

COUNT THREE

Respondents' Detention of Petitioner Violates His Fifth Amendment Procedural Due Process Rights, the Convention Against Torture and its Implementing Regulations, and the Administrative Procedure Act

95. Mr. Azarnezhad realleges and incorporates the allegations of all preceding paragraphs.

96. The Government—having failed before now to designate any country other than Iran for removal—cannot remove Mr. Azarnezhad to some other country without providing procedural protections.

97. ICE has detained Mr. Azarnezhad since October 2024, more than 16 months, including 354 days after his removal order and grant of withholding of removal. Although the Government is purportedly detaining Mr. Azarnezhad for the purposes of trying to remove him to

another country, Mr. Azarnezhad has received no notice as to which countries the Government may be considering and no opportunity to challenge those efforts. Nor have immigration officers asked him to participate in submitting an application for travel documents to another country or countries.

98. The Due Process Clause, the INA, the Convention Against Torture, and implementing regulations require the Government to give a noncitizen notice and an opportunity to respond to any third country removal in reopened removal proceedings. *See* U.S. Const., Amend. V; 8 U.S.C. § 1229a(b)(4) (an immigrant in removal proceedings "shall have a reasonable opportunity to examine the evidence against the [noncitizen], to present evidence on the [noncitizen's] own behalf, and to cross-examine witnesses presented by the Government"); *Mathews*, 424 U.S. at 332–33; *see also Kuhai*, 199 F.3d at 913; 28 C.F.R. § 200.1 ("[a] removal order ... shall not be executed in circumstances that would violate Article 3 [of the CAT]"). Respondents' March and July Memos for third country removals violate all of these laws because these policies direct ICE agents to remove individuals to third countries without any notice or process at all where diplomatic assurances are received and, where no diplomatic assurances are received, to provide flagrantly insufficient notice (6-24 hours) and opportunity to respond, in violation of the statute, regulations, and Fifth Amendment.

99. Mr. Azarnezhad has a fear-based claim against deportation to other countries besides Iran. *See, e.g.*, CNN, *Eswatini receives 10 third-country deportees from US*, Oct. 6, 2025, https://www.cnn.com/2025/10/06/africa/eswatini-deportees-united-states-intl-latam (describing how the Eswatini government is keeping noncitizens removed there from the United States "in correctional facilities until they could be repatriated to their home countries"); Inter-American Commission on Human Rights, *IACHR and United Nations Experts: States Must Protect the*

Rights of Persons in Human Mobility, Sept. 18, 2025, https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2025/190.asp&utm_term=cl...; Exh. B, ¶ 5. Mr. Azarnezhad fears removal to many other countries, including the Latin American countries he traveled through to reach the United States. While in transit, Mr. Azarnezhad did not feel safe in these countries, given the high levels of violence and organized crime, specifically involving the cartels in those countries. *Id.* Thus, any possible third country removal would at minimum trigger additional hearings, new removal proceedings, and multiple additional months of detention.

100. Considering the slim likelihood of removal to a third country, the absence of any plausible third country for removal, the Government's failure to identify to Mr. Azarnezhad any third country or countries currently under consideration, and the statutory regime created by Congress, procedural due process is offended by Mr. Azarnezhad's ongoing detention.

101. Where the sole permissible purpose of detention is to effectuate removal, and where Mr. Azarnezhad has already been granted withholding of removal to the only country designated for removal by the Government, and where the Government cannot indicate any plausible alternative country for removal, the likelihood of erroneous deprivation of liberty is at its apex.

102. Further, the Government regularly employs conditions of release by utilizing Orders of Supervision. *See* 8 C.F.R. § 241.5(a). Because the Government could continue investigating potential third country removal, and because the Government would have ongoing access to Mr. Azarnezhad, as necessary, his release from custody would impose no harm to the Government.

103. By contrast, Mr. Azarnezhad's ongoing deprivation of liberty in immigration detention imposes an ongoing and very heavy cost on him.

104. The balance of these factors tips strongly in Mr. Azarnezhad's favor, such that the Government's continued detention of him violates his procedural due process rights.

PRAYER FOR RELIEF

Petitioner prays this Court grant the following relief:

1. Assume jurisdiction over this matter;

2. Pursuant to 28 U.S.C. § 2243, issue an order directing Respondents to show cause within three days why the writ should not be granted;

3. Declare that Mr. Azarnezhad's continued detention violates the Immigration and Nationality Act because Respondents have not met their burden to demonstrate that removal is significantly likely in the reasonably foreseeable future.

4. Declare that Mr. Azarnezhad's continued detention is without a legitimate governmental purpose and violates his substantive due process rights because Respondents cannot show any plausibility that Mr. Azarnezhad will be removed to an alternative country;

5. Declare Mr. Azarnezhad's continued detention violates his procedural due process rights because Respondents have failed to provide Mr. Azarnezhad with adequate procedural safeguards to ensure that his continued detention is justified;

6. Declare that, if the Government purports to identify any third country willing to accept Mr. Azarnezhad, the Government will be required to provide Mr. Azarnezhad adequate notice and an opportunity to be heard regarding removal to that country;

7. Grant the writ of habeas corpus and order that Respondents release Mr. Azarnezhad from detention; and

8. Grant any other and further relief that this Court deems just and proper.

Dated: **March 27, 2026**

By: /s/ *Jennifer Hackman*
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VERIFICATION

I, s/ Jennifer Hackman hereby declare under penalty of perjury pursuant to 28 U.S.C. § 2242 that, on information and belief, the factual statements in the foregoing Petition for Habeas Corpus are true and correct.

Dated: March 27, 2026