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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RUEDA PENA, Zereth

CASE NO.: '26CV2804 JES DDL

Petitioner-Plaintiff,

vs.

**PETITION FOR WRIT OF
HABEAS CORPUS AND ORDER
TO SHOW CAUSE WITHIN
THREE DAYS; COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

**CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center;
PATRICK DIVVER, Field Office
Director, San Diego Office of Detention
and Removal, U.S. Immigration and
Customs Enforcement; TODD M.
LYONS, Acting Director, U.S.
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
and MARKWAYNE MULLIN,
Secretary, U.S.
Department of Homeland Security,**

**CHALLENGE TO UNLAWFUL
INCARCERATION AND
PROLONGED DETENTION;
REQUEST FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Respondents-Defendants.

1 Petitioner Zareth Rueda Pena petitions this Court for a writ of habeas corpus
2 under 28 U.S.C. § 2241 to remedy Respondents' detaining her unlawfully, and for a
3 prolonged period, and states as follows:
4

5 **INTRODUCTION**

6 1. Petitioner Zareth Rueda Pena ("Petitioner" or "Ms. Rueda Pena") is in the
7 physical custody of Respondents at Otay Mesa Detention Center. She has
8 been detained for over 15.5 months. She won her immigration case and was
9 granted Withholding of Removal over 5 months ago on November 21,
10 2025. This Court should "join[] the majority of courts across the country in
11 concluding that [her] unreasonably prolonged detention violates due
12 process." *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020)
13 (Battaglia, J.). Additionally, because of newly emerging evidence that the
14 neutrality of Otay Mesa's immigration judges ("IJ") has been compromised,
15 and some IJs and the Department of Homeland Security ("DHS") have
16 implemented strategies to detain bond-worthy habeas petitioners, a bond
17 hearing before a randomly selected IJ will no longer reliably satisfy due
18 process. This Court should therefore consider the alternative forms of relief
19 set forth at the end of this petition.
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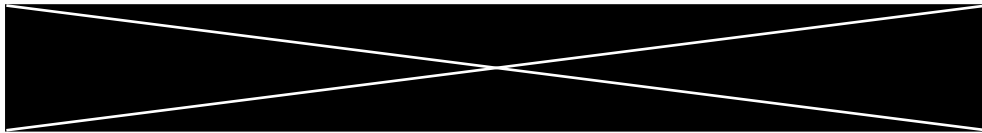
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STATEMENT OF FACTS

2. Petitioner was born in Bucaramanga, Colombia on [REDACTED] On or about January 18, 2025, Petitioner entered the United States and received a positive credible fear finding. *See Exhibit A – Credible Fear Interview Analysis*. She has been detained ever since. Removal Proceedings commenced entitling her to present her asylum claim with the due process rights under 8 U.S.C. § 1229a. She attended her first hearing on or around February 06, 2025. She has attended all hearings since. She obtained an attorney on April 01, 2025, when Pro Bono Counsel David Szeles was assigned to her by the County of San Diego Immigrant Legal Defense Program. *See Exhibit B - Form EOIR 28*. She filed her I-589 Application quickly thereafter on April 05, 2025. *See Exhibit C – 1st page of I-589 showing file upload date*.

3. On November 21, 2025, Petitioner was granted Withholding of Removal under INA 241(b)(3). *See Exhibit D – IJ Grant of Withholding*. Petitioner was persecuted in Colombia on account of her membership of a particular social group – belonging and identifying as a part of the LGBTQIA+ community. The persecution she suffered in Colombia included being

[REDACTED]



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4. While respondents may not remove Petitioner to Colombia, they may seek
- 5 to remove her to another country. This prerogative however is not
- 6 boundless. The INA provides a hierarchical list of countries to which a
- 7 person may be removed. In most cases, the INA commands that a person be
- 8 removed to a place they choose or some other country to which they have a
- 9 close connection. See 8 USC 1231(b)(2). Only if the removal to one of
- 10 these countries is “impracticable, inadvisable, or impossible” may the DHS
- 11 remove a person to some other, third country – a country that is not
- 12 designated in the removal order. 8 USC 1231(b)(2)(E)(vii).
- 13
- 14
- 15
- 16 5. The INA, the Foreign Affairs Reform Restructuring Act of 1998 (FARRA),
- 17 and their implementing regulations ensure that prior to any removal,
- 18 Respondents must provide Petitioner an opportunity to present a claim of
- 19 fear of torture or persecution as to the third country. Specifically, pursuant
- 20 to 8 U.S.C. § 1231(b)(3), Respondents may not remove persons who are
- 21 more likely than not to face persecution if removed. And pursuant to the
- 22 Convention Against Torture (CAT), which is codified as a statutory note to
- 23 § 1231, Respondents may not remove persons to a country where they are
- 24 likely to face torture.
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1 6. The Due Process Clause of the Fifth Amendment also requires that, prior to
2 a third-country removal, Petitioner receive meaningful notice and
3 opportunity to access these mandatory statutory protections. As the
4 Supreme Court recently held in *A.A.R.P. v. Trump*, this means a person
5 “must receive notice” that “they are subject to removal” (here, to a third
6 country), and such notice must be provided “within a reasonable time and in
7 such a manner as will allow the[] [noncitizen] to actually seek . . . relief.”
8 605 U.S. 91, 95 (2025) (per curiam) (quoting *Trump v. J.G.G.*, 604 U.S.
9 670, 673 (2025)).

10 7. On or around April 15, 2026, over 3.5 months after the grant of
11 Withholding of Removal, Respondents tried to remove Petitioner to the
12 Republic of Congo. A short time prior, she had been transferred to a
13 Detention Center in South Louisiana from Otay Mesa. Undersigned
14 counsel’s office received a frantic call from Petitioner stating that she was
15 being boarded onto a plane with other Colombians being removed to
16 Congo. She stated that she was never told she was being removed and was
17 never given any notice. She was not given the opportunity to present any
18 fear based claims.

19 8. Respondents did not provide any meaningful notice or opportunity for
20 petitioner to present a fear-based claim before being boarded onto the flight
21

1 to Congo. There was no mechanism presented to Petitioner to raise her
2 statutory rights for protections as required. Petitioner's counsel emailed
3 DHS counsel asking how this removal was even possible when DHS had an
4 interlocutory appeal pending before the BIA and there was an automatic
5 stay. *See Exhibit E – Emails to DHS Counsel.*

7
8 9. Accordingly, Petitioner seeks an order that employs existing DHS screening
9 mechanisms and requires Respondents (1) to inform her and counsel in
10 writing of any planned removal to Congo (or any other third country) at
11 least ten days prior to removal, (2) to provide a reasonable fear interview
12 (RFI) given Petitioner expressed fear of removal, and (3) if the RFI is
13 denied, to provide fifteen days to file a motion to reopen with the
14 immigration court.
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16
17 10. Respondents have kept Ms. Rueda Pena detained without a meaningful
18 opportunity to seek a bond or custody redetermination hearing. *See* 8 U.S.C.
19 § 1225. Respondents do so based not on Ms. Rueda Pena's personal
20 circumstances or individualized facts. Due to her detention, Ms. Rueda Pena
21 is at risk of being transferred away from the Southern District of California
22 while she remains in Respondents' physical and legal custody. She has been
23 transferred repeatedly. After being transferred to Louisiana, she has been
24 transferred to Texas and Arizona and now back to Otay Mesa.
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1 11.The Constitution protects Ms. Rueda Pena—and every other person present
2 in this country—from arbitrary deprivations of her liberty and guarantees
3 her due process of law. The government’s power over immigration is broad,
4 but as the Supreme Court has declared, it “is subject to important
5 constitutional limitations.” *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).
6 “Freedom from bodily restraint has always been at the core of the liberty
7 protected by the Due Process Clause from arbitrary governmental action.”
8 *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

11 12.Ms. Rueda Pena seeks declaratory and injunctive relief to compel her
12 immediate release from the immigration jail where she has been held by
13 DHS since being unlawfully detained on or about January 18, 2025, without
14 first being provided a due process hearing to determine whether her
15 incarceration is justified.

18 13.Absent review in this Court, no other neutral adjudicator will examine Ms.
19 Rueda Pena’s plight: Respondents will continue—unchecked—to detain her
20 unlawfully under 8 U.S.C. § 1225(b)(1), INA § 235(b)(1), without due
21 process.

23 14.For the reasons outlined below, Ms. Rueda Pena’s arrest and inability to
24 contest her arbitrary detention violate her statutory and constitutional rights,
25 including Due Process protections under the U.S. Constitution. Ms. Rueda
26

1 Pena respectfully requests that this Court should grant the instant petition
2 for a writ of habeas corpus, without any bond requirement, and for
3 declaratory and injunctive relief, to prevent such harms from recurring. Ms.
4 Rueda Pena also asks this Court to find that Respondents' attempts to
5 detain, transfer, and deport her are arbitrary and capricious and in violation
6 of the law, and to immediately issue an order preventing her transfer out of
7 this district.
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10 **JURISDICTION**

11 15. Petitioner is in the physical custody of Respondents. Petitioner is detained
12 at Otay Mesa Detention Center in San Diego, California.
13

14 16. This action arises under the Constitution of the United States and the
15 Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.*
16

17 17. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas
18 corpus), 28 U.S.C. § 1331 (federal question jurisdiction), art. I, § 9, cl. 2 of
19 the United States Constitution (Suspension Clause), and 28 U.S.C. § 1346
20 (U.S. as defendant), and 28 U.S.C. § 1651 (All Writs Act).
21

22 18. Federal district courts have jurisdiction to hear habeas claims brought by
23 noncitizens challenging the lawfulness of their detention. *See Demore v.*
24 *Kim*, 538 U.S. 510, 516-17 (2003) (recognizing habeas jurisdiction over
25 immigration detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 787
26
27

(2001) (same); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *3 (D. Or. July 9, 2025) (same); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (same).

19. 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.*, the All Writs Act, 28 U.S.C. § 1651, and the Court's inherent equitable powers.

20. Nothing in 8 U.S.C. § 1252 deprives this Court of jurisdiction. Specifically, § 1252(a)(5) and (b)(9) do not apply here. Petitioner does not seek "judicial review of an order of removal entered or issued," 8 U.S.C. § 1252(a)(5), because Petitioner's final removal order here designates a country different than the one to which Respondents have recently sought to remove her. *See Ibarra-Perez v. United States*, No. 24-631, --- F.4th, 2025 WL 2461663, at *9–10 (9th Cir. Aug. 27, 2025).

21. Similarly, § 1252(b)(9) "consolidates" a "noncitizen's various challenges arising from the removal proceeding" into "a petition for review [before] the courts of appeals." *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (quoting *INS v. St. Cyr*, 533 U.S. 289, 313 n. 37 (2001)). However, again, one of Petitioner challenges is Respondents' actions to seek removal to a new, third country *after* removal proceedings were completed. Such an action cannot be

1 challenged via a petition for review, because there is no final removal order
2 designating the third country for removal that a court of appeals could
3 review. *Ibarra-Perez*, 2025 WL 2461663, at *9–10.
4

5 22. Subsection 1252(g), which bars claims that challenge DHS’s decision to
6 “execute [a] removal order[,],” also does not prevent relief. This “narrow”
7 subsection, *DHS v. Regents of the Univ. of Calif.*, 591 U.S. 1, 19 (2020), does
8 not “sweep in any claim that can technically be said to ‘arise from’ the three
9 listed actions” in § 1252(g), *Jennings v. Rodriguez*, 583 U.S. 281, 294
10 (2018). Rather than encompass “all deportation-related cases,” *Reno v. Am.-*
11 *Arab Anti-Discrimination Comm. (AADAC)*, 525 U.S. 471, 478 (1999), §
12 1252(g) was “designed to give some measure of protection to ‘no deferred
13 action’ decisions and similar discretionary determinations,” *id.* at 485. Here,
14 Petitioner does not challenge any exercise of discretion by Respondents.
15 Instead, one thing Petitioner seeks is an order requiring Respondents to
16 comply with their mandatory duties to afford protection procedures pursuant
17 to 8 U.S.C. § 1231(b)(3) and the Convention Against Torture. *See Ibarra-*
18 *Perez*, 2025 WL 2461663, at *6–8.
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24 23. Finally, nothing in FARRA bars this case. Section 2242(d) of FARRA limits
25 review of “regulations adopted to implement [CAT].” Here, however,
26 Petitioner does not challenge the CAT regulations. Instead, she seeks an
27

1 order that requires Respondents to provide her with a process to access
2 withholding and CAT, as federal law requires.

3 24. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory
4 Judgment Act, 28 U.S.C. § 2201 *et seq.*, the All Writs Act, 28 U.S.C. § 1651,
5 the Suspension Clause, and the Court's inherent equitable powers.
6

7 **VENUE**
8

9 25. Venue is proper because Petitioner is in Respondents' legal and physical
10 custody at Otay Mesa Detention Center in San Diego, California. Venue is
11 further proper because a substantial part of the events or omissions giving
12 rise to Petitioner's claims occurred in this District, where Petitioner is now
13 in Respondents' legal and physical custody, including her current and
14 ongoing detention under the legal and physical custody of Respondent
15 LaRose, warden of Otay Mesa Detention Center. 28 U.S.C. § 1391(e);
16 *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (habeas petition must be
17 addressed to the federal district court of confinement); *Wairimu v. Dir.*,
18 *Dep't of Homeland Sec.*, No. 19-CV-174-BTM-MDD, 2019 WL 460561, at
19 *2 (S.D. Cal. Feb. 5, 2019) (district of confinement is the preferable forum
20 even if the Court otherwise has personal jurisdiction). For these same
21 reasons, venue should be found proper under Local Civil Rule HC.1.
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CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

26. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to the Respondents “forthwith,” unless 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.*

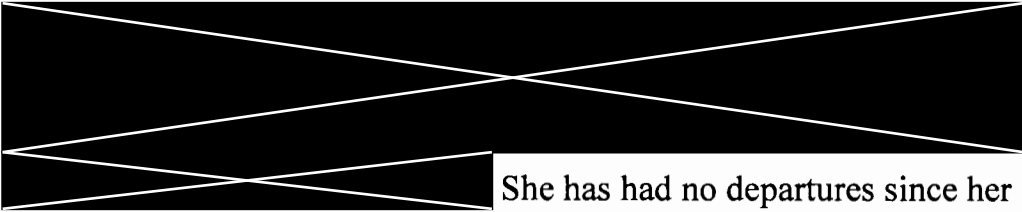
27. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases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

28. Ms. Rueda Pena is “in custody” for the purpose of 28 U.S.C. § 2241 because she was arrested by Respondents and remains in their legal and physical custody at Otay Mesa Detention Center in San Diego, California. She is under Respondents’ and their agents’ direct control.

PARTIES

29. Ms. Rueda Pena (“Petitioner”) is a 26-year-old citizen and national of Colombia. She left Colombia on January 16, 2025, and came to the USA on January 18, 2025, to seek asylum, withholding of removal, or protection

1 under the Convention Against Torture after fleeing persecution in Colombia
2 on account of her membership in a particular social group – LGBTQIA. The
3 persecution she suffered in Colombia included 

4
5  She has had no departures since her

8 arrival. She is not married. She has no children. She has no criminal arrests,
9 charges or convictions. Since the arrest on or about January 18, 2025, Ms.
10 Rueda Pena has remained in DHS custody.
11

12
13 30. Ms. Rueda Pena is currently residing in Respondents' custody at Otay Mesa
14 Detention Center in San Diego, California, as of the time of the filing of this
15 petition.
16

17 31. Respondent Christopher LaRose ("LaRose") is the Senior Warden at Otay
18 Mesa Detention Center in San Diego, California, where Ms. Rueda Pena is
19 detained. LaRose is responsible for the day-to-day operations and
20 confinement of non-citizens detained at that facility. He acts at the direction
21 of Respondents Divver, Lyons, and Mullin. LaRose is a custodian of Ms.
22 Rueda Pena and is named in his official capacity.
23

24
25 32. Respondent Patrick Divver ("Divver") is the Field Office Director of ICE in
26 San Diego, California. He acts at the direction of Respondents Lyons and
27

1 Mullin. ICE is responsible for local custody decisions relating to non-
2 citizens charged with being removable from the U.S., including the arrest,
3 detention, custody status, and removal of non-citizens. The San Diego Field
4 Office's area of responsibility includes San Diego and Imperial Counties in
5 California. Respondent Divver is a custodian of Ms. Rueda Pena and is
6 named in his official capacity.
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8
9 33. Respondent Todd Lyons ("Lyons") is the Acting Director of ICE, and he
10 has authority over the actions of Respondents LaRose and Divver. ICE is
11 responsible for local custody decisions relating to non-citizens charged with
12 being removable from the U.S., including the arrest, detention, custody
13 status, and removal of non-citizens. Respondent Lyons is a custodian of Ms.
14 Rueda Pena and is named in his official capacity.
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16
17 34. Respondent Markwayne Mullin ("Mullin") is the Secretary of DHS and has
18 authority over the actions of all other DHS Respondents in this case, as well
19 as all operations and federal agencies of DHS, including ICE. In his
20 capacity as Secretary of DHS, Respondent Mullin is charged with faithfully
21 administering the immigration and naturalization laws of the United States.
22 8 U.S.C. § 1103(a). Respondent Mullin is a custodian of Ms. Rueda Pena
23 and is named in his official capacity.
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1 35. Respondent ICE is responsible for local custody decisions relating to non-
2 citizens charged with being removable from the U.S., including the arrest,
3 detention, custody status, and removal of non-citizens.

4
5 36. Respondent DHS is the federal agency that has authority over the actions of
6 ICE and all other DHS Respondents.

7
8 37. This action is commenced against Respondents LaRose, Divver, Lyons, and
9 Mullin (collectively, "Respondents") all in their official capacities.

10 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

11 38. Petitioner has no administrative remedies to exhaust. She filed for a bond on
12 or around April 22, 2025. At her bond hearing, DHS argued lack of
13 jurisdiction under Matter of MS because petitioner had a positive credible
14 fear interview. The bond request was then withdrawn for lack of
15 jurisdiction. The bond request was then withdrawn for lack of
16 jurisdiction. *See Exhibit F - IJ Bond Order*. She has no other available
17 remedies.
18

19 39. Ms. Rueda Pena received an NTA ("Notice to Appear") on January 27,
20 2025, which was then filed before the Otay Mesa Immigration Court to
21 initiate her INA section 240 immigration proceedings on or around
22 February 6, 2025. *See Exhibit G – NTA*. She has fully cooperated with
23 Respondents and has not delayed or obstructed her detention.
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1 40. Therefore, a writ of habeas corpus is the sole avenue to vindicate Ms. Rueda
2 Pena's constitutional, statutory, and regulatory rights and restore her liberty.

3 **LEGAL FRAMEWORK**

4
5 **I. The INA's Scheme for Determining the Country of Removal**

6 41. Most noncitizens facing removal are placed into removal proceedings under
7 8 U.S.C. § 1229a.

9 42. Typically, at the outset of such a removal proceeding, the parties or the
10 immigration judge designates a country of removal. *See Imm. Ct. Prac.*
11 *Manual* § 4.15(i).

12 43. As relevant here, the INA "provides four consecutive removal commands"
13 about where to remove a noncitizen. *Jama v. ICE*, 543 U.S. 335, 341 (2005).

14 44. First, in most cases, the noncitizen must be provided the opportunity to
15 "designate one country to which the [noncitizen] wants to be removed." 8
16 U.S.C. § 1231(b)(2)(A)(i).

17 45. Second, if the noncitizen declines to designate a country—which often
18 occurs where the noncitizen fears return to their country of origin—DHS
19 then designates the "country of which the [noncitizen] is a subject, national,
20 or citizen" for removal, as required by statute. *Id.* § 1231(B)(2)(D). The
21 statute requires DHS to attempt removal to these countries before seeking
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alternatives. *See id.* § 1231(b)(1), (b)(2)(A), (D) (repeatedly instructing where DHS “shall” remove someone by order of priority).

46. Third, if DHS is unable to remove the individual to either the country of their designation or the country of which they are a subject, national, or citizen, then the government is required to remove them to any of the following options: (1) “[t]he country from which the [noncitizen] was admitted to the United States;” (2) “[t]he country in which is located the foreign port from which the [noncitizen] left for the United States or for a foreign territory contiguous to the United States;” (3) “[a] country in which the [noncitizen] resided before [they] entered the country from which [they] entered the United States;” (4) “[t]he country in which the [noncitizen] was born;” (5) “[t]he country that had sovereignty over the [noncitizen’s] birthplace when the [noncitizen] was born;” or (6) “the country in which the [noncitizen’s] birthplace is located when the [noncitizen] is ordered removed.” *Id.* § 1231(b)(2)(E).

47. Finally, only where it is “impracticable, inadvisable, or impossible to remove the [noncitizen] to each country described” above may DHS seek removal to some other alternative country. *See id.* § 1231(b)(2)(E)(vii).

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II. Withholding of Removal and the Convention Against Torture

48.U.S. immigration law affords noncitizens in the United States three forms of protection from persecution and/or torture: asylum, withholding of removal, and protection under the Convention Against Torture (CAT).

49.Asylum typically provides full protection against deportation to any country. *See* 8 U.S.C. § 1158(c). This means the person cannot be deported not only to their country of origin, but also any other country. Asylum also provide a host of other benefits, including a pathway to citizenship.

50.Individuals who are not eligible for asylum, e.g., because they did not apply within one year of entering the country, *see id.* § 1158(a)(2)(B), may qualify for withholding of removal, *id.* § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a “mandatory” protection that prohibits removal to a designated country where a noncitizen establishes that they are more likely than not to face persecution. *INS. v. Aguirre-Aguirre*, 526 U.S. 415, 419 (1999). Withholding of removal also contains exceptions for, inter alia, individuals who have committed certain serious crimes. *See* 8 U.S.C. § 1231(b)(3)(B).

51.Finally, pursuant to FARRA, Congress instructed that the U.S. government may not “expel, extradite, or otherwise effect the involuntary return of *any person* to a country in which there are substantial grounds for believing the

1 person would be in danger of being subjected to torture.” Pub. L. 105-277
2 Div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1999) (codified as
3 statutory note to § 1231). This mandate applies to all persons and contains
4 no exceptions.
5

6 52.DHS has implemented withholding and CAT protections via regulation. *See*
7 *generally* 8 C.F.R. §§ 208.16–208.18, 1208.16–1208.18.
8

9 53.Individuals can appeal the denial of an application for withholding of
10 removal or CAT protection to the Board of Immigration Appeals (BIA) and
11 later to the courts of appeals. *See* 8 U.S.C. § 1252(a); 8 C.F.R. §§ 208.31(e),
12 1208.31(e), (g)(2)(ii), 1240.15; *Nasrallah*, 590 U.S. at 575.
13

14 54.No matter where DHS seeks to remove a person, the INA’s protections
15 against removal to a country where a person may face persecution and
16 FARRA’s protections against removal to a country where a person may face
17 torture apply.
18

19 55.Removals pursuant to § 1231(b) are “subject to paragraph (3),” which, as
20 noted, provides the framework for withholding of removal. *See* 8 U.S.C. §
21 1231(b); *see also, e.g., Jama*, 543 U.S. at 348.
22

23 56.Similarly, FARRA and the regulations implementing CAT prohibit
24 deportation to a country where the noncitizen will face torture. *See* FARRA
25 § 2242(b); 8 C.F.R. §§ 208.16(c)–208.18, 1208.16(c)–1208.18.
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**DETENTION OF NON-CITIZENS GRANTED WITHHOLDING OF
REMOVAL OR RELIEF UNDER THE CONVENTION AGAINST
TORTURE.**

I. Statutory Framework

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

58. To avoid “indefinite detention” that would raise “serious constitutional concerns,” the Supreme Court in *Zadvydas* construed § 1231(a)(6) to contain an implicit time limit. 533 U.S. at 682. *Zadvydas* dealt with two non-citizens who could not be removed to their home country or country of citizenship due to bureaucratic and diplomatic barriers. The Court held

1 that § 1231(a)(6) authorizes detention only for “a period reasonably
2 necessary to bring about the [non-citizen]’s removal from the United
3 States.” *Id.* at 689. Six months of post-removal order detention is
4 considered “presumptively reasonable.” *Id.* at 701.
5

6 59. But the “*Zadvydas* Court did not say that the presumption is irrebuttable,
7 and there is nothing inherent in the operation of the presumption itself that
8 requires it to be irrebuttable.” *Cesar v. Achim*, 542 F. Supp. 2d 897, 903
9 (E.D. Wis. 2008). “Within the six-month window,” the non-citizen bears
10 the burden of “prov[ing] the unreasonableness of detention.” *Id.* After six
11 months of detention, if there is “good reason to believe that there is no
12 significant likelihood of removal in the reasonably foreseeable future,” the
13 burden shifts to the Government to justify continued detention. *Zadvydas*,
14 533 U.S. at 701; *see also Cesar*, 542 F. Supp. 2d at 903 (“[T]he
15 presumption scheme merely suggests that the burden the detainee must
16 carry within the first six months of [post- order] detention is a heavier one
17 than after six months has elapsed”).
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22 **II. Regulations**

23 60. DHS regulations provide that, before the end of the 90-day removal period
24 that ensues upon a non-citizen’s removal order becoming final, the local
25 ICE field office with jurisdiction over the non-citizen’s detention must
26
27

1 conduct a custody review to determine whether the non-citizen should
2 remain detained. *See* 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). If the non-
3 citizen is not released following the 90-day custody review, jurisdiction
4 transfers to ICE Headquarters (ICE HQ), *id.* § 241.4(c)(2), which must
5 conduct a custody review before or at 180 days. *Id.* § 241.4(k)(2)(ii). In
6 making these custody determinations, ICE considers several factors,
7 including whether the non-citizen is likely to pose a danger to the
8 community or a flight risk if released. *Id.* § 241.4(e). If the factors in §
9 241.4 are met, ICE must release the non-citizen under conditions of
10 supervision. *Id.* § 241.4(j)(2).

11
12
13
14 61. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that
15 established “special review procedures” to determine whether detained
16 non-citizens with final removal orders are likely to be removed in the
17 reasonably foreseeable future. *See Continued Detention of Aliens Subject*
18 *to Final Orders of Removal*, 66 Fed. Reg. 56,967 (Nov. 14, 2001). While
19 8 C.F.R. § 241.4’s custody review process remained largely intact,
20 subsection (i)(7) was added to include a supplemental review procedure
21 that ICE HQ must initiate when “the [non-citizen] submits, or the record
22 contains, information providing a substantial reason to believe that
23 removal of a detained [non-citizen] is not significantly likely in the
24
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27

1 reasonably foreseeable future.” *Id.* § 241.4(i)(7).

2 62. Under this procedure, ICE HQ evaluates the foreseeability of removal by
3 analyzing factors such as the history of ICE’s removal efforts to third
4 countries. *See id.* § 241.13(f). If ICE HQ determines that removal is not
5 reasonably foreseeable but nonetheless seeks to continue detention based
6 on “special circumstances,” it must justify the detention based on narrow
7 grounds such as national security or public health concerns, *id.* §
8 241.14(b)-(d), or by demonstrating by clear and convincing evidence
9 before an IJ that the non-citizen is “specially dangerous.” *Id.* § 241.14(f).
10
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14 **RETROACTIVE FINALITY APPLIES BECAUSE DHS HAS**
15 **WITHDRAWN THEIR APPEAL. THE MANDATORY 90 DAY PERIOD**
16 **THEREFORE REVERTS BACK TO THE ORIGINAL IJ DECISION DATE**
17 **OF NOVEMBER 21, 2025. THE MANDATORY PERIOD HAS PASSED**
18 **AND PETITIONER’S PROLONGED DETENTION IS**
19 **UNCONSTITUTIONAL.**
20
21

22 63. Under 8 CFR 1003.4 in any case in which an appeal has been taken, the
23 party taking the appeal may file a written withdrawal thereof with the
24 office at which the notice of appeal was filed. If the record in the case has
25 not been forwarded to the Board on appeal in accordance with 8 CFR §
26
27

1 1003.5, the decision made in the case shall be final to the same extent as
2 if no appeal had been taken. If the record has been forwarded on appeal,
3 the withdrawal of the appeal shall be forwarded to the Board and, if
4 no decision in the case has been made on the appeal, the record shall be
5 returned and the initial decision shall be final to the same extent as if no
6 appeal had been taken. If a decision on the appeal has been made by
7 the Board in the case, further action shall be taken in accordance
8 therewith.
9

10
11 64. When the government (DHS) withdraws an appeal, the "administratively
12 final" date—which triggers the 90-day removal period under 8 U.S.C. §
13 1231(a)(1)(B)(i)—reverts to the original date of the IJ's order.
14

15 65. In Petitioner's case, DHS filed an interlocutory appeal on December 12,
16 2025, appealing the IJ's decision to deny DHS motion to pretermite. See
17 *Exhibit H- DHS Interlocutory Appeal*. Petitioner filed a reply motion to
18 that appeal, but did not herself appeal any decision of the Immigration
19 Judge. See *Exhibit I - Petitioner Reply Motion*.
20

21
22 66. On April 16, 2026, **125 days** after filing, the entirety of which petitioner
23 remained detained, DHS withdrew their interlocutory appeal.
24

25 67. On April 24, 2026, the BIA ordered the appeal withdrawn and the record
26 return to the immigration court without further action [as no other appeals
27

1 are pending]. *See Exhibit J -BIA Order*

2 68. Petitioner never received any notice of any other appeals filed beyond the
3 interlocutory appeal and the BIA order confirms nothing else is pending.
4

5 69. Since the BIA confirmed DHS appeal has been withdrawn, the IJ order
6 granting Withholding on November 21, 2025 is administratively final.

7 The withdraw of an appeal is as if no appeal was ever filed. See 8 CFR
8 1003.4 ; 8 U.S.C. § 1231(a)(1)(B)(i)
9

10 70. Immigration detention should not be used as a punishment and should only
11 be used when, under an individualized determination, a noncitizen is a flight
12 risk because they are unlikely to appear for immigration court or a danger to
13 the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
14

15 71. On information and belief, Respondents are using the immigration detention
16 system, including extra-territorial transfer and detention, as a means to
17 punish individuals for asserting rights under the Refugee Act.
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1 **MINDFUL OF THIS COURT'S FOCUS ON UNUSUAL OR ARBITRARY**
2 **DELAYS NOT ATTRIBUTABLE TO THE PETITIONER, MS. RUEDA PENA**
3 **BRINGS ONE UNIQUE CASE FACTOR TO THIS COURT'S ATTENTION:**
4

5 **I. DHS and the Immigration Judge each caused significant delays in their**
6 **own accord.**

7
8 72. Petitioner asked to set a final merits hearing date at her Master Calendar
9 Hearing on June 25, 2025. The Judge set the merits date for September 12,
10 2025. *See Exhibit K – Hearing Notice setting Merits date.* The Court then
11 rescheduled sua sponte to September 26, 2025. *See Exhibit L – Merits reset*
12 *hearing notice.* Respondent remained detained for **93 days** awaiting her
13 merits date from the date she asked for it to be scheduled.
14

15
16 73. Respondent's merits hearing was held on September 26, 2025. DHS did not
17 finish cross examination, so proceedings were continued to October 01,
18 2025. *See Exhibit M – Hearing Notice for 10.2.26.* The Judge then
19 rescheduled to October 02, 2025. A delay of **1 day** by the court. On October
20 02, 2025 proceedings were finished but for the rendering of the oral
21 decision.
22

23
24 74. On October 02, 2025, the Court sealed the record and indicated that an oral
25 decision would be issued on October 8, 2025 at 4 pm. A delay of **6 days** by
26 the court. *See Exhibit N – Hearing Notice for 10.8.26.*
27

1 75. The Court then sua sponte cancelled that October 08, 2025 hearing and
2 continued or delayed the issuance of that oral decision to November 7,
3 2025, without providing a written decision. A delay of **36 days** by the court.
4 This was unreasonable.
5

6 76. As a result, Respondent remained without a final determination, and
7 remained in custody for 36 additional days past her *final* merits date.
8

9 77. On October 16, 2025 Respondent filed a motion for a written decision, to
10 avoid the unnecessary delay in awaiting the November 07, 2025 hearing
11 date solely for an oral decision while petitioner remained detained. *See*
12 *Exhibit O - Motion for Written Decision*.
13

14 78. The Immigrant Judge never adjudicated that motion, but rescheduled the
15 hearing day for one day earlier on November 06, 2025.
16

17 79. On or about October 24, 2025, after all evidence had been sealed, after oral
18 arguments, after all direct examination, cross examination, re-direct, re-
19 cross, and expert testimony, after the proceedings had effectively been
20 closed for any new evidence, testimony, or argument, DHS filed a written
21 motion to pretermitt. *See Exhibit P - First page of Motion to Pretermitt*.
22

23 80. On November 06, 2025, when the Immigration Judge was to read his oral
24 decision, he was unable to, due to the filing by DHS of the motion to
25 pretermitt.
26

1 81.The Judge again continued the hearing to November 19, 2025 for decision
2 on the motion to pretermitt. A delay of **13 days** by the court and DHS.

3 82.Petitioner therefore remained detained in respondent's custody **48 days**
4 beyond her final merits date, still without a final determination of her case.
5 And again, there were more delays.
6

7 83.On November 19, 2025, after petitioner and counsel appeared in court, the
8 judge rescheduled the hearing to November 21, 2025 stating that he did not
9 have time to hear the case. A **2 day** delay by the court.
10

11 84.Petitioner was then **50 days detained** beyond the sealing of evidence,
12 beyond the close of all arguments and examinations, and beyond the date of
13 her merits hearing without a decision on her case.
14

15 85.Although not at issue for this court, we strongly condemn DHS use of their
16 motion to pretermitt AFTER the finality of a case. It is a gross misuse of
17 power, against the idea and purpose of the ACAs and against regulation as
18 the motions to pretermitt must be issued at the onset of determinations of
19 inadmissibility. The purpose of said motions are to preserve scarce
20 resources of the courts, and yet the court had already heard the entirety of
21 the case and sealed the record. Such a late filed motion therefore was
22 without purpose and was punitive. Petitioner even asked DHS to withdraw
23 their motion, but DHS Attorney Ms. Patricia Paredes stated she did not have
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27

1 the authority to do so. Petitioner asked Ms. Paredes to ask her supervisor.
2 Ultimately Ms. Paredes confirmed she could not withdraw her late filed
3 motion to pretermitt. *See Exhibit S – DHS counsel will not withdraw motion.*
4

5 86. The late filed motion to pretermitt was punitive.

6 87. We strongly urge the court to take into consideration the **50 days** petitioner
7 was detained beyond her merits date, without a decision on the merits.
8

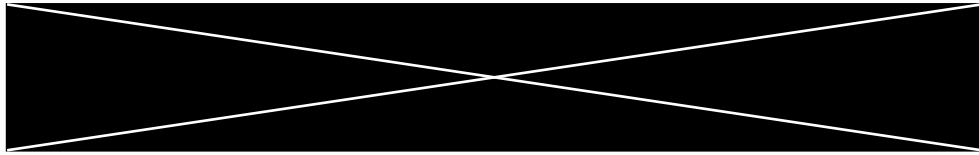
9 88. We also urge the court to consider the **149 days** she was detained from the
10 hearing date of June 25, 2025 when she requested her merits through the
11 delays of DHS and the Court to the final rendering of the decision on
12 November 21, 2025.
13

14 89. We emphatically urge the court to conclude that those days where delays
15 were not attributed to petitioner, be counted towards any calculation of what
16 the court ultimately considers as “prolonged detention.”
17

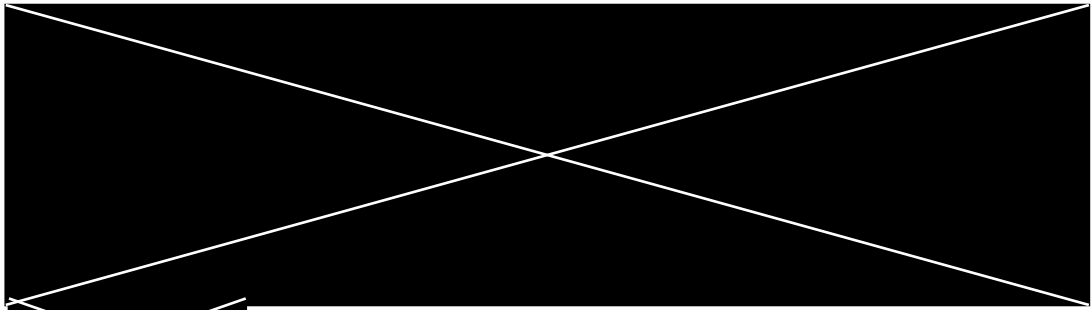
18 **FACTUAL BACKGROUND**

19 90. Petitioner is 26-year-old citizen and national of Colombia.
20

21 91. Ms. Rueda Pena was persecuted in Colombia on account of her membership
22 of a particular social group—belonging and identifying as a member of the
23 LGBTQIA+ community. The persecution she suffered in Colombia
24 included 
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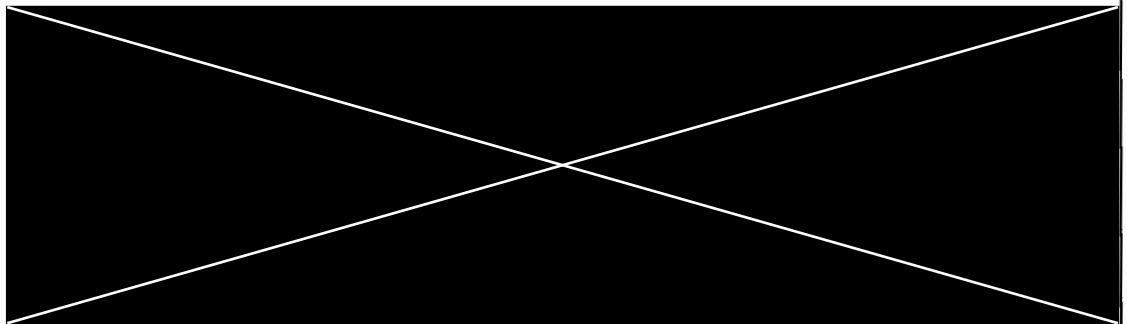


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3 92. While living in Colombia, Petitioner was in line to pay her bills when a
4 random women began to verbally assault her and told Peitioner, "you are
5 gonna burn in hell" and that she was "a disgusting person," (referencing her
6 sexual orientation). Moments later, Ms. Rueda Pena felt a blow to her head
7 and realized that the woman struck her with a motorcycle helmet. 



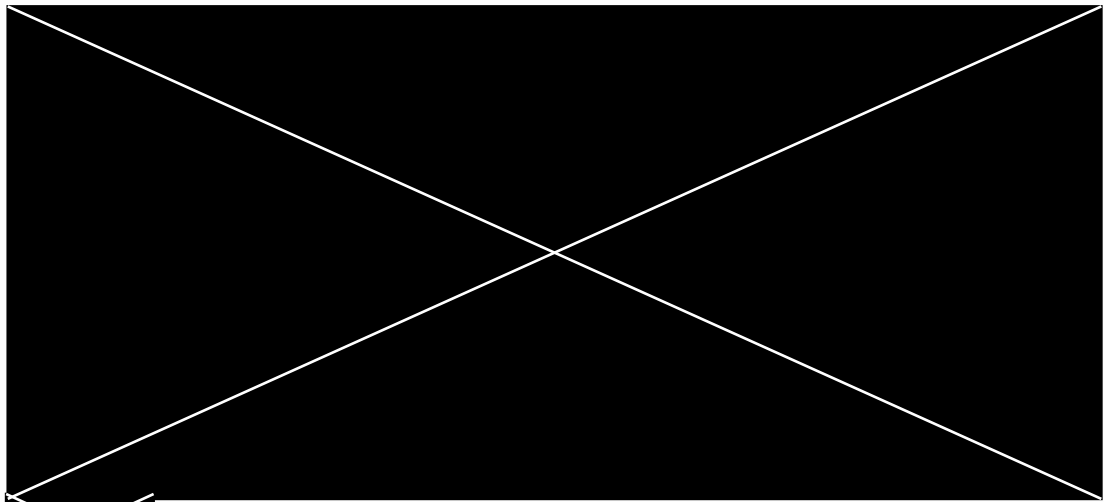
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14
15 Ms. Rueda Pena attempted to alert the police of the incident
16 and because she did not know her attacker, they simply said "we can't do
17 anything," and laughed at her.
18

19 93. While leaving work on or about August 13, 2024, Petitioner was
20 approached by four armed men. She recognized them as members of the
21



1 
2 When she was able to regain some strength to get up, Ms. Rueda Pena
3 called for help and she went to the doctor to receive medical attention. She
4
5 received eighteen (18) stitches as a result of the assault.

6 94. On November 9, 2024, Petitioner was walking home when men from the

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15  The night she managed to escape, she packed up some of her

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17 clothes and savings and left the city in haste. She then moved to Risaralda,
18 Colombia, where she lived for a few months before receiving a written
19 death threat at her home on January 3, 2025. 
20

21 95. Ms. Rueda Pena left Colombia on January 16, 2025. She passed through
22 Mexico to reach the USA. She arrived on or about January 18, 2025, and
23 entered at the San Ysidro Port of Entry.
24

25 96. Respondents detained Ms. Rueda Pena, alleged she was inadmissible to the
26 United States under 8 U.S.C. § 1182(a)(6)(A)(i), commenced removal
27

1 proceedings against her, and commanded her to appear for a hearing on
2 February 6, 2025, in the immigration court in Otay Mesa, California. Ms.
3 Rueda Pena attended all her removal proceeding hearings
4

5 97. Ms. Rueda Pena filed a petition for bond on April 22, 2025, but was
6 informed the court did not have jurisdiction because she had a positive
7 credible fear interview.
8

9 98. On or about April 4, 2025, Petitioner filed her Form I-589 asylum
10 application before the Otay Mesa Immigration Court, within the one-year
11 deadline.
12

13 99. On June 25, 2025, Petitioner asked that her merits date be set. The Judge set
14 the merits for September 12, 2025. The Judge then delayed the case sua
15 sponte to September 26, 2025. On September 26, 2025, DHS could not
16 conclude their cross examination in the time given, so the hearing was
17 continued to October 01, 2025, then the court rescheduled sua sponte to
18 October 02, 2025.
19

20
21 100. On October 02, 2025, the Court sealed the record and indicated that an
22 oral decision would be issued on October 8, 2025, at 4 pm.
23

24 101. The Court then sua sponte cancelled that October 08, 2025, hearing and
25 continued or delayed the issuance of that oral decision to November 7,
26 2025, without providing a written decision.
27

1 102. On October 16, 2025 Respondent filed a motion for a written decision,
2 to avoid the unnecessary delay in awaiting the November 07, 2025, hearing
3 date solely for an oral decision.
4

5 103. The Immigrant Judge never adjudicated that motion but rescheduled the
6 hearing day for one day earlier on November 06, 2025.
7

8 104. On or about October 24, 2025, after all oral arguments, after all direct
9 examination, cross examination, re-direct, re-cross, and expert testimony,
10 after the proceedings had effectively been closed for any new evidence,
11 testimony, or argument, DHS filed a written motion to pretermi.
12

13 105. On November 06, 2025, when the Immigration Judge was to read his
14 oral decision, he was unable to, due to the filing by DHS of the motion to
15 pretermi. He scheduled the next hearing for November 19, 2025.
16

17 106. On November 19, 2025, after petitioner and counsel appeared in court,
18 the judge rescheduled the hearing to November 21, 2025 stating that he did
19 not have time to hear the case.
20

21 107. On November 21, 2025, the immigration judge denied DHS' motion to
22 pretermi, finding that the safe third country bar does not apply, and found
23 that by a preponderance of the evidence Ms. Rueda Pena would face
24 persecution in Honduras based on her membership in a particular social
25 group (sexual orientation/membership in LGBTQIA group).
26
27

1 108. On November 21, 2025, Ms. Rueda's Pena was granted Withholding of
2 Removal under INA 241(b)(3).

3 109. In April 2026, Respondents transferred Petitioner to Louisiana.

4
5 110. On or around April 15, 2026, Respondents attempted to board Petitioner
6 on a flight to the Republic of Congo for removal, despite their appeal still
7 pending and an automatic stay in place. Respondents did not provide any
8 notice to Petitioner or her counsel of these attempted removal during the
9 automatic stay period while DHS appeal was pending. Respondents also did
10 not give Petitioner an opportunity for her fear based claims regarding
11 removal to Congo to be heard.
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13

14 111. Respondents confirmed with the BIA that there was a stay while their
15 appeal was pending. Respondents transferred petitioner to Texas, then to
16 Arizona, and then back to Otay Mesa. She arrived in Otay Mesa on or
17 around May 01, 2026.
18

19 112. ICE has not provided Ms. Rueda Pena with any notice of any further
20 impending removal plans.
21

22 113. Ms. Rueda Pena remains in Respondents' legal and physical custody at
23 Otay Mesa Detention Center, in San Diego, California.
24

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26 //

ARGUMENT

I. PETITIONER'S CONTINUED DETENTION IS UNLAWFUL UNDER THE DUE PROCESS CLAUSE

114. This Court should hold that sufficiently prolonged detention violates the Due Process Clause, as most courts have. See, e.g., *Gao v. LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal. Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*, 25-cv-3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025); *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. 2023).

II. PETITIONER'S CONTINUED DETENTION IS UNLAWFUL UNDER *ZADVYDAS* BECAUSE HER REMOVAL IS NOT REASONABLY FORESEEABLE, AND THIS COURT SHOULD ACCORDINGLY ORDER HER IMMEDIATE RELEASE.

A. **Petitioner's removal is not reasonably foreseeable under *Zadvydas*.**

115. Mr. Rueda Pena's detention is governed by 8 U.S.C. § 1231(a)(6)

because she has been detained for more than 90 days since she received a final grant of Withholding relief. The 90-day removal period began for Ms. Rueda Pena on November 21, 2025, because although DHS timely filed an interlocutory appeal on the case, they withdrew the appeal on April 16, 2026, and the law requires that when an appeal is withdrawn, the removal period is retroactive to the date of the IJ's decision. *See* 8 U.S.C. § 1231(a)(1)(B)(i); 8 C.F.R. §1241.1(c); 8 CFR 1003.4.

116. Furthermore, removal period arguably still would have begun on

November 21, 2025, despite DHS's appeal, because Ms. Rueda Pena did not herself appeal. *See* 8 C.F.R. § 1241.1(c) ("An order of removal . . . shall become final . . . upon expiration of the time allotted for an appeal if the [non-citizen] does not file an appeal within that time . . ."); *Toma v. Adducci*, 535 F. Supp. 3d 651, 656-57 (E.D. Mich. 2021) (finding that non-citizen's removal period began when non-citizen did not appeal removal order, despite DHS' timely appeal of non-citizen's CAT grant).

1 117. Therefore, the *Zadvydas* framework applies to Ms. Rueda Pena's
2 detention, and by the time this habeas is reviewed, she will have been
3 detained for more than six months since her removal order became final.
4

5 118. Ms. Rueda Pena will very likely *not* be deported from the United States
6 in the reasonably foreseeable future. She cannot be deported to her home
7 country of Colombia because she has a final grant of Withholding. *See* 8
8 C.F.R. § 1208.17(b)(2).
9

10 119. Furthermore, it is exceedingly unlikely that ICE will identify an
11 alternative country to which it can remove Ms. Rueda Pena within the next
12 couple weeks.
13

14 120. Even in the highly unlikely scenario that an alternative country notifies
15 ICE of its willingness to accept the deportation of Ms. Rueda Pena, ICE
16 would still be required to obtain travel documents and afford her a
17 Reasonable Fear Interview (RFI) at which she would have the opportunity to
18 articulate a fear of return to the country willing to accept her. *See* 8
19 C.F.R. § 241.8(e). If an Asylum Officer (AO) were to find that Ms. Rueda
20 Pena demonstrated reasonable possibility of persecution or torture at the
21 RFI, or an IJ subsequently vacated a negative finding by the AO, she would
22 enter withholding-only proceedings before an IJ in which she would again
23 seek to demonstrate her eligibility for withholding or CAT relief with
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1 respect to that country, thereby restarting the process that took several
2 months to complete the first time.

3 121. Therefore, Ms. Rueda Pena is about to be detained for more than six
4 months since receiving a final removal order, and her removal is not
5 reasonably foreseeable because 1) she cannot be deported to her home
6 country due to her Withholding relief grant; 2) ICE has historically
7 managed to remove only a tiny fraction of non-citizens granted
8 withholding or CAT to alternative countries; 3) any countries to which
9 requests may still be pending have no logical reason to accept Ms. Rueda
10 Pena's deportation and have provided no timeline under which they might
11 decide; and 4) deporting Ms. Rueda Pena to those alternative countries
12 would require additional, lengthy proceedings. *See Hassoun v. Sessions*,
13 No. 18-cv-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019)
14 (finding removal not reasonably foreseeable where several countries had
15 declined to issue travel documents and several others had provided no
16 response or timeline for response); *Kacanic v. Elwood*, No. 02-cv-8019,
17 2002 WL 31520362, at *5 (E.D. Pa. Nov. 8, 2002) (finding removal not
18 reasonably foreseeable where the country of origin had "been in
19 possession of all the information [ICE] is capable of providing to it" but
20 had "never stated that the Petitioner is likely to be granted travel papers"
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1 and was “unable to tell the [ICE] when a decision will be reached”).

2 122. Even if this Court finds that Ms. Rueda Pena’s removal period did not
3 begin until April 24, 2026, when the BIA recognized DHS’s withdrawal of
4 their interlocutory appeal Ms. Rueda Pena has still demonstrated that her
5 continued detention is unreasonable under *Zadvydas*. Post-removal order
6 detention for less than six months may still be unreasonable in unique
7 circumstances like Petitioner’s where she can meet her burden of
8 demonstrating that removal is not reasonably foreseeable. *See Cesar*, 542 F.
9 Supp. 2d at 904 (“The burden might be on the detainee within the first six
10 months to overcome the presumptive legality of his detention, but where a[]
11 [non-citizen] can carry that burden, even while giving appropriate deference
12 to any Executive Branch expertise, his detention would be unlawful.”); *Trinh*
13 *v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) (“*Zadvydas*
14 established a ‘guide’ for approaching detention challenges, not a categorical
15 prohibition on claims challenging detention less than six months.”); *Ali v.*
16 *DHS*, 451 F. Supp. 3d 703, 708 (S.D. Tex. 2020) (“Whereas the *Zadvydas*
17 Court established a presumption that detention that exceeded six months
18 would be unconstitutional, it did not require a detainee to remain in detention
19 for six months or to prove that the detention was of an indefinite duration
20 before a habeas court could find that the detention is unconstitutional.”).

1 123. For the reasons stated above, Ms. Rueda Pena has clearly met any
2 burden of proof that this Court may place on her. Unlike *Zadvydas* and the
3 vast majority of its progeny, which analyzed whether ICE will foreseeably
4 remove non-citizens to their home country or country of citizenship, *see*,
5 *e.g.*, *Zadvydas*, 533 U.S. at 684-85, the question here is whether ICE will
6 be able to deport Ms. Rueda Pena to random third countries to which she
7 has no connection whatsoever. The answer to that question has been no
8 from the moment Ms. Rueda Pena's relief grant became final, and the
9 likelihood of third-country removal has only decreased since then.
10
11

12
13 **THIS COURT SHOULD ORDER MS. RUEDA PENA'S IMMEDIATE**
14 **RELEASE.**

15 124. Because Petitioner's removal is not reasonably foreseeable,
16 *Zadvydas* requires that he be immediately released. *See* 533 U.S. at
17 700-01 (describing release as an appropriate remedy); 8 U.S.C. §
18 1231(a)(6) (authorizing release "subject to . . . terms of supervision"). To
19 order his immediate release, this Court need only determine that Petitioner's
20 removal is not reasonably foreseeable under *Zadvydas*; it need not analyze
21 whether he poses a danger to the community or a flight risk. *See* 533 U.S. at
22 699-700 ("[I]f removal is not reasonably foreseeable, the court should hold
23 continued detention unreasonable and no longer authorized by statute.").

1 125. *Zadvydas* explicitly held that flight risk is already baked into the
2 reasonable foreseeability analysis, *see id.* at 690 (observing that the
3 “justification . . . [of] preventing flight . . . is weak or nonexistent where
4 removal seems a remote possibility at best”), and that dangerousness cannot
5 unilaterally justify indefinite civil detention barring “special circumstances,”
6 which may include the non-citizen being a “suspected terrorist[.]” but do not
7 include the non-citizen’s “removable status itself.” *Id.* at 691. *See also Kansas*
8 *v. Hendricks*, 521 U.S. 346, 358 (1997) (“A finding of dangerousness,
9 standing alone, is ordinarily not a sufficient ground upon which to justify
10 indefinite involuntary [civil detention].”). With respect to Petitioner’s
11 detention, ICE has not invoked the regulations governing these “special
12 circumstances” determinations. *See* 8 C.F.R. § 241.14.

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17 126. To the extent this Court considers any factors outside of the
18 foreseeability of Petitioner’s removal, which it need not do, the court may
19 take into consideration that Ms. Rueda Pena has no criminal record inside the
20 U.S., or in Colombia, or anywhere in the world. *See Exhibit Q - I-213 and*
21 *Exhibit R - Clean Criminal History Report from Colombia.*
22
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127. Here, because ordering a bond hearing before a randomly selected IJ would not properly redress the constitutional violations present in this matter, Petitioner urges the court to provide an alternative corrective measure. That might include outright release. *See, e.g.*, Order, ECF No. 14 at 19, *Miri v. Bondi*, No. 5:26-CV-00698-MEMF (C.D. Cal. March 5, 2026); *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026). Or it could mean holding a bond hearing in district court. *See, e.g.*, *L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025).

CLAIMS FOR RELIEF

I. COUNT I

VIOLATION OF IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1231(a)(6)

128. Petitioner realleges and incorporates by reference the paragraphs above.

129. 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for “a period reasonably necessary to bring about the alien’s removal from the United States.” 533 U.S. at 689, 701.

130. Petitioner’s continued detention has become unreasonable because her removal is not reasonably foreseeable. Therefore, her continued

1 detention violates 8 U.S.C. § 1231(a)(6), and she must be immediately
2 released.

3
4 **II. COUNT II**

5
6 **ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE**
7 **ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)**

8
9 131. Petitioner realleges and incorporates by reference the paragraphs
10 above.

11 132. Courts must “hold unlawful and set aside agency action” that is
12 “arbitrary, capricious, an abuse of discretion, or otherwise not in
13 accordance with law.” 5 U.S.C. § 706(2)(A).

14
15 133. ICE has deviated from its own policy in continuing to detain
16 Petitioner after she was granted immigration relief, without determining
17 whether exceptional circumstances warrant her continued detention. This
18 is arbitrary, capricious, and contrary to law in violation of the APA.

19
20 134. As a remedy, this Court should release petitioner or conduct its own
21 review of Petitioner’s custody or, at least, order ICE to review Petitioner’s
22 custody under the standard articulated in ICE policy.
23

24
25 //

26 //

III. COUNT III

**VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH
AMENDMENT TO THE U.S. CONSTITUTION**

135. Petitioner realleges and incorporates by reference the paragraphs above.

136. ICE has violated Petitioner's due process rights by denying her an individualized custody review to which she is entitled under ICE policy.

137. As a remedy, this Court should conduct its own review of Petitioner's custody or, at least, order ICE to review Petitioner's custody under the standard articulated in ICE policy.

CONCLUSION

138. Petitioner, Ms. Rueda Pena has suffered unlawful prolonged detention. DHS and the Immigration Judge have each caused unnecessary delays. DHS has withdrawn their appeal to their denied, late filed, motion to pretermitt. Ms. Rueda Pena 90 day mandated detention period has long passed, and she is about pass the 6 month period. The unnecessary delays by DHS and the Immigration Judge outlined in the above petition, namely the 50 days detained past the sealing of the record without a final decision, and the 149 days since the request of a merits hearing, should be taken into consideration when considering the definition of "prolonged

1 detention” in this matter.

2 139. The “equitable and flexible nature of habeas relief” affords district
3 courts significant discretion over the appropriate remedies for violations
4 of law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855
5 (2d Cir. 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995)
6 (“[H]abeas corpus is, at its core, an equitable remedy”). This Court should
7 order a remedy that fully addresses the statutory and constitutional
8 violations in this case and is efficient to administer. *Carafas v. LaVallee*,
9 391 U.S. 234, 238 (1968) (the habeas statute “does not limit the relief that
10 may be granted to discharge of the applicant from physical custody. Its
11 mandate is broad with respect to the relief that may be granted”).
12
13
14

15 **PRAYER FOR RELIEF**

16
17 WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- 18 (1) Assume jurisdiction over this matter;
- 19 (2) Issue an Order to Show Cause ordering Respondents to show cause why
20 this Petition should not be granted within three days;
- 21 (3) Declare that Petitioner’s continued, prolonged detention violates the
22 Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6); the Administrative
23 Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the
24 Fifth Amendment to the U.S. Constitution.
25
26
27

1 (4) Issue a Writ of Habeas Corpus ordering Respondents to release
2 Petitioner from custody;

3 (5) Issue an Order prohibiting the Respondents from transferring Petitioner
4 from this district without the Court's approval;

5
6 (6) Alternatively, order that Petitioner be released or review Petitioner's
7 custody under the standard articulated in ICE policy or order that Petitioner be
8 provided a constitutionally adequate hearing should detention continue beyond
9 the reasonable time period permitted by law and place the burden on the
10 government to prove by clear and convincing evidence why detention is
11 necessary and/or why petitioner is a danger or flight risk; If such a bond is the
12 alternative relief ordered by the court, then also prohibit ICE from invoking the
13 automatic stay provisions under 8 C.F.R. § 1003.19(i)(2) to defeat the IJ's bond
14 determination.
15

16
17
18 (7) Retain jurisdiction to rehear this matter upon expiration of the
19 reasonable time period;

20
21 (8) Grant such further relief as the Court deems just, equitable, and
22 appropriate.

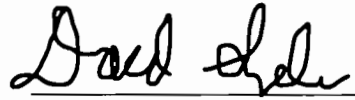
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1 Dated: May 03, 2026

Respectfully submitted,

2 

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9 Enclosures