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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

Angela del Carmen Ruiz,

Petitioner,

v.

Patrick Divver, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, Immigration and Customs Enforcement; et al,

Respondents.

Case No. '26CV4774 DMS JLB

WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

Petitioner Angela del Carmen Ruiz, through counsel, petitions for a writ of habeas corpus under 28 U.S.C. § 2241 and alleges:

I. INTRODUCTION

1. Petitioner seeks a writ of habeas corpus under 28 U.S.C. § 2241 because he is in federal immigration custody and is being detained in violation of the Constitution and laws of the United States.
2. Respondents' continued detention of Petitioner without a prompt, meaningful, and individualized custody determination violates the Immigration and Naturalization Act, the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment.
3. Petitioner requests expedited issuance of an Order to Show Cause pursuant to 28 U.S.C. § 2243; an order directing Respondents to release Petitioner immediately, or, in the alternative, to provide a prompt constitutionally adequate custody hearing before a neutral adjudicator at which the Government bears the burden of justifying continued detention; and any further relief the Court deems just and proper.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is "in custody" under color of federal authority within this judicial district and alleges that such custody violates the Constitution and laws of the United States.
5. This Court is authorized to grant habeas relief under 28 U.S.C. §§ 2241–2243.
6. To the extent Petitioner seeks relief under the Administrative Procedure Act in addition to habeas relief, this Court also has jurisdiction under 28 U.S.C. § 1331.
7. Venue is proper in this District because Petitioner is detained within the South District of California.

III. REQUIREMENTS OF 28 U.S.C. §§ 2241 AND 2243

8. Under 28 U.S.C. § 2243, this Court must either grant the writ or issue an Order to Show Cause "forthwith" unless it appears from the petition that Petitioner is not entitled to relief.

9. Habeas corpus is a fundamental mechanism for testing the legality of executive detention and provides a swift and imperative remedy for unlawful restraint of liberty.

IV. PARTIES

10. Petitioner Angela del Carmen Ruiz is detained by the Department of Homeland Security ("DHS"), through U.S. Immigration and Customs Enforcement ("ICE"), at the Otay Mesa Detention Center ("OMDC") in San Diego, California.

11. Respondent Patrick Divver is the Field Office Director of ICE Enforcement and Removal Operations, San Diego Field Office. In that official capacity, he is responsible for Petitioner's immigration custody and continued detention within this District. He is sued in his official capacity only.

12. Respondent Christopher J. LaRose is the Warden of the Otay Mesa Detention Center, where Petitioner is detained. He has day-to-day physical custody of Petitioner and is sued in his official capacity only.

13. Respondent Department of Homeland Security is the federal agency responsible for implementing and enforcing the Immigration and Nationality Act, including the detention and removal of noncitizens.

14. This Petition challenges Petitioner's present physical confinement under 28 U.S.C. § 2241. Respondents are the officials and agency responsible for Petitioner's custody and continued detention.

V. FACTUAL BACKGROUND

15. Ms. Ruiz is a native and citizen of El Salvador. She was born on [redacted], in Usulutan, El Salvador. Her Alien Registration Number is A# [redacted].

16. For nearly twenty years, Ms. Ruiz endured severe domestic violence and coercive control by her former partner, [redacted]. The abuse included [redacted]. On or about September 20, 2023, Ms. Ruiz fled El Salvador with her daughter because she believed [redacted] would carry out his threats and kill them.

17. On or about October 3, 2023, Ms. Ruiz entered the United States near Hidalgo, Texas. After crossing the border, she walked for approximately one hour so that she and her daughter could present themselves to immigration authorities.

18. Immigration authorities detained Ms. Ruiz and her daughter for approximately two days in a short-term holding facility commonly known as a "hielera." They were then transferred to a shelter in El Paso, Texas, where they remained for approximately two additional days before traveling to Maryland. Immigration authorities also provided Ms. Ruiz with a telephone through which they could monitor her location.

19. Within approximately fifteen days of arriving in Maryland, Ms. Ruiz reported to immigration authorities as directed. She initially reported once each month and later once every two months. During more than two years of reporting, Ms. Ruiz never missed an appointment or otherwise failed to comply with an immigration requirement.

20. Ms. Ruiz lived with her family in Pasadena, Maryland, and worked at a restaurant cleaning and preparing pupusas. On September 24, 2024, she timely filed her Form I-589 application for asylum, withholding of removal, and protection under the Convention

Against Torture. She subsequently obtained employment authorization based on her pending asylum application. Her filings were captioned "NON-DETAINED" and associated with the Baltimore Immigration Court. The supplied record identifies no missed hearing, criminal charge, or criminal conviction.

21. On July 15, 2025, C. Nicholas Cuneo, M.D., M.P.H., of Johns Hopkins examined Ms. Ruiz under Istanbul Protocol standards. Dr. Cuneo documented physical scars consistent with her reports of knife wounds, cigarette burns, and other abuse. He also documented generalized anxiety, chronic trauma symptoms, sleep disturbance, fear, and hypervigilance. Dr. Cuneo recommended continuing mental-health treatment, and Ms. Ruiz's history and symptoms make confinement particularly harmful.

22. On January 31, 2026, at approximately 9:00 a.m., Ms. Ruiz appeared before ICE as required. ICE detained Ms. Ruiz at that appointment along with several other individuals. Officers told them only that they would remain detained. They did not provide Ms. Ruiz with an individualized explanation for her detention or bring her before a judge.

23. Ms. Ruiz has remained in DHS immigration custody since January 31, 2026. She was subsequently transferred to the Otay Mesa Detention Center, where she was detained no later than April 29, 2026. Before re-arresting her, Respondents did not provide advance written notice, identify any changed circumstances, or give her an opportunity to contest the basis for taking away her liberty.

24. Following her re-arrest, Ms. Ruiz did not receive a meaningful bond or custody-redetermination hearing before an Immigration Judge. The supplied record identifies no new criminal arrest, conviction, failure to appear, reporting violation, or other intervening

conduct demonstrating that she had become a danger or flight risk. Ms. Ruiz remains willing to comply with reasonable noncustodial conditions.

25. On May 7, 2026, Immigration Judge Ferdinand Ortiz found Ms. Ruiz removable under INA § 212(a)(6)(A)(i). The Immigration Court denied asylum and statutory withholding of removal but granted Ms. Ruiz withholding of removal under the Convention Against Torture. The order states that she was "ordered removed to El Salvador (withheld under CAT)."

26. Ms. Ruiz therefore received CAT withholding, not CAT deferral. Respondents cannot remove her to El Salvador while that protection remains effective unless it is lawfully terminated. The Immigration Judge did not designate an alternative country of removal.

27. Ms. Ruiz waived appeal from the May 7 decision, but the Immigration Judge's order reflects that DHS reserved its right to appeal through June 8, 2026. On May 28, 2026, ICE nevertheless served Ms. Ruiz with Form I-229(a), stating that her order became final on May 7, 2026. ECAS and BIA records reflect that DHS did not file an appeal.

28. ICE informed Ms. Ruiz that her custody would be reviewed on or about July 21, 2026. As of August 14, 2026, neither Ms. Ruiz nor counsel had received a written decision from that review. Respondents have not disclosed the evidence considered, the findings reached, or the factual basis for continuing her detention.

29. Respondents have not informed Ms. Ruiz or counsel that any third country has agreed to accept her. They have not identified a valid travel document authorizing her removal to another country or provided notice of any scheduled third-country removal. Ms. Ruiz is not serving a criminal sentence and remains detained solely under federal immigration authority.

VI. LEGAL FRAMEWORK

30. Petitioner challenges the legality of her present physical confinement, not the validity of the underlying removal order, through a petition for habeas corpus under 28 U.S.C. § 2241. Habeas relief is available when a person is in federal custody in violation of the Constitution or laws of the United States. Under 28 U.S.C. § 2243, the Court must promptly grant the writ or issue an order directing Respondents to show cause why the writ should not be granted unless the Petition plainly establishes that Petitioner is not entitled to relief.

31. Immigration detention is civil, rather than punitive, and must remain reasonably related to legitimate regulatory purposes, including effectuating removal, ensuring appearance in immigration proceedings, preventing flight, and protecting the community. *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001). The Supreme Court has recognized that detention during removal proceedings may be a constitutionally valid aspect of the removal process, particularly during the limited period reasonably necessary to complete those proceedings. *Demore v. Kim*, 538 U.S. 510, 517–18, 528–31 (2003) But the Government may not convert civil immigration detention into arbitrary, indefinite, or punitive confinement.

32. The entry of a final removal order does not eliminate the Due Process Clause's protection against arbitrary or indefinite detention. *Zadvydas v. Davis*, 533 U.S. 678, 693, 690–91 (2001) Although Congress requires detention during the statutory removal period, continued post-order detention must remain reasonably related to the Government's efforts to effectuate removal and must be limited to the period reasonably necessary to accomplish that purpose.

33. Once a removal order becomes administratively final, 8 U.S.C. § 1231(a) governs detention and removal. Section 1231(a)(1)(A) generally requires the Government to remove the noncitizen within a 90-day removal period, and § 1231(a)(2) requires detention during that period. Under § 1231(a)(1)(B), the removal period begins on the latest of the date the order becomes administratively final, the date a court enters a final order where judicial review and a stay are involved, or the date the noncitizen is released from non-immigration detention. After the removal period expires, § 1231(a)(6) permits, but does not categorically require, continued detention of certain noncitizens.

34. The record must therefore establish the legally operative date on which Petitioner's removal order became administratively final. If the order became final on May 7, 2026, the 90-day removal period may have expired before the filing of this Petition. If DHS's reserved appeal period meant that the order did not become final until June 8, 2026, the 90-day period would begin later. ICE's unilateral statement on Form I-229(a) does not eliminate the need to resolve that finality issue by reference to the Immigration Court and Board of Immigration Appeals records. The distinction matters because detention during the 90-day removal period is governed principally by § 1231(a)(2), while detention after that period is governed by § 1231(a)(6) and the constitutional limitations recognized in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

35. Petitioner's detention is governed by 8 U.S.C. § 1231, rather than 8 U.S.C. § 1226(a), because she is subject to a final order of removal and is not currently detained during a pending withholding-only proceeding. The Supreme Court has held that § 1231 applies even to a noncitizen with a reinstated removal order who is pursuing withholding-only proceedings. *Johnson v. Guzman Chavez*, 594 U.S. 523, 528–30, 535–36 (2021). The

same conclusion follows here with greater force because the Immigration Court has already adjudicated Petitioner's protection claims and issued an order granting CAT withholding.

36. Petitioner's CAT withholding does not erase the underlying removal order, but it prevents Respondents from removing her to El Salvador while that protection remains effective unless it is lawfully terminated. 8 C.F.R. § 208.16(f). A noncitizen granted withholding or deferral may, in appropriate circumstances, be removed to a third country, but only if the statutory and regulatory requirements for that removal are satisfied. 8 C.F.R. §§ 208.16(f), 208.17(b)(2). Thus, the existence of a final removal order does not by itself establish that removal is reasonably foreseeable. Respondents must identify a legally available destination, the practical means of removal, and a significant likelihood that removal can occur in the reasonably foreseeable future.

37. In *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001), the Supreme Court construed 8 U.S.C. § 1231(a)(6) to prohibit indefinite detention and to limit post-removal-period detention to the period reasonably necessary to bring about removal. Six months is a presumptively reasonable period, but the six-month benchmark does not automatically require release in every case. After that period, once the detainee provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must produce evidence sufficient to rebut that showing. As the period of detention grows, the Government must identify an increasingly near-term and concrete prospect of removal.

38. The Supreme Court has held that § 1231(a)(6) does not itself require a bond hearing before an Immigration Judge after six months of detention at which the Government

bears the burden of proof by clear and convincing evidence. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578–82 (2022). The Court nevertheless left unresolved the constitutional challenge to prolonged detention and confirmed that as-applied due-process claims remain available for consideration by the lower courts. Petitioner therefore does not rely solely on an asserted statutory entitlement to a bond hearing. She challenges the continued detention itself, the absence of a meaningful individualized custody determination, and Respondents' failure to demonstrate that her detention remains reasonably related to a significant likelihood of removal.

39. The governing regulations expressly contemplate continued custody review for noncitizens who have been granted withholding or deferral of removal. 8 C.F.R. § 241.4(b)(3). The post-order custody-review process requires consideration of the practicability of removal, the availability of travel documents, the likelihood of removal, danger to the community, flight risk, family and community ties, medical and mental-health evidence, and other favorable or unfavorable factors. 8 C.F.R. § 241.4(d)–(h). The regulations also provide a special review procedure for long-term detainees who demonstrate that there is no significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. § 241.13. These procedures do not displace the Court's authority under § 2241 or authorize detention that the Constitution and § 1231(a)(6) do not permit.

40. Here, the facts relevant to continued detention weigh heavily in Petitioner's favor. Petitioner has no identified criminal conviction, no reported failure to appear, no missed reporting appointment, no known violation of an immigration requirement, substantial family ties, a history of complying with supervision, and a willingness to comply with

reasonable noncustodial conditions. She also suffers from documented trauma-related mental-health conditions that make continued confinement particularly harmful. Respondents have not identified a third country willing to accept her, a valid travel document authorizing removal, a scheduled third-country removal, or any concrete evidence demonstrating that removal is significantly likely in the reasonably foreseeable future.

41. Because Petitioner cannot presently be removed to El Salvador while her CAT withholding remains effective, and because Respondents have not identified a reasonably foreseeable third-country removal, the continued existence of a final removal order cannot alone justify her continued confinement. If Respondents cannot rebut Petitioner's showing under *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001), continued detention under 8 U.S.C. § 1231(a)(6) becomes unreasonable, indefinite, and unauthorized. Petitioner is therefore entitled to release under appropriate conditions or, at minimum, to a prompt, meaningful, and individualized custody determination before a neutral adjudicator.

42. To the extent Petitioner challenges Respondents' failure to conduct or disclose a legally required custody review, her claim also arises under the Administrative Procedure Act. The APA authorizes relief against agency action unlawfully withheld or unreasonably delayed and against agency action that is contrary to law, unconstitutional, or taken without observance of required procedure. 5 U.S.C. §§ 702, 704, 706(1)–(2). Petitioner does not ask the Court to substitute its judgment for a lawful discretionary custody determination. She asks the Court to enforce the statutory and constitutional limits on

detention and to require Respondents to make the individualized, reasoned determination that due process and the governing detention framework require.

VII. CLAIMS FOR RELIEF (HABEAS GROUNDS)

Ground One: Violation of the Administrative Procedure Act — Abuse of Discretion and Arbitrary and Capricious Continued Detention.

43. Petitioner incorporates by reference all preceding paragraphs.

44. This Court has jurisdiction under 28 U.S.C. § 2241 to remedy unlawful federal custody, including immigration custody maintained in violation of the Constitution or laws of the United States. Petitioner also seeks relief under the Administrative Procedure Act, 5 U.S.C. § 701 et seq., to the extent Respondents' custody decision constitutes reviewable agency action and no other adequate remedy provides complete relief.

45. Under the APA, a reviewing court must "hold unlawful and set aside agency action" found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

46. Agency action is arbitrary and capricious where the agency fails to consider an important aspect of the problem, offers an explanation that runs counter to the evidence, or reaches a decision that is implausible in light of the record. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *Nat'l Ass'n of Home Builders v. Defs. of Wildlife,* 551 U.S. 644 (2007).

47. To satisfy APA review, the agency must provide a reasoned explanation reflecting a rational connection between the facts found and the choice made. *Dep't of Com. v. New York*, 139 S. Ct. 2551 (2019).

48. Respondents initially detained Petitioner on January 31, 2026, before the Immigration Court entered a removal order and while Petitioner was subject to the discretionary pre-order custody framework in 8 U.S.C. § 1226(a). That provision authorizes arrest and detention pending a decision on removability but also permits release on bond or conditional parole. 8 U.S.C. § 1226(a)(1)–(2). Respondents subsequently continued Petitioner's confinement after the Immigration Court entered its May 7, 2026, order. To the extent Respondents' current custody rests on the post-order detention authority in 8 U.S.C. § 1231(a)(6), that authority remains subject to the statutory and constitutional limitations recognized in *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001).

49. The challenged agency action includes Respondents' initial decision to detain Petitioner without identifying an individualized basis for taking her into custody and their subsequent decision to maintain that detention without providing a reasoned explanation for why confinement remains necessary. Respondents have not identified any criminal arrest or conviction, failure to appear, missed reporting appointment, violation of an immigration requirement, or other intervening conduct demonstrating that Petitioner presents a danger to the community or a flight risk. Instead, the available facts show that Petitioner appeared for her January 31 reporting appointment as required and had complied with her immigration obligations for more than two years.

50. Respondents also failed to meaningfully consider the facts bearing on whether detention was necessary in Petitioner's particular circumstances, including her consistent compliance with reporting requirements, her appearance at the appointment that resulted in her detention, her family and community ties, her lack of any identified criminal history, her lack of any known failure to appear, and her willingness to comply with

reasonable conditions of release. Respondents further failed to explain why the Government's interests could not be satisfied through less restrictive measures authorized by law, including release on recognizance, bond, conditional parole, supervision, regular reporting, address restrictions, or other appropriate noncustodial conditions. 8 U.S.C. § 1226(a)(2).

51. Respondents' failure to address those material facts and alternatives is particularly significant because the governing post-order custody regulations require individualized consideration of the practicability and likelihood of removal, the availability of travel documents, danger to the community, flight risk, family and community ties, and medical and mental-health evidence. 8 C.F.R. § 241.4(d)–(h). The regulations also contemplate written custody determinations explaining the basis for continued detention or release. 8 C.F.R. § 241.4(d). Respondents have not provided Petitioner or counsel with a written decision identifying the evidence considered, the findings reached, or the reasons why continued detention is warranted.

52. Respondents' failure to explain the necessity of continued confinement is also unreasonable in light of Petitioner's documented trauma-related mental-health conditions. Respondents have not explained whether they considered the psychological and medical consequences of continued detention, whether those conditions affect the propriety of continued custody, or whether the Government's asserted interests could be adequately protected through supervision or other conditions short of physical confinement. A decision that ignores materially relevant medical and mental-health evidence is not the product of reasoned decision-making. M*otor Vehicle Manufacturers Association of the*

United States, Inc. v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 43 (1983).

53. Respondents' continued detention is further arbitrary and capricious because they have not identified a concrete and reasonably foreseeable means of effectuating Petitioner's removal. Petitioner has been granted withholding of removal under the Convention Against Torture, which prevents her removal to El Salvador while that protection remains in effect unless the protection is lawfully terminated. 8 C.F.R. § 208.16(f). Respondents have not identified a third country that has agreed to accept Petitioner, a valid travel document authorizing removal to another country, or a scheduled third-country removal. The existence of a removal order, without more, does not explain why continued physical confinement is necessary or establish that removal is significantly likely in the reasonably foreseeable future. *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001).

54. Respondents' custody decision therefore lacks the required rational connection between the facts found and the choice to continue Petitioner's detention. Respondents have not articulated why Petitioner's established history of compliance, lack of identified criminal conduct, family and community ties, willingness to comply with conditions, and documented medical and mental-health needs do not warrant release. Nor have Respondents explained why detention, rather than supervision or other less restrictive conditions, is necessary to effectuate removal, ensure Petitioner's appearance, prevent flight, or protect the community. The absence of a reasoned, individualized explanation renders Respondents' decision arbitrary and capricious, an abuse of discretion, and not in accordance with law under 5 U.S.C. § 706(2)(A).

55. To the extent Respondents contend that the January 31 custody decision alone authorizes Petitioner's continued confinement, that decision cannot be sustained by facts or legal circumstances arising later. The January 31 detention occurred before the May 7 removal order and must be evaluated under the authority Respondents possessed when they took Petitioner into custody. The later entry of a removal order does not retroactively supply a reasoned basis for the original detention or relieve Respondents of their obligation to make a lawful, individualized determination supporting continued custody. 8 U.S.C. § 1226(a).

56. Alternatively, if Respondents' current detention rests on a later post-order custody decision, that decision is independently arbitrary and capricious because Respondents have not disclosed a written determination or identified the individualized facts supporting continued detention. Respondents have not shown that they considered the factors required by 8 C.F.R. § 241.4, including the practicability and likelihood of removal, the availability of travel documents, Petitioner's danger or flight risk, her family and community ties, and her medical and mental-health evidence.

57. Petitioner's APA claim challenges Respondents' custody decisions and their continuing failure to provide a reasoned basis for her confinement. It does not challenge the validity of the underlying removal order, the Immigration Court's determination of removability, or the adjudication of Petitioner's applications for asylum, withholding of removal, or protection under the Convention Against Torture. The claim accordingly concerns the legality of Petitioner's present detention rather than the merits of the removal proceedings.

58. Respondents' ongoing detention of Petitioner causes irreparable harm through the continuing loss of physical liberty and the exacerbation of her documented trauma-related mental-health conditions. Petitioner has no adequate remedy at law that would fully compensate her for continued unlawful confinement. The APA authorizes a reviewing court to set aside unlawful agency action, and 28 U.S.C. § 2241 independently authorizes habeas relief when detention violates the Constitution or laws of the United States. 5 U.S.C. § 706(2).

59. Petitioner is therefore entitled to relief setting aside Respondents' unlawful custody decision as applied to her. Because the challenged agency action has resulted in ongoing physical confinement, Petitioner also seeks habeas relief directing Respondents to release her immediately, subject only to reasonable conditions of supervision. In the alternative, if the Court determines that the present record does not require immediate release, Petitioner requests an order requiring Respondents to provide a prompt, individualized, and written custody determination that explains the factual and legal basis for continued detention and to release Petitioner unless Respondents establish a lawful and adequately supported basis for maintaining her confinement

60. Petitioner is entitled to habeas and APA relief setting aside Respondents' unlawful custody decision as applied and ordering her immediate release.

Ground Two: Violation of the Administrative Procedure Act — Not in Accordance with Law, In Excess of Statutory Authority, and Without Observance of Required Procedure.

61. Petitioner realleges and incorporates all preceding paragraphs.

62. The Administrative Procedure Act ("APA") authorizes judicial review of agency action that causes a person to suffer a legal wrong or adversely affects or aggrieves that person within the meaning of a relevant statute. 5 U.S.C. § 702. Agency action is reviewable when it is made reviewable by statute or constitutes final agency action for which there is no other adequate remedy in a court. 5 U.S.C. § 704. The APA requires a reviewing court to set aside agency action that is "not in accordance with law," "in excess of statutory jurisdiction, authority, or limitations," or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (C)–(D).

63. Petitioner's initial detention occurred on January 31, 2026, when she appeared for a scheduled reporting appointment and ICE took her into custody. At that time, no final order of removal had been entered. The Immigration Court did not issue its removal order until May 7, 2026. Accordingly, the lawfulness of the January 31 custody decision must be assessed under the pre-order detention authority in 8 U.S.C. § 1226(a), rather than under 8 U.S.C. § 1231, which governs detention after an administratively final removal order.

64. Section 1226(a) authorizes the Secretary of Homeland Security to arrest and detain a noncitizen pending a decision on whether the noncitizen is to be removed, but it does not impose automatic detention in every case. It also authorizes release on bond or conditional parole subject to appropriate conditions. 8 U.S.C. § 1226(a)(1)–(2). The statute therefore confers discretionary custody authority that must be exercised lawfully and on an individualized basis; it does not authorize DHS to detain every person who appears for a reporting appointment without considering whether detention is necessary in that person's particular circumstances.

65. The governing regulations likewise contemplate an initial custody determination by DHS and provide a mechanism for seeking review or amelioration of the custody conditions before an Immigration Judge. 8 C.F.R. § 236.1(c), (d). The regulations also recognize that, unless mandatory detention applies, an authorized immigration officer may release a noncitizen on appropriate conditions when release would not pose a danger to persons or property and the noncitizen is likely to appear for future proceedings. 8 C.F.R. § 236.1(c)(8). A custody determination is therefore distinct from the underlying removal case and requires consideration of the individual circumstances relevant to detention, release, flight risk, and danger.

66. On January 31, 2026, Respondents detained Petitioner together with several other individuals when she appeared as required. The officers did not identify any individualized basis for taking her into custody, did not explain whether they believed she presented a danger or flight risk, did not identify any changed circumstance justifying a departure from her prior non-detained status, and did not provide her with a written custody determination or bond decision. Respondents also did not identify any missed reporting appointment, failure to appear, criminal arrest, criminal conviction, or violation of an immigration requirement that would have supported the immediate deprivation of her liberty.

67. Petitioner challenges Respondents' failure to make and document a lawful, individualized custody determination when they exercised discretionary authority to detain her. The challenged agency action is the January 31 decision to convert Petitioner from a non-detained person who had consistently complied with immigration reporting requirements into a detained person without identifying the factual and legal basis for that decision.

68. Respondents' initial custody decision was not in accordance with law because Respondents treated detention as automatic or categorical rather than exercising the discretion conferred by 8 U.S.C. § 1226(a). The decision failed to address the facts materially bearing on Petitioner's custody, including her more than two years of compliance with reporting requirements, her appearance at the January 31 appointment, her family and community ties, her lack of any identified criminal history, her lack of any known failure to appear, and her willingness to comply with reasonable conditions of release. An agency acts arbitrarily and capriciously when it fails to consider important aspects of the problem before it or offers no rational explanation for the decision under review. Respondents' unexplained and apparently group-based detention of Petitioner is therefore subject to setting aside under 5 U.S.C. § 706(2)(A).

69. Respondents' initial detention also exceeded their statutory authority to the extent they detained Petitioner without determining whether detention was necessary under the discretionary framework established by 8 U.S.C. § 1226(a). The existence of a pending removal case, standing alone, did not eliminate Respondents' obligation to determine whether Petitioner should be detained, released on bond, or released subject to appropriate conditions. Because Respondents have not identified a lawful, individualized basis for the January 31 detention, the custody decision was in excess of statutory authority or limitations within the meaning of 5 U.S.C. § 706(2)(C).

70. Respondents' failure to provide an initial custody determination, the factual basis for detention, and a meaningful avenue for review also constituted action taken without observance of procedure required by law. The custody regulations provide for an initial custody determination and permit the noncitizen to seek review of the conditions of

custody before an Immigration Judge. 8 C.F.R. § 236.1(c), (d). Respondents' failure to perform those required custody functions cannot be cured merely by pointing to the later entry of a removal order. The January 31 detention must be evaluated based on the facts and legal authority existing when Respondents took Petitioner into custody, not by reference to an order entered more than three months later. The initial custody action is therefore subject to set-aside under 5 U.S.C. § 706(2)(D).

71. To the extent Respondents contend that they made an initial custody decision but have not disclosed it, Petitioner is entitled to review of that decision and the record on which it was based. To the extent Respondents contend that no individualized custody decision was made, their failure to perform the required custody determination constitutes agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1). In either event, Respondents should be required to identify the legal authority invoked for the January 31 detention, disclose the factual basis for that action, and provide the individualized custody review contemplated by the governing regulations.

72. The subsequent May 7, 2026, removal order does not retroactively validate the January 31 custody decision. Although detention after an administratively final removal order may be governed by 8 U.S.C. § 1231, that later statutory framework did not supply the legal basis for the initial detention, which occurred before the Immigration Court entered any removal order. Respondents may not rely on the later order to avoid review of whether their original exercise of discretionary detention authority complied with 8 U.S.C. § 1226(a) and the APA.

73. Petitioner's APA claim challenges the legality of Respondents' custody action, not the validity of the underlying removal order and not the Immigration Court's adjudication of

her asylum, withholding, or CAT claims. The Supreme Court has construed the jurisdictional limitation in 8 U.S.C. § 1252(g) narrowly to cover only the Attorney General's discrete decisions or actions to commence proceedings, adjudicate cases, or execute removal orders. Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471, 482–83 (1999). Petitioner's challenge to the January 31 custody decision is directed to detention authority and custody procedures, not to any of those three discrete actions.

74. Respondents' unlawful initial custody decision has caused and continues to cause Petitioner irreparable harm through the ongoing loss of physical liberty and the exacerbation of her documented trauma-related mental-health conditions. The APA authorizes a reviewing court to set aside unlawful agency action and to compel agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1)–(2). Petitioner therefore requests an order setting aside the January 31 custody decision and requiring Respondents to conduct a lawful, individualized custody determination under 8 U.S.C. § 1226(a) and 8 C.F.R. § 236.1.

75. Because the challenged agency action resulted in Petitioner's ongoing physical confinement, Petitioner independently seeks habeas relief under 28 U.S.C. § 2241. The APA claim supports setting aside the unlawful custody action and compelling the procedures required by law; the habeas claim supports an order directing Petitioner's immediate release if Respondents cannot establish lawful authority for her present detention. In the alternative, if the Court determines that the existing record does not require immediate release, Petitioner requests an expedited custody determination before

a neutral adjudicator and an order requiring Respondents to release her unless Respondents establish a lawful basis for continued detention

76. Petitioner is entitled to habeas and APA relief setting aside Respondents' unlawful custody decision as applied and ordering her immediate release.

Ground Three: Violation of the Fifth Amendment Procedural Due Process — As-Applied Challenge to Continued Civil Detention Without a Constitutionally Adequate Custody Determination).

77. Petitioner realleges and incorporates all preceding paragraphs.

78. The Due Process Clause prohibits the federal government from depriving any person of liberty without due process of law. *U.S. Const. amend. V; Zadvydas v. Davis*, 533 U.S. 678 (2001); *Reno v. Flores*, 507 U.S. 292 (1993).

79. The Supreme Court has held that the INA cannot be rewritten by statutory interpretation to impose an automatic schedule of bond hearings. However, Jennings does not foreclose as-applied constitutional challenges to immigration detention, and Petitioner brings this claim as an as-applied due process challenge to her continued civil confinement. *Jennings v. Rodriguez*, 583 U.S. 131 (2018).

80. Petitioner is subject to an administratively final order of removal, although the record indicates that the order became final no earlier than June 8, 2026, when DHS's reserved appeal period expired without an appeal. Petitioner is not serving a criminal sentence, and her grant of withholding of removal under the Convention Against Torture prevents her removal to El Salvador while that protection remains in effect. Her detention is governed by 8 U.S.C. § 1231. To the extent the statutory removal period has expired, continued detention under 8 U.S.C. § 1231(a)(6) is discretionary rather than automatic and must

remain reasonably related to a significant likelihood of removal in the reasonably foreseeable future. *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001)

81. Because immigration detention is civil rather than punitive, due process requires procedures adequate to ensure that continued detention remains justified as applied to the individual. The process due depends on the private liberty interest at stake, the risk of erroneous deprivation and probable value of additional safeguards, and the Government's interests, including the burdens that additional procedures would impose. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) Under the circumstances alleged here, due process requires, at a minimum, notice of the factual and legal basis for continued detention, a meaningful opportunity to contest that basis, and an individualized determination by a neutral decisionmaker concerning whether continued confinement remains necessary to address flight risk, danger, or another legitimate regulatory objective.

82. The Government's interests do not justify continued detention without constitutionally adequate procedures. The Government has a legitimate interest in effectuating a valid removal order, securing Petitioner's appearance, and protecting the community. But those interests must be balanced against Petitioner's substantial liberty interest and the absence of any identified criminal conviction, missed reporting appointment, failure to appear, or other conduct demonstrating that she presents a flight risk or danger. If Respondents cannot establish a reasonably foreseeable removal or a specific need for continued confinement, those interests can be addressed through less restrictive measures, including release subject to supervision, reporting requirements, address restrictions, or other reasonable noncustodial conditions.

83. Accordingly, if Respondents continue to detain Petitioner without providing the factual and legal basis for custody, a meaningful opportunity to contest continued confinement, and an individualized assessment of the likelihood of removal and any asserted flight or danger risk, the detention violates the Due Process Clause as applied to Petitioner. Continued detention also becomes unlawful under *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001), if Petitioner demonstrates good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future and Respondents fail to rebut that showing with evidence of a concrete and reasonably foreseeable removal.

84. Petitioner is therefore entitled to habeas relief directing Respondents to release her from custody, subject to reasonable conditions of supervision. In the alternative, if the Court determines that the existing record does not establish that immediate release is required, Petitioner is entitled to an expedited, constitutionally adequate custody determination that provides the procedural protections described above.

VIII. REQUEST FOR RELIEF

85. Petitioner respectfully requests that the Court:

A. Issue an Order to Show Cause under 28 U.S.C. § 2243 requiring Respondents to respond forthwith;

B. Grant this Writ under 28 U.S.C. § 2241 and order Petitioner released immediately;

D. Award Petitioner attorneys' fees and costs to the extent permitted by law; and

E. Grant such other and further relief as the Court deems just and proper.

DATED this August 20, 2026.

/s/ Jose Torres
Jose Torres
Counsel for Petitioner