

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FT. MYERS DIVISION**

<b>Israel Godinez Perez,</b>	X	
<i>Petitioner,</i>	X	
	X	
v.	X	
	X	Case No.:
<b>Kristi Noem,</b> Secretary, Department of	X	
Homeland Security; <b>Garrett Ripa,</b> Field Office	X	
Director, U.S. Immigration and Customs	X	
Enforcement, Office of Enforcement and Removal	X	
Operations, Miami, Florida,	X	
<i>Respondents.</i>	X	
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**PETITION FOR A WRIT OF HABEAS CORPUS  
REQUEST FOR EXPEDITED HEARING  
REQUEST FOR ORAL ARGUMENT**

This is an action for habeas corpus relief under 28 U.S.C. §2241 and the Suspension Clause of the U.S. Constitution. Petitioner seeks an Order requiring Respondents to release Petitioner from detention in accordance with 8 U.S.C. §1231(a)(3).

**SUBJECT MATTER JURISDICTION**


1. That this Court has habeas corpus jurisdiction pursuant to 28 U.S.C. §2241 et seq., and Article I, § 9, Clause 2 of the U.S. Constitution (“Suspension Clause”). See INS v. St Cyr, 533 U.S. 289 (2001); Demore v. Kim, 538 U.S. 510 (2003); Zadvydas v. Davis, 533 U.S. 678 (2001).

2. That Petitioner is in custody for purposes of habeas corpus relief. He is currently detained in the custody of the U.S. Department of Homeland Security (“Department”), acting under color of authority of the United States.

#### VENUE

3. That venue is proper in the Middle District of Florida, Ft. Myers Division, because Petitioner is currently detained at the Glades County Jail in Moore Haven, Florida, within the territorial jurisdiction of the Ft. Myers Division.

#### PARTIES

4. That Petitioner, **Ismael Godínez Perez** (A ) is a native and citizen of Mexico.
5. That Respondent, **Kristi Noem**, is the Secretary of Homeland Security and she is being sued in his official capacity. In her official capacity, Respondent Noem is in charge of enforcing the immigration laws of the United States. It is Respondent Noem’s refusal to release Petitioner from custody that is the subject of this petition.
6. That Respondent, **Garrett Ripa**, is the Field Office Director of U.S. Immigration and Customs Enforcement (“ICE”) in Miami, Florida and he is being sued in his official capacity. Respondent Ripa exercises authority over immigration enforcement matters within the Miami District. It is

Respondent Ripa's decision to not effectuate Petitioner's release that is the subject of this petition.

#### STATEMENT OF CLAIM

7. That Petitioner is a native and citizen of Mexico. Prior to his arrest and detention, Petitioner was residing in Palm Beach County, Florida.
8. That in or about 1999, Petitioner entered the United States without inspection.
9. That in or about 2006, Petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal ("Form I-589"), with U.S. Citizenship and Immigration Services ("USCIS").
10. That USCIS thereafter referred Petitioner's Form I-589 to the Immigration Court. This was accomplished via issuance of a Form I-862, Notice to Appear ("NTA"), against Petitioner.
11. That on or about October 25, 2007, an Immigration Judge ("IJ") in Miami, Florida entered an order of removal against Petitioner. In so doing, the IJ denied Petitioner's request for withholding of removal as described at 8 U.S.C. §1231(b)(3).<sup>1</sup>
12. That Petitioner reserved his right to appeal the IJ's decision to the Board of Immigration Appeals ("Board"). Petitioner perfected this right when the Board received a timely Form EOIR-26, Notice of Appeal.

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<sup>1</sup> "Notwithstanding paragraphs (1) and (2), the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion."

13. That via written decision dated November 4, 2009, the Board vacated the IJ's order of removal and remanded Petitioner's removal proceedings to the Miami Immigration Court for further action relating to his application for withholding of removal.
14. That following the aforementioned remand, an IJ entered an order granting Petitioner's application for the protections afforded via §1231(b)(3). This order was entered on September 24, 2010. The IJ's order renewed the order of removal that had been entered against Petitioner, but included a restriction that Petitioner could not be removed to Mexico.
15. That neither Petitioner nor Department representatives reserved their right to appeal the IJ's September 24, 2010 order. Accordingly, this order became the administratively final order of removal ("final order") entered against Petitioner. *See* 8 U.S.C. §1101(a)(47)(B).
16. That the IJ's grant of withholding of removal to Petitioner is subject to termination. *See generally* 8 C.F.R. §1208.24(f).
17. That based upon information and belief, Petitioner submits that the Department has taken no action seeking to terminate the IJ's grant of withholding of removal as provided at 8 C.F.R. §1208.24(f).
18. That following the entry of a final order against him, Petitioner was not detained pursuant to the administratively final order of removal discussed in the paragraph above.
19. That on or about April 25, 2025, Petitioner was arrested by ICE.

20. That Petitioner is currently detained at the Glades County Jail in Moore Haven, Florida.

21. That in defining the term “removal period,” 8 U.S.C. §1231(a)(1)(A) provides that:

“[e]xcept as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the “removal period”).”

22. That the Immigration and Nationality Act (“INA” or “Act”) further specifies when the “removal period” begins. The Act provides that:

“[t]he removal period begins on the latest of the following:

- (i) The date the order of removal becomes administratively final.
- (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.” 8 U.S.C. §1231(a)(1)(B).

23. That the Act provides for certain suspensions of the “removal period.”

Specifically, 8 U.S.C. §1231(a)(1)(C) states that:

“[t]he removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.”

24. That the Act also provides that

“[d]uring the removal period, the Attorney General shall detain the alien. Under no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title.” 8 U.S.C. §1231(a)(2).

25. That notwithstanding the statutorily mandated 90-day removal period, the Supreme Court has found that this period may be extended for a period reasonably necessary to effectuate removal; a “reasonable time” limitation of six months. *See Zadvydas v. Davis*, 533 U.S. at 691-702 (2001); *Clark v. Martinez*, 543 U.S. 371 (2005) (applying the *Zadvydas* 6-month ruling to inadmissible persons stopped at the border; finding that 8 U.S.C. §1231(a)(6) authorizes post-final order detention of such persons only for the period reasonably necessary to effectuate removal (6 months)). Thus, if removal is not reasonably foreseeable in the immediate future, detention beyond a six-month period is unconstitutional.

26. That Petitioner submits that the removal period began to run when final order was entered against him on September 24, 2010.

27. That Petitioner has not filed any request for an administrative stay of removal or any request for a judicial stay of removal subsequent to the IJ’s issuance of the final order on September 4, 2010.

28. That Petitioner has not engaged in any conduct described at §1231(a)(1)(C) subsequent to the IJ’s issuance of the final order on September 4, 2010.

29. That based upon information and belief, Petitioner submits that ICE has taken no action seeking to effectuate the order of removal entered against him following entry of the final order on September 24, 2010.
30. That Petitioner contemplates that he could be removed to a country other than Mexico were ICE intent on effectuating the outstanding final order. *See* 8 U.S.C. §1231(b)(2). Were the Department intent on effectuating the final order by removing Petitioner to a country other than Mexico, Petitioner submits that he is entitled to notice of any such intention and an opportunity to apply for the benefits described at 8 U.S.C. §1231(b)(3) as to any country (or countries) to which ICE will deport Petitioner.
31. That Petitioner submits that he has neither taken any course of action nor refused to undertake a course of action which would justify any suspension of the removal period within the meaning of 8 U.S.C. §1231. *See* Edwards v. Gonzalez, 2007 U.S. Dist. LEXIS 96645 (N.D. Fla. Oct. 2, 2007) (upholding Zadvydas and Clark but denying petition finding petitioner had not cooperated with ICE to effectuate his removal); Jian Bin Tang v. Gonzalez, 2006 U.S. Dist. LEXIS 93576 (N.D. Fla. Oct. 13, 2006) (same).
32. That while the INA contemplates that the execution of most orders of removal can be effectuated within the 90-day period defined at 8 U.S.C. §1231(a), the Act provides a pathway allowing certain individuals to be released from detention following completion of the “removal period” if the order of

removal could not be executed within this period. Specifically, 8 U.S.C.

§1231(a)(3) states that:

“[i]f the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien--

- (A) to appear before an immigration officer periodically for identification;
- (B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;
- (C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and
- (D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.”

33. That Petitioner contends that the removal period applicable to his case terminated on or about December 23, 2010, the expiration of the 90-day period following entry of a final order against him. *See Benitez v. Wallis*, 402 F.3d 1133 (11th Cir. 2005) (relying on *Clark* to hold that an inadmissible alien can no longer be detained beyond the statutory 90-day removal period of §1231(a)(1), where there was no significant likelihood of removal in the reasonably foreseeable future). The six month “reasonable time” period to effectuate the order of removal as contemplated in *Zadvydas* was reached no later than March 23, 2011.

34. That Petitioner contends that there is no reasonable foreseeable likelihood of effectuating the outstanding order of removal entered



against him; that the reasonable period for his detention has been exceeded and that his detention is accordingly in violation of the U.S. Constitution.

35. That there is no mechanism for Petitioner to appeal the failure of Respondents to order his release in accordance with 8 U.S.C. §1231(a)(3). As a result, Petitioner contends that his detention is of indefinite length.

#### CAUSES OF ACTION

36. **FIRST CLAIM.** Petitioner's continued detention beyond the 90-day removal period and "reasonable time" period violates his substantive and procedural due process rights under the Fifth Amendment of the United States Constitution. U.S. CONST. amend. V.

37. **SECOND CLAIM.** Petitioner's continued detention beyond the 6-month removal period violates the Fourth Amendment of the United States Constitution because there are no reasonable, objective grounds for the detention. U.S. CONST. amend. IV.

#### EXHAUSTION

38. That Petitioner challenges the constitutionality of his continued detention beyond the 90-day removal period defined in 8 U.S.C. §1231(a)(1) and "reasonable time" period delineated in Zadvydas that, as applied here, mandates his continued and indefinite detention. He does not challenge the government's authority to conduct removal proceedings against him or any

other action of the government other than its refusal to order his release in accordance with 8 U.S.C. §1231(a)(3) and to instead continue his detention.

39. That Petitioner has exhausted his administrative remedies. The administrative process allows for no remedy for the injuries inflicted by Respondents' failure to effectuate the provisions of 8 U.S.C. §1231(a)(3). There is no appellate process that provides Petitioner with an opportunity to challenge the refusal of Respondents to apply 8 U.S.C. §1231(a)(3) to him.

40. That to the extent that any administrative process may exist, exhaustion of administrative remedies, which is a prudential requirement, is not required here because any administrative appeal would be futile, and Petitioner raises a serious constitutional question.

**PRAYER FOR RELIEF**

Petitioner respectfully prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Declare that Petitioner's continued detention is in violation of the Constitution and laws of the United States because his continued and indefinite detention is unconstitutional or otherwise unlawful;
3. Grant temporary and permanent injunctive relief ordering Respondents to release Petitioner in accordance with 8 U.S.C. §1231(a)(3);
4. Award Petitioner his costs and reasonable attorneys' fees in this action as provided by 28 U.S.C. §2412 or other statute; and
5. Grant such further relief as the Court deems just and proper.

Dated: May 22, 2025

Respectfully submitted,

/s/ David Stoller /s/  
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**Table of Contents**  
**Documents in Support of Complaint**

**Ismael Godinez Perez v.**  
**Kristi Noem, Secretary, Department of Homeland Security, *et al.*,**

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- Exhibit 1: Final Administrative Order of Removal issued against Petitioner (September 24, 2010);
- Exhibit 2: Printout from Online Detainee Locator system relating to Petitioner;
- Exhibit 3: Email thread between counsel for Petitioner (Alex Solomiany) and U.S. Immigration and Customs Enforcement relating to Petitioner's arrest on April 25, 2025;
- Exhibit 4: Order from the Board of Immigration Appeals remanding Petitioner's removal proceedings to the Miami Immigration Court (November 4, 2009);
- Exhibit 5: Oral Decision of the Immigration Judge (October 25, 2007).