

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

JUAN CARLOS MELGAR HERNANDEZ,  
Baltimore Hold Room ICE Enforcement and  
Removal Operations 31 Hopkins Plaza, Floor 6  
Baltimore, MD 21201

*Petitioner,*

v.

NIKITA BAKER, *in her official capacity as Field  
Office Director for Detention & Removal*, U.S.  
Immigration and Customs Enforcement 31  
Hopkins Plaza 6th Floor Baltimore, MD, 21201;  
JOSEPH BURKI, *in his official capacity as Acting  
Assistant Director of the Baltimore Field Office,  
Enforcement and Removal Operations*, U.S.  
Immigration and Customs Enforcement 31  
Hopkins Plaza 6th Floor Baltimore, MD, 21201;  
KENNETH GENALO, *in his official capacity as  
Acting Executive Associate Director of  
Enforcement and Removal Operations*, U.S.  
Immigration and Customs Enforcement 500 12th  
St., S.W. Washington, DC 20536; TODD LYONS,  
*in his official capacity as Director*, U.S.  
Immigration and Customs Enforcement, 500 12th  
St., S.W. Washington, DC 20536; KRISTI NOEM,  
*in her official capacity as Secretary*, U.S.  
Department of Homeland Security, Washington,  
DC 20528; and PAM BONDI, *in her official  
capacity as Attorney General of the United States*,  
Department of Justice 950 Pennsylvania Avenue,  
NW Washington, DC 20530,

*Respondents.*

**PETITION FOR A WRIT OF  
HABEAS CORPUS**

Civil Action No. \_\_\_\_\_

**PETITION FOR A WRIT OF HABEAS CORPUS**

**INTRODUCTION**

1. Petitioner Juan Carlos Melgar Hernandez, who has lived in the United States for nearly three decades, was re-detained in ICE custody despite having been previously released under an Order of Supervision after winning his immigration case more than fifteen months ago based on findings by an Immigration Judge (IJ) that he would likely be tortured if deported to his country of origin, El Salvador. The statutorily prescribed time period in which ICE could have theoretically removed Mr. Melgar Hernandez to a country other than El Salvador expired on June 9, 2024, yet on May 21, 2025, he was arbitrarily re-detained with no end in sight.
2. Mr. Melgar Hernandez is detained pursuant to 8 U.S.C. § 1231, which governs the detention of non-citizens with a final order of removal that has been withheld or deferred by an IJ due to a substantial risk of persecution or torture in their country of origin. 8 U.S.C. § 1231(a)(1)(B)(i). Mr. Melgar Hernandez's removal order and accompanying relief grant became final upon the expiry of the appeal period on March 11, 2024. 8 C.F.R. § 1241.1.
3. Mr. Melgar Hernandez's continued detention violates 8 U.S.C. § 1231(a), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his removal is not reasonably foreseeable. He cannot be deported to his country of origin—El Salvador—because he has been granted relief under the Convention Against Torture (“CAT relief”). 8 C.F.R. § 1208.17. To the extent ICE is pursuing his removal to an alternative country, it is historically very unlikely ICE will accomplish this, and even if it identifies such a country, Mr. Melgar Hernandez is entitled to notice and the opportunity to seek fear-based protection with respect to that country.

4. Furthermore, ICE's re-detention of Mr. Melgar Hernandez, without the opportunity to seek relief from the alternative countries to which it is supposedly attempting to remove him, violates his due process rights.
5. Petitioner, Juan Carlos Melgar Hernandez, hereby petitions this Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents, and to enjoin Petitioner's continued unlawful detention by the Respondent. In support of this petition and complaint for injunctive relief, Petitioner alleges as follows:

#### **CUSTODY**

6. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs Enforcement ("ICE"). Petitioner is detained at the "Baltimore Hold Room" in Baltimore, Maryland. Petitioner is under the direct control of Respondents and their agents.

#### **JURISDICTION**

7. This action arises under the Constitution of the United States, 28 U.S.C. §2241(c)(1), and the Immigration and Nationality Act ("INA"), 8 U.S.C. §1101 et seq. This Court has subject matter jurisdiction under 28 U.S.C. §2241, Art. I §9, cl. 2 of the United States Constitution ("Suspension Clause"); and 28 U.S.C. §1331, as Petitioner is presently in custody under color of the authority of the United States., and such custody is in violation of the Constitution, laws, or treaties of the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) ("We conclude that §2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention."); *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) ("at its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that

context that its protections have been strongest.”); *Clark v. Martinez*, 543 U.S. 371 (2005) (holding that *Zadvydas* applies to aliens found inadmissible as well as removable).

### **VENUE**

8. Venue lies in the District of Maryland, because Petitioner is currently detained in the territorial jurisdiction of this Court, at the “Baltimore Hold Room.” 28 U.S. C. §1391.

### **PARTIES**

1. Petitioner is a native and citizen of El Salvador who was granted CAT relief on February 9, 2024. His release was effectuated by ICE on April 16, 2024 under an Order of Supervision. On May 21, 2025, he was again detained by ICE officials at the Baltimore Field Office and has remained held in the Baltimore Hold Room ever since.
2. Respondent Nikita Baker is the Field Office Director (“FOD”) for ICE’s ERO Baltimore Field Office, which has jurisdiction over the Baltimore Hold Room. She is responsible for enforcement and removal operations in Maryland. As far as counsel is aware, Petitioner is currently in the custody of the Baltimore Field Office, at the Baltimore Hold Room. *See Ozturk v. Trump*, No. 2:25-cv-374, 2025 WL 1145250, at \*8 (D. Vt. Apr. 18, 2025) (finding that Field Office Director was plausibly petitioner’s immediate custodian because petitioner “was not at a prison or jail when the Petition was filed – she was in a vehicle begin transported to an ICE Field Office.”). Ms. Baker is the immediate legal custodian of Petitioner. She is sued in her official capacity.
3. Respondent Joseph Burki is the Assistant Field Office Director for ICE’s ERO Baltimore Field Office, which has jurisdiction over the Baltimore Hold Rooms and is responsible for enforcement and removal operations in Maryland. He is sued in his official capacity.

4. Respondent Kenneth Genalo is the Acting Executive Associate Director of ICE Enforcement and Removal Operations. He is the head of the ICE office that carries out arrests of noncitizens and removals from the United States. He is sued in his official capacity.
5. Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS). DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity.
6. Pam Bondi is the Attorney General of the United States and is responsible for administering the Executive Office for Immigration Review (EOIR) within the Department of Justice. She is sued in her official capacity.

#### **STATEMENT OF THE FACTS**

9. The Petitioner is a native and citizen of El Salvador. He last entered the United States on February 8, 1999, pursuant to an immigrant visa. He has remained here ever since.
10. On February 1, 2023, the Petitioner filed before the Immigration Court his application for deferral of removal under the Convention Against Torture. 8 C.F. R. §1208.16(c)(4).
11. The Immigration Judge granted the Petitioner's application for deferral of removal of removal pursuant to 8 C.F. R. §1208.16(c)(4) on February 9, 2024.
12. On April 19, 2024, the Department of Homeland Security ("DHS") released the Petitioner from custody subject to an Order of Supervision, dated April 16, 2024. A condition of his release was that he report in person on May 16, 2024 to the ICE Enforcement and Removal Operations ("ERO") office in Silver Spring, Maryland.

13. The Petitioner appeared before ERO on May 16, 2024, and was scheduled to report again on April 16, 2026 to the ERO Field Office in Baltimore, Maryland.
14. On May 1, 2025, Respondent mailed to petitioner a “Call-In Letter,” ordering the Petitioner to appear in person at the Baltimore Field Office on May 21, 2025, “in connection with an official matter.”
15. The Petitioner appeared, with counsel, at the Baltimore Field Office on May 21, 2025, and was immediately apprehended by the Respondents and their agents.
16. The Petitioner immediately placed the Respondents on written notice of his request for a reasonable fear interview in regard to any third country to which Respondents may designate his removal.
17. On May 21, 2025, Respondent served on Respondent a Notice of Removal, informing the Petitioner of Respondent’s intent to remove him to Mexico.
18. As of the date of filing, the Petitioner remains in custody of Respondents at the Baltimore Hold Room in the Baltimore Field Office. As of the date of filing, Respondents have yet to take any action in the Petitioner’s removal proceedings.

## **CLAIMS FOR RELIEF**

### **COUNT I**

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

19. Petitioner realleges and incorporates by reference the paragraphs above.
20. 8 U.S.C. § 1231(a), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for “a period reasonably necessary to bring about the [non-citizen’s] removal from the United States.” 533 U.S. at 689. The removal period, as defined by 8 U.S.C § 1231(a) expired, by all statutory definitions and otherwise, in June 2024. His re-detention after

being released to an Order of Supervision on April 16, 2024, is entirely outside the scope of any provision under 8 U.S.C. § 1231(a).

21. Petitioner cannot be deported to El Salvador, the only country of which he is a citizen, because he has a final grant of protection from removal there. There is no indication that ICE has identified another country to which he can be feasibly removed. While ICE has provided Petitioner a Notice of Removal to Mexico, dated May 21, 2025, there is no indication whatsoever that Respondents would be able to reasonably foreseeably remove the Petitioner to Mexico. Petitioner seeks fear-based relief from removal to that country, further prolonging his proceedings and detention.
22. Therefore, Petitioner will not be removed from the United States in the “reasonably foreseeable future,” and his re-detention violates 8 U.S.C. § 1231(a). *Id.* at 701.

## **COUNT II**

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

23. Petitioner realleges and incorporates by reference the paragraphs above.
24. The Due Process Clause of the Fifth Amendment forbids the Government from depriving any person of liberty without due process of law. U.S. Const. Amend. V. To comply with the Due Process Clause, civil detention must “bear[] a reasonable relation to the purpose for which the individual was committed,” which for immigration detention is removal from the United States. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690). Furthermore, “[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotations omitted).

25. Petitioner's re-detention following his release to an Order of Supervision more than one year prior is entirely arbitrary given the lack of any showing of changed circumstances, alleged or otherwise, by the Respondents, and given the Petitioner's strict compliance with all terms of the Order of Supervision since it was issued on April 16, 2024. Re-detention of the Petitioner pending supposed third country removal efforts, without indication that ICE is actually attempting to remove him anywhere reasonably foreseeable, violates his due process rights.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully request that this Court:

- a. Assume jurisdiction over this matter;
- b. Declare that Respondents' actions or omissions violate the Immigration and Nationality Act and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution.
- c. Order Petitioner's immediate release from custody;
- d. Grant any other further relief this Court deems just and proper.

Dated: May 23, 2025

Respectfully submitted,

/s/ Adam Crandell

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