

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ESAU ERNEST CHICAS ORTEGA,

Petitioner,

v.

Sylvester Ortega, Acting Field Office Director, San Antonio Field Office, United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of Homeland Security; Pamela Bondi, United States Attorney General; Bobby Thompson, South Texas Detention Complex, Warden, *in their official capacities,*

Respondents.

Civil Action No.:

5:25-cv-00689-OLG-RBF

**PETITION FOR WRIT OF HABEAS
CORPUS**

**FIRST AMENDED PETITION FOR A WRIT
OF HABEAS CORPUS PURSUANT TO 28
U.S.C. § 2241**

INTRODUCTION

1. Petitioner respectfully moves this Court to enjoin the Department of Homeland Security (DHS), including Immigration and Customs Enforcement (ICE), from executing his removal order by sending him to a third country without affording the procedural protections required under the Preliminary Injunction in *D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. Apr. 18, 2025), and to order Petitioner's immediate release from immigration detention, as further detention violates due process and is not justified under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

2. Petitioner was previously granted protection under the United Nations Convention Against Torture (CAT) and is now detained by ICE, facing potential removal to a country not designated in the original order of removal. Such action is unlawful under both statutory and constitutional principles.

CUSTODY

3. Petitioner is in the physical custody of the Respondents. Petitioner is imprisoned at the South Texas Detention Complex in Pearsall, Texas, an immigration detention facility, under the direct control of Respondents and their agents.

JURISDICTION

4. This Court has jurisdiction to entertain this habeas petition under 28 U.S.C. 1331; 28 U.S.C. 2241; the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V; and the Suspension Clause, U.S. Const. art. I, § 2.

VENUE

5. Venue is proper in this District under 28 U.S.C. 1391 and 28 U.S.C. 2242 because at least one Respondent is in this District, Petitioner is detained in this District, Petitioner's immediate physical custodian is located in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) ("the proper respondent to a habeas petition is 'the person who has custody over the petitioner'") (citing 28 U.S.C. 2242).

PARTIES

6. Petitioner Esau Ernesto Chicas Ortega is currently detained by Respondents in South Texas Detention Complex in Pearsall, Texas, an immigration detention facility. He has been in ICE custody since on or about June 18, 2025, when he was detained while

reporting in person for his regular, required check-in.

7. Respondent Sylvester Ortega is the Acting Field Office Director for San Antonio, which is responsible for the San Antonio Sub-Field Office of ICE with administrative jurisdiction over Petitioner's immigration case. He is a legal custodian of the Petitioner and is named in his official capacity.
8. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security (DHS). She is a legal custodian of the Petitioner and is named in her official capacity.
9. Respondent Pamela Jo Bondi is the Attorney General of the United States Department of Justice. She is a legal custodian of the Petitioner and is named in her official capacity.
10. Bobby Thompson is the Warden of the South Texas Detention Complex, also known as South Texas ICE Processing Center. Mr. Thompson has actual custody of Petitioner and is named in his official capacity. Respondent Thompson can be served at 566 Veterans Dr., Pearsall, Texas 78061.

STATEMENT OF FACTS

PETITIONER WAS DETAINED DESPITE HAVING PROTECTED STATUS AWARDED TO HIM BY AN IMMIGRATION JUDGE UNDER THE CONVENTION AGAINST TORTURE

11. Mr. Chicas Ortega came to the United States on or about December 7, 2017. He was detained in Immigration Custody and applied for relief under the Convention Against Torture. Mr. Chicas Ortega remained imprisoned for nearly two years, exactly 649 days, in Pearsall, Texas, awaiting a favorable decision in his case, which he received in September of 2019. He was released from detention with an "Order of Supervision" on September 17, 2019. (Exhibit A). An Immigration Judge signed Mr. Chicas Ortega's

Deferral of Removal under the Convention Against Torture on October 3, 2023. (Exhibit B).

12. Since his release and formal grant of protection, Mr. Chicas Ortega has remained in compliance with his Order of Supervision. He has no criminal record. He is not a threat in any way to the community. However, when Petitioner dutifully reported under this supervision order on June 18, 2025, he was detained by ICE/ERO. He was told his grant of protection was “too old” and it would have to be “redone.” He has remained imprisoned again since that time.
13. Mr. Chicas Ortega’s pro bono counsel has advised ICE/ERO via email that Mr. Chicas Ortega cannot be lawfully detained or removed due to both his valid protection order and the fact that he requires notice and due process of any removal to a third nation.

LEGAL STANDARD AND ARGUMENT

A. ICE May Not Remove Petitioner to a Third Country Without Procedural Due Process

In *D.V.D. v. DHS*, the United States District Court for the District of Massachusetts entered a nationwide preliminary injunction prohibiting DHS from removing individuals with final orders of removal to third countries without:

1. Providing written notice (in a language the noncitizen understands) to both the individual and their counsel;
2. Affording a meaningful opportunity to raise a fear-based claim under the Convention Against Torture;
3. Moving to reopen proceedings upon a showing of “reasonable fear”;
4. Providing a minimum 15-day opportunity to file a motion to reopen if DHS declines to

do so.

Petitioner is a member of the nationwide class protected by this injunction. DHS has not complied with any of these procedural safeguards. Removal to a third country under these conditions is barred by a federal court order.

B. DHS Lacks Authority to Circumvent CAT Relief Without Reopening

CAT protection, once granted, prohibits removal to any country where torture is likely. DHS cannot revoke this protection absent a formal motion to reopen under 8 C.F.R. § 1208.17(d). Petitioner has received no such notice or opportunity to challenge the revocation of his protection order. Any attempt to circumvent CAT relief by designating a third country for removal undermines the Immigration Judge's order and violates federal law.

C. Continued Detention Violates the Due Process Clause and *Zadvydas*

Under *Zadvydas v. Davis*, the government may not detain a noncitizen indefinitely where removal is not reasonably foreseeable. Because ICE has not lawfully designated a country for removal—and may not lawfully remove Petitioner to any country without compliance with *D.V.D.*—Petitioner's detention is no longer constitutionally justified.

Furthermore, Petitioner's detention serves no removal purpose and thus violates the Fifth Amendment's Due Process Clause. Continued detention of an individual with a valid CAT deferral—particularly where there is no significant likelihood of removal in the reasonably foreseeable future—violates the constitutional principles of due process and the statutory limitations on detention under *Zadvydas*. The government cannot justify

prolonged civil incarceration where removal is not practically attainable and where the underlying purpose of detention—to effectuate removal—no longer exists.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. 2243;
3. Enjoin ICE from removing the Petitioner to any third country unless and until all procedural requirements from *D.V.D. v. DHS* are satisfied;
4. Declare any such removal without notice and hearing unlawful;
5. Declare that Petitioner's detention violates the Immigration and Nationality Act, and specifically 8 U.S.C. 1254a;
6. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
7. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;
8. Order the immediate release of Petitioner from ICE custody, or in the alternative, order a

bond hearing within seven days;

9. Award any other relief the Court deems just and proper, including attorney's fees if applicable.

Dated: 7/3/2025

Respectfully submitted,

/s/ Alicia Perez

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ATTORNEYS FOR PLAINTIFF

Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I, Alicia Perez, have discussed the events described in this Petition with the Petitioner. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's CAT status, are true and correct to the best of my knowledge.

/s/ Alicia Perez

Date: July 2, 2025

Certificate of Service

I, Alicia Perez, hereby certify that the foregoing First Amended Petition for Habeas Corpus has been served on all parties by the ECF System on July 2, 2025.

/s/ Alicia Perez

Alicia Perez

Attorney for Petitioner