

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
Brownsville Division

Yovani Perez Hernandez,)
Petitioner,)
v.) Civil Action No. _____
Kristi Noem, *Secretary of Homeland Security*,)
Todd Lyons, *Acting Director, U.S. Immigration*)
and *Customs Enforcement*,)
Pamela Bondi, *Attorney General*,)
Field Office Director, *Harlingen Field Office*,)
Immigration and Customs Enforcement,)
Warden, *El Valle Detention Facility*,)
Respondents.)

PETITION FOR WRIT OF HABEAS CORPUS

1. On April 25, 2018, an immigration court found that Petitioner Yovani Perez Hernandez would more likely than not be tortured if he were sent to his native Mexico. The immigration court therefore granted Petitioner deferral of removal, which prohibits Respondents from removing him to Mexico. Should Respondents wish to remove Petitioner to Mexico, the law sets forth specific procedures by which they can reopen the case and seek to set aside the grant of deferral of removal. Should Respondents wish to remove Petitioner to any *other* country, they would first need to provide him with notice and the opportunity to apply for protection as to *that* country as well. Until they do either of these things, they cannot remove Petitioner from the United States. Nonetheless, Respondents have arrested Petitioner without observance of any legal procedures whatsoever. Such conduct cries out for immediate judicial relief.

JURISDICTION AND VENUE

2. This Court has jurisdiction to hear this case under 28 U.S.C. § 2241; 28 U.S.C. § 2201, the Declaratory Judgment Act; and 28 U.S.C. § 1331, Federal Question Jurisdiction. In addition, the individual Respondents are United States officials. 28 U.S.C. § 1346(a)(2).

3. The Court has authority to enter a declaratory judgment and to provide temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, 28 U.S.C. §§ 2201-2202, the All Writs Act, and the Court's inherent equitable powers, as well as issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

4. Venue lies in this District because Petitioner is currently detained in the custody of U.S. Immigration and Custom Enforcement (ICE) at the El Valle Detention Facility in Willacy County, within the Southern District of Texas; and each Respondent is an officer of the United States sued in his or her official capacity. 28 U.S.C. § 2241; 28 U.S.C. § 1391(e)(1). In addition, the Field Office Director for the Harlingen ICE Field Office, maintains his or her principal place of business in Harlingen, Texas.

THE PARTIES

5. Petitioner Yovani Perez Hernandez is a native of Mexico, who resides in Maryland. He is currently detained by Respondents at El Valle Detention Facility, TX.

6. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS). She is the cabinet-level secretary responsible for all immigration enforcement in the United States.

7. Respondent Todd Lyons is the Acting Director of ICE. He is the head of the federal agency responsible for all immigration enforcement in the United States.

8. Respondent Pamela Bondi is the Attorney General of the United States. The immigration judges who decide removal cases and applications for relief from removal do so as her designees.

9. The Field Office Director of the Harlingen ICE Field Office is responsible for overseeing ICE operations pertaining to noncitizens within its territorial jurisdiction, such as Petitioner, including detentions, enforcement, and removal operations. He or she is the immediate legal custodian of Petitioner for purposes of a federal habeas petition.

10. The Warden of the El Valle Detention Facility is the immediate physical custodian of Petitioner for purposes of a federal habeas petition.

11. All government Respondents are sued in their official capacities.

LEGAL BACKGROUND

12. The Convention Against Torture (“CAT”) prohibits the government from removing a noncitizen to a country where he is more likely than not to face torture. 8 C.F.R. § 1208.17(a). This protection is usually referred to as “CAT deferral of removal.” For an immigration judge (serving as the designee of Respondent Bondi) to grant CAT deferral of removal to a noncitizen, the noncitizen bears the burden of proof that he is more likely than not to suffer torture. *Id.*

13. If a noncitizen is granted deferral of removal, “DHS may not remove the alien to the country designated in the removal order unless the order of [deferral] is terminated.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021). No exceptions lie.

14. However, deferral of removal is a country-specific form of relief. Should the government wish to remove an individual with a grant of deferral of removal to some other country, it must first provide that individual with notice and an opportunity to apply for deferral of removal as to *that* country as well, if appropriate. *Cf. Guzman Chavez v. Hott*, 940 F.3d 867,

880 (4th Cir. 2019) (“And precisely because [deferral] of removal is country-specific, as the government says, if a noncitizen who has been granted [deferral] as to one country faces removal to an alternative country, then she must be given notice and an opportunity to request [deferral] of removal to that particular country.”), *rev’d on other grounds, Johnson v. Guzman Chavez*, 594 U.S. 523 (2021). *See also Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf. Protsenko v. U.S. Att’y Gen.*, 149 F. App’x 947, 953 (11th Cir. 2005) (per curiam) (permitting removal to third country only where individuals received “ample notice and an opportunity to be heard”).

15. Finally, for individuals with a removal order but who cannot be removed (because there is no country designated to which they can lawfully be removed, or because logistical or practical considerations prevent execution of an otherwise lawfully executable order), 8 U.S.C. §1231(a) permits the government to detain noncitizens during the “removal period,” which is defined as the 90-day period during which “the Attorney General shall remove the alien from the United States.” 8 U.S.C. §1231(a)(1)(A).

16. After the expiration of the removal period, 8 U.S.C. § 1231(a)(3) provides that the government shall release unremovable noncitizens on an order of supervision (the immigration equivalent of supervised release, with strict reporting and other requirements). Pursuant to 8 U.S.C. § 1231(a)(6), even noncitizens with aggravated felony convictions may be “released” if “subject to the terms of supervision” set forth in 8 U.S.C. § 1231(a)(3).

17. Constitutional limits on detention beyond the removal period are well established. Government detention violates due process unless it is reasonably related to a legitimate government purpose. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). “[W]here detention’s goal is

no longer practically attainable, detention no longer ‘bear[s][a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Additionally, cursory or pro forma findings of dangerousness do not suffice to justify prolonged or indefinite detention. *Zadvydas*, 533 U.S. at 691 (“But we have upheld preventative detention based on dangerousness only when limited to especially dangerous individuals [like suspected terrorists] and subject to strong procedural protections.”).

18. The purpose of detention during and beyond the removal period is to “secure[] the alien’s removal.” *Zadvydas*, 533 U.S. at 682. In *Zadvydas*, the Supreme Court “read § 1231 to authorize continued detention of an alien following the 90-day removal period for only such time as is reasonably necessary to secure the alien’s removal.” *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 699).

19. As the Supreme Court explained, where there is no possibility of removal, immigration detention presents substantive due process concerns because “the need to detain the noncitizen to ensure the noncitizen’s availability for future removal proceedings is “weak or nonexistent.” *Zadvydas*, 533 U.S. at 690-92. Detention is lawful only when “necessary to bring about that alien’s removal.” *See id.* at 689.

20. To balance these competing interests, the *Zadvydas* Court established a rebuttable presumption regarding what constitutes a “reasonable period of detention” for noncitizens after a removal order. *Id.* at 700-01. The Court determined that six months detention could be deemed a “presumptively reasonable period of detention,” after which the burden shifts to the government to justify continued detention if the noncitizen provides a “good reason to believe that there is not significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

21. Where a petitioner has provided “good reason to believe there is no significant

likelihood of removal in the reasonably foreseeable future,” the burden shifts to the government to rebut that showing. *Zadvydas*, 533 U.S. at 701.

FACTS

22. Petitioner Yovani Perez Hernandez was born on [REDACTED] 1979, in Mexico, and has no claim to citizenship or legal immigration status in any other country.

23. On April 25, 2018, an immigration court ordered Petitioner removed to Mexico, but also granted deferral of that removal under the Convention Against Torture. *See Ex. A*, Order of the Immigration Judge. No appeal was received for this case.

24. To date, Respondents have not taken any steps to reopen or rescind the grant of relief. *See Ex. B*, EOIR Automated Case Information.

25. On August 9, 2018, Petitioner was released from immigration detention on an Order of Supervision because the agency was unable to effectuate his removal to any country. *See Ex. C*, Order of Supervision.

26. Petitioner has dutifully attended his ICE check-in appointments, never failing to comply with his supervision schedule. Petitioner has no criminal arrests or convictions subsequent to the issuance of his Order of Supervision, and did not disobey any orders from immigration authorities. Petitioner had been given no reason to believe that he would be taken into custody, since he was in full compliance with his immigration case.

27. Since being granted deferral of removal, Petitioner has maintained stable housing and employment, supported by valid employment authorization. In addition, Petitioner has been actively involved in his community through volunteer work and regular church attendance.

28. Petitioner was issued “category C18” Employment Authorization Documents (EADs) on September 12, 2020; December 20, 2022; December 20, 2023; and December 20, 2024.

See Ex. D, Employment Authorization Documents and Notices. Each time the agency issued Petitioner an EAD, it necessarily first determined that he “cannot be removed due to the refusal of all countries designated by the alien or under this section to receive the alien[.]” 8 U.S.C. § 1231(a)(7)(A). *See also* 8 C.F.R. § 274a.12(c)(18) (“An alien against whom a final order of deportation or removal exists and who is released on an order of supervision under the authority contained in section 241(a)(3) of the Act may be granted employment authorization in the discretion of the district director only if the alien cannot be removed due to the refusal of all countries designated by the alien or under section 241 of the Act to receive the alien, or because the removal of the alien is otherwise impracticable or contrary to the public interest.”).

29. On June 11, 2025, Petitioner was on his way to work when he was stopped by three unidentified officers and subsequently detained by ICE. The officers indicated that he needed to be taken to Baltimore, Maryland, to confirm his identity, but they did not provide any explanation or present identification. Although Petitioner presented his driver’s license, he was not informed of the basis for his detention. He was then held in the Baltimore Hold Room for five days before being transferred to El Valle Detention Facility.

30. Petitioner was nearly removed to Mexico under ICE’s mistaken belief that he had been issued an executable order of removal. After a conversation with counsel, Petitioner’s deportation officer pulled him out of line for immediate removal. Throughout this process, Petitioner was never provided with any written or verbal explanation as to why his Order of Supervision was revoked, nor was he afforded any opportunity, such as a personal interview, to contest or clarify why his Order of Supervision should remain in place.

31. Despite this consistent compliance over the course of numerous years, Petitioner was nonetheless taken into custody and now remains detained at the El Valle Detention Facility,

as of the time of filing this habeas corpus petition. *See Ex. E, ICE Detainee Locator screenshot.*

32. To Petitioner's knowledge, ICE has not designated any third country for removal. Indeed, since Petitioner has no legal immigration status in any other country, there is no third country to which Respondents can remove him without that country ultimately removing him to Mexico, where it has already been determined that he would face persecution. Such indirect removal—or chain refoulement—would violate the Convention Against Torture just as clearly as a direct removal to Mexico.

33. Petitioner's current detention has severely impacted his overall well-being. Petitioner is an amputee who experiences complications with his prosthetic device, which requires regular charging, and he has been advised of a chest growth that is under evaluation for potential malignancy. He also suffers from respiratory tuberculosis, dermatitis, hypertension, blindness in his right eye, and auditory hallucinations. In addition, Petitioner continues to struggle with PTSD, anxiety, and depression as a result of torture he endured in Mexico. At the detention facility, Petitioner has not received adequate medication to manage the pain from his prosthesis or to address his other medical conditions. He has experienced panic attacks and worsening episodes of depression and anxiety, leaving him feeling increasingly frustrated and fearful. *See Ex. F. Petitioner's Medical Records from ICE.*

34. Respondents currently lack any factual or legal basis to detain Petitioner, since Respondents cannot establish that Petitioner will likely be removed from the United States in the reasonably foreseeable future.

35. Petitioner has exhausted all administrative remedies. No further administrative remedies are available to Petitioner.

**FIRST CLAIM FOR RELIEF:
Violation of 8 U.S.C. § 1231(a)(6)**

36. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-35.
37. Petitioner's continued detention by the Respondents violates 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas*. Petitioner's 90-day statutory removal period and six-month presumptively reasonable period for continued removal efforts have long since passed.
38. No significant likelihood of removal in the reasonably foreseeable future exists.
39. Under *Zadvydas*, the continued detention of someone like Petitioner is unreasonable and not authorized by 8 U.S.C. § 1231.

**SECOND CLAIM FOR RELIEF:
Due Process/Detention**

40. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-35.
41. Petitioner's detention during the removal period is only constitutionally permissible under the Due Process Clause when there is a significant likelihood of removal in the reasonably foreseeable future. Respondents have rearrested and re-detained Petitioner on the wrong assumption that Petitioner's had been issued an executable order of removal to Mexico.
42. In the alternative, Respondents have rearrested and re-detained Petitioner on the assumption that Petitioner will be removable to a third country but have designated no such third country, nor do they have any factual basis to believe that such third-country removal will ever become practicable and legally permissible.
43. Respondent continues to detain Petitioner without evidence that they will be able to remove him imminently, to Mexico or to any other country.
44. Respondents' detention of Petitioner no longer bears any reasonable relation to a legitimate government purpose, and thus violates the Due Process Clause.

**THIRD CLAIM FOR RELIEF:
Habeas Corpus, 28 U.S.C. § 2241**

45. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-35.
46. The writ of habeas corpus is available to any individual who is held in custody of the federal government in violation of the Constitution or laws or treaties of the United States.
47. Respondents presently have no legal basis to detain Petitioner in immigration custody, and the writ of habeas corpus should issue.
48. In the alternative, as set forth above, Respondents intend to remove Petitioner to a third country which will in turn remove Petitioner back to Mexico without adequate notice and opportunity to be heard, thus violating this law.

**FOURTH CLAIM FOR RELIEF:
Violation of Regulations/*Accardi* doctrine**

49. Petitioner incorporates the foregoing paragraphs 1-35 by reference.
50. Petitioner's supervised release was revoked in violation of the substantive and procedural requirements of 8 C.F.R. § 241.4(l), and was revoked by an individual who lacked the authority to do so under that regulation.
51. Section 241.4 is a regulation designed to protect the due process rights of noncitizens like Petitioner and – as this regulation pertains to continued detention, conditions for release, and revocation of release – it directly impacts Petitioner's individual liberty interest.
52. This violation of required procedures also violated Petitioner's due process rights under the Fifth Amendment to the U.S. Constitution.
53. Under the *Accardi* doctrine, "when an agency fails to follow its own procedures or regulations, that agency's actions are generally invalid." *Nader v. Blair*, 549 F.3d 953, 962 (4th Cir. 2008), citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Several

federal district courts have held that where ICE revokes an Order of Supervision without following the procedures set forth in these regulations, such revocation violates due process and the post-removal-period statute. *See Santamaria Orellana v. Baker*, 2025 WL 2444087 (D. Md. Aug. 25, 2025); *Ceesay v. Kurzdorfer*, 2025 WL 1284720, at *20-*21 (W.D.N.Y. May 2, 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017) (same).

REQUEST FOR RELIEF

Petitioner prays for judgment against Respondents and respectfully requests that the Court enters an order:

- a) Issuing an Order to Show Cause, ordering Respondents to justify the basis of Petitioner's detention in fact and in law, forthwith;
- b) Preliminarily and permanently enjoining Respondents from removing Petitioner to Mexico unless and until his order of Deferral of Removal is terminated, including all appeals;
- c) Preliminarily and permanently enjoining Respondents from removing Petitioner to any other country without first providing him notice and offering him adequate opportunity to apply for deferral of removal as to that country;
- d) Issuing a writ of habeas corpus, and ordering that Petitioner be released from physical custody forthwith;
- e) Restoring Petitioner to his prior Order of Supervision; and
- f) Granting such other relief at law and in equity as justice may require.

Respectfully submitted,

//s//Simon Sandoval-Moshenberg
Simon Sandoval-Moshenberg, Esq.
Attorney-in-charge
S. D. Tex. Bar no. 3878128
Virginia State Bar no. 77110
Murray Osorio PLLC
4103 Chain Bridge Road, Suite 300
Fairfax, VA 22030
Telephone: (703) 352-2399
Facsimile: (703) 763-2304
ssandoval@murrayosorio.com

Date: September 4, 2025

List of exhibits

- Ex. A) Order of the Immigration Judge.
- Ex. B) EOIR Automated Case Information.
- Ex. C) Order of Supervision.
- Ex. D) Employment Authorization Documents and Notices.
- Ex. E) ICE Detainee Locator screenshot.
- Ex. F) Petitioner's Medical Records from ICE.

Certificate of Service

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. I furthermore will send a copy by certified U.S. mail, return receipt requested, to:

Civil Process Clerk
U.S. Attorney's Office for the Southern District of Texas
1000 Louisiana, Ste. 2300
Houston, TX 77002

Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, SW, Mail Stop 0485
Washington, DC 20528-0485

Pamela Bondi, Attorney General of the United States
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
500 12th Street SW, Mail Stop 5902
Washington, DC 20536-5902

Warden, El Valle Detention Facility
1800 Industrial Drive
Raymondville, TX 78580

Respectfully submitted,

//s//Simon Sandoval-Moshenberg
Simon Sandoval-Moshenberg, Esq.
Attorney-in-charge
S. D. Tex. Bar no. 3878128
Virginia State Bar no. 77110
Murray Osorio PLLC
4103 Chain Bridge Road, Suite 300
Fairfax, VA 22030
Telephone: (703) 352-2399
Facsimile: (703) 763-2304
ssandoval@murrayosorio.com

Date: September 4, 2025