UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

JOSE ANTONIO TREJO TREJO,

Petitioner,

v.

WARDEN, ERO El Paso East Montana, NIKITA BAKER, *in her official capacity as Field Office Director for Detention & Removal, ICE Baltimore Field Office,* U.S. Immigration and Customs Enforcement; JOSE GUERRERO, *in his official capacity as Acting Assistant Director of the Baltimore Field Office, Enforcement and Removal Operations,* U.S. Immigration and Customs Enforcement; MARCOS CHARLES, *in his official capacity as Acting Executive Associate Director of Enforcement and Removal Operations,* U.S. Immigration and Customs Enforcement; TODD LYONS, *in his official capacity as Acting Director,* U.S. Immigration and Customs Enforcement; KRISTI NOEM, *in her official capacity as Secretary,* U.S. Department of Homeland Security; and PAM BONDI, *in her official capacity as Attorney General of the United States*,

Respondents.

PETITION FOR A WRIT OF HABEAS CORPUS

Civil Action No. 3:25-cv-401

PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Jose Antonio Trejo Trejo, was re-detained in ICE custody despite having been previously released under an Order of Supervision on May 7, 2019. Mr. Trejo Trejo was released under the Order of Supervision after being granted deferred action on a Convention Against Torture claim on March 29, 2019, based on findings by an Immigration Judge (IJ) that he would likely be tortured if deported to his country of origin, El Salvador. (See Exhibit 1). The statutorily prescribed time period in which ICE could have theoretically removed Mr. Trejo Trejo to a country other than El Salvador has expired, yet on March 27, 2025, he was arbitrarily re-detained with no end in sight.
2. Mr. Trejo Trejo 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. Trejo Trejo's removal order and accompanying relief grant became final upon the expiry of the appeal period. 8 C.F.R. § 1241.1.
3. Mr. Trejo Trejo'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. Indeed, ICE officers from the Baltimore Office of Enforcement and Removal Operations conceded to Mr. Trejo Trejo's immigration counsel that ICE has not identified an alternative country to which it will attempt to remove him. Even if it eventually identifies such a country, Mr. Trejo Trejo is entitled to notice and the

opportunity to seek fear-based protection with respect to that country. However, it is clear that ICE had not identified a country to which it intended to remove Mr. Trejo Trejo at the time it re-detained him, rendering his re-detention unreasonable and arbitrary since his removal is not reasonably foreseeable. *Zadvydas*, 533 U.S. at 699.

4. Furthermore, ICE's re-detention of Mr. Trejo Trejo without the opportunity to seek relief from the alternative countries to which it may eventually attempt to remove him violates his due process rights.

5. Petitioner, Jose Antonio Trejo Trejo, hereby petitions this Court for a writ of habeas corpus to remedy his unlawful detention by Respondents, and to enjoin his continued unlawful detention by the Respondents. 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 ERO El Paso Camp East Montana facility in El Paso, Texas. (See Exhibit 3). 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 Western District of Texas, because Petitioner is currently detained in the territorial jurisdiction of this Court, at the ERO El Paso Camp East Montana detention facility. 28 U.S.C. 1391(b)(2); *see also Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (interpreting 28 U.S.C. § 2241 to confirm the "general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement").

PARTIES

9. Petitioner is a native and citizen of El Salvador who was granted CAT relief on March 29, 2019. His release was effectuated by ICE on May 7, 2019 under an Order of Supervision. On March 27, 2025, he was again detained by ICE officials at the Baltimore Field Office and has been detained in Baltimore, Maryland, then Batavia, New York, and now in El Paso, Texas.
10. Respondent Warden is in charge of the ERO El Paso Camp East Montana detention facility. He or she is in in physical control of the Petitioner.
11. Respondent Nikita Baker is the Field Office Director ("FOD") for ICE's ERO Baltimore Field Office, which has jurisdiction over the Petitioner. As far as counsel is aware,

Petitioner is currently in the custody of the Baltimore Field Office. *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.

12. Respondent Jose Guerrero 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.

13. Respondent Marcos Charles 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.

14. 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.

15. 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

16. The Petitioner is a native and citizen of El Salvador.

17. The Petitioner's application for withholding of removal under the Convention Against Torture was granted by the immigration judge on March 29, 2019. 8 C.F.R. § 1208.16(c)(4).

18. On May 7, 2019, the Department of Homeland Security ("DHS") released the Petitioner from custody subject to an Order of Supervision. (See Exhibit 2). A condition of his release was that he report in person to the ICE Enforcement and Removal Operations ("ERO") office in Baltimore, Maryland.

19. The Petitioner appeared before ERO, reporting numerous times.

20. Petitioner was redetained by Respondents on March 27, 2025.

21. As of the date of filing, the Petitioner remains in custody of Respondents in the ERO El Paso Camp East Montana detention facility.

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1231(a), AND OTHER REQUIRED PROCEDURES FOR THE REVOCATION OF RELEASE OF A NONCITIZEN

22. Petitioner realleges and incorporates by reference the paragraphs above.

23. 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 [noncitizen'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 2016. His re-detention after

being released to an Order of Supervision on February 19, 2016, is entirely outside the scope of any provision under 8 U.S.C. § 1231(a).

24. 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. ICE has affirmatively informed Petitioner's counsel that it has not identified a country to which it intends to attempt to deport Petitioner, and that the United States does not have any agreements with other nations to receive Jamaican citizens. Because of this information, and the fact that ICE has not provided Petitioner a Notice of Removal to any alternative country, it is evident that ICE will not be able to remove Petitioner in the reasonably foreseeable future.

25. Moreover, if ICE were to identify a country to which it intends to deport Petitioner, he will seek fear-based relief from removal to that country, further prolonging his proceedings and detention.

26. 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). *Zadvydas*, 533 U.S. at 701.

27. Furthermore, ICE did not comply with the procedural requirements outlined in the regulations that govern the revocation of release of a noncitizen previously released under an order of supervision. 8 CFR § 241.4(l)(2). The regulations only permit the Executive Associate Commissioner, or, in limited prescribed circumstances, the District Director, to revoke the release of a noncitizen. ICE did not comply with this requirement in its revocation of Petitioner's release.

28. Additionally, under the regulations, Petitioner is entitled to notification of the reason for the revocation of release and to an "informal interview promptly after his [] return to [ICE]

custody to . . . respond to the reasons for revocation." 8 C.F.R. § 241.4(l)(1); 8 C.F.R. § 241.13(h)(4)(i)(3). Despite being Petitioner's attorney of record, Petitioner's counsel has not received any notification of the reason for the revocation of his release. And to counsel's knowledge, Petitioner has not yet been afforded an interview and the opportunity to dispute the basis for his re-detention. Given ICE's failure to comply with its own regulations and procedural requirements, its actions should be presumed unlawful under the Accardi Doctrine. Therefore, ICE's re-detention of Petitioner violated U.S. law.

COUNT II

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

29. Petitioner realleges and incorporates by reference the paragraphs above.

30. 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).

31. Petitioner's re-detention following his release pursuant to an Order of Supervision more than nine years 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 May 7, 2019. Re-detention of the Petitioner pending as-yet uninitiated third country removal efforts,

without indication that ICE is actually attempting to remove him anywhere reasonably foreseeable—and indeed with the concession that ICE has not identified any countries to which it intends to attempt to deport him—violates his due process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests 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: September 19, 2025

Respectfully submitted,

/s/ Brian Scott Green
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