

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

JOEL LAZARO LAZARO,

Petitioner,

v.

NIKITA BAKER, ICE Baltimore Field Office Director; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and PAMELA BONDI, Attorney General of the United States, in their official capacities,

Respondents.

Case No: 8:25-cv-3162

PETITION FOR WRIT OF HABEAS CORPUS

On February 21, 2025, an Immigration Judge (IJ) found that Petitioner Joel Lazaro Lazaro would more likely than not be tortured if he were returned to his native country, Peru, either by or at the acquiescence of the government of that country. The Immigration Judge granted Petitioner withholding of removal under the Convention Against Torture (CAT) thus prohibiting the U.S. government from removing him to Peru. On September 5, 2025, Respondents, through their agents, stated their intent to no longer honor Petitioner's protection from removal and shackled him with an ankle monitor.

Respondent's decision to place an ankle monitor on Petitioner is a gross deprivation of his liberty with scant legal basis. Should Respondents wish to remove Petitioner to a third country,

they must follow specific procedures outlined in the Immigration and Nationality Act (INA) and its implementing regulations, as well as provide him with full due process of the law.

Petitioner submits that his ankle monitor is illegal and violates his due process under the Fifth Amendment of the U.S. constitution. The restraint on his physical liberty also violates Petitioner's Eighth Amendment right to be free from cruel and unusual punishment. Petitioner requests that this court order Respondents to remove the ankle monitor or otherwise ameliorate his supervision conditions and issue a stay of Petitioner's physical transfer outside of this judicial district. Petitioner also requests that this Court order the Respondents to refrain from arbitrarily detaining Petitioner any further and provide assurances that they will not attempt to remove the Petitioner to a third country without affording him full due process of the law.

CUSTODY

1. Petitioner is under an order of supervision and ankle monitor placed upon him by the Respondents. Petitioner is in the direct custody and control of Respondents and their agents in the state of Maryland.

JURISDICTION

2. This action arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 1570. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), as Petitioner is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States.

3. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the

Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

4. Venue is proper in the United States District Court for the District of Maryland because Petitioner is subject to the custodial determinations of U.S. Immigration and Customs Enforcement, specifically in the state of Maryland. Nikita Baker is the supervisor of the Baltimore Field Office with jurisdiction over the state of Maryland. Each Respondent is an officer of the United States and is sued in their capacity and at least one Respondent is located in this district. Nikita Baker resides where the Petitioner is under custody. 28 U.S.C. § 1391(e).

PARTIES

5. Petitioner Lazaro Lazaro is a national and citizen of Peru who resides in Montgomery County, Maryland. Petitioner has a valid grant of withholding of removal as to Peru. Respondents are subjecting him to arbitrary physical custody even though his removal is not reasonably foreseeable.

6. Respondent Baker is the Field Office Director for the Baltimore Field Office which has jurisdiction over U.S. ICE's operations in the state of Maryland. Respondent Baker maintains control over Respondent's physical custodial determinations.

7. Respondent Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. He is the head of the federal agency responsible for all immigration enforcement in the United States. Respondent Lyons is a legal custodian of Petitioner and has authority to release him.

8. Respondent Kristi Noem is sued in her official capacity as the Secretary of the DHS. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the

Immigration and Nationality Act, and oversees U.S. ICE, the component agency responsible for Petitioner's detention.

9. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals ("BIA").

EXHAUSTION OF ADMINISTRATIVE REMEDIES

10. The petitioner exhausted his administrative remedies to the extent required by law.
11. Petitioner fully cooperated with Respondents and did not delay or obstruct his detention.
12. Petitioner's only remedy is by way of this judicial action.

LEGAL BACKGROUND

Withholding of Removal

13. The government may not remove a noncitizen to a country where he is more likely than not to face persecution on account of a statutorily protected ground. 8 U.S.C. § 1231(b)(3)(A). This protection is called "withholding of removal."

14. For an immigration judge to grant withholding of removal under the Convention Against Torture (CAT), a noncitizen must show that he is more likely than not to face torture by or with the acquiescence of the government in the country that has been designated for his removal.

15. If a noncitizen is granted withholding of removal under the CAT, "DHS may not remove the [noncitizen] to the country designated in the removal order unless the order of withholding is terminated." *Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021).

16. Withholding of removal is country-specific relief, which leaves open the possibility that a noncitizen may be removed to any other country.

17. There are specific procedures that DHS must follow to seek termination of withholding of removal. Federal regulations lay out this procedure. First, DHS must move to reopen the removal proceedings before an immigration judge. DHS bears the burden of proof, by a preponderance of the evidence, that grounds for termination exist. 8 C.F.R. § 1208.24(e).

18. If an individual's removal order is terminated, DHS must also follow specific statutory procedures for affecting removal to a third country. § 1231(b)(3)(A) mandates that "the Attorney General may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion."

19. For individuals with final removal orders, DHS must first attempt to remove the individual to the country designated in the removal order, then their country of origin, then a country to which they have a lesser connection, and finally, if and only if removal to any of those countries is "impracticable, inadvisable, or impossible" may DHS remove a person to another country "whose government will accept" them. *Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2004) (citing 8 U.S.C. § 1231(b)(2)).

20. If ICE identifies an appropriate alternative country of removal, the noncitizen must have notice and an opportunity to seek relief from removal to that country. *See Jama*, 543 U.S. at 348 ("If [noncitizens] would face persecution or other mistreatment in the country designated under § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture, see 8 CFR §§ 208.16(c)(4), 208 17(a) (2004). ."); *Romero v. Evans*, 280 F. Supp. 3d 835, 848 n.24 (E.D.

Va 2017) (“DHS could not immediately remove petitioners to a third country, as DHS would first need to give petitioners notice and the opportunity to raise any reasonable fear claims.”) (*rev'd on other grounds, Guzman Chavez*, 594 U.S. 523 (2021)).

21. This is grounded in U.S. statutes and regulations. Before removal to any country where a noncitizen fears persecution or torture, U.S. law guarantees the right to raise a claim under the withholding of removal statute, 8 U.S.C. § 1231(b)(3) and/or Article 3 of the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment (CAT). Congress also enacted the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA) to implement CAT, instructing that the U.S. government may not “expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture.” Pub. L. 105-277, Div. G, § 2242(a), 112 Stat. 2681, 2681-822 (1998) (emphasis added) (codified as statutory note to 8 U.S.C. § 1231).

22. Congress directed that the government “shall prescribe regulations to implement the obligations of the United States under Article 3 of the [CAT],” *id.* § 2242(b), 112 Stat. at 2681822, which the government did, *see, e.g.*, 28 C.F.R. § 200.1 (explaining that a Title V removal order “shall not be executed in circumstances that would violate Article 3 of [CAT]”). The statute and regulations clearly implement Congress’ designation scheme to ensure that noncitizens receive meaningful notice and an opportunity to present a fear-based claim.

23. Respondents also must honor the U.S. government’s commitment to *non-refoulement*, and provide individuals who express a fear of return to their designated country an opportunity to demonstrate a reasonable fear of persecution or torture to any asylum officer. Those who pass the threshold for fear are eligible to apply for withholding of removal and/or CAT protection.

24. On March 30, 2025, DHS issued a memorandum outlining its policy on third country removals. Memorandum, U.S. Dep't of Homeland Sec., Guidance Regarding Third Country Removals (Mar. 30, 2025) ("March 30 Memo"). The policy states that before the government can remove a noncitizen to a country that had not previously been designated as the country of removal, DHS must determine whether that country has provided diplomatic assurances that noncitizens removed from the U.S. will not be persecuted or tortured. *Id.* If the government does not receive such assurances, then it must follow the procedures outlined in the March 30 Memo, which includes providing the noncitizen with notice and a reasonable fear interview. *See id.*

Detention of Noncitizens Beyond the Removal Period

25. 8 U.S.C. § 1231 governs the detention of noncitizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)-(6). The "removal period" begins once a noncitizen's removal order becomes "administratively final." 8 U.S.C. § 1231(a)(1)(B). Administratively final means that the 30-day period to file an appeal has run out, and no parties have filed an appeal.

26. The removal period lasts for 90 days, during which ICE has the option to detain and remove the noncitizen. If ICE does not remove within this 90-day period, the noncitizen "may be detained beyond the removal period" if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. U.S.C. § 1231(a)(6) (emphasis added).

27. After the removal period expires, 8 U.S.C. § 1231 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). § 1231(a)(3).

28. Constitutional limits on detention beyond the removal period have been well established. Government custody violates due process unless it is reasonably related to a legitimate government purpose. *See Zadvydas v. Davis*, 553 U.S. 678, 701 (2001). *Zadvydas* held that § 1231(a)(6)

authorizes detention only for “a period reasonably necessary to bring about the [noncitizen]’s removal from the United States.” *Id.* at 689. Six months of post-removal order detention is considered “presumptively reasonable.” *Id.* at 701.

29. But the “*Zadvydas* Court did not say that the presumption is irrebuttable, and there is nothing inherent in the operation of the presumption itself that requires it to be irrebuttable.” *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008). “Within the six-month window,” the noncitizen bears the burden of “prov[ing] the unreasonableness of detention.” *Id.* After six months of detention, if there is “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the burden shifts to the Government to justify continued detention. *Zadvydas*, 533 U.S. at 701; *see also Cesar*, 542 F. Supp. 2d at 903 (“[T]he presumption scheme merely suggests that the burden the detainee must carry within the first six months of [postorder] detention is a heavier one than after six months has elapsed”).

30. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that established “special review procedures” to determine whether detained noncitizens with final removal orders are likely to be removed in the reasonably foreseeable future. *See Continued Detention of Aliens Subject to Final Orders of Removal*, 66 Fed. Reg. 56,967 (Nov. 14, 2001). If ICE determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on “special circumstances,” it must justify the detention based on narrow grounds such as national security or public health concerns, *id.* § 241.14(b)-(d), or by demonstrating by clear and convincing evidence before an IJ that the noncitizen is “specially dangerous.” *Id.* § 241.14(f).

STATEMENT OF FACTS

31. Petitioner Joel Lazaro Lazaro is a citizen of Peru and no other country. No other country has ever expressed interest in receiving Petitioner, nor have Respondents ever designated any other

country for removal besides Peru.

32. On February 21, 2025, Petitioner was granted CAT withholding of removal pursuant to 8 C.F.R. § 1208.61. The IJ designated Peru as the country for removal. The Respondent DHS waived appeal of this decision and thus the decision became administratively final on this date.

33. Respondent DHS did not attempt to remove Petitioner to a third country within the 90-day period after his removal order became final. At the time of filing, it has been over six months since the Petitioner's removal order has become final.

34. Since being granted withholding of removal, the Petitioner has been subject to an order of supervision, which requires him to check in with DHS/ICE periodically, but he has never been placed under physical custody such as electronic ankle monitoring.

35. Petitioner has remained fully compliant with the conditions of his supervision order. No circumstances have changed since the Petitioner received a grant of withholding of removal.

36. However on September 5, 2025, Petitioner received a text message from ICE through the Intensive Supervision Appearance Program (ISAP). ICE directed him to report to an office in Silver Spring, Maryland on September 9, 2025. The message also indicated that "the program that you are in has been canceled and we need to reenroll you in the regular program."

37. When Petitioner showed up to this appointment, ICE put an ankle monitor on him and told him that his protection was no longer valid and that ICE would attempt to remove him to a third country.

38. Upon information and belief, no such third country has agreed to issue travel documents to Petitioner, nor do Respondents have any articulable basis to believe that a significant likelihood exists that any third country will issue travel documents to Petitioner in the reasonably foreseeable future.

39. Upon information and belief, the placement of Petitioner's ankle monitor is without legal basis, as no circumstances have changed since the removal period ended and the Respondents failed to pursue removal during the statutory period allowed by U.S.C. § 1231(a). Petitioner is not in violation of his order of supervision and has no criminal history. DHS never provided Petitioner with any paperwork or explanation justifying their decision to place an ankle monitor on him.

40. Petitioner and his family very recently fled persecution in Peru. Petitioner followed all legal procedures available to him and a neutral fact finder determined that he faces persecution or torture if he returns to Peru.

41. Petitioner is prepared to assert fear-based persecution claims if the government attempts to remove him to a non-designated or third country, as is his legal right to do so under the INA, implementing regulations and case law.

42. The Petitioner does not have any criminal history in this country. He resides in Maryland with his spouse and their daughter, who fled persecution in Peru with him. If the Respondent were to be removed from the United States he will be ripped from his family and community. His ankle monitor is wholly arbitrary because the government has not demonstrated any credible likelihood that he will be removed to a third country in the foreseeable future. Nor has the government provided any special justification for restraining Petitioner's physical liberty outside of the statutory removal period. There is no better time for this court to intervene and decide the merits of this case and clarify his statutory and constitutional rights.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

43. Petitioner alleges and incorporates by reference paragraphs 1 through 42 above.

44. Respondents are subjecting Petitioner to arbitrary and unreasonable physical restraint on

his liberty in violation of his Fifth Amendment right to due process.

45. In the immigration context, the Supreme Court has emphasized, “[f]reedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty protected by that clause.” *Zadvydas*, 553 U.S. at 690.

46. Government detention violates the Fifth Amendment “unless the detention is ordered in a *criminal proceeding* with adequate procedural protections or, in certain special and ‘narrow’ nonpunitive ‘circumstances’ where a special justification . . . outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Id.* (emphasis in original).

47. There is no “special justification” which allows the Respondents to place an ankle monitor on Petitioner. Respondents never attempted to remove Petitioner during the period of removal after he was granted withholding of removal under the CAT. Respondents have not identified any third country for Petitioner’s removal and therefore Petitioner’s removal is not reasonably foreseeable. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Nor have respondents asserted that Petitioner is a national safety, public health concern, or “specially dangerous.” See 8 C.F.R. § 241.14(b)-(d); (f).

48. Petitioner’s ankle monitoring also lacks procedural safeguards. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (the risk of erroneous deprivation is one of the three factors used to determine the constitutional sufficiency of procedures).

49. Noncitizens with final removal orders are subject to mandatory orders of supervision under 8 C.F.R. § 241.5(a). While § 241.5(a)(1)-(5) outlines several possible conditions of supervision, it fails to set forth any process under which a noncitizen or their counsel can seek amelioration of these conditions. Indeed, while 8 C.F.R. § 241.4(a)-(1) sets out detailed procedures for review of ICE decisions to continue detention of noncitizens with final removal orders beyond the 90-day

removal period, no such periodic review exists for noncitizens released on orders of supervision. Moreover, the list of conditions of supervision that the regulation contemplates under § 241.5(a)(1)-(5) does not even mention ankle monitoring or other GPS monitoring.

50. Petitioner was never told why his specific case requires him to receive an ankle monitor. Petitioner has always obeyed the conditions of his order of supervision and has never committed any criminal acts in the United States.

51. Petitioner's ankle monitor is subjecting him to constant government surveillance. Respondents have no reason to think that Petitioner is a flight risk or will otherwise evade their attempts at removing him.

52. Petitioner fears that Respondents will attempt his removal without providing him full due process of the law. Respondents must first seek to terminate Petitioner's withholding of removal order through proper administrative channels and before an immigration judge, and then they must provide him with sufficient notice and opportunity to challenge his removal to any other country.

53. Respondents also have no basis to revoke Petitioner's order of supervision and detain him, and any attempts to do so would violate *Zadvydas*. Petitioner has never violated the conditions of his order, has no criminal record, and the Respondents have taken no steps towards removing him such that his removal is reasonably foreseeable. Respondent's withholding of removal order allows him to live freely in the United States.

54. This court must act to ameliorate Petitioner's arbitrary detention and ensure Petitioner is afforded due process.

COUNT TWO

Violation of Eighth Amendment Right to Protection from Cruel and Unusual Punishment

55. Petitioner alleges and incorporates by reference paragraphs 1 through 54 above.

56. Petitioner's ankle monitor constitutes cruel and unusual punishment under the Eighth

Amendment because this physical restraint is not grounded in any legal justification. Petitioner's withholding of removal status allows him to reside in the United States freely without being subject to DHS custody. Petitioner has an order of supervision which already restricts his liberty and ensures he complies with the conditions of his withholding of removal status. There is no legal basis for the Respondents to subject Petitioner to this cruel and unusual form of punishment, as he has never violated his order of supervision and has no criminal history.

57. Ankle monitors are known to cause long-lasting physical and mental harm to their wearers. *See Electronic Monitoring of Migrants: Punitive not Prudent*, AM. BAR. ASS'N, 18-19 (Feb. 23, 2024), <https://www.americanbar.org/content/dam/aba/administrative/immigration/electronic-monitoring-report-2024-02-21.pdf>. The American Bar Association recently issued a report finding that ankle monitors used in civil immigration enforcement are punitive in nature and impose unnecessary restraints on an individual's constitutional liberty where less restrictive means are available. *Id.* Here, the government could easily use a less restrictive means to supervise the Petitioner, as they already had been doing for six months. Instead, at the expense of Petitioner's individual liberty and taxpayer dollars, the government is subjecting Petitioner to arbitrary physical custody.

58. Detainees may challenge the unconstitutional conditions of their confinement through writs of habeas corpus, an avenue which the Supreme Court has never explicitly foreclosed. *See Preiser v. Rodriguez*, 411 U.S. 475, 499-500 (1973) (stating that when "a prisoner is put under *additional and unconstitutional restraints* during his lawful custody, it is arguable that habeas corpus will lie to remove the restraints making the custody illegal.") (emphasis added); *see also Coreas v. Bounds*, 451 F. Supp. 3d 407, 419 (D. Md. 2020) ("In the absence of binding Fourth Circuit authority, this Court concludes, consistent with the positions of several circuits, that a claim by an immigration

detainee seeking release because of unconstitutional conditions or treatment is cognizable”
(citing *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014).

59. Petitioner’s ankle monitor serves no purpose except as a cruel and unusual punishment meant to humiliate him. Respondents have no reason to believe that Petitioner is a danger to the community or a flight risk. Respondents have not provided any indication that Petitioner will be removed in the foreseeable future. The ankle monitor imposes additional constitutional restraints on Petitioner’s liberty, in the form of cruel and unusual punishment. As such, Petitioner challenges the fact and condition of his physical custody through this habeas petition.

COUNT THREE
Violation of 8 U.S.C. § 1231(a) and Implementing Regulations

60. Petitioner alleges and incorporates by reference paragraphs 1 through 59 above.

61. Petitioner’s ankle monitoring and custodial treatment violates the INA and its implementing regulations because, 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for “a period reasonably necessary to bring about the alien’s removal from the United States.” 533 U.S. at 689, 701.

62. Petitioner’s ankle monitoring is unreasonable because his removal is not reasonably foreseeable. Respondents have not initiated any steps towards removal. Additionally, Petitioner is not a danger to the community nor a flight risk, and there is no other special justification which renders his custody appropriate. 8 C.F.R. § 241.4. Therefore, his current ankle monitoring and any future attempts to physically detain Respondent violate 8 U.S.C. § 1231(a)(6).

COUNT FOUR

63. If he prevails, Petitioner requests attorney’s fees and costs under the Equal Access to Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Preliminarily and permanently enjoin Respondents from removing Petitioner from the State of Maryland pending the outcome of this litigation;
3. Preliminarily and permanently enjoin Respondents from detaining Petitioner with the purposes of removing him;
4. Preliminarily and permanently enjoin Respondents from removing Petitioner to Peru, unless and until his order of Withholding of Removal is terminated, including all appeals;
5. 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 withholding of removal as to that country;
6. Issue a writ of habeas corpus ordering Respondents to release Mr. Lazaro Lazaro from his ankle monitor;
7. Issue an order directing Respondents to show cause why the writ should not be granted;
8. Award Petitioner reasonable costs and attorney's fees; and,
9. Grant any other relief which this Court deems just and proper.

Respectfully submitted,

/s/ Zachary Kohn
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Dated: September 23, 2025

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Joel Lazaro Lazaro, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 23 day of September, 2025.
s/Zachary Kohn

Exhibit List

- Exhibit A:** February 21, 2025 Order of Immigration Judge granting Withholding of Removal under the Convention Against Torture
- Exhibit B:** Print-out message from ISAP