

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; Maria DeLeon, United States Immigration and Customs Enforcement, *in their official capacities,*

Respondents.

Civil Action No.: 5:25-cv-1229

**PETITION FOR WRIT OF HABEAS
CORPUS AND APA CLAIM**

PETITION FOR A WRIT OF HABEAS CORPUS

PURSUANT TO 28 U.S.C. § 2241 AND APA CLAIM

INTRODUCTION

1. Petitioner respectfully moves this Court to enjoin DHS/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 his 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 deferral of removal under the United Nations Convention Against Torture (CAT). ICE now detains him despite the still valid grant of a stay of removal and despite the absence of any realistic prospect of removal. Importantly, this Petition does not challenge the validity or finality of his removal order, which has been final since 2017. Instead, it challenges (1) the constitutionality of his prolonged detention where removal is not reasonably foreseeable, and (2) ICE's potential failure to comply with nationwide procedural safeguards before attempting third-country removal.
3. At an evidentiary hearing in a previously filed cause of action on July 24, 2025, Maria DeLeon explained that there was no substantive change in circumstances that would justify the revocation of the Order of Supervision which allowed Mr. Chicas Ortega to be living and working within the United States. This is what constitutes a violation of the APA, arbitrary and capricious revocation of his Order of Supervision.

CUSTODY

4. 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

5. 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

6. 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

7. 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.

8. 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.
9. 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.
10. 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.
11. 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.
12. Maria DeLeon was the acting ICE office Field Director who revoked the Order of Supervision in her official capacity.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

13. Mr. Chicas Ortega has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

STATEMENT OF FACTS

PETITIONER WAS DETAINED SEVEN YEARS AFTER HIS REMOVAL ORDER WAS FINAL, FIVE YEARS AFTER HE WAS RELEASED WITH AN ORDER OF SUPERVISION, AND TWO YEARS AFTER AN IMMIGRATION JUDGE ORDERED A STAY OF HIS REMOVAL.

14. Mr. Chicas Ortega first came to the United States by entering without permission in January of 2017 and was issued an expedited order of removal and removed from the United States.

15. Mr. Chicas Ortega returned to the United States by entering illegally on or about December 7, 2017. Mr. Chicas Ortega remained in ICE custody at that time and for the next two years fighting for protection in these United States, a bastion of human rights and care for the oppressed. (Exhibit A).

16. Therefore, On December 7, 2017, Petitioners' Order of Removal was final. Ninety days of detention after that date would have been in March, 2018. Six months of detention post removal order expired in June 2018. At the present date of filing, the Court finds itself considering a case where Mr. Chicas Ortega is detained by ICE 92 months and one weeks after this removal order was final.

17. On September 17, 2019, Mr. Chicas Ortega was released from his two year period of immigration detention with an "Order of Supervision." (Exhibit B). This order was given after Mr. Chicas Ortega had made his case for protection under the Convention Against Torture. The case was sent to the Board of Appeals twice before, at this date in

September of 2019, the Board indicated that the only option for the trial court was to grant the relief requested. Due to some unknown oversight or willful failure to act, the Order granting relief was not signed in 2019.

18. In a hearing on October 3, 2023, an Immigration Judge signed Mr. Chicas Ortega's Deferral of Removal under the Convention Against Torture. (Exhibit C). It is argued that this is the most recent change in circumstances for Mr. Chicas Ortega, the official and recent grant of protection.
19. On June 18, 2025, Mr. Chicas was detained by ICE/ERO at his regularly scheduled check-in under his Order of Supervision. He has been detained up to and as of the date of this filing.
20. On June 20, 2025, Mr. Chicas Ortega's counsel advised ICE/ERO immediately that Mr. Chicas Ortega cannot be lawfully detained without the promise of removal and of the legal requirement that he requires notice and due process of any removal to a third nation. Counsel provided a list of countries from which Petitioner claims a reasonable fear of persecution (Exhibit D). Mexico is on that list because of his fear of how he will be treated there.
21. In July of 2025, Mr. Chicas Ortega's Order of Supervision was revoked, nearly a month after he was detained, without following the procedures required by the Administrative Procedures Act, as discovered in testimony by the Respondent's witness. Maria DeLeon, at the July 24, 2025 hearing.

22. During testimony at the July 24, 2025, hearing, the Respondent's witness further explained that Mr. Chicas Ortega followed every requirement under his Order of Supervision short of attempting self-deportation to a third country. She further indicated that there was no country willing to take Respondent or guarantee his safety. Exhibit E.
23. As of July 25, 2025, the Respondents had asked for permission to send Petitioner to Mexico, Honduras, and Guatemala, and all three countries denied the request.
24. As of September 29, 2025, ICE/ERO has made no offer of removal to any third country who can promise his safety per the protections of the Convention Against Torture.
25. As of September 29, 2025, ICE/ERO has not removed Mr. Chicas Ortega to a third country.
26. The Respondents have failed to articulate a third country that is accepting CAT removals from the United States. As of September 29, 2025, the Respondents have only threatened to force his removal to Mexico, without providing any proof of acceptance, travel documents, or guarantees of safety.
27. As of September 29, 2025, Mr. Chicas Ortega has been detained for 103 days since June 18, 2025.
28. As of September 29, 2025, it has been 7 years and 9 months since Mr. Chicas Ortega's removal order was reinstated and final.
29. ICE has acted capriciously and has not followed its own guidance about third country

removals, under caselaw or subsequent memo policies. As such, Mr. Chicas Ortega is begging this court for relief.

CLAIMS FOR RELIEF

COUNT ONE

CONSTITUTIONAL CLAIM

30. Petitioner re-alleges and incorporates by reference the factual allegations made above.

31. Petitioners' custody violates their right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

COUNT TWO

STATUTORY CLAIM

32. Petitioner re-alleges and incorporates by reference the factual allegations made above.

33. Petitioner's detention violates the Immigration and Nationality Act because Respondents lack authority to detain Petitioner.

COUNT THREE

ADMINISTRATIVE PROCEDURES ACT

34. Petitioner re-alleges and incorporates by reference the factual allegations made above.
35. By revoking the Order of Supervision without following the regulations requiring a change in circumstances to do so, Respondents have violated the Administrative Procedures Act because their actions constitute agency action that is arbitrary and capricious, and not in accordance with law. 5 U.S.C. §§ 701 et seq.

COUNT SIX

ATTORNEY'S FEES

36. If he prevails, Petitioner requests attorney's fees and costs under applicable federal law.

LEGAL STANDARD AND ARGUMENT

Finality of Expedited Removal Orders and Reinstatement

37. An expedited removal order issued under INA § 235(b)(1), 8 U.S.C. § 1225(b)(1), is final upon issuance by a Department of Homeland Security officer. Such orders are not subject to direct appeal to the Board of Immigration Appeals. See 8 C.F.R. § 235.3(b)(2)(ii). Thus, an

expedited removal order is effective immediately once entered.

38. If a noncitizen subsequently reenters the United States without authorization, the prior order may be reinstated pursuant to INA § 241(a)(5), 8 U.S.C. § 1231(a)(5). Upon reinstatement, “the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed.” *Id.* The Supreme Court has confirmed that reinstatement “revives the original removal order and makes it final and enforceable again.” *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 35–36 (2006).
39. Although reinstatement triggers the prior order’s immediate finality, regulations provide a narrow safeguard for individuals who express a fear of return. In that circumstance, the person is placed in withholding-only proceedings before an Immigration Judge. See 8 C.F.R. § 1208.31(e). Those proceedings do not reopen or disturb the underlying removal order; rather, they are limited to adjudicating eligibility for withholding of removal or protection under the Convention Against Torture. See *Garcia-Garcia v. Sessions*, 856 F.3d 27, 32 (1st Cir. 2017).
40. Accordingly, an expedited removal order is “final” at the moment it is issued and remains final when reinstated after unlawful reentry, subject only to a temporary stay of removal while withholding-only proceedings are pending.
41. In the present case, Petitioner had a final order as of December 17, 2017, when he reentered the United States illegally after previously entering the United States and being removed under an order of expedited removal.
42. This reinstated order was stayed due to an Immigration Court Order for protection under the Convention Against Torture that was officially rendered in October of 2023.

43. Mr. Chicas Ortega was detained in ICE custody from December 2017 to September 2019 while awaiting that order. He was released when the Board of Immigration Appeals returned his case to the Immigration Court at that time. They overturned the denial of protection at that time. Then the order granting protection sat, awaiting signature, until the case was recalled by another Immigration Judge in 2023 who signed the grant of protection.

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

44. 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:

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

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

B. DHS Lacks Authority to Circumvent CAT Relief Without Reopening

46. 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).
47. 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*

48. 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.
49. This matter was litigated in an extensive hearing on July 24, 2025, granting the Respondents time to effectuate their stated desire to remove the Petitioner from the United States. They have not done this. They have not offered removal. They have not secured permission from a third country to receive Mr. Chicas Ortega. They are not actively trying to remove him at this time.
50. An order was issued on July 25, 2025, indicating that the Respondents should be allowed some unspecified amount of time to attempt removal.
51. Counsels for Petitioner have received zero communications from Respondents seeking to offer or receive communication from Petitioner regarding removal.
52. 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.

D. Revocation of Supervision Was Arbitrary and Capricious

53. Revoking Petitioner's Order of Supervision after years of compliance, absent any misconduct or rationale, was arbitrary, capricious, and contrary to the Administrative Procedure Act. The agency offered no explanation, rendering the revocation unlawful.

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 release Petitioner from custody immediately;
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: 09/25/2025

Respectfully submitted,

/s/ Alicia Perez

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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: Sep 29, 2025

Certificate of Service

I, Alicia Perez, hereby certify that the foregoing Petition for Habeas Corpus has been filed for service on all parties by the ECF System on September 29, 2025.

/s/ Alicia Perez

Alicia Perez

Attorney for Petitioner