

United States District Court  
Western District of Texas  
San Antonio Division

Esau Ernesto Chicas Ortega,  
Petitioner,

v.

Kristi Noem, in her official capacity as  
Secretary, U.S. Department of Homeland  
Security *et al*,  
Respondents.

No. 5:25-CV-01229-JKP

**Joint Advisory to the Court**

Per this Court's order dated October 23, 2025, (ECF No. 14), the parties file this joint advisory to alert the Court of any remaining issues that remain in dispute, the status of those issues, and the relief sought.

**I. Uncontested Background and Procedural Posture**

Petitioner Esau Ernesto Chicas Ortega is a Salvadoran national detained at the South Texas Detention Complex in Pearsall, Texas. He has been subject to a final order of removal since 2017, was released in 2019 under an Order of Supervision, and later had his removal to El Salvador deferred under the Convention Against Torture (CAT) by Immigration Judge Newaz on October 3, 2023. On June 18, 2025, after nearly six years of supervised release, ICE detained him at a routine check-in, and in July 2025, revoked his Order of Supervision.

After the denial of his first Petition for Writ of Habeas Corpus, Petitioner filed the instant Petition for Writ of Habeas Corpus and APA claim and a Motion for Temporary Restraining Order and Preliminary Injunction, asserting that (1) the revocation and redetention were arbitrary and capricious in violation of the Administrative Procedure Act (APA) and the Fifth Amendment; (2) his continued detention violates *Zadvydas v. Davis*, 533 U.S. 678 (2001), because removal is not

reasonably foreseeable; and (3) ICE may not remove him to a third country without procedural safeguards required by law and regulation. On October 3, 2025, this Court issued a stay of removal, enjoining ICE from transferring Petitioner or removing him outside the Western District of Texas. ECF No. 10. On the same day but by separate order, the Court held in abeyance Petitioner's pending Motion for Temporary Restraining Order (TRO) and Preliminary Injunction. ECF No. 12. On October 16, 2025, the parties jointly reported that USCIS conducted a fear interview on October 13, 2025, concerning Petitioner's possible removal to Mexico and found no likelihood of persecution or torture. ECF No. 13. Petitioner reported an intent to seek review of the adverse decision by an Immigration Judge. *Id.*

On October 23, 2025, the Court ordered the parties to confer and file a joint advisory by 5pm CT on October 31, 2025, to indicate whether any issues remain after conference. ECF No. 14. For each remaining issue, the Court ordered each party to state its respective position and describe any relief sought. *Id.* In compliance with the Court's order, the parties conferred and timely file this joint advisory.

## **II. Petitioner's Acknowledgment of the *D.V.D. v. DHS* Stay and Rule 11 Compliance**

Petitioner acknowledges that the preliminary injunction in *D.V.D. v. Department of Homeland Security*, 778 F. Supp. 3d 355 (D. Mass. 2025) was stayed by the Supreme Court on June 23, 2025, pending appellate review. Petitioner cites *D.V.D.* for its persuasive reasoning concerning due-process protections in third-country removals and does not rely on it as a binding authority. The claims here rest independently on (a) the Administrative Procedure Act, (b) 8 C.F.R. § 1208.17(d) (CAT regulation requiring reopening for any change of deferral), and (c) the Due Process Clause of the Fifth Amendment. Petitioner's counsel affirms compliance with Fed. R. Civ.

P. 11 and the Local Rules and appreciates the Court's guidance in ensuring that all filings are well-grounded in law and fact.

### **III. Petitioner's Issues Remaining for Adjudication**

#### **1. APA / Procedural Due Process – Revocation of Order of Supervision**

- Whether ICE's July 2025 revocation of Petitioner's Order of Supervision and redetention was arbitrary, capricious, and contrary to law under 5 U.S.C. §§ 701–706 and violated due process where the record reflects no misconduct or change in circumstances, no notice, and no written justification.

- Whether the agency failed to comply with its own regulations at 8 C.F.R. §§ 241.4, 241.5, and 241.13 governing post-order custody review and supervision.

#### **2. Habeas Claim – Unlawful Prolonged Detention under Zadvydas v. Davis**

- Whether continued detention is unlawful because removal is not reasonably foreseeable where Petitioner has CAT deferral, no evidence has been provided to Respondents that a country has agreed to accept him or under what terms and whether they can protect him from removal to El Salvador, and Respondents have not produced travel documents or proof of imminent removal.

- Whether Petitioner is entitled to release under 8 U.S.C. § 1231(a)(3) or an individualized custody review under 8 C.F.R. § 241.4 with written findings.

#### **3. Procedural Safeguards for Any Third-Country Removal**

- Whether Respondents may lawfully remove Petitioner to any third country without (1) written notice of the intended country of removal, (2) a meaningful opportunity to raise a fear claim, and (3) compliance with 8 C.F.R. § 1208.17(d) and the Due Process Clause.

o Whether the recent fear interview and finding of “no fear” moot or cure the prior APA and due-process violations relating to revocation and detention.

#### **IV. Petitioner’s Position and Requested Relief**

Petitioner contends that the revocation of his Order of Supervision was procedurally defective and unlawful; that his continued detention violates statutory and constitutional limits; and that the subsequent fear interview does not moot these claims or cure the APA violations.

Petitioner reiterates that he has consistently refused removal to Mexico based on his well-founded fear of persecution and torture there. Petitioner’s preference, after exhaustion of all administrative and judicial remedies, is to effectuate removal, if required by law, to his country of nationality—El Salvador—rather than to any third country. This clarification is made to preserve Petitioner’s rights under the Convention Against Torture and to ensure that any removal conforms to lawful process and the Immigration Judge’s prior deferral of removal.

Petitioner seeks the following relief:

1. Vacatur and Reinstatement of his Order of Supervision pending lawful removal efforts.
2. Immediate release to supervision under 8 U.S.C. § 1231(a)(3), or alternatively an individualized post-order custody review with written findings under 8 C.F.R. § 241.4 within 7 days.
3. Injunction against third-country removal absent lawful process and compliance with CAT regulations and due process.
4. Declaratory relief that the revocation and continued detention violated the APA and the Fifth Amendment.
5. Any other relief the Court deems just and proper, including attorney’s fees and costs if applicable.

### **V. Federal Respondents' Position on Petitioner's Remaining Issues**

Federal Respondents have been prepared to remove Petitioner from the United States to Mexico since before this habeas petition was filed, for over 30 days. *See* ECF No. 11. Petitioner is subject to a reinstated final order of removal under 8 U.S.C. § 1231(a)(5), and Federal respondents aver that removal to Mexico is imminent, but for this litigation.

At Petitioner's request, ICE deplaned Petitioner from a removal flight and coordinated with USCIS to instead arrange for a fear interview. *See* ECF No. 11, 13. DHS conducted the interview and finalized the process at the DHS level, finding that Petitioner did not establish that it is more likely than not that he would be persecuted or tortured in Mexico. *See* ECF No. 13, 13-1. As such, the only impediment from ICE's perspective to Petitioner's imminent removal is this Court's order staying removal during the pendency of this litigation. *See* ECF No. 10.

Procedurally, Federal Respondents deny that Petitioner's due process rights were violated when ICE revoked Petitioner's order of supervision, which is an agency action committed to the agency's discretion by law and protected from judicial review under the Administrative Procedure Act (APA), 5 U.S.C. § 701(a). ICE further denies that Federal Respondents have acted contrary to their statutory and regulatory duties during his post-removal-order detention and aver that ICE has provided Petitioner with more than the statute or the regulations require. Even if the Court were to find such violations, ICE has provided ample substitute process to Petitioner through counsel that would have cured any defect in the original process owed.

Substantively, Federal Respondents aver that removal to Mexico is imminent, but for this Court's stay order. While Petitioner states an intention to seek review by an immigration judge of the negative fear finding, Federal Respondents are unaware of the status of that review or whether such review is even available to Petitioner in this posture. Regardless, Petitioner's continued

detention as an alien with a final order of removal is lawful under 8 U.S.C. § 1231(a)(6), because removal to Mexico is significantly likely in the reasonably foreseeable future, and ICE avers that Petitioner is unlikely to comply with the removal order unless he is detained.

To the extent that Petitioner now requests removal to El Salvador, he would need to file a motion to reopen his removal order with the immigration court and request to withdraw his relief under the Convention Against Torture so that ICE can remove him to El Salvador.

#### **VI. Conclusion**

The parties appreciate the Court's expedited attention to this matter and continue to confer to narrow or clarify any disputed factual or procedural matters.

Respectfully submitted,

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