

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

ALEXI CANAS QUINTANILLA,



Petitioner/Plaintiff,

v.

**RAPHAEL VERGARA, Warden, Adams County
Correctional Center,**

Respondent/Defendant

Case No. 5:25-CV-00115- DCB-BWR

**AMENDED PETITION FOR WRIT
OF HABEAS CORPUS PURSUANT
TO 28 U.S.C. §2241, BY A PERSON
SUBJECT TO INDEFINITE
IMMIGRATION DETENTION**

BACKGROUND AND NEED FOR AMENDMENT

Petitioner, Mr. Alexi Canas, petitioned this Court for a writ of habeas corpus as well as for an injunction to remedy Petitioner's unlawful detention and to enjoin Petitioner's continued unlawful detention by the Respondents on October 20, 2025. Since that time, the Immigration court has issued a final order, granting relief to the Respondent. The previous court order only provided a reserved decision. On November 3, 2025 the Department of Homeland Security filed an appeal with the Board of Immigration Appeals ("BIA"). This is significant as it impacts Mr. Canas' eligibility for a bond hearing with the immigration court. The immigration court no longer has jurisdiction to review bond pursuant to 8 CFR § 1003.19. Whether to detain Mr. Canas is now a question for Immigration and Customs Enforcement, Enforcement and Removal Operations. In support of this petition and complaint for injunctive relief, Petitioner alleges as follows:

PARTIES

1. Petitioner, Mr. Canas, is a native and citizen of El Salvador who entered the United States on or about May 25, 1995, without inspection. He has maintained continuous presence in the United States since entering. On or about March 12, 2025, Petitioner was detained by immigration officials and is currently being held at the Adams County Correctional Center in Natchez, MS. Petitioner sought Cancellation of Removal for Certain Non-Permanent Residents. On August 24, 2025, an immigration judge with the Executive Office for Immigration Review (“EOIR”) reserved a decision on the application. On October 17, 2025, the judge granted the application in full as a visa became available. On November 3, 2025, counsel for DHS filed an appeal of the IJ’s order.
2. Respondent, Raphael Vergara, is the Warden of Adams County Correctional Center. As such, Mr. Vergara is responsible for the operation of the Correctional Center where Mr. Canas is detained. Because ICE contracts with detention centers such as Adams to house immigration detainees such as Mr. Canas, Respondent has immediate physical custody of the Petitioner.

JURISDICTION

3. This action arises under the Constitution of the United States, 28 U.S.C. § 2241(c)(1), and the Immigration and Nationality Act, as amended (“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 the 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.”); *see also*, *Demore v. Kim*, 538 U.S. 510 (2003) (evaluating mandatory detention for pre-removal detainees for the “brief period necessary” to complete removal proceedings); *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).

4. Further, this action also arises pursuant to 28 U.S.C. § 1331, federal question jurisdiction, as this Court has power to issue a federal injunction to force the ICE and the Correctional Center to release Mr. Canas so that he will not have to endure the continued burden of unreasonable detention.

VENUE

5. Venue lies in the Southern District of Mississippi, because Mr. Canas is currently detained in the territorial jurisdiction of this Court, at the Adams County Correctional Center. 28 U.S.C. § 1391.

LEGAL BACKGROUND

6. Following the IJ’s grant of Cancellation of Removal for Certain Non-Permanent Residents on October 17, 2025 and the subsequent appeal of that decision to the BIA, this case is no longer about eligibility for bond before the immigration court.
7. The immigration court no longer has jurisdiction to review bond pursuant to 8 CFR § 1003.19.

8. Rather, Petitioner's Habeas claim now arises under the failure of ICE ERO to consider Petitioner's request for parole and release from detention filed on September 26, 2025.
9. Pursuant to 8 CFR § 241.4, ICE ERO must conduct reviews of detention every ninety (90) days. Failure to conduct these reviews has been found to be a violation of substantive due process. *See e.g. Jimenez v. Cronen*, 317 F. Supp.3d. 626 (D. Mass. 2018).
10. ICE ERO has generally followed a policy of paroling or releasing individuals on their own recognizance following the grant of relief by an immigration judge. *See* Immigration & Customs Enforcement, *Policy Memorandum: Detention Guidance* (Feb. 9, 2004), <https://www.aila.org/ice-favors-release-of-aliens-granted-relief>. The only exceptions to release listed in the policy memorandum include concerns such as national security or danger to the community. *Id.*
11. ICE has the authority to release detained individuals pursuant to INA § 212(d)(5)(A). This permits the Attorney General, at his or her discretion, to "parole" any noncitizen into the United States "temporarily under such conditions as [she or] he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." *See* INA § 212(d)(5).
12. ICE also has authority to grant release or parole under INA § 236(a) which authorizes the detention of aliens pending removal proceedings and permits aliens who are not subject to mandatory detention to be released on bond or on their own recognizance. INA § 236(a)(2) states that "the Attorney General may . . . release the alien on (A) bond of at least \$1500 with security approved by, and continuing conditions prescribed by, the Attorney General, or (B) conditional parole."

13. Failure to release Petitioner creates an unreasonable period of continued detention where removal from the United States is not “reasonably foreseeable” under 8 USC § 1231(a)(6). The Supreme Court has defined the presumptively reasonable period of time to effect removal as six months.¹ See *Zadvydas v. Davis*, 533 U.S. 678 (2001). Following *Zadvydas*, the *Clark* Court found that an inadmissible person must be released after six months where their removal is not reasonably foreseeable. See *Clark v. Martinez*, 543 U.S. 371 (2005).

FACTS

14. Petitioner Canas has resided in the United States since around 1995 and lived in Maryland before being detained and transported to Natchez, MS.

15. Mr. Canas is the proud father of eight (8) children and owner of a licensed home-restoration business in Maryland.

16. Mr. Canas’ son, A  has been diagnosed with Pediatric Acute Onset Neuropsychiatric Syndrome (PANS).

17. On or about March 12, 2025, Petitioner was arrested by immigration authorities as part of a widescale immigration enforcement action.

18. He was placed into removal proceedings to appear before an immigration judge (IJ) and was charged with having entered the United States without inspection and being present without valid immigration documents. 8 U.S.C. § 1182(a)(6)(A)(i).

19. On or about August 24, 2025, an IJ conditionally approved his 42B Application for Cancellation of Removal for Certain Non-Permanent Residents. The decision was

¹ On remand, the Fifth Circuit found that the immigration authorities did not rebut applicant’s showing that his removal was not reasonably foreseeable. See *Zadvydas v. Davis*, 533 U.S. 678 (2001), *on remand*, 285 F.3d 398 (5th Cir. 2002).

reserved due to the backlog of visas for this category. The current backlog is about four (4) years behind.

20. Mr. Canas attempted to seek a bond from the immigration court but was denied. An appeal followed and the decision was upheld.

21. On October 17, 2025 the judge lifted the reserved grant and fully granted petitioner's application or relief.

22. On November 3, 2025 the government appealed the decision of the immigration judge to the Board of Immigration Appeals. As it stands, there are no briefing schedules due currently. It is widely known that appeals before the Board face long backlogs.

23. ICE has not granted release or set a bond amount for the Petitioner, despite a month since the favorable decision.

24. Petitioner Canas has minimal criminal history beyond his unlawful entry into the United States, about thirty years ago. He had a non-violent offense from 2003 for possession of marijuana (less than 30 grams) and possession of paraphernalia. These resulted in non-custodial, minor dispositions. Since that he has had some minor traffic violations. He is neither a flight risk nor a danger to the community.

CAUSES OF ACTION

COUNT 1

Violation of 8 CFR § 241.4

Unlawful failure to conduct detention review

25. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

26. ICE ERO's failure to conduct detention reviews amounts to a due process violation and is cause for release from detention.

27. If ICE has completed this review, they have not communicated the results to the Petitioner or his legal counsel pursuant to 8 CFR § 241.4(d). This regulation requires that ICE outline to the alien the reasons for continued detention.

COUNT 2

Violation of Procedural Due Process

28. Petitioner repeats, re-alleges, and incorporates by reference paragraphs 1 to 24 as if fully set forth herein.

29. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d. 653 (2001).

30. Petitioner has a fundamental interest in liberty and being free from official restraint.

31. The government’s detention of Petitioner without the possibility for a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

32. The government’s detention of Petitioner beyond six months without removal being reasonably foreseeable, is a violation of his due process rights.

33. The government’s failure to release Petitioner following a grant of relief by an immigration judge is a violation of his due process rights.

PRAYER FOR RELIEF

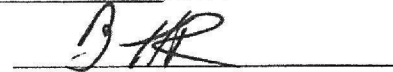
WHEREFORE, Petitioner respectfully requests that this Court:

- a. Assume jurisdiction over this matter;

- b. Declare that the Petitioner's lack of review of his detention by ICE ERO violates the INA, APA, and Due Process;
- c. Issue a writ of habeas corpus requiring that Defendants release Petitioner;
- d. Set aside Respondents' unlawful detention policy under the APA, 5 U.S.C. § 706(2);
- e. Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 241(d), 5 U.S.C. § 504, or any other applicable law; and
- f. Order further relief as this court deems just and appropriate.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this the 20th day of November, 2025.



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