

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS

**FERNANDO GONZALEZ GUTIERREZ,**

*Petitioner,*

v.

**CRYSTAL CARTER**, in her official capacity as the Warden of FCI Leavenworth; **SAMUEL OLSON**, in his official capacity as Chicago Field Office Director for U.S. Immigration and Customs Enforcement; **TODD LYONS**, in his official capacity as Acting Director of U.S. Customs and Immigration Enforcement; **KRISTI NOEM**, in her official capacity as Secretary of the Department of Homeland Security; and **PAMELA BONDI**, in her official capacity as Attorney General of the United States,

*Respondents.*

Case No. 25-3233-JWL

**VERIFIED PETITION FOR  
WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2241**

**INTRODUCTION**

1. Fernando Gonzalez Gutierrez sought protection from an immigration court because he feared torture or death at the hands of narcotraffickers in Mexico. At a hearing before Immigration Judge Carla Espinoza on March 31, 2025, Mr. Gonzalez was granted deferral of removal to Mexico, meaning the United States cannot legally deport him there because of the risk of torture or death he would face. *See* ECF No. 1-1 (IJ decision). DHS waived appeal of that determination, and it became final immediately.

2. Mr. Gonzalez Gutierrez has now been detained for nearly seven months after the IJ's order granting him deferral of removal became final. Because of the IJ's order, Respondents cannot legally remove Mr. Gonzalez Gutierrez to Mexico, and ICE has stated in an email to Mr.

Gonzalez Gutierrez's immigration attorney as recently as October 14, 2025 that it had not found a country to which to deport him. See ECF No. 1-2 (ICE emails, noting "HQ is actively working ... to see if they can establish a location ... Once HQ establishes a third country of removal your client will be informed."). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that noncitizens cannot be detained indefinitely on the off chance that the government might someday be able to remove them. Here, where Mr. Gutierrez has been detained for seven months following his removal order, ICE cannot remove him to Mexico, and has not identified another country where he might be sent, *Zadvydas* and this Court's case law require his release. See, e.g., *Manago v. Carter*, 2025 WL 2841209 (D. Kan. Oct. 7, 2025) (ordering habeas relief where Government sought unsuccessfully to remove noncitizen to four countries); *Zhuzhiashvili v. Carter*, -- F. Supp. 3d --, 2025 WL 2837716 (D. Kan. Oct. 7, 2025) (ordering habeas relief where Government had not identified a single country to which petitioner might be removed).

3. Mr. Gonzalez Gutierrez's continued detention violates 8 U.S.C. § 1231(a), as interpreted by the Court in *Zadvydas*, as well as his procedural due process rights, and furthermore serves no legitimate purpose. This Court should grant habeas relief and order his immediate release.

#### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, since this Petition arises under the Constitution and laws of the United States, namely the detention provisions of the Immigration and Nationality Act, 8 U.S.C. § 1231; the accompanying regulations codified at 8 C.F.R. § 241.4, *et seq.*; the habeas corpus statute, 28 U.S.C. § 2241; and the Due Process Clause of the Fifth Amendment..

5. This Court may grant relief pursuant to the Habeas Corpus Act, 28 U.S.C. § 2241,

*et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; and the Court's inherent equitable powers.

6. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *Zadvydas*, 533 U.S. at 687 (2001).

7. Venue is proper in this district pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because at the time of filing Petitioner was detained at FCI Leavenworth in Leavenworth, Kansas, within the jurisdiction of the District of Kansas; a substantial part of the events and omissions giving rise to the claim occurred in this district; Respondent Carter resides in this district; and Respondents are officers of the United States acting in their official capacity.

8. Exhaustion of administrative remedies is not required because it would be futile.

#### **PARTIES**

9. Mr. Gonzalez Gutierrez is a citizen of Mexico who is being detained by Respondents at FCI Leavenworth in Leavenworth, Kansas.

10. Respondent Crystal Carter is the Warden of FCI Leavenworth, which incarcerates individuals suspected of civil immigration violations. Respondent Carter is the immediate physical custodian responsible for the detention of Petitioner. She is named in her official capacity.

11. Respondent Samuel Olson is the director of ICE's Chicago Field Office, which is responsible for ICE activities in Kansas, including FCI Leavenworth. Respondent Olson is an immediate legal custodian responsible for Petitioner's detention. He is named in his official capacity.

12. Respondent Todd Lyons is the Acting Director of ICE. Respondent Lyons is responsible for ICE's policies, practices, and procedures, including those relating to detention of

immigrants during the removal process. Respondent Lyons is a legal custodian of Petitioner. He is named in his official capacity.

13. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. She is named in her official capacity. In that capacity, Respondent Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103.

14. Respondent Pamela J. Bondi is the Attorney General of the United States. She is named in her official capacity.

### **FACTUAL BACKGROUND**

15. Mr. Gonzalez Gutierrez is a 56-year-old citizen of Mexico. Mr. Gonzalez Gutierrez was raised in Guadalajara, Jalisco. In 2007, he moved to Ciudad Obregon, Sonora, where he had spent time during childhood with his stepmother's family. Mr. Gonzalez Gutierrez had a successful transportation business at the time.

16. Mr. Gonzalez Gutierrez's business was later struggling, and with the pandemic, he was forced to close. When Mr. Gonzalez Gutierrez fell into financial ruin, his partner left him, and Mr. Gonzalez Gutierrez sank into a depression. Mr. Gonzalez Gutierrez began using cocaine occasionally to cope with his emotions.

17. Mr. Gonzalez Gutierrez's drug use increased when he started living with a long-time family friend, [REDACTED], around August 2021. [REDACTED] had recently been hospitalized and Mr. Gonzalez Gutierrez offered to care for him. Unbeknown to Mr. Gonzalez Gutierrez, [REDACTED] worked for [REDACTED] a narco-trafficker who controlled Ciudad Obregon and worked under [REDACTED] an FBI Top Ten Most Wanted Fugitive.

18. Mr. Gonzalez Gutierrez never met [REDACTED] in person. All communication was over the phone. [REDACTED] sent a lot of gifts to Mr. Gonzalez Gutierrez because he was caring for

[REDACTED] Knowing that he might be able to exploit Mr. Gonzalez Gutierrez, who possessed a valid U.S. visa, [REDACTED] gave Mr. Gonzalez Gutierrez methamphetamine and caused him to become addicted. Mr. Gonzalez Gutierrez's addiction grew and his financial situation worsened.

[REDACTED] began offering Mr. Gonzalez Gutierrez opportunities to work, but Mr. Gonzalez Gutierrez declined.


19. [REDACTED] grew jealous of Mr. Gonzalez Gutierrez's increased communication with [REDACTED] [REDACTED] threatened to kill Mr. Gonzalez Gutierrez around November 2022, at which point Mr. Gonzalez Gutierrez moved out.

20. Struggling financially, Mr. Gonzalez Gutierrez agreed to take a job from [REDACTED] [REDACTED] Mr. Gonzalez Gutierrez was told to pick up a car from a parking lot, register it in his name, and drive it into the United States. Mr. Gonzalez Gutierrez did not know what type or quantity of drugs were concealed in the car. He was told to cross the border at Nogales, Arizona, and that he would be given a follow-up address once he had crossed the border.

21. On February 22, 2023, Mr. Gonzalez Gutierrez attempted to enter the United States through the DeConcini port of entry in Nogales, Arizona. Federal agents searched the car and found 20 kilos of methamphetamine. Mr. Gonzalez Gutierrez was arrested and told officers the truth about where the drugs had come from and why they were in the car.

22. On June 14, 2024, Mr. Gonzalez Gutierrez pleaded guilty to 21 U.S.C. § 952(a), 21 U.S.C. § 960(a)(1), and 21 U.S.C. § 960(b)(3) (Importation of Methamphetamine). Mr. Gonzalez Gutierrez was sentenced to 27 months in prison and three years of supervision upon release.

23. On November 6, 2024, Mr. Gonzalez Gutierrez was transferred to ICE custody. He feared retaliation from [REDACTED] and [REDACTED] for losing the delivery, as they were

known to be extremely violent. Mr. Gonzalez Gutierrez also feared  who had previously threatened his life.

24. On March 31, 2025, an immigration judge granted Mr. Gonzalez Gutierrez's application for deferral of removal under the Convention Against Torture. ECF No. 1-1. As a result of the IJ's order, the government is prohibited from removing him to Mexico based on the substantial likelihood that he would be tortured there. Notably, DHS waived appeal of the IJ's order.

25. Around May 2025, Mr. Gonzalez Gutierrez was transferred from the Dodge County Detention Center in Wisconsin to FCI Leavenworth in Kansas, where he is still detained.

26. Mr. Gonzalez Gutierrez has been detained pursuant to 8 U.S.C. § 1231(a) since March 31, 2025, for a total period of nearly seven months (212 days). Conditions at FCI Leavenworth, where he remains detained, have been reported to be squalid and unhealthy. One news article describes "unsanitary and crowded living quarters, extended lockdowns, delayed and costly medical treatment, restricted contact with [detainees'] families and no access to religious services," as well as a "rat infestation" and "suicide attempts" with a lack of access even to sunlight. *See* Anna Kaminski, "Immigrants detained in Leavenworth federal prison live in squalor without sunlight, letters claim" (June 7, 2025), <https://lailuminator.com/2025/06/07/immigrants-leavenworth/>. His continuing detention at FCI Leavenworth violates his due process rights as articulated by the Supreme Court in *Zadvydas*.

27. On October 1, 2025, immigration counsel for Mr. Gonzalez Gutierrez, Marco Becerra from the Cook County Public Defender's office, emailed ICE regarding his release, explaining that Mr. Gonzalez Gutierrez had already been jailed for more than six months after his CAT grant. *See* ECF No. 1-2. ICE informed Mr. Becerra that DHS was "actively looking for a third

country for removal,” which is another way of saying that DHS has not found any country to which to remove Mr. Gonzalez Gutierrez. *Id.* His immigration attorney followed up on October 14, 2025, asking for evidence of DHS’s effort for third country removal. *Id.* ICE again responded only to say that it was “actively working ... to see if they can establish a location,” again, a concession that DHS has not found a possible removal country.

### ARGUMENT

#### **A. Mr. Gonzalez Gutierrez has been detained for an unreasonably long period and has shown that his removal is not reasonably foreseeable.**

28. 8 U.S.C. § 1231(a) permits ICE to detain noncitizens during the “removal period,” which is defined as the 90-day period during which “the Attorney General shall remove the alien from the United States.” 8 U.S.C. § 1231(a)(1)(A).

29. The statute provides that “the removal period begins on the latest of the following:

- (i) The date the order of removal becomes administratively final.
- (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court’s final order.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.”

8 U.S.C. § 1231(a)(1)(B).

30. In this case, Mr. Gonzalez Gutierrez had an administratively final removal order as of March 31, 2025, when DHS waived appeal of the IJ’s decision. The 90-day removal period therefore ended on June 29, 2025, four months ago.

31. After the expiration of the 90-day removal period, 8 U.S.C. § 1231(a)(3) provides that ICE may release noncitizens on an order of supervision. Alternatively, a noncitizen “may be detained beyond the removal period” if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6).

32. Constitutional limits on detention beyond the removal period are well established.

Government detention violates due process unless it is reasonably related to a legitimate government purpose. *Zadvydas*, 533 U.S. at 701. “[W]here detention’s goal is no longer practically attainable, detention no longer ‘bear[s] [a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Here, where the Government has not shown Mr. Gonzalez Gutierrez to be either a danger to the community or a flight risk, there is no justification under *Zadvydas* for his continued incarceration.

33. The purpose of detention during and beyond the removal period is to “secure[] the alien’s removal.” *Zadvydas*, 533 U.S. at 682. In *Zadvydas*, the Supreme Court “read § 1231 to authorize continued detention of an alien following the 90-day removal period for only such time as is reasonably necessary to secure the alien’s removal.” *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 699).

34. As the Supreme Court explained, where there is no possibility of removal, immigration detention presents due process concerns because the need to detain the noncitizen to ensure the noncitizen’s availability for future removal proceedings is “weak or nonexistent.” *Zadvydas*, 533 U.S. at 690-92. Detention is lawful only when “necessary to bring about that alien’s removal.” *See id.* at 689.

35. To balance these competing interests, the Court in *Zadvydas* established a rebuttable presumption regarding what constitutes a “reasonable period of detention” for noncitizens after a removal order. *Id.* at 700-01. The Court held that six months’ detention could be deemed a “presumptively reasonable period of detention,” after which the burden shifts to the government to justify continued detention if the noncitizen provides a “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

36. Here, Mr. Gonzalez Gutierrez has been detained for longer than the presumptively reasonable six-month period. His removal period began on March 31, 2025, when the immigration judge's removal order became final, and he passed six months of post-removal order custody on September 30, 2025.

37. Mr. Gonzalez Gutierrez has "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* By law, he cannot be removed to Mexico, and he does not have citizenship in any other country, nor any ties to any other country. *See* 8 U.S.C. § 1231(b)(2)(D) (mandating that DHS "shall remove the alien to a country of which the alien is a subject, national, or citizen"). In the past month, DHS has stated twice in writing to Mr. Gonzalez Gutierrez's immigration attorney that it has not identified a third country to which to remove him. DHS cannot keep Mr. Gonzalez Gutierrez incarcerated indefinitely simply on the off chance that it might one day try to remove him to a third country.

38. Courts have often found that a petitioner in Mr. Gonzalez Gutierrez's position meets his burden of showing that his removal is not significantly likely to occur in the reasonable future if he can show that removal to his home country is impossible. *See, e.g., Palma v. Gillis*, 2020 WL 4880158, at \*2 (S.D. Miss. July 7, 2020) ("to shift the burden to the Government, an alien must demonstrate ... barriers to his repatriation to his country of origin"); *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 707-08 (S.D. Tex. 2020) (Pakistani man met burden by showing he could not be removed to Pakistan); *Joseph v. Mukasey*, 2009 WL 331558, at \*4 (N.D. Fla. Feb. 10, 2009) (dual citizen of Bahamas and Haiti met burden by showing Bahamas would not issue travel documents for him). This is analogous to Mr. Gonzalez Gutierrez's case, where removal to his home country is impossible because of the CAT order.

39. In recent weeks, numerous cases have been decided under *Zadvydas*, including by this Court, in which noncitizens have been released because there is no significant likelihood of their removal in the reasonably foreseeable future. Many of these involve noncitizens like Mr. Gonzalez Gutierrez who were granted withholding of removal. See, e.g., *Douglas v. Baker*, 2025 WL 2997585 (D. Md. Oct. 24, 2025), at \*5 (habeas granted for Jamaican man where Government could point to no progress in removing him to United Kingdom); *Trejo v. Warden of ERO El Paso East Montana*, -- F. Supp. 3d --, 2025 WL 2992187 (W.D. Tex. Oct. 24, 2025), at \*5-6 (habeas granted where requests to some countries were refused and others had been pending for over five months); *Moreno v. Bondi*, 2025 WL 2926547 (D. Kan. Oct. 15, 2025), at \*2-3 (habeas granted where DHS attempted to remove to three countries without success but “will continue its efforts to identify alternative countries”); *Andauga-Colin v. Bondi*, 2025 WL 2926546, at \*2-3 (D. Kan. Oct. 15, 2025) (habeas granted where ICE gave only boilerplate statements about third-country removal); *Kamyab v. Bondi*, 2025 WL 2917522 (W.D. Wash. Oct. 14, 2025) (DHS’s vague and generalized statements insufficient to rebut petitioner’s showing); *Zhuzhiashvili v. Carter*, -- F. Supp. 3d --, 2025 WL 2837716 (D. Kan. Oct. 7, 2025) (habeas granted where DHS could not identify a single possible removal country); *Manago v. Carter*, 2025 WL 2841209 (D. Kan. Oct. 7, 2025) (habeas granted where DHS had tried and failed to send petitioner to four countries); *Conchas-Valdez v. Casey*, 2025 WL 2884822 (S.D. Cal. Oct. 6, 2025), at \*3 (habeas granted where “one resettlement request and two follow up emails over the course of seven months [] [did] not instill confidence” that petitioner would be removed in the reasonably foreseeable future); *Iakubov v. Figueroa*, 2025 WL 2731355 (D. Ariz. Sept. 25, 2025) (habeas granted where DHS sent requests to three countries and received no response); *Ambrosi v. Warden, Folkston ICE Processing Center*,

2025 WL 2772500 (S.D. Ga. Sept. 29, 2025) (habeas granted where DHS could not identify a country to which petitioner might be deported).

40. In *Zhuzhiashvili*, this Court quoted a DHS official who said, “We are submitting acceptance requests to three other countries once a final order takes effect. These are never successful[.]” 2025 WL 2837716, at \*2. The Court interpreted the comment as suggesting that “such requests are generally futile.” *Id.* This is borne out by the court’s opinion in *Munoz Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J. 2025), where the court noted that from FY 2020 to FY 2023, according to publicly available data, ICE removed a total of only *five* noncitizens granted withholding or CAT relief to alternative countries. Indeed, data in one Supreme Court case showed “only 1.6% of noncitizens granted withholding-only relief were ever actually removed to an alternative country.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 552-53 (2021) (Breyer, J., dissenting).

41. Given ICE’s admissions in this and other cases, its historic futility at deporting noncitizens with withholding orders, and the fact that ICE has been unable to remove Mr. Gonzalez Gutierrez over a nearly seven-month period and cannot even name a single country to which he might be sent, Mr. Gonzalez Gutierrez has met his initial burden to show that his removal is not significantly likely in the reasonably foreseeable future.

42. Furthermore, Mr. Gonzalez Gutierrez would be able to assert a credible fear of removal to a third country. As one district court recently noted, the U.S. has been violating the principle of non-refoulement by deporting refugees to third countries who are not bound by U.S. immigration court orders and which then immediately return the refugees to their homelands, where they face persecution. *See Abrego Garcia v. Noem*, 2025 WL 2062203 (D. Md. July 23, 2025), at \*9, n. 15 (citing removal of Guatemalan refugee to Mexico, which then immediately sent

him to Guatemala, and case of Venezuelans with pending asylum claims who were sent to El Salvador, which then returned them to Venezuela in a prisoner swap). In another case, filed September 12, 2025 in the U.S. District Court for the District of Columbia, *D.A. v. Noem*, 1:25-cv-3135, the plaintiffs allege that the United States is violating its obligations under international law not to refoul refugees to countries where they would face persecution by instead sending them to Ghana, which then immediately returns them to their homelands, a practice known as “chain refoulement.” Similarly, it has been reported in the media that refugees removed to Eswatini will be refoiled to their home countries. *See* “5 immigrants deported by the US to Eswatini in Africa are held in solitary confinement,” (July 17, 2025), available at: <https://www.politico.com/news/2025/07/17/5-immigrants-deported-by-the-us-to-eswatini-in-africa-are-held-in-solitary-confinement-00461712>. Because any third country to which Respondents might send Mr. Gonzalez Gutierrez could return him to Mexico in violation of the U.S.’s obligations of non-refoulement, Mr. Gonzalez Gutierrez could assert a credible fear to such removal and would be entitled to a credible fear hearing before a USCIS officer. *See D.V.D. v. U.S. Dep’t of Homeland Security*, 778 F. Supp. 3d 355, 393 n. 48 (D. Mass. 2025) (injunction stayed pending appeal by *Dep’t of Homeland Sec. v. D.V.D.*, 145 S.Ct. 2153 (2025)).

43. Respondents have been legally entitled to remove Mr. Gonzalez Gutierrez to a safe third country for nearly seven months, but have for whatever reason been unable or unwilling to do so; therefore, it appears that there is no “*significant* likelihood” of his removal “in the *reasonably* foreseeable future” (emphasis added). At this point, the Government “must respond with evidence sufficient” to indicate that it is significantly likely that Mr. Gonzalez Gutierrez will, in fact, be removed in a reasonable period of time. *Zadvydas*, 533 U.S. at 701.

**B. The Government must be required to rebut Mr. Gonzalez Gutierrez’s showing.**

44. Some deference is owed to the government’s assessment of the likelihood of

removal and the time it will take to execute removal. *Id.* at 700. However, just as pro forma findings of dangerousness do not suffice to justify indefinite detention, pro forma statements that removal is likely should not satisfy the government's burden. The government must rebut a detainee's showing that there is no significant likelihood of removal in the reasonably foreseeable future with "evidence of progress . . . in negotiating a petitioner's repatriation." *Gebrelibanos v. Wolf*, 2020 WL 5909487 at \*3 (S.D. Cal., Oct. 6, 2020); *Hassoun v. Sessions*, 2019 WL 78984 at \*4 (W.D.N.Y. Jan. 2, 2019) ("[A]s time passes, the mere existence of possible avenues for removal becomes insufficient to justify further detention; some evidence of progress is required") (collecting cases).

45. The longer a noncitizen is detained, the more evidence the Government needs to put forward to justify continued detention. Specifically, "for detention to remain reasonable [once six months of detention have passed], as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Zadvydus*, 533 U.S. at 701; see also *Alexander v. Att'y Gen. U.S.*, 495 F. App'x 274, 275 (3d Cir. 2012) ("[T]he longer an alien is detained, the less he must put forward to obtain relief"); *Hassoun*, 2019 WL 78984 at \*4 ("[T]he government's burden becomes more onerous the longer an alien is detained, because it must show that removal will be effectuated sooner in the future.").

46. Even if ICE is engaged in ongoing efforts to secure removal, such efforts alone do not mitigate already-prolonged detention, nor do they render removal reasonably foreseeable. See *Shefqet v. Ashcroft*, 2003 WL 1964290 at \*5 (N.D. Ill. April 28, 2003) ("Even if [ICE] has been making regular efforts to secure Petitioner's travel document . . . at this time there must be some concrete evidence of progress. [ICE] cannot rely on good faith efforts alone"). The likelihood of removal "does not turn on the degree of the government's good faith efforts," but rather "on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun*,

2019 WL 78984 at \*5. Indeed, the Supreme Court specifically rejected the notion that removal is reasonably foreseeable as long as “good faith efforts” continue, holding that such a standard “would seem to require an alien seeking release to show the absence of any prospect of removal—no matter how unlikely or unforeseeable—which demands more than our reading of the statute can bear.” *Zadvydas*, 533 U.S. at 701. “[I]f [ICE] has no idea of when it might reasonably expect [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future.” *Palma*, 2020 WL 4880158, at \*3 (citing *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)).

47. Given ICE’s total failure to take any meaningful step toward removing Mr. Gonzalez Gutierrez in nearly seven months, this Court should order Mr. Gonzalez Gutierrez’s immediate release subject to whatever conditions this Court deems appropriate. *See, e.g., Manson v. Barr*, 2020 WL 3962235 (M.D. Fla. July 13, 2020) at \*3 (ordering immediate release on conditions of supervision pursuant to 8 U.S.C. § 1231(a)((3))).

#### **CLAIMS FOR RELIEF**

##### **Count I – Violation of 8 U.S.C. § 1231(a), as interpreted by *Zadvydas***

48. Petitioner re-alleges and incorporates by reference all preceding paragraphs.

49. Mr. Gonzalez Gutierrez’s prolonged and open-ended detention by Respondents violates 8 U.S.C. § 1231(a), as interpreted by *Zadvydas*. Mr. Gonzalez Gutierrez’s 90-day statutory removal period and six-month presumptively reasonable removal period for continued removal efforts have passed.

50. Respondents’ failure to remove to Mr. Gonzalez Gutierrez over a seven-month span, as well as Respondents’ own written admissions that they have not identified a single country to which he might be removed, indicates that Respondents either cannot or will not remove him in

the reasonably foreseeable future, particularly given that Respondents are not legally allowed to send him to Mexico and he has no citizenship or ties to any other country.

51. Under *Zadvydas*, Mr. Gonzalez Gutierrez’s continued detention is unreasonable and not authorized by 8 U.S.C. § 1231.

**Count II – Procedural Due Process – Unconstitutionally Indefinite Detention  
(U.S. Const. amend. V)**

52. Petitioner re-alleges and incorporates herein by reference, as if set forth fully herein, the allegations in all the preceding paragraphs.

53. 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.

54. Other than as punishment for a crime, due process permits the government to take away liberty only “in certain special and narrow nonpunitive circumstances ... where a special justification ... outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690. Such special justification exists only where a restraint on liberty bears a “reasonable relation” to permissible purposes. *Jackson*, 406 U.S. at 738; see also *Foucha v. Louisiana*, 504 U.S. 71, 79 (1992). In the immigration context, those purposes are “ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community.” *Zadvydas*, 533 U.S. at 690 (quotations omitted).

55. Those substantive limitations on detention are closely intertwined with procedural due process protections. *Foucha*, 504 U.S. at 78-80. Noncitizens have a right to adequate procedures to determine whether their detention in fact serves the purposes of ensuring their appearance or protecting the community. *Id.* at 79; *Zadvydas*, 533 U.S. at 692; *Casas-Castrillon v. Dep’t of Homeland Sec.*, 535 F.3d 942, 949 (9th Cir. 2008). Where laws and regulations fail to provide such procedures, the habeas court may assess whether the noncitizen’s immigration

detention is reasonably related to the purposes of ensuring his appearance or protecting the community, *Zadvydas*, 533 U.S. at 699, or require release.

56. Under this framework, Petitioner's release is required because his detention violates his due process rights.

57. Petitioner's detention is unconstitutionally indefinite because he cannot be removed to Mexico and has no ties or citizenship anywhere else. His continued detention without any reasonably foreseeable end point is thus unconstitutionally prolonged in violation of clear Supreme Court precedent. *Zadvydas*, 533 U.S. at 701.

58. Moreover, because Petitioner has not been shown to be a danger or flight risk, his detention is not reasonably related to its claimed purpose, and is unlawful.

#### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

- (a) Assume jurisdiction over this matter;
- (b) Declare that Petitioner's continued detention violates 8 U.S.C. § 1231, as interpreted by the Supreme Court in *Zadvydas*;
- (c) Alternatively, declare that Petitioner's prolonged and indefinite detention violates his rights under the Due Process Clause of the Fifth Amendment;
- (d) Grant a writ of habeas corpus and order Respondents to release Petitioner from detention forthwith, on an order of supervision pursuant to 8 U.S.C. § 1231(a)(3);
- (e) Award Petitioner his reasonable attorneys' fees and costs under the Equal Access to Justice Act;
- (f) Grant any other relief that this Court deems just and proper.

Dated: October 29, 2025

Respectfully submitted,

/s/ James D. Jenkins  
James D. Jenkins (KSD #78125, MO #57258)  
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jjenkins@valancourtbooks.com

*Counsel for Petitioner*

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT  
TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner pursuant to 28 U.S.C. § 2242 because I am the Petitioner's attorney and have reviewed and am familiar with the facts alleged in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: October 29, 2025

/s/ James D. Jenkins  
James D. Jenkins

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was emailed to the Clerk of Court at ksd\_clerks\_topeka@ksd.uscourts.gov for filing via the Court's CM/ECF system this 29th day of October, 2025, and that a true copy of the foregoing was emailed to russell.keller@usdoj.gov and audrey.koehler@usdoj.gov, and served pursuant to Fed. R. Civ. P. 4(i) via certified U.S. mail this 29th day of October, 2025 to the following Respondents:

United States Attorney's Office  
Civil Process Clerk  
500 State Avenue, Suite 360  
Kansas City, KS 66101

Crystal Carter  
FCI Leavenworth  
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