

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

<b>Jose Santos Gomez-Simeon,</b>	§
Petitioner,	§ No. <u>5:25-cv-01460</u>
V.	§
<b>Pamela J. Bondi, Attorney General of the United States</b>	§
<b>Reynaldo Castro, Warden, South Texas Ice Processing Center;</b>	§
<b>Sylvester Ortega, Field Office Director, ICE;</b>	§
<b>Todd M. Lyons, Director, Ice;</b>	§
<b>Kristi Noem, Secretary, Department of Homeland Security.</b>	§

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND  
COMPLAINT FOR PRELIMINARY INJUNCTIVE RELIEF**

Petitioner Jose Santos Gomez-Simeon, by and through undersigned counsel, respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 and states:

**PARTIES**

1. Petitioner Jose Santos Gomez-Simeon, Alien Number , is a citizen of Honduras, born on  1977. He has resided in the United States for approximately twelve years without interruption. On November 26, 2012, an Immigration Judge granted Petitioner withholding of removal under the Convention Against Torture (CAT) based on a well-founded fear of persecution and torture in Honduras. Because of this grant, Petitioner cannot lawfully be removed to Honduras.
2. Petitioner complied with ICE's supervision requirements for years under an Order of Supervision originally issued on November 20, 2013. Under these orders, Petitioner consistently attended regular check-ins and adhered to all reporting and compliance conditions required by ICE. The Petitioner attended his first check in on January 22, 2014 and has been attending all subsequent scheduled appointments. Despite this compliance, Petitioner was suddenly detained at a routine ICE check-in in San Antonio on October 22, 2025. He is currently detained at the South Texas ICE Processing Center, located at 566 Veterans Drive, Pearsall, Texas 78061.
3. Respondent Sylvester Ortega is the Field Office Director for Detention and Removal, ICE San Antonio Field Office, within the U.S. Department of Homeland Security (DHS). Pursuant to his orders, Petitioner remains detained.

4. Respondent Reynaldo Castro is the Warden of the South Texas ICE Processing Center in Pearsall, Texas, and is Petitioner's immediate custodian within this judicial district.

5. Respondents Kristi Noem, Secretary of DHS; Todd M. Lyons, Acting Director of ICE; and Pamela J. Bondi, Attorney General of the United States, have legal authority over Petitioner's continued detention.

#### **CUSTODY**

6. Mr. Gomez-Simeon is in the physical custody of Respondents Reynaldo Castro, Warden for the South Texas ICE Processing Center, Sylvester Ortega, Field Office Director, Ice San Antonio, and Todd M. Lyons, Director for ICE. At the time of the filing of this petition, Petitioner is detained at the STDC in Pearsall, Texas. The STDC contracts with the DHS to detain aliens such as Petitioner. Mr. Gomez-Simeon is under the direct control of Respondents and their agents.

#### **JURISDICTION & VENUE**

7. 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 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 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. This Court may grant relief pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 2201 et seq. and the All Writs Act, 28 U.S.C. § 1651.

8. Venue is proper in the Western District of Texas because Petitioner is currently detained within this District and most Respondents also reside within this jurisdiction. 28 U.S.C. § 1391(e). Venue is proper in this District also pursuant to 28 U.S.C. § 1391(e), because Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving rise to her claims occurred in this district, and no real property is involved in this action.

#### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9. Mr. Gomez-Simeon has exhausted his administrative remedies to the extent required by law. He has fully cooperated with Respondents and has not delayed or obstructed his detention. He has not been given any explanation for his detention and was never provided with an opportunity to present any evidence. Mr. Gomez-Simeon was never informed that his Order of Supervision (OSUP) had been revoked. He was not afforded an interview, advised of the reason for the revocation, or provided any explanation for the decision. ICE has abused him, and has used terror tactics to try to get him to sign that he wishes to be removed to Honduras, notwithstanding the immigration judge's order stating that ICE may not remove him to Honduras. Mr. Gomez-Simeon was never advised that any country had agreed to accept him on a permanent basis.
10. Mr. Gomez-Simeon's only remedy is by way of this judicial action.

#### STATEMENT OF FACTS

11. Petitioner entered the United States in 2005 with a visa and overstayed his permission. After a traffic stop, the Petitioner was detained and removed to Honduras. After suffering persecution in Honduras, the Petitioner re-entered the United States.
12. On November 26, 2012, the Petitioner was ordered removed from the United States. However, relying on all the evidence presented by the Petitioner *pro se*, an Immigration Judge granted protection under the Convention Against Torture. That order remains final and binding, given no appeal was ever made.
13. Following his CAT grant, ICE released Petitioner under an Order of Supervision. Since his release, Petitioner has abided by his Order of Supervision, appeared at every ICE check-in, and maintained a stable residence in Pflugerville, Texas, with his family. He has held employment with a valid Employment Authorization Document and a valid Social Security number.
14. Gomez-Simeon has deep roots in this community and is a business owner. He owns a company called Personal Touch Construction Services. His continued detention deprives his family of his companionship and income.

15. ICE has provided no explanation, bond hearing, or custody review since his re-detention. No country has agreed to accept him, and his removal to Honduras is legally barred under the CAT order.

16. Respondents' decision to detain Mr. Gomez-Simeon is no longer legally justifiable and is capricious and arbitrary. There is no better time for the Court to consider the merits of his request for release. There is no significant likelihood of removal in the reasonably foreseeable future.

### **LEGAL FRAMEWORK**

17. Pursuant to 28 U.S.C. § 2243, the Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response “within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed.” 28 U.S.C. § 2243 (emphasis added).

18. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

19. This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious.”). It also protects noncitizens who have been ordered removed from the United States and who face continuing detention. *Id.* at 690.

20. Furthermore, 8 U.S.C. § 1231(a)(1)-(2) authorizes detention of noncitizens during “the removal period,” which is defined as the 90-day period beginning on “the latest” of either “[t]he date the order of removal becomes administratively final”; “[i]f the removal order is judicially

reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court's final order"; or "[i]f the [noncitizen] is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement."

21. Although 8 U.S.C. § 1231(a)(6) permits detention "beyond the removal period" of noncitizens who have been ordered removed and are deemed to be a risk of flight or danger, the Supreme Court has recognized limits to such continued detention. In *Zadvydas*, the Supreme Court held that "the statute, read in light of the Constitution's demands, limits [a noncitizen's] post-removal-period detention to a period reasonably necessary to bring about that [noncitizen's] removal from the United States." 533 U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

22. The regulations at 8 C.F.R. § 241.4 provide situations where ICE may revoke its order of release – "(I) Revocation of release—(1) Violation of conditions of release. Any alien described in paragraph (a) or (b)(1) of this section who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody. Any such alien who violates the conditions of an order of supervision is subject to the penalties described in section 243(b) of the Act. Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.

23. Petitioner argues that ICE has not complied with its own regulation. It has never supplied him with a reason as to an alleged violation, nor afforded him an opportunity or received any notification of ICE's reasons. Further, he shows that ICE has maintained custody of him under its Order of Supervision but has never in all these years shown any progress towards imminent removal or reasonably foreseeable removal to a third country.

24. In determining the reasonableness of detention, the Supreme Court recognized that, if a person has been detained for longer than six months following the initiation of their removal period, their detention is presumptively unreasonable unless deportation is reasonably foreseeable; otherwise, it violates that noncitizen's due process right to liberty. 533 U.S. at 701. In this circumstance, if the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government **must** respond with evidence sufficient to rebut that showing." *Id.* (*emphasis added*).

25. The Court's ruling in *Zadvydas* is rooted in due process's requirement that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any other justification.

26. The first justification of preventing flight, however, is "by definition . . . weak or nonexistent where removal seems a remote possibility." *Zadvydas*, 533 U.S. at 690. Thus, where removal is not reasonably foreseeable and the flight prevention justification for detention accordingly is "no longer practically attainable, detention no longer 'bears [a] reasonable relation to the purpose for which the individual [was] committed.'" *Id.* (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). As for the second justification of protecting the community, "preventive detention based on dangerousness" is permitted "only when limited to specially dangerous individuals and subject to strong procedural protections." *Zadvydas*, 533 U.S. at 690–91.

27. Thus, under *Zadvydas*, “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699–700. If removal is reasonably foreseeable, “the habeas court should consider the risk of the [noncitizen’s] committing further crimes as a factor potentially justifying the confinement within that reasonable removal period.” *Id.* at 700.

28. At a minimum, detention is unconstitutional and not authorized by statute when it exceeds six months and deportation is not reasonably foreseeable. *See Zadvydas*, 533 U.S. at 701 (stating that “Congress previously doubted the constitutionality of detention for more than six months” and, therefore, requiring the opportunity for release when deportation is not reasonably foreseeable and detention exceeds six months); *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005).

29. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that the post-order detention of noncitizens becomes presumptively unreasonable after six months unless the government can demonstrate a significant likelihood of removal in the reasonably foreseeable future<sup>1</sup>. The Court was clear, however, that the six-month period is not a strict jurisdictional bar to judicial review—it is a guideline for reasonableness<sup>2</sup>. As such, courts retain discretion to consider habeas petitions filed before the six-month period elapses if the facts show that removal is not reasonably foreseeable.

30. This principle has been reaffirmed by several courts. In *Bah v. Cangemi*, 489 F. Supp. 2d 905, 920 (D. Minn. 2007), the court held that “while six months marks the beginning of the presumptively unreasonable period, it does not mark the beginning of federal court jurisdiction.” Similarly, in *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002), the Eleventh Circuit

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<sup>1</sup> See also *Rodriguez v. Robbins* (9th Circuit 2015) (Page 31).

<sup>2</sup> *Zadvydas v. Davis*, 533 US 678 (2001) (Page 3).

emphasized that the six-month period under *Zadvydas* is merely a guideline, not a jurisdictional requirement.

31. Here, Petitioner has been detained without any indication that removal will occur in the reasonably foreseeable future. ICE has not identified a receiving country, has made no tangible progress in securing travel documents, and has not articulated any plan for lawful removal. In fact, ICE has not even provided the Petitioner with an OSUP revocation notice nor an informal interview. Petitioner cannot be returned to Honduras due to a final order withholding removal under the Convention Against Torture, and no third country has agreed to accept him.

32. This situation closely aligns with the facts in *Zadvydas* and similar cases, such as *Sopo v. Att’y Gen.*, 825 F.3d 1199 (11th Cir. 2016), and *Singh v. Att’y Gen.*, 945 F.3d 1310 (11th Cir. 2019), where detention without a viable removal plan was held to be unconstitutional.

33. Moreover, the circumstances surrounding Petitioner’s detention—namely, his sudden arrest after more than a decade of full compliance with ICE supervision and his ongoing separation from his family—strongly suggest that the detention is punitive, not administrative. Detention under § 241 of the INA must be tethered to the purpose of effectuating removal. Where, as here, that purpose is illusory or nonexistent, continued detention violates substantive due process<sup>3</sup>.

34. “[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699. Petitioner shows that the government had years to execute the final order and failed to do so. That failure does not now authorize his detention while the government belatedly attempts to enforce it. The government may detain a noncitizen only when it can demonstrate that removal is presently possible or will be possible within a reasonable time. The regulations refer to an order of supervision as a “release” (alternative to detention) under

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<sup>3</sup> See also: *Clark v. Martinez* (1/12/05, 543 U.S. 371) (Page 17) and *Johnson, et al. v. Guzman Chavez, et al.* [6/29/21, 594 U.S.] (Page 8).

terms and conditions as set by ICE (U.S. Department of Homeland Security, Immigration and Customs Enforcement). 8 C.F.R. § 241.4(l) (order of supervision cannot be rescinded without providing the foreign national with a written explanation of how the order of supervision was violated and why it is being rescinded and as to give the foreign national an opportunity to respond and show that they did not violate the terms and conditions of the order of supervision).

35. His detention by defendants began under their order of supervision, more than nine years ago. Petitioner's detention on October 22, 2025 is unconstitutional because ICE has had custody under its order of supervision (Form I-220B) since November 20, 2013, more than six months after the removal order in his case became administratively final on December 26, 2012, because removal is not reasonably foreseeable. Accordingly, to vindicate Petitioner's statutory and constitutional rights and to put an end to his continued arbitrary detention, this Court should grant the instant petition for a writ of habeas corpus.

36. The Supreme Court construed § 1231(a)(6) as having an implicit, temporal limitation of six months post-order of removal, after which an alien must generally be released absent a significant likelihood of removal in the reasonably foreseeable future. The defendants do not have a likelihood of imminently removing Petitioner. The apparent purpose of detaining him at his yearly ICE check in was to try to browbeat him into renouncing the immigration judge's 2013 withholding of removal order so he would "sign" his removal to Honduras. In the past twelve years, the defendants have shown no ability to remove him to a third country under the statute and regulations. Nor would his release on supervision, as previously, prevent the defendants continuing their efforts to locate a third country to remove him to.

37. Respondents' actions also contravene the spirit and purpose of the CAT order, which legally bars Petitioner's removal to Honduras. Continued detention under these circumstances amounts to arbitrary confinement forbidden by both domestic and international law.

38. In light of the government's failure to provide any legitimate path toward removal, and considering Petitioner's equities and compliance history, judicial intervention is warranted now. Courts are empowered to act where removal is not reasonably foreseeable, even if six months have not yet passed since the initial detention.

**CLAIMS FOR RELIEF  
COUNT ONE  
CONSTITUTIONAL CLAIM**

39. Petitioner alleges and incorporates by reference paragraphs 1 through 38 above.

40. Petitioner's detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

41. 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.

42. Petitioner has been under the custody of Respondents, under an order of supervision, for twelve years, and now has been detained by Respondents since October 22, 2025. Over twelve years of this prolonged detention has taken place *after* his removal period began. Petitioner's removal order became administratively final on December 26, 2012. The removal period began on that day and thus has already elapsed.

43. Petitioner's prolonged detention is not likely to end in the reasonably foreseeable future. ICE has threatened him with removal to random countries if he does not sign renouncing his fear of Honduras, and has failed to follow its own regulation requiring notification and reasons for its revocation of supervision, and affording him an opportunity to respond to the alleged violation. 8 C.F.R. § 241.4. In fact, ICE has never had an agreement with any other third country to accept Petitioner, for more than twelve years. Where, as here, removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and thus violates due process. *See Zadvydas*, 533 U.S. at 690, 699–700.

44. Absent an order from this Court, Petitioner will likely remain detained for many more months, if not years. For these reasons, Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment.

**COUNT TWO**  
**STATUTORY CLAIM - Violation of 8 U.S.C. § 1231(a)**

45. Petitioner alleges and incorporates by reference paragraphs 1 through 44 above.

46. Petitioner's continued detention violates the Immigration and Nationality Act and the U.S. Constitution. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes detention "beyond the removal period" only for the purpose of effectuating removal. 8 U.S.C. § 1231(a)(6); see also *Zadvydas*, 533 U.S. at 699 ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute."). Because Petitioner's removal is not reasonably foreseeable, his detention does not effectuate the purpose of the statute and is accordingly not authorized by § 1231(a).

**COUNT THREE**

47. 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. The undersigned counsel recognizes the Fifth Circuit's decision in *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023) ruling that fees are not available to be awarded in 28 U.S.C. § 2241. Nonetheless, the issue is ripe for redetermination at the Fifth Circuit. At least two Circuit Courts and two district courts have disagreed with *Barco*. See *Vacchio v. Ashcroft*, 404 F.3d 663, 670-72 (2d Cir. 2005); *In re Petition of Hill*, 775 F.2d 1037, 1040-41 (9th Cir. 1985); *Abioye v. Oddo*, 2024 U.S. Dist. LEXIS 174205 (W. D. Penn. 2024); *Arias v. Choate*, 2023 U.S. Dist. LEXIS 119907 (Dist. Colo. 2023). Given ICE's recent actions in detaining individuals without substantial justification, EAJA fees are needed to ensure attorneys can confront detention that is unconstitutional.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;

2. Issue an order directing Respondents to show cause why the writ should not be granted;
3. Issue a writ of habeas corpus ordering Respondents to release Mr. Gomez-Simeon on his own recognizance or under parole, a low bond or reasonable conditions of supervision show;
4. Award Petitioner reasonable costs and attorney's fees under the Equal Access to Justice Act, and on any other basis justified under law;
5. Enjoin Respondents from continuing his detention absent a legally viable removal plan;  
and,
6. Grant any other relief which this Court deems just and proper.

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**Respectfully submitted on November 10, 2025.**



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**VERIFICATION OF COUNSEL**

I, Georgia Santos Laurent, hereby certify that I am familiar with the case of the named petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.



Georgia Santos Laurent

Date: 11/10/2025

**CERTIFICATE OF SERVICE**

I certify, in accordance with the rules of this Court, I filed the foregoing via the Court's CM/ECF system, which will send notice to all registered counsel of record.

November 10, 2025.



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