

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FAUSTINO PABLO PABLO,

Petitioner,

v.

TODD M. LYONS, Acting Director, U.S.
Immigration and Customs Enforcement, U.S.
Department of Homeland Security, in his official
capacity;
Daren K. MARGOLIN, the Director of Executive
Office for Immigration Review, in his official
capacity;

KRISTI NOEM, Secretary of U.S. Department of
Homeland Security, in her official capacity;
and

PAMELA BONDI, Attorney General of the
United States, in her official capacity,
WARDEN of ERO El Paso Camp East Montana
in El Paso, Texas, in his or her official capacity,

Respondents.

Case No.: 3:25-cv-566

**PETITIONER FAUSTINO PABLO
PABLO'S PETITION FOR WRIT OF
HABEAS CORPUS AND COMPLAINT
FOR DECLARATORY AND INJUNCTIVE
RELIEF**

Challenge to Unlawful Incarceration Under
Color of Immigration Detention Statutes:
Request for Declaratory and Injunctive Relief

PETITION FOR HABEAS CORPUS

Petitioner Faustino PABLO PABLO ("Petitioner" or "MR. PABLO PABLO") petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2242 to remedy Respondents' detaining him unlawfully, and states as follows:

INTRODUCTION

1. Petitioner Faustino PABLO PABLO ("Petitioner" or "MR. PABLO PABLO") is a 33-year-old Guatemalan man detained at ERO El Paso Camp East Montana in El Paso, Texas. He submits this habeas petition under 28 U.S.C. § 2241 for a judicial check on Respondents' unlawful revocation of his release on an Order of Supervision and Unsupervised Parole

(“OSUP”) and detaining him without belief that his removal from the United States is reasonably foreseeable.

2. On November 4, 2013, an Immigration Judge (“IJ”) at the Immigration Court in Pearsall, Texas, granted Mr. PABLO PABLO withholding of removal to Guatemala under the Convention Against Torture, 8 C.F.R. § 1208.16, determining that it was more likely than not that he would be tortured by, or at the acquiescence of, the Guatemalan government. *Exhibit A*. The decision of the Immigration Judge was appealed to the Board of Immigration Appeals (“BIA”).

3. Immigration and Customs Enforcement (“ICE”) released Mr. PABLO PABLO from custody, and on November 14, 2013, issued him an OSUP. *Exhibit B*. Upon information and belief, Mr. PABLO PABLO complied with all conditions of his release. On March 3, 2015, the BIA dismissed the appeal, and the IJ’s decision became final. *Exhibit A*

4. But on November 5, 2025, almost exactly twelve years after an IJ granted him withholding of removal, and he was released from detention and ICE issued his OSUP, without any notice—much less the process that was due—ICE officers arbitrarily cancelled his OSUP and took him into custody at his regular check-in appointment. Upon information and belief, ICE had not begun to search for a third country to remove him to at the time he was detained.

5. Petitioner’s counsel cannot provide a full copy of Petitioner’s OSUP. Counsel only has a partial copy. But she does provide a declaration from attorney Ginger Jacobs, who represented him at the appointment when he was detained. ICE has not responded to Ms. Jacob’s request for the full copy of the OSUP paperwork showing all of the dates that he has checked-in. *Exhibit D*.

6. ICE’s withdrawal of PABLO PABLO’s OSUP and subsequent detention was permissible only if ICE could demonstrate that removal could occur “in the reasonably foreseeable future” or

if he had violated release conditions—neither of which occurred here. *See Zadvydas v. Davis*, 533 U.S. 678 (2001); 8 C.F.R. § 241.13(h)(4).

7. Under the Supreme Court’s holding in *Zadvydas*, ICE may only detain individuals after the removal period if there is a “reasonable foreseeability” of removal within a predictable timeframe. Here, ICE’s own actions in beginning to search for a third country only after taking PABLO PABLO into custody demonstrate the absence of any such reasonable foreseeability.

8. Moreover, even assuming that ICE possessed the theoretical authority to revoke release, the agency failed to meet mandatory procedural requirements, including the obligation to establish “a significant likelihood that the [non-citizen] may be removed in the reasonably foreseeable future” under 8 C.F.R. § 241.13(i)(2) and to provide him with notice of the specific reasons for revocation as 8 C.F.R. § 241.13(1)

9. ICE’s arbitrary cancellation of PABLO PABLO’s OSUP and subsequent detention constitute flagrant violations of due process and regulatory law.

10. Absent review in this Court, no other neutral adjudicator will examine PABLO PABLO’s plight: Respondents will continue—unchecked—to detain him—potentially indefinitely—unless or until they remove him to an as-yet-to-be-determined country, despite *Zadvydas’s* and the regulatory requirements. He thus urges this Court to review the lawfulness of his detention; declare that his detention is unlawful; and order either his immediate release or that Respondents provide him with a bond hearing complying with the procedural requirements in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011).

CUSTODY

11. PABLO PABLO is currently in the Respondents' physical and legal custody. They are detaining him at the ERO El Paso Camp East Montana in El Paso, Texas. He is under Respondents' and their agents' direct control.

PARTIES

12. Petitioner Faustino PABLO PABLO is a citizen of Guatemala. He fled that country because he suffered severe physical attacks in Guatemala and would be tortured if he were to return. He applied for admission to the United States on December 7, 2012 to seek asylum. An IJ granted him withholding of removal under the Convention Against Torture on November 4, 2013. This decision became final on March 3, 2015, when the BIA dismissed the appeal of the IJ's decision. *Exhibit A*. Mr. PABLO PABLO was at liberty—and complying with all check-in obligations—until Respondents detained him on November 5, 2025.

13. Mr. PABLO PABLO is currently in Respondents' legal and physical custody at the ERO El Paso Camp East Montana in El Paso, Texas.

14. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Mr. PABLO PABLO.

15. Respondent Daren K. MARGOLIN is the Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the Board of Immigration Appeals, including bond hearings. EOIR is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings. He is sued in his official capacity.

16. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. In her capacity as Secretary, Respondent NOEM has responsibility for the administration and enforcement of the immigration and naturalization laws under section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent NOEM is the ultimate legal custodian of Mr. PABLO PABLO.

17. Respondent Pamela BONDI is the Attorney General of the United States and the most senior official in the U.S. Department of Justice (“DOJ”) and is named in her official capacity. She has the authority to interpret immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (“EOIR”), which administers the immigration courts and the BIA

18. The Warden of ERO El Paso Camp East Montana in El Paso, Texas is named in his or her official capacity. Petitioner is in the direct custody of the Warden.

JURISDICTION AND VENUE

19. This action arises under the Constitution of the United States and 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 (“IRRIRA”), Pub. L. No. 104-208, 110 Stat. 1570, to challenge Mr. PABLO PABLO’s detention under the INA and any inherent or plenary powers the government may claim to continue holding him.

20. This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§ 701-706 (Administrative Procedures Act, “APA”); and the Suspension Clause, U.S. Const. art. I, § 9, cl.

2, and the Fifth and Eighth Amendments of the United States Constitution. Jurisdiction is not limited by a petitioner's nationality, immigration status, or any other classification. *See Boumediene v. Bush*, 55s U.S. 723, 747 (2008). The Court may grant relief under the Suspension Clause; the Fifth and Eighth Amendments; 5 U.S.C. § 706 (APA); and 28 U.S.C. §§ 1361 (Mandamus Act), 1651 (All Writs Act), 2001 (Declaratory Judgment Act), and 2241 (habeas corpus).

21. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review PABLO PABLO's detention and his challenge to the government's arbitrary cancellation of his OSUP. Federal district courts possess broad authority to issue writs of habeas corpus when a person is held "in custody in violation of the Constitution or laws or treaties of the United States" (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges that survived the REAL ID Act's jurisdictional restrictions. Because PABLO PABLO seeks the traditional habeas remedy of release from allegedly unlawful detention, his petition presents precisely the type of threshold legality-of-detention question that § 2241 was designed to address. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh*, 638 F.3d at 1211-12)). And federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). No court has ruled on the legality of PABLO PABLO's detention.

22. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a substantial part of the events or omissions giving rise to this claim have happened here, PABLO PABLO is detained here, and his custodian resides here. Venue is also proper under 28 U.S.C. § 2243 because PABLO PABLO's immediate custodian resides in this District. *See Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004) (Kennedy, J., concurring).

REQUIREMENTS OF 28 U.S.C. § 2243

23. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to the respondents “forthwith,” unless the petitioner is not entitled to relief. *See* 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

24. Courts have long recognized the significance of the habeas statute in protecting persons from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

FACTUAL BACKGROUND

25. PABLO PABLO reserves the right to amend and supplement his factual statement.

26. PABLO PABLO is a native and citizen of Guatemala and no other country.

27. PABLO PABLO applied for admission at Hidalgo, Texas on December 7, 2012. *Exhibit A*. Border patrol agents detained PABLO PABLO on December 12, 2012. *Id.* On January 8, 2013, an asylum officer conducted a credible fear interview with PABLO PABLO and, on January 10, 2013, found that there was a significant possibility that the assertions underlying his claim could be found credible during a full hearing. *Id.* On November 4, 2013, an IJ at the Immigration Court in Pearsall, Texas, entered a removal order against PABLO PABLO and granted him withholding of removal as to Guatemala under the Convention Against Torture. *Id.*

28. On information and belief, ICE released PABLO PABLO, shortly after the IJ entered the order withholding his removal to Guatemala. And on November 14, 2013, ICE issued PABLO PABLO an OSUP. *Exhibit B.*

29. On December 26, 2024, PABLO PABLO was convicted of California Vehicle Code § 23152b and 23578. *Exhibit C.* He was required to attend and complete the First Conviction Program for 9 months, with which he was complying. *Exhibit C.*

30. On November 5, 2025, ICE officers detained Mr. PABLO PABLO. On information and belief, prior to his detention, Mr. PABLO PABLO was given no notice of ICE's intention to re-detain him, and he was not provided with any information about why his OSUP was presumably revoked.

31. On information and belief, ICE has no particularized evidence that Mr. PABLO PABLO can be removed to any third country.

32. On information and belief, Mr. PABLO PABLO has not received an individualized hearing before a neutral decisionmaker to assess whether his recent re-detention is warranted due to danger or flight risk.

33. Upon Mr. PABLO PABLO's detention, his counsel apprised ICE of his representation by counsel; his receipt of withholding of removal to Guatemala based on harm he suffered in that country; and his fear of removal to third countries based on his ties to the United States (including that his wife is currently pregnant and due to give birth on November 20, 2025).

34. On November 7, 2025, Mr. PABLO PABLO's counsel emailed ICE Supervisor Humberto Martinez to request documents from Mr. PABLO PABLO's file. She did not receive a response.

EXHAUSTION OF REMEDIES

35. Mr. PABLO PABLO has exhausted all administrative remedies, and further ones are not available to him.

LEGAL FRAMEWORK

36. Section 1231(a) of Title 8 governs the detention of individuals whom immigration courts have ordered removed. The statute commands ICE to detain these individuals for ninety days while it executes the removal order. See 8 U.S.C. § 1231(a)(2). The ninety-day removal period starts the moment the removal order becomes final. Absent an applicable exception, ICE must release the person under supervision if it cannot complete removal within ninety days. See 8 U.S.C. § 1231(a)(3).

37. Subsection 1231(a)(6) authorizes ICE to extend detention beyond the ninety-day period, yet it bars indefinite custody. See *Zadvydas*, 533 U.S. at 689 (limiting ICE's authority to a period "reasonably necessary" to carry out removal and prohibiting detention when removal is not "reasonably foreseeable").

38. Regulations allow ICE to release a non-citizen after the ninety-day removal period if the agency determines that the non-citizen "would not pose a danger to the public or a risk of flight, without regard to the likelihood of the [non-citizen's] removal in the reasonably foreseeable future." 8 C.F.R. § 241.13(b)(1). ICE typically places these individuals on an OSUP, as it has done with Mr. PABLO PABLO for the past twelve years. See 8 C.F.R. § 241.4(j); 8 C.F.R. § 241.13(h).

39. ICE may withdraw release approval if it can effectuate removal "in the reasonably foreseeable future" or if the non-citizen violates the release conditions. 8 C.F.R. § 241.13(h)(4). ICE may revoke release only when "there is significant likelihood that the [non-citizen] may be

removed in the reasonably foreseeable future.” *Id.* § 241.13(i)(1). Upon revocation, ICE must notify the non-citizen of the reasons for the revocation. *Id.* § 241.13(i)(3).

CAUSES OF ACTION

FIRST CAUSE OF ACTION Unlawful Revocation of Release

40. Mr. PABLO PABLO repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

41. Mr. PABLO PABLO was previously detained by ICE and released by Respondents because they could not effectuate his removal. As long as he complied with the conditions of his OSUP, Respondents have authority to revoke release only if there is a significant likelihood that they can remove him in the reasonably foreseeable future. *See* 8 C.F.R. § 241.13(i)(2).

42. Respondents revoked Mr. PABLO PABLO’s release without evidence that he can be removed to a third country. Indeed, at the time of his detention, ICE had not even decided which country it would attempt to remove him to, let alone whether such removal could be done in the reasonably foreseeable future.

43. Respondents’ actions are arbitrary, capricious, an abuse of discretion, and contrary to law. 5 U.S.C. § 706(a)(2)(A). Mr. PABLO PABLO is entitled to immediate release on an OSUP.

SECOND CAUSE OF ACTION Violation of Procedures for Revocation of Release

44. Mr. PABLO PABLO repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

45. The governing regulations require Respondents to notify Mr. PABLO PABLO of the reason for his re-detention. 8 C.F.R. § 241.13(i)(3). Respondents have not complied with this obligation, nor have they provided him with an initial interview at which he can respond to the

purported reasons for revocation. *Cf. id.* As such, Mr. PABLO PABLO is entitled to immediate release on OSUP until ICE can provide the minimal process required by the regulation.

THIRD CAUSE OF ACTION
Unlawful Detention Where Removal is Not Reasonable Foreseeable

46. Mr. PABLO PABLO repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

47. Post-removal order detention violates 8 U.S.C. § 1231(a)(6) where removal is not significantly likely to occur in the reasonably foreseeable future. *See also Zadvydas v. Davis*, 533 U.S. 678 (2001).

48. Detention where removal is not reasonably foreseeable also violates due process.

49. The ninety-day removal period ended June 1, 2015, after the BIA dismissed the appeal of the IJ's order. Prior to that, in 2013, ICE determined it could not effectuate Mr. PABLO PABLO's removal and issued him an OSUP. Given that the United States did not then find—and in the intervening decade has not since found—a third country for removal, Mr. PABLO PABLO has made an initial showing under *Zadvydas* that his removal is not significantly likely. *Zadvydas*, 533 U.S. at 701. Respondents cannot rebut this showing, as they do not have any individualized evidence to believe that Mr. PABLO PABLO's removal is reasonably foreseeable.

50. Mr. PABLO PABLO's re-detention under these circumstances violates 8 U.S.C. § 1231 and the Due Process Clause under the United States Constitution.

51. Mr. PABLO PABLO is entitled to immediate release on an OSUP.

FOURTH CAUSE OF ACTION
Unlawful Detention Without Individualized Determination of Danger or Flight Risk

52. Mr. PABLO PABLO repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

53. Detention violates 8 U.S.C. § 1231 and the Due Process Clause of the United States Constitution unless it is reasonably related to the government's purpose of preventing flight and protecting the community. *Zadydas*, 533 U.S. at 690-91.

54. Before being re-detained, Mr. PABLO PABLO lived in the community for twelve years, in compliance with the terms of his OSUP. And he has received no process to determine whether his re-detention is warranted.

55. Mr. PABLO PABLO is entitled to an individualized determination by impartial adjudicators as to whether detention is justified based on danger or flight. *See also Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011).

PRAYER FOR RELIEF

Mr. PABLO PABLO respectfully requests this Court grant the following relief:

- A. Assume jurisdiction over this matter.
- B. Issue the writ of habeas corpus and order Respondents to show cause, within three days of Mr. PABLO PABLO's filing this petition, why the relief he seeks should not be granted; and set a hearing on this matter within five days of Respondents' return on the order to show cause (*see* 28 U.S.C. § 2243);
- C. Declare that Respondents have violated Mr. PABLO PABLO's rights;
- D. Order Respondents to notify Mr. PABLO PABLO of the reasons for the revocation of his release, and provide Mr. PABLO PABLO with a prompt interview as required by regulation;
- E. Order Respondents to release Mr. PABLO PABLO from detention because they lack any individualized evidence that removal of Mr. PABLO PABLO will occur in the reasonably foreseeable future;
- F. Order Respondents to release Mr. PABLO PABLO from detention absent an individualized determination by an impartial adjudicator that his detention is justified based on danger or flight risk, which cannot be sufficiently addressed by alternative conditions of release or supervision;

- G. Enjoin Respondents from revoking Mr. PABLO PABLO's release unless they have individualized evidence that his removal is reasonably foreseeable;
- H. Enjoin Respondents from revoking Mr. PABLO PABLO's release without providing him a determination by an impartial adjudicator that his detention is justified based on danger or flight risk, which cannot be sufficiently addressed by alternative conditions of release or supervision, at which hearing Respondents will bear the burden of proof demonstrating that Mr. PABLO PABLO is a flight risk or a danger to the community; and
- I. Grant any and all other relief this Court deems proper and just.

Respectfully submitted on this 18th day of November 2025, ,

/s/ Jennifer Scarborough
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Verification Pursuant to 28 U.S.C. § 2242

The undersigned counsel submits this verification on behalf of the Petitioner. Undersigned counsel has discussed with Petitioner the events described in this Petition and, on the basis of those discussions, verify that the statements in the Petition are true and correct to the best of her knowledge and belief.

Date: 18 November 2025

/s/ Jennifer Scarborough
Attorney for Petitioner