

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EVODIO BERRUM FAJARDO,

A 

Petitioner,

v.

KEVIN RAYCRAFT, Field Office Director,
Detroit Field Office, Immigration and Customs
Enforcement; KRISTI NOEM, Secretary, U.S.
Department of Homeland Security,

Respondents.

Case No. 25-cv-1529

PETITION FOR WRIT OF HABEAS CORPUS

The Petitioner, EVODIO BERRUM FAJARDO, by and through his own and proper person and through his attorney, BRITTNI RIVERA, of the LAW OFFICES OF KRIEZELMAN, BURTON & ASSOCIATES, LLC, petition this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful detention, in violation of his constitutional and statutory rights.

Introduction

1. Petitioner is presently being detained by the U.S. Immigration and Customs Enforcement (“ICE”) at the North Lake Processing Center located in Baldwin, Michigan.
2. Petitioner is a native and citizen of Mexico. He resides in Addison, Illinois with his three U.S. Citizen Children and is the primary source of financial support for his family.
3. Petitioner has been arrested once for DUI several years ago, but this arrest was not the basis of his arrest or detention by ICE. Other than one DUI, Petitioner does not have any criminal record in the United States.

4. Petitioner was previously granted withholding of removal by an Immigration Judge on October 13, 2016. He has reported to ICE yearly since that decision. *See* Exhibit A.

5. Petitioner was arrested by ICE on October 13, 2025 while driving to work. His detention became unlawful that day because ICE pulled him over without a warrant, and without any cause. Petitioner's continued detention is a violation of due process and Petitioner's constitutional rights.

6. Petitioner respectfully asks this Court to issue a temporary restraining order directing Respondents to immediately release Petitioner, or in the alternative, to conduct a bond hearing to ensure his due process rights and his ability to care for his family, who have needs that require Petitioner's presence and support.

7. In the alternative, Petitioner requests the Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243.

Jurisdiction and Venue

8. The action arises under the Constitution of the United States, the Immigration and Nationality Act of 1952, as amended ("INA"), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*

9. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241, and Article I, section 9, clause 2 of the United States Constitution (the "Suspension Clause"), as Petitioner is presently subject to immediate detention and custody under color of authority of the United States government, and said custody is in violation of the Constitution, law or treaties of the United States.

10. This action is brought to compel the Respondents, officers of the United States, to accord Petitioner the due process of law to which he is entitled under the Fifth and Fourteenth Amendments of the United States Constitution.

11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgments Act, 28 U.S.C. § 2201 *et seq.*, 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1361 (mandamus), and the All Writs Act, 28 USC § 1651.

12. Venue is proper in the Western District of Michigan because Petitioner is presently detained by Respondents at North Lake Correctional Facility – which is located within the Western District. 28 U.S.C. § 1391(b), (e)(1).

Parties

13. Petitioner EVODIO BERRUM FAJARDO is a native and citizen of Mexico. Petitioner is presently detained at North Lake Correctional Facility, located in Baldwin, Michigan.

14. Respondent KEVIN RAYCRAFT is being sued in his official capacity only. As the Field Office Director of the Detroit Field Office of Immigration and Customs Enforcement (ICE), he is charged with the detention and removal of aliens, which fall under the jurisdiction of the Detroit Field Office. *Roman v. Ashcroft*, 240 F.3d 314 (6th Cir. 2003).

15. Respondent KRISTI NOEM is being sued in her official capacity only. Pursuant to the Homeland Security Act of 2002, Pub. L. 107-296, Defendant NOEM, through her delegates, has broad authority over the operation and enforcement of the immigration laws.

Custody

16. Petitioner EVODIO BERRUM FAJARDO is being unlawfully detained by ICE and he is not likely to be removed in the foreseeable future.

Factual and Procedural Background

17. Petitioner EVODIO BERRUM FAJARDO is a native and citizen of Mexico. He is 53 years old and resides in Addison, Illinois. He has three United States Citizen children. He is currently detained at North Lake Correctional Facility.

18. On October 13, 2016, Petitioner was granted withholding of removal by an immigration judge in Chicago, Illinois. At the same time, the Immigration Judge issued an order of removal.

19. Petitioner is required to attend a yearly check in with ICE as a condition of his withholding grant. Petitioner has been routinely and properly attending his ICE check-ins since that date. *See* Exhibit A.

20. At no time following Petitioner's arrest did ICE explain why it revoked Petitioner's Order of Supervision ("OSUP") or give him an opportunity to respond to those reasons.

21. . In the last 9 years since Petitioner was granted withholding of removal, Respondents have not raised any issues or concerns with Petitioner. Respondents have also not notified Petitioner of any change in circumstances that could explain their re-detention of Petitioner in October 2025.

22. Respondents have had more than 9 years to designate a country of removal, given Petitioner's grant of withholding of removal to Mexico.

23. Petitioner has three U.S. Citizen children who are 27, 25, and 20 years old. He is their only living parent, as their mother died several years ago.

Legal Framework

24. According to 8 U.S.C. § 1231(a)(1)(A), the government "shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period")." "During the removal period, the Attorney General shall detain the alien." 8 U.S.C. § 1231(a)(2)(A). Certain noncitizens are required to be further detained. Such noncitizens include

those with criminal convictions. Here, there is no circumstance that would render Petitioner to be detained beyond the removal period.

25. Additionally, 8 C.F.R. § 241.13(i) governs the re-detention of a noncitizen with an OSUP. ICE may re-detain a noncitizen “if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2).

26. Factors that ICE considers in the re-detention determination include “the noncitizen’s efforts to comply with the removal order; the history of ICE’s efforts to remove individuals to the destination country or to third countries; the ongoing nature of ICE’s efforts to remove the particular noncitizen and his assistance with those efforts; the reasonably foreseeable results of those efforts; and the views of the Department of State regarding the prospects for removal to the countries in question. 8 C.F.R. § 241.13(f).” *Phongsavanh v. Williams*, 2025 WL 3124032, at *5–6 (S.D. Iowa 2025).

27. In *Zadvydas*, the Supreme Court held that “once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). The Supreme Court in *Zadvydas* also determined that a six-month detention is presumptively reasonable, but that this presumption is rebuttable. *See Zavvar v. Scott, et al*, 2025 WL 2592543 (D. Md. Sept. 8, 2025) (holding that the 6-month presumption is rebuttable); *Munoz-Saucedo v. Pittman*, 2025 WL 1750346, at *6 (D.N.J. June 24, 2025); *see e.g., Ali v. Dep’t of Homeland Security*, 451 F. Supp. 3d 703, 707 (S.D. Tex. 2020) (holding that the “six-month presumption is not a bright line” and that *Zadvydas* “did not require a detainee to remain in detention for six months . . . before a habeas court could find that the detention is unconstitutional”); *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018) (“The

Supreme Court in *Zadvydas* outlined a ‘guide’ for approaching these detention challenges . . . not a prohibition on claims challenging detention less than six months.” (quoting *Zadvydas*, 533 U.S. at 700–01)); *Cesar v. Achin*, 542 F. Supp. 2d 897, 905 (E.D. Wis. 2008) (concluding that “while detention pursuant to § 1231(a)(6) for up to six months is presumptively lawful, an alien may still state a claim for and demonstrate a constitutional violation within the six-month window”).

28. Because Petitioner’s detention has not exceeded six months, *Zadvydas* requires Petitioner to show that there is “no significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. at 701.

29. Unlike the Petitioner in *Zadvydas*, Petitioner has been granted withholding of removal to Mexico, “substantially increas[ing] the difficulty of removing” Petitioner. *Zavvar v. Scott, et al*, 2025 WL 2592543, at *15; *Munoz-Saucedo*, 2025 WL 1750346, at *6; see 8 C.F.R. § 1208.24(f). Petitioner cannot be removed without the lifting of the order providing for withholding of removal. *Id.*

30. Further, Petitioner has only ever lived in and been a citizen of Mexico, making removal to a third country highly unlikely.

31. Respondents have had more than 9 years to designate a country of removal for Petitioner, yet they have not even attempted to do so, making it even more likely that Petitioner will not be removed in the foreseeable future. *Zavvar v. Scott, et al*, 2025 WL 2592543, at *15; *Munoz-Saucedo*, 2025 WL 1750346, at *6; *Tadros v. Noem et al.*, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025).

32. As noted in *Munoz-Saucedo*, it is vital to the foreseeability analysis to acknowledge that “even if ICE identified a third country, Petitioner . . . would be entitled ‘to seek fear-based relief from removal to that country,’ which would require ‘additional, lengthy proceedings’”). 2025

WL 1750346, at *7. This, yet again, evidences no significant likelihood of Petitioner's removal in the foreseeable future.

33. Only on rare occasions does ICE exercise the ability to remove noncitizens with withholding of removal. According to a FOIA request, "in FY 2017, just 21 people in total granted withholding of removal were deported to a third country. That is just 1.6 percent of the 1,274 people granted withholding of removal that year."¹

34. The lack of any action on behalf of Respondents for 9 years, the infrequency of deporting people who have withholding of removal, and the lack of an explanation as to why Petitioner was detained in October 2025 all lead to the conclusion that Petitioner is unlikely to be removed in the foreseeable future. *See Villanueva v. Tate*, 2025 WL 2774610, at *10 (S.D. Tex. 2025) (where the court granted the petition for habeas corpus based on *Zadvydas* because the petitioner had withholding of removal, respondents had not initiated proceedings to lift the order granting withholding of removal, respondents made no attempt to remove petitioner for eight years after his removal order, and there was no change in circumstances to make petitioner's removal foreseeable).

Claims for Relief

Count I

Violation of 8 U.S.C. § 1231(a) and Fifth Amendment Due Process Clause

35. All of the foregoing allegations are repeated and incorporated as though fully set forth herein.

36. The INA requires mandatory detention of individuals with final removal orders only during the 90-day removal period. 8 U.S.C. § 1231(a)(2).

¹ *The Difference Between Asylum and Withholding of Removal*, AM. IMMIGR. COUNCIL (published Oct. 6, 2020), <https://www.americanimmigrationcouncil.org/fact-sheet/asylum-withholding-of-removal/>.

37. A noncitizen who is not removed within that period “shall be subject to supervision under regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3). 126. While § 1231(a)(6) permits detention beyond the removal period in certain situations, “once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699.

38. No statute permits Defendants to re-detain an individual who has been released under § 1231(a)(3) without evidence that removal is now reasonably foreseeable or that the individual has violated the conditions of their release.

39. 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.

40. Petitioner was detained previously, and then granted withholding of removal. Following the grant of withholding of removal, he has been complying with his reporting requirements since 2016.

41. Petitioner has a liberty interest in remaining free from physical confinement where removal is not reasonably foreseeable, he has not violated the conditions of his release, and where re-detention is unlawful because Defendants have not created a lawful mechanism to ensure that noncitizens receive meaningful notice and an opportunity to present a fear-based claim before deportation to a third country.

42. For these reasons, Defendants have violated the INA, implementing regulations, and the Due Process Clause of the Fifth Amendment.

Count II

Fifth Amendment Due Process Clause and Administrative Procedure Act, 5 U.S.C. § 706(2)(D)

43. The allegations in the above paragraphs are realleged and incorporated herein.

44. The INA, FARRA, and implementing regulations mandate meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country.

45. Petitioner has a due process right to meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country. *See, e.g., Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Petitioner also has a due process right to implementation of a process or procedure to afford these protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991).

46. Accordingly, the Court should compel Respondents to provide Petitioner with meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country.

Third Cause of Action

Violation of 8 U.S.C. § 1231(a) and Fifth Amendment Due Process Clause

47. All of the foregoing allegations are repeated and incorporated as though fully set forth herein.

48. The INA requires mandatory detention of individuals with final removal orders only during the 90-day removal period. 8 U.S.C. § 1231(a)(2).

49. A noncitizen who is not removed within that period “shall be subject to supervision under regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3). 126. While § 1231(a)(6) permits detention beyond the removal period in certain situations, “once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699.

50. No statute permits Defendants to re-detain an individual who has been released under § 1231(a)(3) without evidence that removal is now reasonably foreseeable or that the individual has violated the conditions of their release.

51. 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.

52. Petitioner was previously detained by ICE after he was granted withholding of removal and he has been complying with his reporting requirements since 2016.

53. Petitioner has a liberty interest in remaining free from physical confinement where removal is not reasonably foreseeable, he has not violated the conditions of his release, and where re-detention is unlawful because Defendants have not created a lawful mechanism to ensure that noncitizens receive meaningful notice and an opportunity to present a fear-based claim before deportation to a third country.

54. For these reasons, Defendants have violated the INA, implementing regulations, and the Due Process Clause of the Fifth Amendment.

Prayer for Relief

WHEREFORE, Petitioner respectfully requests that this Honorable Court:

- A. Accept jurisdiction over this action;
- B. Order Respondents not to transfer Petitioner out of the state of Michigan during the pendency of these proceedings to preserve jurisdiction and access to counsel;
- C. Order Respondents not to remove or attempt to remove Petitioner from the United States;
- D. Declare that Respondents’ actions to detain Petitioner violate the Due Process Clause of the Fifth Amendment and violate the Immigration and Nationality Act;

E. Grant the writ of habeas corpus on the ground that Petitioner's continued detention violates the Due Process Clause and order Petitioner's immediate release;

F. In the alternative, conduct a bond hearing or remand to the immigration judge for a bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) alternatives to detention that could mitigate flight risk are considered; and

G. Grant any other relief that is equitable and just.

Dated: November 21, 2025

Respectfully submitted,

/s/ Brittni Rivera

Brittni Rivera, Esq.
Kriezelman Burton & Associates, LLC
200 West Adams Street, Suite 2211
Chicago, Illinois 60606
(312) 332-2550
Brivera@krilaw.com
Attorney for Petitioner