

I. PARTIES & CUSTODY

1. Petitioner Jhair Abadia Victoria is currently detained at the Immigration and Customs Enforcement (“ICE”) Montgomery Processing Center, located at 806 Hilbig Road, Conroe, Texas 77301. He has been detained continuously at that location since November 19, 2025.
2. Respondent Randy Tate, in his official capacity as Warden of the Montgomery Processing Center, currently holds Petitioner in custody as unlawfully ordered by the Houston Field office of ICE Enforcement and Removal Operations. The Warden’s detention facility is located within this Honorable Court’s judicial district.
3. Respondent Bret Bradford, in his official capacity as Director of the Houston Field Office of ICE Enforcement and Removal Operations, has refused to effect Petitioner’s release from the unlawful custody of the Warden of the Montgomery Processing Center.
4. Respondent Kristi Noem, in her official capacity as Secretary of the United States Department of Homeland Security, has refused to exercise her authority to oversee her department’s ICE Enforcement and Removal Operations and thereby effect Petitioner’s release from the unlawful custody of the Warden of the Montgomery Processing Center.

5. Respondent Pam Bondi, in her official capacity as Attorney General of the United States, has refused to exercise her authority to oversee her department's ICE Enforcement and Removal Operations and thereby effect Petitioner's release from the unlawful custody of the Warden of the Montgomery Processing Center.

II. JURISDICTION & VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 to issue writs of habeas corpus when the petitioner is in custody in violation of the Constitution or laws of the United States.
7. Venue is proper in this district because Petitioner is detained within this district.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

8. Petitioner has exhausted her administrative remedies to the extent required by law.
9. Petitioner has fully cooperated with Respondents and has not delayed or obstructed her detention.
10. Petitioner's only remedy is by way of this judicial action.

IV. FACTUAL AND PROCEDURAL BACKGROUND

11. Petitioner is a fifty one year old female native and citizen of Colombia. *See attached*, Exhibit A: Petitioner's Colombian Passport. He fled Colombia due to
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political demonstrations. Petitioner fled Colombia in January of 2022 after [REDACTED] threatened his wife with death for [REDACTED]. *See attached, Exhibit B: Petitioner's Form I-589 Application for Asylum and for Withholding of Removal.*

12. Petitioner entered the United States near Hidalgo, Texas, on or about January 27, 2022, without first being admitted or paroled. *See attached, Exhibit C: Notice to Appear.*
13. On October 25, 2022, *Petitioner timely filed* a Form I-589 Application for Asylum and for Withholding of Removal under the Convention Against Torture. *See attached, Exhibit B, supra.*
14. On December 13, 2023, Petitioner appeared before the Immigration Judge of the Houston Immigration Court located at 16800 Greenspoint Prk Dr, Houston, Texas 77060, for a hearing in his removal proceedings, seeking asylum, withholding of removal, and protection under the Convention Against Torture based on persecution due to his particular social group. At the close of that hearing, the Immigration Judge denied Petitioner's claims and ordered his removal to Colombia.

15. On December 19, 2023, *Petitioner timely filed a Form EOIR-26 Notice of Appeal with the Board of Immigration Appeals, challenging the Immigration Judge's decision. See attached, Exhibit D: Petitioner's Filing Receipt for Appeal.*

16. Petitioner's BIA appeal remains pending, and no final decision has been issued. See attached, Exhibit E: Current Status of Petitioner's BIA Appeal.

17. Petitioner has continued to check in regularly for scheduled appointments at the Houston ICE offices, updating his contact information with the ICE officers and following all instructions as required. Petitioner appeared, with his family, to a scheduled ICE appointment on November 19, 2025 and was detained upon arrival. *See attached, Exhibit F, Petitioners ICE appointment check-in..*

18. Petitioner suffers from chronic medical conditions associated with Diabetes and a torn knee. His diabetes symptoms include headaches with sudden spikes and drops in blood pressure. Petitioner's medical conditions have been aggravated by the circumstances of his detention. Petitioner has not been given access to any of his prescribed medication; placing his physical health at risk of a medical emergency. See attached, Exhibit G: Petitioner's Medical Records.

19. Petitioner's continued detention is having an on-going exacerbating effect on his medical condition, causing serious concern to himself and his family. In addition, Petitioner is currently recovering from a surgical operation to treat a torn knee.

Petitioner has experienced sharp pains in his affected knee because of the crowded conditions and lack of resources to rehabilitate his leg. *Id.*

V. LEGAL FRAMEWORK FOR RELIEF SOUGHT

20. Under U.S. Code 28 § 2241, writs of habeas corpus may be granted by the district courts on behalf of a prisoner in several instances, including when they are (1) “in custody under or by the authority of the United States or is committed for trial before some court thereof,” (3) “in custody in violation of the Constitution or laws and treaties of the United States,” and (4) when they, “being a citizen of a foreign state and domiciled therein [are] in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations[.]”
21. Courts have consistently recognized “habeas corpus as an appropriate vehicle through which noncitizens may challenge the fact of their civil immigration detention.” *Vazquez Barrera v. Wolf*, 455 F. Supp. 3d 330, 336 (S.D. Tex. 2020) (citing *Zadvydas v. Davis*, 533 U.S. at 688 (ruling on merits of habeas petition challenging validity of indefinite mandatory detention)).

VI. CLAIMS FOR RELIEF

COUNT ONE:

RESPONDENTS HAVE UNLAWFULLY DETAINED PETITIONER
IN VIOLATION OF THE IMMIGRATION AND NATURALIZATION ACT.

22. Petitioner alleges and incorporates by reference paragraphs 1 through 21 above.
23. Petitioner's detention lacks statutory authority while her BIA appeal is pending, as the removal order is automatically stayed under 8 C.F.R. § 1003.6;
24. Under 8 C.F.R. § 1003.6, the timely filing of a BIA appeal that challenges an IJ's decision to order the removal of non-citizen *creates an automatic stay* that renders the removal order non-final.
25. Because the appeal was timely filed, **the Immigration Judge's removal order is not final and cannot be executed pursuant to 8 C.F.R. § 1003.6.**
26. **Petitioner has no criminal history**, and has demonstrated no conduct indicating that he is a threat to the United States or otherwise eligible for deportation.
27. Therefore, Petitioner merits immediate release because he has a pending appeal with the BIA, no final order of removal, and the government cannot articulate any meaningful reason why he should continue to remain in detention pending his appeal.

COUNT TWO:

**RESPONDENTS HAVE UNLAWFULLY DETAINED PETITIONER
IN VIOLATION OF CONSTITUTIONAL DUE PROCESS**

28. Petitioner alleges and incorporates by reference paragraphs 1 through 27 above.
29. Petitioner's detention violates her right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.
30. Petitioner is unlawfully in custody pursuant to INA § 241(a)(6), 8 U.S.C. § 1231(a)(6) (2018) ("Section 241"). Under *Zadvydas*, that provision prohibits the indefinite detention of noncitizens who (i) cannot be repatriated in the reasonably foreseeable future, and (ii) pose no threat to the community. Any such detention is unconstitutional. *See Zadvydas*, 533 U.S. at 689, emphasis added ("In our view, the statute [Section 241], read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. It does not permit indefinite detention.").
31. The Fifth Amendment's Due Process Clause prohibits the government from detaining individuals without legal authority.
32. Under 8 U.S.C. § 1231(a)(1), detention during the removal period is only authorized after a removal order becomes "final."
33. A removal order does not become final while an appeal is pending before the BIA.
8 C.F.R. § 1003.6.

34. As stated above, Petitioner's BIA appeal remains pending, the removal order is not final and cannot serve as a basis for continued detention.

35. Furthermore, under *Zadvydas*, a non-citizen petitioner is not barred from seeking a writ of habeas corpus as relief for indefinite detention when there has been no final order issued. *See Zadvydas*, 533 U.S. at 688 (“The aliens here, however, do not seek review of the Attorney General's exercise of discretion; rather, they challenge the extent of the Attorney General's authority under the post-removal-period detention statute. And the extent of that authority is not a matter of discretion . . . [therefore we] conclude habeas corpus proceedings remain available. . .”).

36. Therefore, this petition is not barred, as the Petitioner is not seeking to collaterally attack the final removal order, because there is no final order yet issued by the BIA.

37. Moreover, **continued detention without an individualized determination violates due process** under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

38. Petitioner has been detained since November 19, 2025 **without any individualized assessment of flight risk or dangerousness.**

39. **Petitioner poses no flight risk or danger to the community**, as evidenced by her lack of criminal record, and of any other conduct that could pose a danger to the United States.

40. Furthermore, Petitioner has not undergone individualized assessment of hardship posed by her continued detention.

41. Petitioner's on-going detention is currently aggravating his diabetic medical condition.

42. Petitioner's forced separation from his wife is causing immediate and irreparable harm to her. The Petitioner's wife and family have expressed immediate concern regarding the detention center's refusal to provide him with the necessary medication to keep his health in balance. The prospect of Petitioner suffering a medical emergency due to lack of medication scares his wife.

43. Moreover, this continuing harm and separation caused by Petitioner's detention under circumstances adverse to his health is causing irreparable harm to his family.

44. Continued detention under these circumstances is both cruel and arbitrary.

45. Petitioner's continued detention lacks statutory authority and violates his right to substantive due process under the Constitution. Therefore, he should be immediately released from custody.

V. REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court issue a writ of habeas corpus directing Respondents to show cause why Petitioner should not be released from custody, and to order Petitioner's immediate release from custody. In the alternative, Petitioner respectfully requests that this Court order an individualized bond hearing before an Immigration Judge with the burden on the government to demonstrate by clear and convincing evidence that detention is necessary. Petitioner requests that this Court award reasonable attorney's fees and costs; and grant such other relief as this Court deems just and proper.

Respectfully submitted,

/s/ Matthew Mendez
Matthew Mendez
Attorney for Petitioner
State Bar No. 24098092
6300 Gulfton Street
Houston, Texas 77081
Tel. (346) 205-4343
matt@mendezlawoffice.com

PETITIONER VERIFICATION

Petitioner, Jhair Abadia Victoria, is currently detained in ICE custody, and has authorized Counsel, Matthew Mendez, to verify, on her behalf, that the facts stated therein are true and correct to the best of her knowledge and belief.

/s/ Matthew Mendez
Matthew Mendez
Attorney for Petitioner
Jennifer Taina Rodriguez Castellon

12/8/25
Date

CERTIFICATE OF SERVICE

On December 8, 2025, Counsel for Plaintiff served a copy of the attached Complaint via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the **Respondent, Randy Tate, in his Official Capacity as Warden of the Montgomery Processing Center**, at (1) Office of the Warden, 806 Hilbig Road, Conroe, Texas 77301, and (2) to the United States at Civil Process Clerk, U.S. Attorney's Office, 1000 Louisiana Street, Suite 2300, Houston, Texas 77002.

/s/ Matthew Mendez _____
Matthew Mendez
Attorney for Respondent

12/8/2025 _____
Date

On December 8, 2025, Counsel for Plaintiff served a copy of the attached Complaint via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the **Respondent, Bret Bradford, in his Official Capacity as Field Office Director, of ICE Enforcement and Removal Operations Houston Field Office**, at (1) Office of the Field Office Director, Enforcement and Removal Operations, Houston Field Office, 126 Northpoint Drive, Houston, Texas 77060, and (2) to the United States at Civil Process Clerk, U.S. Attorney's Office, 1000 Louisiana Street, Suite 2300, Houston, Texas 77002.

/s/ Matthew Mendez _____
Matthew Mendez
Attorney for Respondent

12/08/2025 _____
Date

CERTIFICATE OF SERVICE

On December 8, 2025, Counsel for Plaintiff served a copy of the attached Complaint via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, Kristi Noem, in her Official Capacity as Director of U.S. Department of Homeland Security, at (1) Office of General Counsel, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0485, Washington, D.C. 20530; and (2) to the United States at Civil Process Clerk, U.S. Attorney's Office, 1000 Louisiana Street, Suite 2300, Houston, Texas 77002.

/s/ Matthew Mendez
Matthew Mendez
Attorney for Respondent

12/08/2025
Date

On December 8, 2025, Counsel for Plaintiff served a copy of the attached Complaint via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, Pam Bondi, in her Official Capacity as Attorney General of the United States, at USATXS.CivilNotice@usdoj.gov.

/s/ Matthew Mendez
Matthew Mendez
Attorney for Respondent

12/08/2025
Date

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION
CIVIL No.

<u>JHAIR ABADIA VICTORIA</u>	,	§	
Petitioner		§	
		§	
vs.		§	PETITION FOR
		§	WRIT OF HABEAS CORPUS
		§	PURSUANT TO 28 U.S.C§2241
RANDY TATE, in his official capacity as		§	
Warden of the Montgomery Processing Center;		§	
		§	
Et. al.		§	
Respondents.		§	
		§	

PROPOSED WRIT OF HABEAS CORPUS

Having considered Petitioner's Petition for Writ of Habeas Corpus, and good cause appearing, IT IS HEREBY ORDERED that:

1. Respondents shall effect the IMMEDIATE RELEASE of Petitioner from ICE/DHS custody;
2. Petitioner shall comply with all reporting requirements set by ICE, as well as ankle monitoring, at the discretion of ICE, while her appeal is pending at the BIA;
3. Respondents, their agents, employees, and successors are RESTRAINED and ENJOINED from removing Petitioner, from the United States;
4. Respondents shall immediately notify all relevant personnel, including but not limited to ICE Enforcement and Removal Operations, that Petitioner shall not be removed from the United States;
5. Security is waived / set at \$ _____;
6. This order may be served by facsimile, email, or other means reasonably calculated to provide immediate notice.

SIGNED this _____ day of _____, 2025.
