

BRIAN SCOTT GREEN, CO Bar # 56087
BrianGreen@greenUSimmigration.com
LAW OFFICE OF BRIAN GREEN
8700 E Jefferson Avenue, #370021
Denver, CO 80237
TEL: (443) 799-4225
Attorney for Petitioner Marco Aurelio Garcia Carbajal

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

MARCO AURELIO GARCIA CARBAJAL,

Petitioner,

-against-

WARDEN, FLORENCE SERVICE PROCESSING
CENTER;

JOHN CANTU, ACTING PHOENIX FIELD OFFICE
DIRECTOR, ENFORCEMENT AND REMOVAL
OPERATIONS, U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT (ICE);

TODD M. LYONS, ACTING DIRECTOR, U.S.
IMMIGRATION AND CUSTOMS ENFORCEMENT
(ICE);

KRISTI NOEM, IN HER OFFICIAL CAPACITY AS
SECRETARY OF THE UNITED STATES
DEPARTMENT OF HOMELAND SECURITY;

PAMELA JO BONDI, IN HER OFFICIAL
CAPACITY AS ATTORNEY GENERAL OF THE
UNITED STATES;

Respondents.

:

:

:

:

:

:

:



:

**PETITION FOR A
WRIT OF HABEAS
CORPUS**

No.

Agency Case No.
A 

INTRODUCTION

1. Petitioner Marco Aurelio Garcia Carbajal (“Petitioner”) is a native and citizen of Guatemala. He is currently detained at the Florence Service Processing Center in Florence, Arizona. Petitioner has now been held for 318 days, or over 10 months, despite the absence of any lawful basis for continued detention. *See* Exhibit A, Form I-213, and Exhibit B, TimeAndDate.com Calculation.
2. In April of 2024, Mr. Garcia entered the United States without inspection.
3. On February 25, 2025, Mr. Garcia applied for asylum, withholding and protection under the convention against torture (“CAT”) due to his fear of persecution in Guatemala due to his particular social group as 
 Mr. Garcia’s petition was within the one-year deadline for relief.
4. On September 8, 2025, Petitioner was granted withholding of removal and protection under the Convention Against Torture (“CAT”), prohibiting his removal to Guatemala as a matter of law. Respondents therefore cannot remove him to the country designated in his removal order. *See* Exhibit C, Order of the Immigration Judge.

5. On September 15, 2025, Petitioner received a Notice of Removal to Mexico. *See Exhibit D, Notice of Removal.*
6. Despite this bar on removal to Guatemala, Respondents continue to detain Petitioner indefinitely while speculatively asserting that it is seeking to remove him to Mexico. A “third country” which has not proven willing to accept him. No travel documents have been issued, and ICE has provided no date certain or meaningful timeline for removal.
7. Petitioner was detained on January 27, 2025. His detention has now exceeded both the 90-day statutory removal period under 8 U.S.C. § 1231(a)(1)(A) and the six-month presumptively reasonable period recognized in *Zadvydas v. Davis*, 533 U.S. 678 (2001).
8. Because there is no significant likelihood of removal in the reasonably foreseeable future, Petitioner’s continued detention is unlawful under *Zadvydas*, *Clark v. Martinez*, 543 U.S. 371 (2005), and 8 U.S.C. § 1231(a)(6).
9. Petitioner is also an HIV-positive individual, requiring regular access to antiretroviral medications and close medical monitoring. Conditions at Moshannon Valley—including serious, well-documented deficiencies in medical care—place his health at risk and make prolonged detention particularly dangerous.

10. Petitioner has no criminal history that warrants continued civil detention, has substantial community ties, and is eligible for release under supervision pursuant to 8 U.S.C. § 1231(a)(3).

11. Additionally, a credible fear interview was conducted with Petitioner on November 7, 2025. When the Asylum Office issued a negative credible fear determination, Petitioner timely requested judicial review, but ICE has failed to present him before an Immigration Judge for the mandatory second-stage review required by statute. This omission is a *per se* violation of Fifth Amendment procedural due process.

12. ICE has further failed to conduct meaningful post-order custody reviews (“POCRs”), in violation of 8 C.F.R. §§ 241.4 and 241.13.

13. Petitioner therefore seeks a writ of habeas corpus directing his immediate release under reasonable conditions of supervision, and declaratory and injunctive relief declaring his continued detention unlawful.

JURISDICTION

14. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

15. The Suspension Clause of the U.S. Constitution (Art. I, § 9, cl. 2) guarantees access to the writ of habeas corpus.

16. This Court has subject-matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and the All Writs Act, 28 U.S.C. § 1651.

17. Venue is proper under 28 U.S.C. § 1391(e) because the Florence Service Processing Center is located in Florence, Arizona, within the United States District Court for the District of Arizona. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 494–95 (1973).

VENUE

18. Venue is proper under 28 U.S.C. § 1391(e) and 28 U.S.C. § 2241 because Petitioner is detained at the Florence Service Processing Center, in Florence, Arizona, which is within the jurisdiction of this District.

19. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and Respondent Warden resides in this District, substantial part of the events or omissions giving rise to the Petitioners' claims occurred in this District, and Petitioner is being detained in this District, and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

20. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 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).

21. Courts have long recognized the significance of the habeas statute in protecting individuals 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).

PARTIES

22. Petitioner is a citizen of Guatemala who fled Guatemala and sought asylum in the U.S. *See* Exhibit A. He is being detained in ICE custody at the Florence Service Processing Center in Florence, Arizona. He is currently in custody, and under the direct control, of Respondents and their agents. *See* Exhibits A, C & D. Petitioner has been detained since January 27, 2025,

totaling 318 days.

23. Respondent Warden of the Florence Service Processing Center in Florence, Arizona, is Petitioner's immediate custodian. Respondent Warden has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent warden is a legal custodian of Petitioner.

24. Respondent John Cantu is sued in his or her official capacity as the Director or Acting Director of the Phoenix Field Office of U.S. Immigration and Customs Enforcement. Respondent Cantu is a legal custodian of the Petitioner and has the authority to release him.

25. Respondent Todd M. Lyons is sued in his official capacity as the Acting Director of the U.S. Immigration and Customs Enforcement. In this capacity, Respondent Lyons is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees the U.S. Immigration and Customs Enforcement, the component agency responsible for the Petitioner's detention. Respondent Lyons is a legal custodian of the Petitioner.

26. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, Respondent

Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees the U.S. Immigration and Customs Enforcement, the component agency responsible for the Petitioner's detention. Respondent Noem is a legal custodian of the Petitioner.

27. Respondent Pamela Jo Bondi is sued in her official capacity as Attorney General of the United States. In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA. Respondent Pamela Jo Bondi is a legal custodian of the Petitioner.

FACTUAL ALLEGATIONS

28. As explained above, Petitioner Mr. Garcia, is a citizen of Guatemala who fled that country and sought asylum in the United States. Mr. Garcia was granted withholding of removal to Guatemala. *See* Exhibit C.

29. Respondents have failed to provide Petitioner Mr. Garcia with a rescheduled Review of Credible Fear Determination hearing before a U.S. Immigration Judge.

30. Respondents have failed to provide clear confirmation of a country that has agreed to accept him;

- a. no travel documents have been issued;
- b. no consulate has identified him as admissible; and
- c. Respondents have not provided a timetable or “date certain” for removal.

31. Respondents have been unable to identify any country to which his removal is even theoretically possible.

32. Petitioner has now been detained far beyond the presumptively reasonable six-month period recognized in *Zadvydas*.

33. Petitioner is HIV-positive and requires ongoing antiretroviral medication and regular medical monitoring. Respondents have been documented to have:

- a. dangerously inadequate medical care;
- b. failures to provide chronic-care medication;
- c. delays in outside specialist access;
- d. insufficient infectious-disease management.

CLAIMS FOR RELIEF

COUNT ONE

Unlawful Detention Under 8 U.S.C. § 1231(a)(6) (*Zadvydas* / Clark)

34. Petitioner re-alleges paragraphs 1–33.

35. Petitioner has been detained since January 27, 2025, well over ten months.

36. There is no significant likelihood of removal in the reasonably foreseeable future, as required under *Zadvydas*.

37. Respondents cannot lawfully remove him to Guatemala.

38. No other country has agreed to accept him.

39. Therefore, detention is no longer authorized under § 1231(a)(6).

COUNT TWO

Violation of Fifth Amendment Substantive Due Process

40. Petitioner re-alleges paragraphs 1–33.

41. Mr. Garcia's detention during the removal period is only constitutionally permissible when there is a significant likelihood of removal in the reasonably foreseeable future. In Mr. Garcia's case, he cannot be removed to Guatemala under Judicial Order; he has also not been recognized as a national of any other country. These factors lend support to the conclusion that there is no likelihood of Mr. Garcia's removal in the reasonably foreseeable future. Respondent continues to detain Mr. Garcia without evidence that a third country will ultimately approve his entry.

42. Respondents' detention of Mr. Garcia no longer bears any reasonable relation to a legitimate government purpose, and detention has therefore become punitive, and thus violates the Due Process Clause.

COUNT THREE

Violation of Fifth Amendment Procedural Due Process (Failure to Provide Judicial Review of Negative Credible Fear)

43. Petitioner re-alleges paragraphs 1–33.

44. Under the INA, a noncitizen who receives a negative credible-fear determination is entitled to timely judicial review before an Immigration Judge. 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

45. The regulations are mandatory: DHS “shall provide the alien with Form M-444 ... and shall place the alien in proceedings for review by an immigration judge.” 8 C.F.R. § 208.30(g)(2)(i). Form M-444 further explains that review is *de novo*, DHS must schedule and present the noncitizen for the hearing, and it must occur as quickly as possible, typically within seven days.

46. The USCIS Policy Manual (Vol. 2, Pt. A, Ch. 6) likewise requires all negative credible-fear findings to be referred for IJ review upon request, with DHS ensuring the individual’s presence. This process is mandatory, not discretionary.

47. These procedures provide the minimum due-process protections in expedited removal. DHS may not delay, ignore, or deny presentation for IJ review. See *M.S.P.C. v. U.S. Atty. Gen.*, 60 F.4th 1236, 1246 (11th Cir. 2023) (credible-fear review is the “exclusive means” of ensuring constitutional adequacy).

48. Because DHS failed to provide Petitioner with the required judicial review—contrary to § 1225, 8 C.F.R. §§ 208.30 and 1003.42, and the rights conveyed through Form M-444—Petitioner was denied fundamental procedural due process, rendering his continued detention unlawful.

COUNT FOUR

Violation of 8 C.F.R. §§ 241.4 and 241.13 (Failure to Conduct Meaningful Custody Reviews)

49. Petitioner re-alleges paragraphs 1–33.

50. As set forth above, Respondents continue to detain Mr. Garcia in violation of 8 C.F.R. § 241.4, having not considered the substantive factors set forth in subsections (e) and (f) of that regulation. Were such factors to be properly weighed, it would be apparent that Mr. Garcia is a candidate for release on an Order of Supervision pending removal.

51. Likewise, Respondents continue to detain Mr. Garcia in violation of 8 C.F.R. §§ 241.4 and 241.13, since the proper procedures set forth in those regulations have not been carried out.

PRAYER FOR RELIEF

WHEREFORE, the Petitioner respectfully requests this Court to grant the following:

- (1) An order assuming jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days;
- (3) Declare that the Respondents' challenged actions violate the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1101, *et seq.*, and/or its implementing regulations;
- (4) A writ of habeas corpus directing Respondents to immediately release him under reasonable conditions of supervision;
- (5) A writ of habeas corpus directing Respondents not to remove or transfer him from this District and not to remove him from the U.S.;
- (6) In the alternative, an order requiring a prompt custody hearing before a neutral decision-maker, at which the government must show by clear and convincing evidence that continued detention is necessary;
- (7) Grant any further relief this Court deems just and proper.

Date: December 10, 2025

Respectfully submitted,

/s/Brian Scott Green

Brian Scott Green

Colorado State Bar No. 56087

Law Office of Brian Green

8700 E Jefferson Avenue

#370021

Denver, CO 80237

Telephone: (443) 799-4225

BrianGreen@greenUSimmigration.com

Attorney for the Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent the Petitioner, Marco Aurelio Garcia Carbajal, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 10th day of December, 2025.

s/Brian Scott Green
Brian Scott Green