

I. PARTIES & CUSTODY

1. Petitioner Jose Cruz Garcia Pescador is currently detained at the Immigration and Customs Enforcement (“ICE”) Joe Corley Processing Center, located at 500 Hilbig Road, Conroe, Texas 77301. He has been in ICE custody since September 6, 2025.
2. Respondent Grant Dickey, in his official capacity as Associate Warden of the ICE Joe Corley Processing Center, has refused to effect Petitioner’s release from unlawful custody at that facility.
3. Respondent Raymond Thompson, in his official capacity as Associate Warden of the ICE Joe Corley Processing Center, has refused to effect Petitioner’s release from unlawful custody at that facility.
4. 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 unlawful custody at the ICE Joe Corley Processing Center.
5. 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 unlawful custody at the ICE Joe Corley Processing Center.
6. 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 unlawful custody at the ICE Joe Corley Processing Center.

II. JURISDICTION & VENUE

1. 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.
2. Venue is proper in this district because Petitioner is detained within this district.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

3. Petitioner has exhausted his administrative remedies to the extent required by law.
4. Petitioner has fully cooperated with Respondents and has not delayed or obstructed his detention.
5. No administrative remedy exists that could provide relief from the unlawful detention described herein; thus, judicial review is the only remedy.

IV. FACTUAL AND PROCEDURAL BACKGROUND

6. Petitioner is a forty-six-year-old native and citizen of Mexico. *See* Exhibit A Mexican Passport. He entered the United States on or about May 26, 1998, without admission or parole, and has lived continuously in the United States for more than 25 years. *See* Exhibit B: Notice to Appear.
7. After being placed in removal proceedings, Petitioner filed a Form EOIR-42B Application for Cancellation of Removal for Certain Nonpermanent Residents. *See attached*, Exhibit C: Petitioner's Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents.

8. On August 24, 2023, Petitioner's U.S. citizen wife filed a Form I-130 Petition for Alien Relative, which USCIS approved on November 13, 2025. *See attached*, Exhibit D: I-797 Notice of Action. Petitioner was actively pursuing his immigration relief when he was unexpectedly detained.
9. On September 5, 2025, Petitioner was taken into ICE custody following a traffic stop.
10. On October 24, 2025, Petitioner appeared for a bond hearing in the Conroe Immigration Court. The Immigration Judge denied jurisdiction to consider bond based on Matter of Y-L-, concluding that Petitioner was considered an "applicant for admission."
11. On November 10, 2025, Petitioner appeared for a merits hearing in the Houston Immigration Court located at 500 Jefferson Street. The Immigration Judge denied his applications and ordered him removed.
12. On November 14, 2025, *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 E: Petitioner's Filing Receipt for Appeal.
13. **Petitioner's BIA appeal remains pending, and no final decision has been issued.**
14. **Petitioner has no criminal history and has never engaged in conduct suggesting he is a danger to the community or risk to national security.**
15. Petitioner has been employed while in the United States and files taxes. *See attached*, Exhibit F: Petitioner's Filed Income Taxes

16. Petitioner is the biological father of two U.S. citizen children and the stepfather of four additional U.S. citizen children, whom he has raised and supported since they were minors. *See attached, Exhibit G: Children's Birth Certificates.*
17. Petitioner's wife is eight months pregnant with a high-risk pregnancy. She also suffers from PTSD and anxiety. As a result of her condition and the high-risk pregnancy, she is unable to work at this time, and Petitioner is the sole provider for his wife and seven U.S. citizen children. *See attached, Exhibit H: Wife's Medical Records.*
18. Despite having extended family in the United States, none have stepped in to provide meaningful assistance or support during Petitioner's detention.
19. Additionally, Petitioner's wife has been informed that chromosomal abnormalities were detected, and the baby may be born with a potential syndrome. The full extent of the medical complications will not be known until birth. During this time of medical uncertainty, Petitioner's wife urgently needs support caring for their existing children and will require significant help caring for the newborn upon delivery.
20. The family is already struggling to make ends meet; they are falling behind on essential expenses, including house payments, and Petitioner's wife will be unable to afford childcare if she attempts to return to work after the pregnancy. Petitioner's detention has therefore placed the entire family in severe financial and emotional crisis, with no available support system to rely on.
21. Petitioner urgently needs to be reunified with his wife and citizen children, who require his constant presence due to their medical vulnerability and needs. His continued detention

directly threatens the wife and his unborn child's well-being and creates immediate and irreparable harm.

V. LEGAL FRAMEWORK FOR RELIEF SOUGHT

22. 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[.]”
23. 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.

24. Petitioner alleges and incorporates by reference paragraphs 1 through 23 above.

25. Petitioner's detention lacks statutory authority while his BIA appeal is pending, as the removal order is automatically stayed under 8 C.F.R. § 1003.6;
26. 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.
27. 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.**
28. As stated above, **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.
29. 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**

30. Petitioner alleges and incorporates by reference paragraphs 1 through 29 above.
31. The Fifth Amendment prohibits the government from detaining individuals without lawful authority or without an individualized assessment of their liberty interest.

32. A removal order is not final until the BIA decides the appeal. 8 C.F.R. § 1003.6(a). With no final order, § 1231 does not apply, and Respondents cannot rely on post-order detention authority.
33. Under *Zadvydas*, the indefinite detention of noncitizens who (i) cannot be repatriated in the reasonably foreseeable future, and (ii) pose no threat to the community is prohibited. 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.”).
34. The Fifth Amendment's Due Process Clause prohibits the government from detaining individuals without legal authority.
35. Under 8 U.S.C. § 1231(a)(1), detention during the removal period is only authorized after a removal order becomes "final."
36. A removal order does not become final while an appeal is pending before the BIA. 8 C.F.R. § 1003.6.
37. As stated above, Petitioner's BIA appeal remains pending, the removal order is not final and cannot serve as a basis for continued detention.
38. 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. . . .”).

39. 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.

40. Petitioner has been detained since September 5, 2025, approaching three months, without an individualized bond determination, despite a strong showing that he is neither a danger nor a flight risk, and despite extraordinary family hardship.

41. Continued detention without a hearing violates both procedural and substantive due process, particularly where, as here, (1) no final removal order exists, (2) no statutory authority supports continued detention, and (3) the deprivation of liberty imposes severe and irreparable harm to a U.S. citizen family.

42. Accordingly, Petitioner's detention violates the Due Process Clause and he must be released.

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. 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
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PETITIONER VERIFICATION

Petitioner, Jose Cruz Garcia Pescador is currently detained in ICE custody, and has authorized Counsel, Matthew Mendez, to verify, on his behalf, that the facts stated therein are true and correct to the best of his knowledge and belief.

//s// **Matthew Mendez**
Matthew Mendez
Attorney for Petitioner
Jose Cruz Garcia Pescador

12/16/2025
Date

CERTIFICATE OF SERVICE

On December 16, 2025, Counsel for Plaintiff served a copy of the attached Motion via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the **Respondent, Grant Dickey, in his Official Capacity as Co-Associate Warden of the Joe Corley Processing Center**, at the Office of the Warden, 500 Hilbig Road,

Conroe, Texas 77301.

//s// Matthew Mendez

Matthew Mendez
Attorney for Petitioner

12/16/2025
Date

CERTIFICATE OF SERVICE

On December 16, 2025, Counsel for Plaintiff served a copy of the attached Motion via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the **Respondent, Raymond Thompson, in his Official Capacity as Co-Associate Warden of the Joe Corley Processing Center**, at the Office of the Warden, 500 Hilbig Road, Conroe, Texas 77301.

//s// Matthew Mendez
Matthew Mendez
Attorney for Petitioner

12/16/2025
Date

CERTIFICATE OF SERVICE

On December 16, 2025, Counsel for Plaintiff served a copy of the attached Motion 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 the Office of the Field Office Director, Enforcement and Removal Operations, Houston Field Office, 126 Northpoint Drive, Houston, Texas 77060.

//s// Matthew Mendez
Matthew Mendez
Attorney for Petitioner

12/16/2025
Date

CERTIFICATE OF SERVICE

On December 16, 2025, Counsel for Plaintiff served a copy of the attached Exhibits 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 the Office of General Counsel, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0485, Washington, D.C. 20530.

//s// Matthew Mendez
Matthew Mendez
Attorney for Petitioner

12/16/2025
Date

CERTIFICATE OF SERVICE

On December 16, 2025, Counsel for Plaintiff served a copy of the attached Motion 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 the U.S. Attorney General, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530-0001.

//s// Matthew Mendez
Matthew Mendez
Attorney for Petitioner

12/16/2025
Date

10. 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;

11. Security is waived / set at \$ _____;

12. This order may be served by facsimile, email, or other means reasonably calculated to provide immediate notice.

SIGNED this ____ day of _____, 2025.
