

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:25-cv-4053

EDILBERTO ARNEZ COPA,

Petitioner,

v.

KRISTI NOEM, Secretary of Homeland Security in her official capacity,  
TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement in his official  
capacity,  
ROBERT GUARDIAN, Denver Field Office Director, U.S. Immigration and Customs  
Enforcement in his official capacity,  
PAMELA BONDI, Attorney General in her official capacity, and  
JUAN BALTASAR, Warden, Denver Contract Detention Facility in his official capacity,

Respondents.

---

PETITION FOR WRIT OF HABEAS CORPUS

---

On February 25, 2013, Petitioner Edilberto Arnez Copa won an order from an immigration judge granting him a form of relief called withholding of removal, which prohibits Respondents from removing him to his native Bolivia. Should Respondents wish to remove Petitioner to Bolivia, the law sets forth specific procedures by which they can reopen the case and seek to set aside the grant of withholding of removal. Should Respondents wish to remove Peitioner to any other country, they would first need to provide him with notice and opportunity to apply for protection as to that country as well. Unless they do either of these things, they cannot remove Petitioner from the United States. But on December 2, 2025, Respondents arrested Petitioner without warning and without observance of procedures required by regulation. He was detained without prior notice or explanation, despite having no new criminal history since his grant of

withholding of removal. Petitioner is currently held at the Denver Contract Detention Facility in Denver, Colorado. Petitioner is his family's primary breadwinner. Continued detention is unlawful, unnecessary, and causing extreme hardship to him and his U.S. citizen family members. Such conduct cries out for immediate judicial relief.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to hear this case under 28 U.S.C. § 2241; 28 U.S.C. § 2201, the Declaratory Judgment Act; and 28 U.S.C. § 1331, Federal Question Jurisdiction. In addition, the individual Respondents are United States officials. 28 U.S.C. § 1346(a)(2).

2. The Court has authority to enter a declaratory judgment and to provide temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, 28 U.S.C. §§ 2201-2202, the All Writs Act, and the Court's inherent equitable powers, as well as issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

3. Venue lies in this District because Petitioner is detained in the custody of U.S. Immigration and Customs Enforcement (ICE) at the Denver Contract Detention Facility, located within this division of this judicial district. Each Respondent is an officer of the United States sued in his or her official capacity. 28 U.S.C. § 2241; 28 U.S.C. § 1391(e)(1). In addition, Respondent Robert Guardian, Denver ICE Field Office Director, maintains his principal place of business in Denver, CO.

### **THE PARTIES**

4. Petitioner is a citizen and native of Bolivia who resides in Oxon Hill, Maryland. Respondents are detaining him without any legal basis whatsoever, as he currently has a valid grant of withholding of removal.

5. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (“DHS”). She is the cabinet-level secretary responsible for all immigration enforcement in the United States.

6. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (“ICE”). He is the head of the federal agency responsible for all immigration enforcement in the United States.

7. Respondent Robert Guardian is the Director of the Denver ICE Field Office. He is the head of the ICE office that is unlawfully detaining Petitioner, and such detention is taking place under his direction and supervision. He is the immediate legal custodian of the Petitioner.

8. Respondent Pamela Bondi is the Attorney General of the United States. She is the head of the U.S. Department of Justice, which oversees the Executive Office for Immigration Review, including the Board of Immigration Appeals and the Immigration Court judges, who decide removal cases and applications for bond as her designees.

9. Respondent Juan Baltasar is the warden of the Denver Contract Detention Facility in Aurora, Co., where Petitioner is currently detained. He is the immediate custodian who is currently holding the Petitioner in physical custody. He is sued in his official capacity.

10. All government Respondents are sued in their official capacities.

#### **LEGAL BACKGROUND**

11. Withholding of removal under 8 U.S.C. § 1231(b)(3) prohibits the government from removing a noncitizen to a country where it is more likely than not that the individual would be persecuted on account of race, religion, nationality, membership in a particular social group, or

political opinion. *See* 8 C.F.R. § 1208.16(b). This form of relief is mandatory if the applicant meets the standard and is distinct from asylum in that it does not lead to permanent residency

12. To qualify for withholding of removal, the noncitizen bears the burden of proving that it is more likely than not that they would face persecution if returned to their country of origin. The government may not remove an individual with a valid withholding order to that country unless the order is formally terminated following the procedures set forth in the regulations. *See* 8 C.F.R. § 1208.24(f).

13. If a noncitizen is granted withholding of removal, “DHS may not remove the alien to the country designated in the removal order unless the order of withholding is terminated.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021). No exceptions lie.

14. Federal regulations provide a procedure by which a grant of withholding of removal issued by an immigration judge may be terminated: DHS must move to reopen the removal proceedings before the immigration judge and must prove, by a preponderance of the evidence, that the individual would no longer face persecution. 8 C.F.R. § 1208.24(f). Only after termination may removal to that country proceed.

15. However, withholding of removal is a country-specific form of relief. Should the government wish to remove an individual with a grant of withholding of removal to some other country, it must first provide that individual with notice and an opportunity to apply for withholding of removal as to that country as well, if appropriate. 8 U.S.C. § 1231(b)(3)(A). *See also Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf. Protsenko v. U.S. Att’y Gen.*, 149 F. App’x 947, 953 (11th Cir. 2005) (per curiam) (permitting removal to third

country only where individuals received “ample notice and an opportunity to be heard”).

16. Finally, for individuals with a removal order but who cannot be removed (because there is no country designated to which they can lawfully be removed, or because logistical or practical considerations prevent execution of an otherwise lawfully executable order), 8 U.S.C. §1231(a) permits the government to detain noncitizens during the “removal period,” which is defined as the 90-day period during which “the Attorney General shall remove the alien from the United States.” 8 U.S.C. §1231(a)(1)(A).

17. After the expiration of the removal period, 8 U.S.C. § 1231(a)(3) provides that the government shall release unremovable noncitizens on an order of supervision (the immigration equivalent of supervised release, with strict reporting and other requirements). Pursuant to 8 U.S.C. § 1231(a)(6), even noncitizens with aggravated felony convictions may be “released” if “subject to the terms of supervision” set forth in 8 U.S.C. § 1231(a)(3).

18. Constitutional limits on detention beyond the removal period are well established. Government detention violates due process unless it is reasonably related to a legitimate government purpose. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). “[W]here detention’s goal is no longer practically attainable, detention no longer ‘bear[s][a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Additionally, cursory or pro forma findings of dangerousness do not suffice to justify prolonged or indefinite detention. *Zadvydas*, 533 U.S. at 691 (“But we have upheld preventative detention based on dangerousness only when limited to especially dangerous individuals [like suspected terrorists] and subject to strong procedural protections.”).

19. As the Supreme Court explained, where there is no possibility of removal,

immigration detention presents substantive due process concerns because “the need to detain the noncitizen to ensure the noncitizen’s availability for future removal proceedings is “weak or nonexistent.” *Zadvydas*, 533 U.S. at 690-92. Detention is lawful only when “necessary to bring about that alien’s removal.” *See id.* at 689.

20. To balance these competing interests, the *Zadvydas* Court established a rebuttable presumption regarding what constitutes a “reasonable period of detention” for noncitizens after a removal order. *Id.* at 700-01. The Court determined that six months detention could be deemed a “presumptively reasonable period of detention,” after which the burden shifts to the government to justify continued detention if the noncitizen provides a “good reason to believe that there is not significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

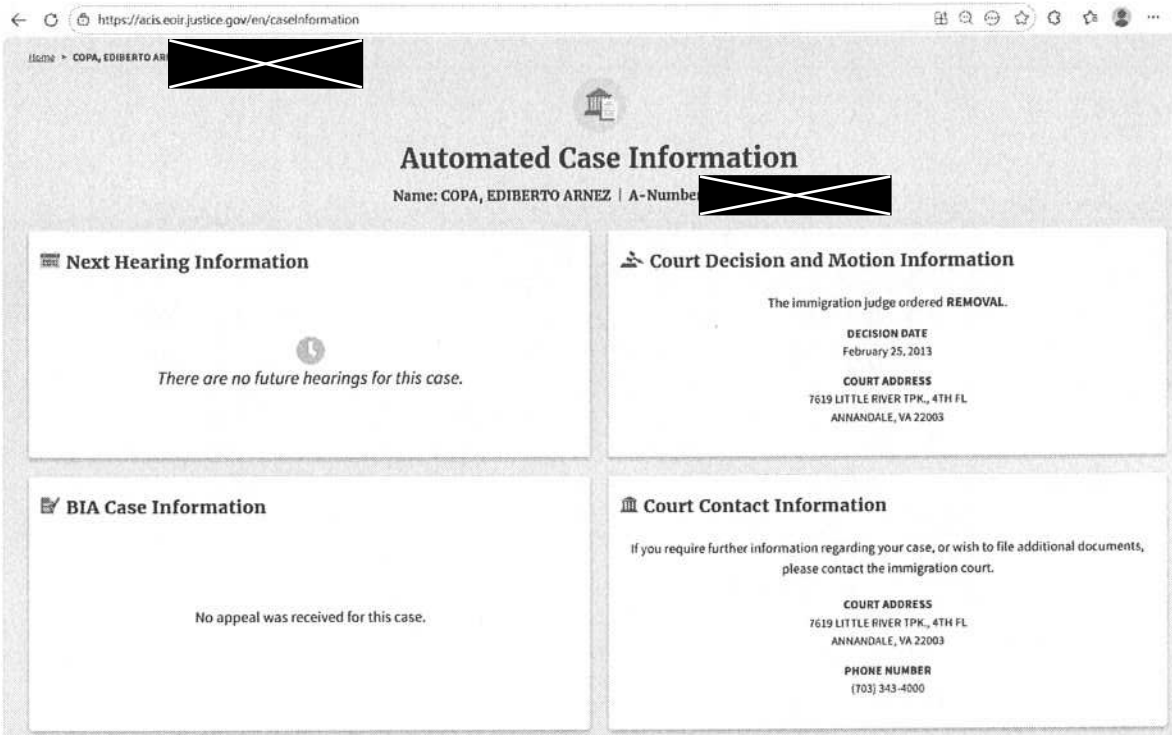
21. Where a petitioner has provided “good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future,” the burden shifts to the government to rebut that showing. *Zadvydas*, 533 U.S. at 701.

#### FACTS

22. Petitioner is a citizen of Bolivia and no other country. He entered the United States in June 2007 between ports of entry and upon information and belief, was not encountered by immigration officials at that time.

23. In 2013, Petitioner applied for asylum and on February 25, 2013, an Immigration Judge granted Petitioner withholding of removal pursuant to 8 U.S.C. § 1231(b)(3). *See* Ex. 1 (order of withholding of removal). No appeal was received for the case. To date, Respondents have not taken any steps to reopen the proceedings and rescind the grant of withholding. *See* EOIR Automated Case Information (*available at*: <https://acis.eoir.justice.gov/> (last visited

on December 17, 2025)):



24. Since his grant of withholding of removal, Petitioner has maintained lawful and gainful employment, supported by his consistently renewed Employment Authorization Document (“EAD”). *See* Ex. 2, Employment Authorization Document, valid from July 15, 2024 to July 14, 2029.

25. On December 2, 2025, approximately twelve years after Petitioner was granted withholding of removal, he was arrested by immigration officials conducting random enforcement operations at a Home Depot in Maryland. Without prior notice or explanation, ICE officers detained him. He was subsequently transferred to the Denver Contract Detention Facility in Aurora, CO which falls under the custody of the ICE Denver Field Office.

26. Petitioner is currently detained in the Denver Contract Detention Facility in Aurora,

CO. See ICE Detainee Locator information (available at: https://locator.ice.gov/ (last visited on December 17, 2025)):



27. Upon information and belief, Petitioner was recently told by ICE officials that the government intends to remove him to Mexico.

28. Additionally, given Petitioner has no claim to legal immigration status in Mexico, there is a significant possibility Mexico will promptly send him to Bolivia, where it has already been determined that he will face persecution. This chain refolement would violate the withholding-of-removal statute just as surely as if Respondents carried out the removal directly to Bolivia.

29. On December 16, 2015, Petitioner, through his immigration counsel, submitted a request for a Reasonable Fear Interview. See Ex. 3, Reasonable Fear Interview Request email.

30. Since being granted withholding of removal in 2013, Petitioner has repeatedly been issued “category A10” Employment Authorization Documents (EAD). *See* Ex. 2. Each time the agency issued Petitioner an EAD, it necessarily first determined that he “cannot be removed due to the refusal of all countries designated by the alien or under this section to receive the alien[.]” 8 U.S.C. § 1231(a)(7)(A).

31. Petitioner has two young U.S. citizen children, ages 5 and 8, who rely on him immensely. Petitioner was the family’s primary breadwinner, and his long-term partner has now been left to care for their children and manage the household on her own. Petitioner’s business and career have been put at risk due to his abrupt detention, which will have lasting financial impacts on him and his family. Their stability has deteriorated rapidly, and the emotional and logistical impact of Petitioner’s absence has placed the entire household in crisis. Immediate relief is necessary to prevent further harm to the children and to restore basic stability to this U.S. citizen family.

32. Petitioner has exhausted all administrative remedies. No further administrative remedies are available to Petitioner.

**FIRST CLAIM FOR RELIEF:  
Violation of 8 U.S.C. § 1231(a)(6)**

33. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-32.

34. Petitioner’s continued detention by the Respondents violates 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas*. Petitioner’s 90-day statutory removal period and six-month presumptively reasonable period for continued removal efforts have long since passed.

35. Under *Zadvydas*, the continued detention of someone like Petitioner is unreasonable and not authorized by 8 U.S.C. § 1231.

**SECOND CLAIM FOR RELIEF:  
Due Process/Detention**

36. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-32.

37. Petitioner's detention during the removal period is only constitutionally permissible under the Due Process Clause when there is a significant likelihood of removal in the reasonably foreseeable future. Although Respondents arrested and detained Petitioner randomly, they are now attempt to justify his continued detention based on the assumption that Petitioner will be removable to a third country; however, they have no factual basis to believe that such third-country removal will ever become practicable and legally permissible.

38. Respondent continues to detain Petitioner without evidence that they will be able to remove him imminently, to Bolivia, Mexico, or to any other country.

39. Respondents' detention of Petitioner no longer bears any reasonable relation to a legitimate government purpose, and thus violates the Due Process Clause.

**THIRD CLAIM FOR RELIEF:  
Procedural Due Process/Removal**

40. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-32.

41. Respondents' policy on third-country deportations allows a noncitizen to be deported to a third country based on generalized assurances from that country's government that the noncitizen will not be tortured in that country. Petitioner has a procedural due process right to an individualized determination as to whether he will be persecuted or tortured in any country of removal to which he claims a fear of removal.

42. Even where Respondents carry out an individualized determination of persecution or torture in a third country of removal, Respondents' policy on third-country deportations

provides only for an interview by a single immigration officer, with no further right of review by an immigration judge. Petitioner has a procedural due process right not to be removed to any country in which he fears persecution or torture, or to any country which he fears will re-deport him to Bolivia where it has already been judicially determined that he is more likely than not to face persecution or torture, without an immigration judge first reviewing his claim of fear of removal. Due process requires that the immigration judge conduct this initial screening review at the “reasonable possibility” standard, not the more-likely-than-not standard; and that the immigration judge take into account the likelihood of refoulement to persecution or torture, not just persecution or torture in the country of direct removal.

**FOURTH CLAIM FOR RELIEF:  
Habeas Corpus, 28 U.S.C. § 2241**

43. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-32.

44. The writ of habeas corpus is available to any individual who is held in custody of the federal government in violation of the Constitution or laws or treaties of the United States.

45. Respondents presently have no legal basis to detain Petitioner in immigration custody, and the writ of habeas corpus should issue.

46. In the alternative, as set forth above, Respondents intend to remove Petitioner to Mexico, which will in turn remove Petitioner back to Bolivia without adequate notice and opportunity to be heard, thus violating this law.

**FIFTH CLAIM FOR RELIEF:  
Violation of 8 C.F.R. § 241.4(l)**

47. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-32.

48. As set forth above, Respondents’ actions in arresting Petitioner without any

advance or contemporaneous explanation of the legal or factual basis for re-detention violated 8 C.F.R. § 241.4(I), a regulation designed to protect the due process rights of noncitizens like Petitioner.

49. In addition, upon information and belief, Petitioner's release was revoked by an individual who lacked authority to do so, without observance of proper and required formalities and without the requisite findings being made, in violation of 8 C.F.R. § 241.4(I)(2).

50. This violation of required procedures also violated Petitioner's due process rights under the Fifth Amendment to the U.S. Constitution.

51. In arresting and detaining Petitioner, Respondents violated important substantive and procedural rules designed to protect his due process rights, and the writ of habeas corpus should issue.

#### **REQUEST FOR RELIEF**

Petitioner prays for judgment against Respondents and respectfully requests that the Court enters an order:

- a) Issuing an Order to Show Cause, ordering Respondents to justify the basis of Petitioner's detention in fact and in law, forthwith;
- b) Preliminarily and permanently enjoining Respondents from removing Petitioner to Bolivia, unless and until his order of Withholding of Removal is terminated, including all appeals;
- c) Preliminarily and permanently enjoining Respondents from removing Petitioner to any other country without first providing him notice and offering him adequate opportunity to apply for withholding of removal as to that country, by means of (1) a fear interview before a USCIS asylum officer, followed by (2) Immigration Judge review;

- d) Restoring Petitioner to his prior conditions of release and releasing him from custody thereupon;
- e) Issuing a writ of habeas corpus, and ordering that Petitioner be released from physical custody; and
- f) Granting such other relief at law and in equity as justice may require.

Date: December 18, 2025

/s/ Simon Sandoval-Moshenberg  
Simon Sandoval-Moshenberg, Esq.  
Virginia State Bar no. 77110  
Murray Osorio PLLC  
4103 Chain Bridge Road, Suite 300  
Fairfax, Virginia 22030  
Telephone: 703-352-2399  
Facsimile: 703-763-2304  
ssandoval@murrayosorio.com

*Counsel for Petitioner*

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. I furthermore will send a copy by certified U.S. mail, return receipt requested, to:

Civil Process Clerk  
U.S. Attorney's Office for the District of Colorado  
1801 California Street, Suite 1600  
Denver, CO 80202

Office of the General Counsel  
U.S. Department of Homeland Security  
245 Murray Lane, SW, Mail Stop 0485  
Washington, DC 20528-0485

Pamela Bondi, Attorney General of the United States  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Office of the Principal Legal Advisor  
U.S. Immigration and Customs Enforcement  
500 12th Street SW, Mail Stop 5902  
Washington, DC 20536-5902

Juan Baltasar, Warden  
Denver Contract Detention Center  
3130 N. Oakland St.  
Aurora, CO 80010

Respectfully submitted,

Date: December 18, 2025

/s/ Simon Sandoval-Moshenberg  
Simon Sandoval-Moshenberg, Esq.  
Virginia State Bar no. 77110  
*Counsel for Petitioner*  
Murray Osorio PLLC  
4103 Chain Bridge Road, Suite 300  
Fairfax, Virginia 22030  
Telephone: 703-352-2399  
Facsimile: 703-763-2304  
ssandoval@murrayosorio.com