

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

Jose Adonay Urbina Salazar,

Petitioner,

4:25-cv-6147

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department of
Homeland Security,

Department of Homeland Security,

Todd M. Lyons, Acting Director of
Immigration and Customs Enforcement,

Immigration and Customs Enforcement,

Miguel Vergara, Director, Harlingen Field
Office Immigration and Customs
Enforcement,

and,

Warden of Port Isabel Service Detention
Center

**EMERGENCY VERIFIED
PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Respondents are detaining Petitioner, Mr. Jose Urbina Salazar, (“Petitioner”), who is subject to a final order of removal as well as a grant of Withholding of Removal to El Salvador issued simultaneously with the removal order.
2. Petitioner has an administratively final order of removal.
3. Petitioner’s application for Withholding of Removal was granted on December 5, 2013. Both parties waived appeal. *See* Ex. A.
4. Respondents subsequently released Petitioner.
5. Respondents programmed annual check-ins for Petitioner’s supervision. The next check-in was set for March 2026.
6. Petitioner has no adverse criminal history since his release from custody.
7. Respondents detained Petitioner on December 9, 2025.
8. Respondents have communicated to Petitioner that Respondents will remove Petitioner to El Salvador on December 22, 2025 despite the order withholding removal to El Salvador.
9. Respondents has neither provided notice of its intent to reopen proceedings to afford Petitioner an opportunity to challenge removal, nor established that removal to a third country is reasonably foreseeable, and it has failed to

provide Petitioner an opportunity to seek withholding protection from any such country.

10. Petitioner's continued post-final order detention violates the Due Process Clause of the United States Constitution because removal is legally impossible in the absence of any third country willing to accept him, removal to El Salvador is barred by his grant of withholding of removal, and the Government has neither initiated reopening proceedings nor provided notice of any purported basis for terminating withholding.
11. The continued detention of Petitioner serves no legitimate purpose.
12. To remedy this unlawful detention, Petitioner seeks declaratory and injunctive relief in the form of immediate release from detention.
13. Pending the adjudication of his Petition, Petitioner seeks an order restraining the Respondents from transferring him to a location where he cannot reasonably consult with counsel, such a location to be construed as any location outside of the geographic jurisdiction of the day-to-day operations of U.S. Customs and Immigration's ("ICE") Harlingen, Texas, of the Office of Enforcement and Removal Operations in the State of Texas.
14. Pending the adjudication of this Petition, Petitioner also respectfully requests that Respondents be ordered to provide seventy-two (72) hour notice of any movement of Petitioner.

15. Petitioner requests the same opportunity to be heard in a meaningful manner, at a meaningful time, and thus requests 72-hour notice prior to any removal or movement of him away from the State of Texas.

JURISDICTION AND VENUE

16. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1361 (federal employee mandamus action), § 1651 (All Writs Act), and § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the United States Constitution (“Suspension Clause”); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act). This action further arises under the Constitution of the United States and the Immigration and Nationality Act (“INA”), specifically, 8 U.S.C. § 1101-1537.
17. Because Petitioner seeks to challenge his custody as a violation of the Constitution and laws of the United States, jurisdiction is proper in this court. *See Zadvydas, v. Davis*, 533 U.S. 678 (2001).
18. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 583 U.S. 281, 290-94 (2018); *Nielsen v. Preap*, 586 U.S. 392, 399, 399-401 (2019).

19. Venue is proper in this Court pursuant to 28 USC §§ 1391(b), (e)(1)(B), and 2241(d) because Petitioner is detained within this District. He is currently detained at the Port Isabel Detention Center in Los Fresnos, Texas. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because Respondents are operating in this district.

PARTIES

20. Petitioner is a citizen and national of El Salvador. Petitioner is currently in Immigration and Customs Enforcement (“ICE”) custody at the Port Isabel Detention Center in Los Fresnos, Texas.
21. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice, which encompasses the BIA and the immigration judges through the Executive Office for Immigration Review. Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Platon Pallares.
22. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to § 103(a) of the Immigration and Nationality Act (“INA”), 8

U.S.C. § 1103(a), routinely transacts business in the Southern District of Texas, supervises the Harlingen ICE Field Office, and is legally responsible for pursuing Platon Pallares's detention and removal. As such, Respondent Noem is a legal custodian of Platon Pallares.

23. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.
24. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Defendant Lyons is responsible for Petitioner's detention.
25. Respondent Immigration and Customs Enforcement (ICE) is the subagency within the Department of Homeland Security responsible for implementing and enforcing the Immigration & Nationality Act, including the detention of noncitizens.
26. Respondent Miguel Vergara is being sued in his official capacity as the Field Office Director for the Harlingen Field Office for ICE within DHS. In that capacity, Field Director Vergara has supervisory authority over the ICE agents responsible for detaining Platon Pallares. The address for the Harlingen Field Office is 1717 Zoy Street, Harlingen, Texas, 78552, and it is

the field office with jurisdiction over Platon Pallares's detention in Texas. As such, Respondent Vergara is a legal custodian of Platon Pallares.

27. Respondent Warden of the Port Isabel Service Detention Center is being sued in his or her official capacity. Because Petitioner is detained in the Port Isabel Service Detention Center, under the jurisdiction of the Harlingen Field Office, Respondent has immediate day-to-day control over Petitioner. As such, Respondent Director of the Port Isabel Service Detention Center is a legal guardian of Platon Pallares.


EXHAUSTION

28. A final order of removal has been entered against Petitioner and Petitioner has exhausted his administrative remedies such that judicial action is his only remedy.
29. Notably, no statutory exhaustion requirement applies to Petitioner's claim of unlawful detention. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); 8 U.S.C. § 1252(d)(1) (requiring exhaustion of administrative remedies only where requesting review of a final removal order).
30. Furthermore, prudential "[e]xhaustion is not required when the issue presented to the court ... involves purely legal issues." *Trinity Indus. v. Reich*, 901 F. Supp. 282, 286 (E.D. Ark. 1993), *aff'd*, 33 F.3d 942 (8th Cir. 1994) (citing *Bethlehem Steel v. E.P.A.*, 669 F.2d 903, 907 (3rd Cir.1982)).

31. Petitioner raises a purely legal challenge to Respondents' failure to initiate reopening proceedings or provide notice before continuing to detain Petitioner. 8 C.F.R. § 208.24 (requiring formal reopening of proceedings and an opportunity to respond before a grant of withholding of removal can be terminated).
32. "Further, exhaustion is not required when the nonjudicial remedy is clearly shown to be inadequate to prevent irreparable injury." *Id.* (citing *Miss America Organization v. Mattel*, 945 F.2d 536, 545 (2nd Cir.1991)).
33. Unlawful, going on indefinite, detention is clearly an irreparable injury given that "a loss of liberty ... is perhaps the best example of irreparable harm." *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018).
"Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001).
34. "In addition, exhaustion is not required where administrative proceedings involve questions of significant national interest or where the agency has clearly violated rights secured by the Constitution, statutes, or administrative regulations." *Trinity Indus.*, 901 F. Supp. at 286 (citing *Philip Morris v. Block*, 755 F.2d 368, 370 (4th Cir.1985)).
35. Respondents have not shown that Petitioner's removal to a third country is reasonably foreseeable. Thus, his continued detention constitutes irreparable

harm. (“the loss of constitutional freedoms ‘for even minimal periods of time ... unquestionably constitutes irreparable injury.’” *BST Holdings, L.L.C. v. Occupational Safety & Health Admin.*, 17 F.4th 604, 618 (5th Cir. 2021) (quoting *Elrod v. Burns*, 427 U.S. at 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976)).

FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

36. Petitioner was born in El Salvador, on  and is a citizen and national of El Salvador.
37. Petitioner first entered the United States sometime in 2006. He was ordered removed and departed on October 5, 2012. *See* Ex. B.
38. On March 2, 2013, Petitioner reentered the United States near Hidalgo, Texas. *Id.*
39. Petitioner was detained during his entry. Petitioner was placed in expedited proceedings due to his previous removal order. However, Petitioner expressed fear of return to El Salvador.
40. On August 29, 2013, Petitioner underwent a reasonable fear interview. The asylum officer that conducted Petitioner’s interview found him credible and found that reasonable fear of torture was established. *See* Ex. C.
41. Respondent was subsequently placed in withholding only proceedings.

42. On December 5, 2013, Petitioner was granted Withholding of Removal under 8 U.S.C. § 1231(b)(3). *See* Ex. A.
43. Both Petitioner and the government waived their right to appeal. *Id.*
44. After having been granted withholding of removal, Petitioner was released from ICE custody on an order of supervision.
45. Petitioner attended ICE check-ins annually since 2014.
46. Respondents have not identified a third country to which they intend to remove Petitioner.
47. Respondents have not received authorization or permission from any third country willing to accept Petitioner.
48. Respondents have not obtained a travel document that would permit them to remove Petitioner to a third country.
49. Petitioner has not been made aware of any specific plans to remove him to any specific, identified, third country.
50. Petitioner has not been made aware of the Government's intention to reopen proceedings.
51. Petitioner remains in detention at Port Isabel Detention Center in Los Fresnos, Texas.

LEGAL FRAMEWORK

52. As the constitution states, “[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the Public Safety may require it.” U.S. Const. art. I, § 9 cl. 2.
53. Such a writ is available to a person who “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3).
54. “There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus, for it is in such proceedings that a person in custody charges that error, neglect, or evil purpose has resulted in his unlawful confinement and that he is deprived of his freedom contrary to law.” *Harris v. Nelson*, 394 U.S. 286, 291-22 (1969).
55. 55. “The scope and flexibility of the writ – its capacity to reach all manner of illegal detention – its ability to cut through barriers of form and procedural mazes – have always been emphasized and jealously guarded by courts and lawmakers.” *Id.* at 291.
56. Once a noncitizen is given a final removal order, 8 U.S.C. §1231(b)(2) governs the country to which that individual may be removed. The statute allows the noncitizen to “designate one country to which the alien wants to

be removed,” and requires that “the Attorney General shall remove the alien to the country the alien so designates.” 8 U.S.C. § 1231(b)(2)(A)(i), (ii).

57. The Attorney General may disregard the noncitizen’s designation only under certain enumerated conditions. 8 U.S.C. § 1231(b)(2)(C). If the noncitizen cannot be removed to that country, then 8 U.S.C. § 1231(b)(2)(E) provides a list of other countries to which the noncitizen may be removed. The very last country of removal on the list is “[a] country with a government that will accept the alien into the country’s territory if removal to each country described in a previous clause of this subparagraph is impracticable, inadvisable, or impossible.” 8 U.S.C. § 1231(b)(2)(E)(vii).
58. As the Supreme Court has explained, “[t]he statute thus provides four consecutive removal commands[.]” *Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335, 341 (2005) (emphasis added). “With respect to the third step, however, the Attorney General is directed to move on to the fourth step only if it is ‘impracticable, inadvisable, or impossible to remove the alien to each country described in’ the third step.” *Id.* at 342.
59. However, “the Attorney General may not remove an alien to a country if the Attorney General decides that the alien’s life or freedom would be threatened in that country because of the alien’s race, religion, nationality,

membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3)(A).

60. “[T]he prohibition on removal to a country where a noncitizen would face persecution or torture remains absolute. And precisely because withholding of removal is country-specific, as the government says, if a noncitizen who has been granted withholding as to one country faces removal to an alternative country, then she must be given notice and an opportunity to request withholding of removal to that particular country.” *Guzman Chavez v. Hott*, 940 F.3d 867, 879 (4th Cir. 2019) (citing *Kossov v. INS*, 132 F.3d 405, 409 (7th Cir. 1998)), rev’d on other grounds, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021).
61. For noncitizens ordered removed, 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).
62. Petitioner fulfilled this requirement.
63. 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).

64. 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 (alterations in original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).
65. Additionally, cursory or pro forma findings of dangerousness do not suffice to justify prolonged or indefinite detention. *Zadvydas*, 533 U.S. at 690–91 (“But we have upheld preventive detention based on dangerousness only when limited to specially dangerous individuals [like suspected terrorists] and subject to strong procedural protections.”).
66. The purpose of detention during and beyond the removal period is to “secure[] the alien’s removal.” *Zadvydas*, 533 U.S. at 682. In *Zadvydas*, the Supreme Court “read § 1231 to authorize continued detention of an alien following the 90-day removal period for only such time as is reasonably necessary to secure the alien’s removal.” *Demore v. Kim*, 538 U.S. at 527 (citing *Zadvydas*, 533 U.S. at 699).

67. As the Supreme Court has 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.
68. 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 no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

COUNT ONE: VIOLATION OF THE APA – FAILURE TO COMPLY WITH REGULATORY MANDATE & ACCARDI DOCTRINE

69. Petitioner re-alleges and incorporates by reference each allegation.
70. Under the APA, "the reviewing court shall ... interpret constitutional ... provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall ... hold unlawful and set aside

agency action, findings, and conclusions found to be ... contrary to constitutional right.” 5 U.S.C. § 706 (2)(B).

71. Respondents have not complied with 8 C.F.R. § 208.24.
72. A grant of withholding of removal may be terminated only through formal reopening of removal proceedings, and only if the Government establishes, by a preponderance of the evidence, that termination is warranted due to changed circumstances, fraud, or criminal conduct rendering the noncitizen ineligible for withholding at the time it was granted. 8 C.F.R. § 208.24(a)–(b), (f).
73. Respondents have neither moved to reopen Petitioner’s removal proceedings nor complied with the procedures required to terminate his grant of withholding of removal. As a result, Petitioner remains legally protected from removal to El Salvador.
74. The individuals who arrested and detained Petitioner are not authorized to terminate his withholding of removal grant.
75. Despite the absence of lawful authority to remove Petitioner to El Salvador, and despite the Government’s failure to initiate or complete any process to terminate withholding of removal or secure removal to an alternative country, Respondents continue to detain Petitioner.
76. These are all violations of 8 C.F.R. § 208.24.

77. Respondents' action also violates the mandate of *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).
78. Respondents must observe the rules, regulations or procedures which it has established. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).
79. Respondents acted in excess of their regulatory authority or limitation.
80. Respondents' action constitutes a final agency decision.
81. Petitioner has no administrative remedy available to him.
82. Respondents' action violates the APA.

COUNT TWO: SUBSTANTIVE DUE PROCESS VIOLATION

83. Petitioner re-alleges and incorporates by reference each allegation.
84. Petitioner's continued detention violates Petitioner's right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.
85. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest.
86. To the extent the Government relies on a purported final order of removal from 2013, Petitioner's 90-day removal period and 180-day *Zadvydas* presumptively reasonable period would have expired no later than 2014.

87. Petitioner's 90-day statutory removal period and six-month presumptively reasonable period for continued removal efforts have long since passed.
88. Petitioner's removal to El Salvador is squarely foreclosed under 8 U.S.C. § 1231(b)(3)(A). It is a legal impossibility.
89. No other country has issued a travel document.
90. Under *Zadvydas*, the continued detention of someone like Petitioner is unreasonable and not authorized by 8 U.S.C. § 1231.
91. Continued detention violates the Fifth Amendment and Petitioner's writ of habeas corpus must issue.

PRAYER FOR RELIEF

WHEREFORE, Petitioner, asks this Court for the following relief:

1. Assume jurisdiction over this matter.
2. Issue an order restraining Respondents from removing Petitioner to El Salvador in violation of law.
3. Issue an injunction against Respondents prohibiting Respondents from removing Petitioner to El Salvador in violate of law.
4. Issue an order restraining Respondents from attempting to move Petitioner from the State of Texas during the pendency of this Petition.
5. Issue an order requiring Respondents to provide 72-hour notice of any intended movement of Petitioner.

6. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C., chapter 153 related to habeas actions.
7. Order Respondents to show cause for their continued detention of Petitioner within three days pursuant to 28 U.S.C. § 2243.
8. Grant the writ of habeas corpus.
9. Order Petitioner's release from custody under an order of supervision or other condition as set by the Court.
10. Declare that Respondents' action is arbitrary and capricious.
11. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment where formal reopening proceedings have not been initiated.
12. Grant Petitioner reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).
13. Grant all further relief this Court deems just and proper.

DATED: December 19, 2025

Respectfully submitted,

/s/ David L. Wilson

David L. Wilson

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Attorney for Petitioner

**Verification by
Petitioner Pursuant to 28 U.S.C. § 2242**

I am submitting this verification on behalf of Petitioner because I am his attorney.

I have discussed the events described in this Petition with Petitioner and have reviewed his documents to corroborate the claims made herein. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the dates and nature of the administrative appellate procedure, are true and correct to the best of my knowledge.

/s/ David L. Wilson
David L. Wilson

12/19/2025
Date:

CERTIFICATE OF SERVICE

I, **David L. Wilson**, hereby certify that on December 19, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.