

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION**

El Hassene Hachem,

Petitioner,

v.

MARCELLO VILLEGAS, Warden,
Bluebonnet Detention Facility,
KRISTI NOEM, Secretary, U.S. Department
of Homeland Security; TODD LYONS,
Acting Director, U.S. Immigration and Customs
Enforcement,

Case No.
Hon. Judge:
Mag. Judge:

Respondents.

**PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner, El Hassene Hachem (Hachem), through counsel files this Petition for Writ of Habeas Corpus and respectfully requests that this Court issue a Writ of Habeas Corpus. In support, the Petitioner states:

I. INTRODUCTION

1. The Petitioner, by and through undersigned counsel, hereby files this Petition for a Writ of Habeas Corpus in order to secure his release from unlawful detention.

2. The Petitioner has been granted Deferral of Removal Under the U. N. Convention against Torture which will allows him to remain in the United States free from the threat of torture in his home country.

3. The Petitioner has been detained over six months without the ability to be released and without an individualized determination as to whether he should remain detained by immigration authorities.

4. ICE detention is indistinguishable from prison,” and “[a] majority of people in ICE detention have no criminal record.” Tom Dreisbach, Government’s Own Experts Found “Barbaric” and “Negligent” Conditions in ICE Detention, NPR News (Aug. 16, 2023),

<https://www.npr.org/2023/08/16/1190767610/icedetention-immigration-government-inspectors-barbaric-negligent-conditions#:~:text=In%20examining%20more%20than%20two,problems%20that>

%2C%20in%20some%20cases

5. For detained persons who have suffered persecution, like Hachem, these prison-like conditions compound the trauma from which they fled.

6. Hachem is not challenging the execution of a removal order before this Court. He is challenging his length of his detention.

7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released within three days.

II. JURISDICTION

8. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction) 28 U.S.C. §2201, 28 U.S.C. §2241 et seq., Art. I § 9, cl. 2 of the United States Constitution (Suspension Clause), 28 U.S.C. § 1343; 28 U.S.C. § 1361; and 5 U.S.C. § 702, and common law. This action arises under the Fifth Amendment of the United States Constitution and the Immigration and Nationality Act 8 U.S.C. §1101 (INA).

9. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of DHS conduct. Federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

10. This Court has jurisdiction under the Suspension Clause to review the actions of the executive branch's enforcement of the immigration laws if those

actions violate the Constitution by depriving Petitioner of due process or other constitutional rights. Compare Suspension Clause with 8 U.S.C. § 1252(g); see also *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). The Suspension Clause protects the right to the writ of habeas corpus where, as here, no adequate or effective alternative remedy exists. See *Boumediene v. Bush*, 553 U.S. 723 (2008).

III. VENUE

11. Venue lies in the Northern District of Texas, the judicial district in which the Petitioner is detained.

12. The Petitioner is in the custody of Respondent, Marcello Villegas at the Bluebonnet Detention Center in Anson, Texas. Petitioner is under the direct control of the Respondents and their agents since it is Respondent Noem's policies and Respondent Lyon's authorization to detain that have caused Hachem's unlawful detention.

IV. PARTIES

13. Hachem is a citizen of the Mauritania who was granted Protection under the U. N. Convention against Torture (CAT Deferral) by the immigration judge on June 25, 2025. (Ex. A – Order of the Immigration Judge). He is currently detained at Bluebonnet Detention Center in Anson, Texas.

14. Respondent, Marcello Villegas is the warden of Bluebonnet Detention Center in Anson, Texas and is the custodian of the Petitioner. He is being sued in his official capacity.

15. Respondent, Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS). She is generally charged with enforcement of the Immigration and Nationality Act and is further authorized to delegate such powers and authority to subordinate employees of the DHS and its various divisions. 8 USC §1103(a). She is being sued in her official capacity.

16. Defendant Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE) and is responsible for the administration of the detention and removal of aliens in the United States. He is being sued in his official capacity.

V. FACTS

17. Hachem fled his native Mauritania because of religious persecution. He entered the United States on or about July 11, 2024, through El Paso, Texas seeking asylum in the U.S.

18. Hachem has been detained since his entry to the United States which was over one year ago – July 11, 2024.

19. Over eleven months after he sought asylum in the U.S., on June 25, 2025, Immigration Judge Michael Pleters at the El Paso Immigration Court denied

Hachem's asylum application but granted him Deferral of Removal Under the U. N. Convention against Torture. (CAT Deferral)

20. Both the Petitioner and the Respondents waived appeal which means that the decision has been final since June 25, 2025. As explained below, Hachem now has a final order of removal but is allowed to remain in the U.S. pursuant to the grant of CAT Deferral.

21. Upon information and belief, the Respondents have attempted to remove Hachem to a third country (which is permissible under certain circumstances when a person has been granted CAT Deferral) without success.

22. Hachem is still detained by the Immigration authorities. He has been detained for approximately 193 days after being granted CAT Deferral.

VI. APPLICABLE LAW

23. A district court has jurisdiction to grant a writ of habeas corpus where a Petitioner is held in federal custody in violation of the Constitution or laws of the United States. See, 28 U.S.C. § 2241. At its "historical core," the writ of habeas corpus functions as a critical safeguard for reviewing the legality of executive detention, a context in which its protections are at their zenith. *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001). Section 2241(c)(3) expressly authorizes any person to seek federal judicial relief where he or she is held "in custody in violation of the Constitution or laws . . . of the United States." *Zadvydas v. Davis*, 533 U.S. 678,

687 (2001). Accordingly, § 2241 confers jurisdiction upon federal courts to adjudicate challenges to the lawfulness of immigration-related detention. *Id.*; see also *Demore v. Kim*, 538 U.S. 510, 517 (2003).

24. Habeas corpus is “the basic method for obtaining review of continued custody after a deportation order has become final” and is the appropriate vehicle for statutory and constitutional challenges to prolonged post-removal-period detention. *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001) (citation omitted). In *Zadvydas*, the Supreme Court held that post-removal-order detention is presumptively reasonable for only six months. *Id.* at 701. Once detention exceeds that presumptively reasonable period, and the noncitizen demonstrates that there is no significant likelihood of removal in the reasonably foreseeable future, the Government bears the burden of justifying continued detention. *Id.* at 701–02. Whether detention has extended beyond the period reasonably necessary to effectuate removal is thus dispositive of the Government’s statutory authority to continue custody, and the federal habeas statute squarely vests district courts with the authority to resolve that question. *Id.* at 699 (citing 8 U.S.C. § 2241(c)(3)).

25. Non-citizens in immigration removal proceedings can seek three main forms of relief based on their fear of returning to their home country: asylum, withholding of removal, and CAT relief. Non-citizens may be ineligible for asylum for several reasons, including failure to apply within one year of entering the United States. See 8 U.S.C. § 1158(a)(2). There are fewer restrictions on eligibility

for withholding of removal, id. § 1231(b)(3)(B)(iii), and no restrictions on eligibility for CAT deferral of removal. 8 C.F.R. § 1208.16.

26. To be granted CAT relief, a non-citizen must show that “it is more likely than not that he or she would be tortured if removed to the proposed country of removal.” 8 C.F.R. § 1208.16(c)(2). An applicant for CAT relief must show a higher likelihood of torture than the likelihood of persecution an asylum applicant must demonstrate. *Id.*

27. An alien who has been ordered removed but has been found under § 1208.16(c)(3) to be entitled to protection under the Convention Against Torture; and is subject to the provisions for mandatory denial of withholding of removal under § 1208.16(d)(2) or (d)(3), shall be granted deferral of removal to the country where he or she is more likely than not to be tortured. 8 C.F.R. §1208.17(a)

28. Once withholding or CAT relief is granted, either party has the right to appeal that decision to the BIA within 30 days. See 8 C.F.R. § 1003.38(b). If both parties waive appeal or neither party appeals within the 30-day period, the withholding or CAT relief grant and the accompanying removal order become administratively final. See *Id.* § 1241.1.

29. Pursuant to 8 U.S.C. § 1231, once an immigration judge issues a removal order and that order becomes “final,” the Attorney General has ninety days to affect the detainee’s departure from the United States. See 8 U.S.C. § 1231(a)(1)(A); *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006). In general,

during this 90- day removal period, the detainee must remain detained. 8 U.S.C. § 1231(a)(2). If the detainee is not removed within that 90-day period, he may then become eligible for supervised release. See 8 U.S.C § 1231(a)(3).

30. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered the extent of immigration officials’ authority to detain noncitizens post-removal order under 8 U.S.C. § 1231. The Supreme Court expressly stated that there is “nothing in the history of [§ 1231] that clearly demonstrates a congressional intent to authorize indefinite, perhaps permanent, detention. The purpose of detention during and beyond the removal period is to “secure[] the alien’s removal.” *Id.* at 682. Because the purpose of ongoing detention under 8 U.S.C. § 1231(a)(6) is to facilitate removal, in order to determine whether continued post-removal order detention is lawful, habeas courts must ask whether a petitioner’s removal is reasonably foreseeable. *Id.* at 699–700.

31. The Supreme Court in *Zadvydas* construed § 1231(a)(6) to contain an implicit time limit. 533 U.S. at 682. The Court held that § 1231(a)(6) authorizes detention only for “a period reasonably necessary to bring about the [non-citizen]’s removal from the United States.” *Id.* at 689. Six months of post-removal order detention is considered “presumptively reasonable.” *Id.* at 701

32. After six months of detention, if there is “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the burden shifts to the Government to justify continued detention. *Zadvydas*, 533

U.S. at 701.

33. DHS regulations provide that before the end of the 90-day removal period that ensues upon a non-citizen's removal order becoming final, the local ICE field office with jurisdiction over the non-citizen's detention must conduct a custody review to determine whether the non-citizen should remain detained. See 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). If the noncitizen is not released following the 90-day custody review, jurisdiction transfers to ICE Headquarters (ICE HQ), *Id.* § 241.4(c)(2), which must conduct a custody review before or at 180 days. *Id.* § 241.4(k)(2)(ii). In making these custody determinations, ICE considers several factors, including whether the non-citizen is likely to pose a danger to the community or a flight risk if released. *Id.* § 241.4(e). If the factors in § 241.4 are met, ICE must release the non-citizen under conditions of supervision. *Id.* § 241.4(j)(2).

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF VIOLATION OF DUE PROCESS FIFTH AMENDMENT OF THE US CONSTITUTION

34. Petitioners reallege the foregoing paragraphs as if set forth fully herein.

35. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment— from government custody, detention, or other forms of physical restraint—lies at

the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001)

36. The Supreme Court has long made clear that when the government seeks to deprive an individual of a “particularly important individual interest[],” it must bear the burden of justifying this deprivation by clear and convincing evidence. *Addington v. Texas*, 441 U.S. 418, 424 (1979). Hachem has a significant interest at stake, and a “clear and convincing” evidence standard provides the appropriate level of procedural protection. *Id.* at 423.

37. To comport with substantive due process, civil immigration detention must bear a reasonable relationship with its two regulatory purposes— (1) to ensure the appearance of noncitizens at future hearings and (2) to prevent danger to the community pending the completion of removal. *Zadvydas*, 533 U.S. at 690-91.

38. Furthermore, the Respondents’ detention of Hachem for at least 90 days past the grant of relief without a prompt, individualized determination of whether he should remain detained is inconsistent with ICE’s own long-standing policy, thereby violating due process. See *Accardi v. Shaughnessy*, 347 U.S. 260 (1954)

**SECOND CLAIM FOR RELIEF
VIOLATION OF THE
IMMIGRATION AND NATIONALITY ACT**

39. Petitioner realleges the foregoing paragraphs as if set forth fully

herein.

40. Hachem's continued detention is unconstitutional and in violation of 8 U.S.C. § 1231.

41. Hachem's continued detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his removal is not reasonably foreseeable. He cannot be deported to his home country of Mauritania because he was granted protection under the Convention Against Torture (CAT) with respect to that country. 8 C.F.R. § 1208.17. The Respondents have had over six months to attempt to remove him to another country and have been unable to do so.

42. Petitioner's continued detention has become unreasonable because his removal is not reasonably foreseeable. Therefore, his continued detention violates 8 U.S.C. § 1231(a)(6), and he must be immediately released.

**THIRD CLAIM FOR RELIEF
VIOLATION OF THE
ADMINISTRATIVE PROCEDURES ACT**

43. Petitioner realleges the foregoing paragraphs as if set forth fully herein.

44. Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

45. The APA affords a right of review to a person who is “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702. Respondents’ continued detention of Petitioner up to and past the 90-day removal period has adversely and severely affected Petitioner’s liberty and freedom.

VII. CONCLUSION

THEREFORE, the Petitioner respectfully requests that this Court:

- a. Issue a Writ of Habeas Corpus on the ground that the continued detention of Hachem violates the Due Process Clause, the INA and the APA and order Hachem’s immediate release;
- b. Award Plaintiffs their costs and reasonable attorneys’ fees in this action;
- c. Any other relief the Court deems appropriate.

Respectfully submitted:

s/Caridad Pastor
Caridad Pastor
Pastor and Associates, P.C.
Attorneys for Petitioner
11 Broadway Suite 1005
New York, New York 10004
(248) 619-0065
carrie@pastorandassociates.com

Dated: December 9, 2026