

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

2:26-cv-00064-CDS-BNW

Jhoan Yesid Torres Gonzalez

Petitioner,


v.

PAMELA BONDI, Attorney General of the United States; KRISTI NOEM, Secretary, United States Department of Homeland Security; MICHAEL BERNACKE, Field Director, West Valley City Office; TODD LYONS, Acting Director; JOHN MATTOS, Nevada Southern Detention Center,


Respondents.

Case No.


PETITION FOR WRIT OF HABEAS  
CORPUS UNDER 28 U.S.C. § 2241

<input checked="" type="checkbox"/> FILED	<input type="checkbox"/> RECEIVED
<input type="checkbox"/> ENTERED	<input type="checkbox"/> SERVED ON
COUNSEL/PARTIES OF RECORD	
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> <p>JAN 12 2026</p> </div>	
<p>CLERK US DISTRICT COURT DISTRICT OF NEVADA</p>	
BY: _____	 DEPUTY

Personal Information

1. (a) JHOAN YESID TORRES GONZALEZ  
(b) Other names used:
2. Place of confinement:
  - (a) Nevada Southern Detention Center
  - (b) 2190 E. Mesquite Avenue, Pahrump, NV 89048
  - (c) Case number or numbers: My A# is 
3. I am currently being held on orders by federal authorities: United States Immigration and Customs Enforcement.
4. I am currently being held pursuant to a final removal order.

Decision or Action You Are Challenging

5. What are you challenging in this petition: Immigration Detention.
6. Provide more information about the decision or action you are challenging:
  - (a) Name and location of the agency or court: United States Immigration and Customs Enforcement.
  - (b) Docket number, case number, or opinion number: My A# is 
  - (c) Decision or Action you are challenging: I was originally ordered removed in or around **December 15, 2025**.

I was taken into custody by ICE on **July 22, 2025** I have been detained in ICE custody for 30 days following my final deportation order.

Your Earlier challenges of the Decision or Action:

- 7-9. First, second, and third appeals: None
10. Motion under 28 U.S.C. § 2255: N/A

11. Appeals of immigration proceedings:

Does this case concern immigration proceedings? Yes

(a) Date you were taken into immigration custody: **July 22, 2025**

(b) Date of the removal or reinstatement order: **December 15, 2025**

(c) Did you file an appeal with the Board of Immigration Appeals?

If "Yes," provide answers: Yes

(1) Date of filing: **December 16, 2025**

(2) Case number:

(3) Result: Pending

(4) Date of result: No Result

(5) Issues raised: To have the BIA review my case on the erred decision the IJ made on denying my asylum application.

(d) Did you appeal the decision to the United States Court of

Appeals? If "Yes," provide answers: No

(1) Date of filing:

(2) Case number:

(3) Result:

(4) Date of result:

(5) Issues raised:

12. Other appeals:

Other than the appeals listed above, have you filed any other petition, application, or motion about the issues raised in this petition? \_\_\_ Yes X No

## JURISDICTION AND VENUE

This Court has jurisdiction pursuant to 28 U.S.C. §2241 (granting general habeas authority to district courts); Art. 1 § 9, cl. 2 of the U.S. Constitution (the “Suspension Clause”); 28 U.S.C. §1331 (federal question jurisdiction); and 28 U.S.C. § 2201, 2202 (Declaratory Judgment Act).

Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. See e.g. *Zadvydas v. Davis*, 533 U.S. 678 (2001). Federal courts also have federal questions jurisdiction, through the Administrative Procedures Act (APA) to “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). APA claims are cognizable in habeas. 5 U.S.C. § 703. The APA affords a right of review to a person who is “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702. Petitioner's continued detention violates his constitutional due process rights, and constitutes arbitrary and capricious agency action, and is an abuse of discretion.

Venue is proper in this district pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this district at Nevada Southern Detention Center.

Accordingly, Petitioner's habeas petition is properly before this court.

## PARTIES

JHOAN YESID TORRES GONZALEZ is a citizen of Venezuela. He is detained in the control and custody of Respondents in Nevada.

John Mattos is the warden of Nevada Southern Detention Center

John Mattos, in his official capacity, is the immediate custodian of Petitioner.

Michael Bernacke is the Field Director of the West Valley City Office of ICE Enforcement and Removal Operations, which has jurisdiction of enforcement and removal operations over detention facilities in Nevada, including Nevada Southern Detention Center where Petitioner is detained. Bernacke, in his official capacity, is a legal custodian of the Petitioner.



## GROUNDS FOR RELIEF

### **Ground One: Petitioner's continued detention violates his Fifth Amendment right to due process because his removal is not reasonably foreseeable.**

The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. Amend. V. Petitioner has a liberty interest in remaining free from physical confinement where removal is not reasonably foreseeable. Respondents have violated the Due Process Clause of the Fifth Amendment because Petitioner's removal is not reasonably foreseeable.

The INA requires mandatory detention of individuals with final removal orders only during the 90-day removal period. 8 U.S.C. § 1231(a)(2). A non citizen who is not removed within that period “shall be subject to supervision under regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3). If ICE does not remove the non citizen within the 90-day removal period, the non citizen “may be detained beyond the removal period.” 8 U.S.C. § 1231(a)(6) (emphasis added). However, in *Zadvydas*, supra, the Supreme Court concluded that due process imposes an “implicit limitation” upon 8 U.S.C. §1231(a)(6). *Zadvydas*, 533 U.S. at 689. Specifically, the Court held that 8 U.S.C. § 1231(a)(6) authorizes detention only for “a period reasonably necessary to bring about the [non citizen]'s removal from the United States” and that six months of detention after the removal order is final is “presumptively reasonable.” *Id.* at 701. The Court further determined that “once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.*

Petitioner's detention is governed by 8 U.S.C. § 1231(a)(6) because he has been detained for more than 90 days since he was ordered removed. Therefore, the *Zadvydas* framework applies.

Petitioner's continued detention is unreasonable and his removal is not reasonably foreseeable. As of the filing date of this Amended Petition, 30 days have passed since the immigration judge issued an order of removal in immigration proceedings. Despite his lengthy detention, Respondents have not been able to effectuate his removal either to his country of origin, or to a third country. His removal is no longer reasonably foreseeable, so the Constitution and the holding of *Zadvydas* compel his immediate release. *See* 533 U.S. At 700-

01 (describing release as an appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release “subject to terms of supervision”).

**Ground Two: Petitioner's continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6).**

As provided in Ground One, above, Petitioner's detention is governed by 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas, supra*. Petitioner's continued detention violates 8 U.S.C. § 1231(a)(6) because it is both unreasonable and because removal is not reasonably foreseeable. As further discussed in Ground Three, incorporated herein by reference, Petitioner poses neither a risk of flight nor a danger to the community. Rather, his continued detention under 8 U.S.C. § 1231(a)(6) is driven by sweeping and arbitrary DHS policies. Moreover, and as discussed in Ground One, Petitioner's removal is not reasonably foreseeable. This Court should order that Petitioner be released.

**Ground Three: ICE's continued detention of Petitioner, without providing and individualized custody assessment pursuant to ICE policy, violates the Administrative Procedures Act, 5 U.S.C. § 706(2)(A).**

Under the Administrative Procedures Act (APA), a court must hold unlawful and set aside agency action found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” or “without observance of procedures required by law.” 5 U.S.C. §706(2). An agency action is “arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to difference in view or the product of agency expertise.” *Motor Vehicles Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Courts “defer to an agency's determination so long as the agency 'gives adequate reasons for its decisions, in the form of a satisfactory explanation for its action including a rational connection between the facts found and the choice made.’” *Nat. Res. Def. Council, Inc. v. United States Env't Prot. Agency*, 961 F.3d 160, 170 (2d Cir. 2020) (cleaned-up).

As noted in 8 C.F.R. §241.4, before the end of the 90-day removal period, the local ICE field office with jurisdiction over a noncitizen's detention must conduct a custody review to

determine whether the noncitizen should remain detained. *See* 8 C.F.R. §241.4(c)(1), (h)(1)(i). A copy of any decision to release or continue to detain a noncitizen “shall be provided to the detained [noncitizen].” 8 C.F.R. §241.4(d). Where ICE decides that a noncitizen will stay detained, the decision provided to the noncitizen “shall briefly set forth the reasons for the continued detention.” *Id.* The criteria for determining if continued detention is warranted mainly concerns whether the noncitizen presents a risk of flight or danger to the community. 8 C.F.R. §241.4(e). The review panel members must also determine that travel documents are not available or that “immediate removal, while proper, is otherwise not practicable or not in the public interest.” *Id.*

Petitioner's continued detention without an individualized assessment is arbitrary and capricious. Because there is no evidence that Respondent found Petitioner to be a danger or a flight risk, or that he had travel documents, the decision to continue detaining him violates DHS's own regulations. “It is a familiar rule of administrative law that an agency must abide by its own regulations.” *Fort Stewart Schs. v. Fed. Lab. Rels. Auth.*, 495 U.S. 641, (1990); *see also United States ex rel Accardi v. Shaughnessy*, 347 U.S.260 (1954) (holding that government agencies are required to follow their own regulations). In addition, continuing to detain Petitioner is contrary to ICE's longstanding policy of releasing individuals granted withholding of removal absent an exceptional reason not to do so. Even the new directives regarding removal to third countries, which on their face are unconstitutional and a violation of the INA because they fail to provide the requisite due process and comply with the regulations, do not provide any reason that a noncitizen in Petitioner's position should not be released. Accordingly, Petitioner's continued detention violates the APA because it is arbitrary and capricious and not in accordance with law.

This Court should order that Petitioner be released because Respondents have not demonstrated that he was afforded proper procedures related to his continued detention, or that he warrants continued detention under the regulations. Accordingly, his continued detention is unlawful.

**Ground Four: ICE's policy to remove noncitizens to a third country with no notice of opportunity to seek a fear-based protection constitutes arbitrary and capricious agency action in violation of the Administrative Procedure Act, 5 U.S.C. § 706.**

The APA entitles “a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . to judicial review.” 5 U.S.C. § 702. Further, the APA compels a reviewing court to “hold unlawful and set aside agency action, findings and conclusions found to be . . . arbitrary [or] capricious, . . . otherwise not in accordance with law,” *id.* § 706(2)(A), or “short of statutory right,” *id.* § 706(2)(C). The APA also compels a reviewing court to “hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

Petitioner has a due process right to meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports him to a third country. *See Andriansian v. INS*, 180 F.3d 1033, 1041 (W.D. Wash. 2019). Petitioner also has a due process right to implementation of a process or procedure to afford these protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991). Respondents, however, have adopted a policy-set forth in their March 30, 2025 memo and July 9, 2025, directive that is arbitrary and capricious and deprive Petitioner of meaningful notice and an opportunity to present a fear-based claim to an immigration judge prior to his deportation to a third country. Moreover, Respondents' policy also violates the INA and implementing regulations which mandate that Respondents refrain from removing Petitioner, and similarly situated individuals, to a third country where they will likely be persecuted or tortured, thus requiring Respondents to provide meaningful notice of deportation to a third country and the opportunity to present a fear-based claim to an immigration judge before deporting an individual to a third country. In this case, the March 30 memo and July 9 directive and Respondents recent actions in this case and others, demonstrate Respondents do not intend to observe those protections.<sup>1</sup>

The APA empowers federal courts to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). The Court should hold that Respondents' actions and policy are unlawful and compel that before any attempt is made to deport him to a third country, Petitioner be provided with meaningful notice and opportunity to present a fear-based claim to an immigration judge.

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<sup>1</sup> See also Lunga Masuku, Eswatini government faces court challenges for accepting US deportees, THE GUARDIAN (Aug. 22, 2025), <https://www.reuters.com/world/africa/eswatini-government-faces-court-challenges-accepting-us-deportees-2025-08-22/>.

**Ground Five: Petitioner's detention in immigration custody pending removal to any third country pursuant to recent ICE policy violates the Due Process Clause of the Fifth Amendment.**

“It is well established that the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.” *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025)(per curiam (quoting *Renov. Flores*, 507 U.S. 292, 306 (1993))). Petitioner is this entitled to “notice and an opportunity to be heard appropriate to the nature of the case.” *Id.* (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). As relevant here, this means that Petitioner is entitled to notices that he is to be removed to a third country “within a reasonable time and in such manner as will allow [him] to actually seek habeas relief in the proper venue before such removal occurs.” *Id.*

Petitioner has not had an opportunity to contest removal to any third country on the ground that he may face persecution or torture if he is removed to that country. To the extent that Petitioner's continued detention is meant to facilitate his removal to a third country, his detention is unlawful because, as argued in Ground Four, ICE's procedure for third country removal is arbitrary and capricious, and does not comply with due process. Any such future removal would be accomplished in violation of his due process rights, rendering his detention on that basis unlawful. This due process claim “necessarily impl[ies] the invalidity of [his] confinement and removal” to a third country not yet named in any removal order. *J.G.G.*, 145 S. Ct. at 1005. Thus, his due process claim is properly brought in these habeas proceedings, and ordering his release from detention is a proper remedy for such violation.

**PRAYER FOR RELIEF**

Accordingly, Jhoan Yesid Torres Gonzalez respectfully requests that this Court:

1. Issue a writ of habeas corpus to have Jhoan Yesid Torres Gonzalez brought before the Court so that he may be discharged from his unconstitutional confinement;
2. Conduct an evidentiary hearing at which proof may be offered concerning the allegations in this amended petition and any defenses that may be raised by respondents; and
3. Grant such other and further relief as, in the interest of justice, may be appropriate.

DATED this 07 day of JANUARY, 2026.

Respectfully submitted,

JHOAN YESID TORRES GONZALEZ  
JHOAN YESID TORRES GONZALEZ

PETITIONER