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**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

Jose HERLINDO CHINCHILLA,

Petitioner,

v.

Jason STREEVAL, Warden of Stewart
Detention Center, in his official capacity;
George STERLING, Deputy Field Office
Director of the Atlanta Field Office, U.S.
Immigration and Customs Enforcement; Todd
LYONS, in his official capacity as acting
Director of U.S. Immigration and Customs
Enforcement, Kristi NOEM, in her official
capacity as Secretary of the U.S. Department
of Homeland Security, and Pamela BONDI,
in her official capacity as U.S. Attorney
General; Daren MARGOLIN, Director for
Executive Office for Immigration Review,

Respondents.

**EMERGENCY HEARING
REQUESTED**

Case No.:

PETITION FOR WRIT OF HABEAS CORPUS

The Petitioner, by and through his own and proper person and through his undersigned counsel, petition this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful detention, in violation of his constitutional and statutory rights.

Introduction

1. Petitioner is presently being detained by the U.S. Immigration and Customs Enforcement (“ICE”) at the Stewart Detention Center in Lumpkin, Georgia. *See Ex. A*, ICE Detainee Locator Screenshot, 1/16/2026, 9:16 am.

2. Petitioner is a native and citizen of Honduras. He resides in Charlotte, North Carolina area with his wife and six children. He is the primary source of financial support for his family.

3. Petitioner has no criminal history, and he was detained by U.S. Immigration and Customs Enforcement (“ICE”) on or around January 7, 2026, while walking on the street in Charlotte.

4. Petitioner was previously granted withholding of removal by an Immigration Judge on November 21, 2014. *See Ex. B*, EOIR Case Information. He has maintained lawful employment authorization since that time, and he has not violated the law or his immigration status in any way.

5. Petitioner’s arrest and detention became unlawful immediately upon his apprehension because ICE stopped him without a warrant, and without any cause. Petitioner’s continued detention is a violation of due process and Petitioner’s constitutional rights.

6. Petitioner respectfully asks this Court to issue a temporary restraining order directing Respondents to immediately release Petitioner, or in the alternative, to conduct a bond hearing to ensure his due process rights and his ability to care for his family, who have needs that require Petitioner’s presence and support.

7. It has come to our attention that ICE anticipates removing Petitioner from the United States within the next 24 hours, presumably to a country other than Honduras. Petitioner and counsel have been provided no further information as to his planned removal.

8. In the alternative, Petitioner requests the Court order Respondents to show cause why this Petition should not be granted within three days and issue a stay of his removal by the end of the day today. *See* 28 U.S.C. § 2243.

Jurisdiction and Venue

9. The action arises under the Constitution of the United States, the Immigration and Nationality Act of 1952, as amended (“INA”), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*

10. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241, and Article I, section 9, clause 2 of the United States Constitution (the “Suspension Clause”), as Petitioner is presently subject to immediate detention and custody under color of authority of the United States government, and said custody is in violation of the Constitution, law or treaties of the United States.

11. This action is brought to compel the Respondents, officers of the United States, to accord Petitioner the due process of law to which he is entitled under the Fifth and Fourteenth Amendments of the United States Constitution.

12. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgments Act, 28 U.S.C. § 2201 *et seq.*, 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1361 (mandamus), and the All Writs Act, 28 USC § 1651.

13. Venue is proper in the Middle District of Georgia because Petitioner is presently detained by Respondents at Stewart Detention Center – which is located within the Middle District. 28 U.S.C. § 1391(b), (e)(1).

Parties

14. Petitioner is a native and citizen of Honduras. Petitioner is presently detained at Stewart Detention Center in Lumpkin, Georgia.

15. Respondent Jason Streeval is the warden of the Stewart Detention Center and controls the detention center where Petitioner is confined under the authority of ICE. Mr. Streeval has direct physical custody of Petitioner and is his immediate custodian. Mr. Streeval is sued in his official capacity.

16. Respondent George Sterling is the Acting Director of ICE's Atlanta Field Office, which has jurisdiction over ICE detention facilities in Georgia, including the Stewart Detention Center. He exercises authority over Petitioner's detention and is sued in his official capacity.

17. Respondent Todd Lyons is the Acting Director of ICE. He is responsible for the overall administration of ICE and for the implementation and enforcement of the immigration laws, including immigrant detention. As such, Mr. Lyons is a legal custodian of Petitioner. He is sued in his official capacity.

18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS). DHS is responsible for the administration of ICE, a component agency, and for the implementation and enforcement of the immigration laws. As such, Secretary Noem is a legal custodian of Petitioner. She is sued in her official capacity.

19. Respondent Pamela Bondi is the Attorney General of the United States and head of the Department of Justice, which encompasses the Board of Immigration Appeals (BIA) and the Immigration Courts. The Attorney General shares responsibility for the implementation and enforcement of the immigration laws with Respondents Lyons and Noem. Attorney General Bondi is a legal custodian of Petitioner and is sued in her official capacity.

20. Respondent Daren Margolin is the Director of the Executive Office for Immigration Review (EOIR). He has ultimate responsibility for overseeing the operation of the immigration courts and the BIA, including the conduct of bond hearings. Director Margolin is sued in his official capacity.

Custody

21. Petitioner is being unlawfully detained by ICE and he is very likely to be removed in the near future in violation of his constitutional protections.

Factual and Procedural Background

22. Petitioner is a native and citizen of Honduras. He is 54 years old and resides in Charlotte, North Carolina. He has six children, two are U.S. citizens, and the remainder have pending applications. He is currently detained at Stewart Detention Center.

23. On November 21, 2014, Petitioner was granted withholding of removal by an immigration judge in Pearsall, Texas. At the same time, the Immigration Judge issued an order of removal.

24. At no time following Petitioner's arrest did ICE explain why he was being detained or provide him an opportunity to seek additional relief, such as a Reasonable Fear Interview.

25. Respondent's counsel has reached out to various ICE officials to request that a Reasonable Fear Interview be provided by the Asylum Office. *See Ex. C*, Emails.

26. In the last 12 years since Petitioner was granted withholding of removal, Respondents have not raised any issues or concerns with Petitioner. Respondents have also not notified Petitioner of any change in circumstances that could explain their re-detention of Petitioner in January 2026.

27. Respondents have had more than 9 years to designate a country of removal, given Petitioner's grant of withholding of removal to Mexico.

28. Petitioner has three U.S. Citizen children who are 27, 25, and 20 years old. He is their only living parent, as their mother died several years ago.

Legal Framework

29. According to 8 U.S.C. § 1231(a)(1)(A), the government "shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period")." "During the removal period, the Attorney General shall detain the alien." 8 U.S.C. § 1231(a)(2)(A). Certain noncitizens are required to be further detained. Such noncitizens include those with criminal convictions. Here, there is no circumstance that would render Petitioner to be detained beyond the removal period.

30. Additionally, 8 C.F.R. § 241.13(i) governs the re-detention of a noncitizen with an OSUP. ICE may re-detain a noncitizen "if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2).

31. Factors that ICE considers in the re-detention determination include "the noncitizen's efforts to comply with the removal order; the history of ICE's efforts to remove individuals to the destination country or to third countries; the ongoing nature of ICE's efforts to remove the particular noncitizen and his assistance with those efforts; the reasonably foreseeable results of those efforts; and the views of the Department of State regarding the prospects for removal to the countries in question. 8 C.F.R. § 241.13(f)." *Phongsavanh v. Williams*, 2025 WL 3124032, at *5-6 (S.D. Iowa 2025).

32. In *Zadvydas*, the Supreme Court held that “once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). The Supreme Court in *Zadvydas* also determined that a six-month detention is presumptively reasonable, but that this presumption is rebuttable. *See Zavvar v. Scott, et al*, 2025 WL 2592543 (D. Md. Sept. 8, 2025) (holding that the 6-month presumption is rebuttable); *Munoz-Saucedo v. Pittman*, 2025 WL 1750346, at *6 (D.N.J. June 24, 2025); *see e.g., Ali v. Dep’t of Homeland Security*, 451 F. Supp. 3d 703, 707 (S.D. Tex. 2020) (holding that the “six-month presumption is not a bright line” and that *Zadvydas* “did not require a detainee to remain in detention for six months . . . before a habeas court could find that the detention is unconstitutional”); *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018) (“The Supreme Court in *Zadvydas* outlined a ‘guide’ for approaching these detention challenges . . . not a prohibition on claims challenging detention less than six months.” (quoting *Zadvydas*, 533 U.S. at 700–01)); *Cesar v. Achin*, 542 F. Supp. 2d 897, 905 (E.D. Wis. 2008) (concluding that “while detention pursuant to § 1231(a)(6) for up to six months is presumptively lawful, an alien may still state a claim for and demonstrate a constitutional violation within the six-month window”).

33. Because Petitioner’s detention has not exceeded six months, *Zadvydas* requires Petitioner to show that there is “no significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. at 701.

34. Unlike the Petitioner in *Zadvydas*, Petitioner has been granted withholding of removal to Honduras, “substantially increas[ing] the difficulty of removing” Petitioner. *Zavvar v. Scott, et al*, 2025 WL 2592543, at *15; *Munoz-Saucedo*, 2025 WL 1750346, at *6; *see* 8 C.F.R. § 1208.24(f). Petitioner cannot be removed without the lifting of the order providing for withholding of removal. *Id.*

35. Further, Petitioner has only ever lived in and been a citizen of Honduras, making removal to a third country highly unlikely.

36. Respondents have had more than 12 years to designate a country of removal for Petitioner, yet they have not even attempted to do so, making it even more likely that Petitioner will not be removed in the foreseeable future. *Zavvar v. Scott, et al*, 2025 WL 2592543, at *15; *Munoz-Saucedo*, 2025 WL 1750346, at *6; *Tadros v. Noem et al.*, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025).

37. As noted in *Munoz-Saucedo*, it is vital to the foreseeability analysis to acknowledge that “even if ICE identified a third country, Petitioner . . . would be entitled ‘to seek fear-based relief from removal to that country,’ which would require ‘additional, lengthy proceedings’”). 2025 WL 1750346, at *7. Petitioner must be immediately released from custody and afforded his due process rights to seek protection from a likely third country removal.

38. The lack of any action on behalf of Respondents for 12 years, and the lack of an explanation as to why Petitioner was detained in January 2026, all lead to the conclusion that Petitioner is unlikely to be afforded constitutional protections as required under the law without this Court’s immediate intervention. *See Villanueva v. Tate*, 2025 WL 2774610, at *10 (S.D. Tex. 2025) (where the court granted the petition for habeas corpus based on *Zadvydas* because the petitioner had withholding of removal, respondents had not initiated proceedings to lift the order granting withholding of removal, respondents made no attempt to remove petitioner for eight years after his removal order, and there was no change in circumstances to make petitioner’s removal foreseeable).

39. If ICE intends to remove Petitioner to a third country that was never designated during the course of his removal proceedings, or in the 12 years since he was granted withholding of

removal, he must be put on notice as to the intended third country of removal and afforded a reasonable fear interview. Specifically, under “the Due Process Clause of the Fifth Amendment, noncitizens are entitled to reasonable notice of the country to which they will be removed and an opportunity to present claims for various forms of protection from removal”. *See Kumar v. Wamsley*, 2:25-cv-02055-KKE (Western District of Washington, November 17, 2025); *see also Salim Nizar Esmail v. Noem*, No. 2:25-CV08325-WLH-RAO, 2025 WL 3030589, at *5 (C.D. Cal. Sept. 26, 2025) (concluding petitioner satisfied standing to challenge possible third-country removal because “[t]he fact that [the feared violation of his constitutional right to due process] is directly traceable to a written policy” to which he, “as a noncitizen with a removal order . . . is, therefore, inherently subject . . . sufficiently demonstrate[s] that he is realistically threatened by a repetition of the violation” (citation modified)).

Claims for Relief

Count I

Violation of 8 U.S.C. § 1231(a) and Fifth Amendment Due Process Clause

40. All of the foregoing allegations are repeated and incorporated as though fully set forth herein.

41. 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).

42. A noncitizen 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). 126. While § 1231(a)(6) permits detention beyond the removal period in certain situations, “once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699.

43. No statute permits Defendants to re-detain an individual who has been released under § 1231(a)(3) without evidence that removal is now reasonably foreseeable, including required constitutional protections, such as a reasonable fear interview, or that the individual has violated the conditions of their release.

44. 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.

45. Petitioner was granted withholding of removal. Following the grant of withholding of removal, he has been complying with the law ever since.

46. Petitioner has a liberty interest in remaining free from physical confinement where removal is not reasonably foreseeable, he has not violated the conditions of his release, and where re-detention is unlawful because Defendants have not created a lawful mechanism to ensure that noncitizens receive meaningful notice and an opportunity to present a fear-based claim before deportation to a third country.

47. For these reasons, Defendants have violated the INA, implementing regulations, and the Due Process Clause of the Fifth Amendment.

Count II

Fifth Amendment Due Process Clause and Administrative Procedure Act, 5 U.S.C. § 706(2)(D)

48. The allegations in the above paragraphs are realleged and incorporated herein.

49. The INA, FARRA, and implementing regulations mandate meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS departs a person to a third country.

50. Petitioner has a due process right to meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS departs a person to a third country. *See, e.g.,*

Aden v. Nielsen, 409 F. Supp. 3d 998, 1004 (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).

51. Accordingly, the Court should compel Respondents to provide Petitioner with meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country.

Prayer for Relief

WHEREFORE, Petitioner respectfully requests that this Honorable Court:

- A. Accept jurisdiction over this action;
- B. Order Respondents not to transfer Petitioner out of the state of Georgia or from Stewart Detention Center during the pendency of these proceedings to preserve jurisdiction and access to counsel;
- C. Order Respondents not to remove or attempt to remove Petitioner from the United States;
- D. Declare that Respondents' actions to detain Petitioner violate the Due Process Clause of the Fifth Amendment and violate the Immigration and Nationality Act;
- E. Grant the writ of habeas corpus on the ground that Petitioner's continued detention violates the Due Process Clause and order Petitioner's immediate release;
- F. In the alternative, conduct a bond hearing or remand to the immigration judge for a bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) alternatives to detention that could mitigate flight risk are considered; and
- G. Grant any other relief that is equitable and just.

Dated: January 16, 2026.

Respectfully submitted,

/s/ Danielle M. Claffey

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