

1. Petitioner Jose Ricardo Monge Aviles was born in El Salvador. On May 5, 2015, an Immigration Judge granted him a form of relief called deferral of removal under the Convention Against Torture, which prohibits Respondents from removing him to his native El Salvador. Should Respondents wish to remove Petitioner to El Salvador, the law sets forth specific procedures by which they can reopen the case and seek to set aside the grant of deferral of removal. Should Respondents wish to remove Petitioner to any other country, they would first need to provide him with notice and the opportunity to apply for protection as to *that* country as well. Until they do either of these things, they cannot remove Petitioner from the United States. But Respondents have arrested Petitioner without warning and without observance of procedures required by regulation, and are detaining him for no reason; they now appear to be seeking to deport Petitioner without observance of any legal procedures whatsoever, ripping him away from his family. Such conduct cries out for immediate judicial relief.

JURISDICTION AND VENUE


2. 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).

3. 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.

4. Venue lies in this District because Petitioner is currently detained at the U.S. Penitentiary at Lewisburg, in Lewisburg, Pennsylvania; and each Respondent is an agency or 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, Michael Rose, the Field Office Director for the Philadelphia ICE Field Office, maintains his principal place of business in Philadelphia, PA.

THE PARTIES

5. Petitioner Jose Ricardo Monge Aviles (A ) is a native of El Salvador, who resides in Pennsylvania. He is currently detained by Respondents in the U.S. Penitentiary at Lewisburg, in Lewisburg, Pennsylvania.

6. 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.

7. 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.

8. Respondent Pamela Bondi is the Attorney General of the United States. The Immigration Judges who decide removal cases and application for relief from removal do so as her designees.

9. Respondent Michael Rose, the Field Office Director of the U.S. Immigration and Customs Enforcement (“ICE”) Philadelphia Field Office, is responsible for overseeing ICE operations pertaining to noncitizens within its territorial jurisdiction, such as Petitioner, including detentions, enforcement, and removal operations. His regular place of business is in Philadelphia, PA. He is the federal official with legal authority over the civil immigration detainees at U.S. Penitentiary at Lewisburg, in Lewisburg, Pennsylvania and therefore he is the immediate legal custodian of Petitioner for purposes of a federal habeas petition.

10. Respondent Jessica Sage is the warden at the U.S. Penitentiary at Lewisburg, in

Lewisburg, Pennsylvania, where Petitioner is currently detained. She is the immediate custodian who is currently holding Petitioner in physical custody. She is sued in his official capacity.

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

LEGAL BACKGROUND

12. The Convention Against Torture (“CAT”) prohibits the government from removing a noncitizen to a country where he is more likely than not to face torture. 8 C.F.R. § 1208.17(a). This protection is usually referred to as “CAT deferral of removal.” For an immigration judge (serving as the designee of Respondent Bondi) to grant CAT deferral of removal to a noncitizen, the noncitizen bears the burden of proof that he is more likely than not to suffer torture by or at the acquiescence of a public official. *Id.*

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

14. However, deferral of removal is a country-specific form of relief. Should the government wish to remove an individual with a grant of deferral of removal to some other country, it must first provide that individual with notice and an opportunity to apply for deferral of removal as to *that* country as well, if appropriate. *Cf. Guzman Chavez v. Hott*, 940 F.3d 867, 880 (4th Cir. 2019) (“And precisely because [deferral] of removal is country-specific, as the government says, if a noncitizen who has been granted [deferral] as to one country faces removal to an alternative country, then she must be given notice and an opportunity to request [deferral] of removal to that particular country.”), *rev'd on other grounds, Johnson v. Guzman Chavez*, 594 U.S. 523 (2021). *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”).

15. 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).

16. 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).

17. 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.”).

18. 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. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 699).

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.

22. The order of supervision regulation 8 C.F.R. § 241.4 addresses continued detention beyond the period of removal. Subsection 241.4(l)(1) provides that "[u]pon revocation, the alien will be notified of the reasons for revocation of his or her release or parole."


23. The regulation allows re-detention, *inter alia*, when "[i]t is appropriate to enforce a removal order." 8 C.F.R. § 241.4(l)(2)(iii).

24. Finally, the regulation promises: “The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.4(l)(1).

25. Specific officials are authorized to revoke an order of supervision, namely the Executive Associate Commissioner. See 8 C.F.R. § 241.4(l)(2). However, that authority can be delegated to the district director when “revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner.” *Id.*

26. An individual subject to a final order of removal, who is released on an order of supervision, is eligible for work authorization “only if the alien cannot be removed due to the refusal of all countries designated by the alien or under section 241 of the Act to receive the alien, or because the removal of the alien is otherwise impracticable or contrary to the public interest...” See 8 C.F.R. § 274a.12(c)(18); *see also* 8 U.S.C. § 1231(a)(7)(A).

FACTS

27. Petitioner Jose Ricardo Monge Aviles is a citizen and national of El Salvador, born on  and has no claim to citizenship or legal immigration status in any other country.

28. Petitioner became a lawful permanent resident in the United States on July 18, 1989.

29. On January 9, 2002, Petitioner was convicted in Lackawanna County, Pennsylvania of aggravated indecent assault and attempt to commit aggravated indecent assault. He was sentenced for four years incarceration.

30. Petitioner was served with an ICE I-862 Notice to Appear, commencing removal proceedings against him on October 24, 2014. Petitioner was detained during this time, and throughout his removal proceedings.

31. On May 5, 2015, Petitioner was ordered removed to El Salvador. However, the immigration judge found that Petitioner was more likely than not to face torture in El Salvador and so further ordered that Petitioner's application for deferral of removal under the Convention Against Torture be granted. Neither party appealed the grant of deferral of removal. *See* EOIR Automated Case Information, which reflects a grant date of October 14, 2015 (*available at: <https://acis.eoir.justice.gov/>* (last visited on February 6, 2026)):

The screenshot shows a web browser window with the address bar displaying "acis.eoir.justice.gov/en/caseInformation". The page header includes "EOIR | Automated Case Information" and a notice about court closures. The main content area displays the case name "MONGE AVILES, JOSE RICARDO" and "A-Number" (redacted). The page is divided into several sections:

- Next Hearing Information:** "There are no future hearings for this case."
- Court Decision and Motion Information:** "The immigration judge **GRANTED** an application." It lists the decision date as "October 14, 2015" and the court address as "625 EVANS STREET ROOM 148A, ELIZABETH, NJ 07201".
- BIA Case Information:** "No appeal was received for this case."
- Court Contact Information:** "If you require further information regarding your case, or wish to file additional documents, please contact the immigration court." It lists the court address as "625 EVANS STREET ROOM 148A, ELIZABETH, NJ 07201" and the phone number as "(908) 787-1355".

32. To this day, since being granted deferral of removal to El Salvador, Respondents have not taken any steps to reopen or rescind the grant of relief.

33. Petitioner was held in custody while ICE attempted to remove him to some other country, other than El Salvador. Petitioner remained in ICE custody until April 6, 2016, at which time ICE determined that removal from the United States was not significantly likely in the reasonably foreseeable future, and released him from custody on an Order of Supervision. *See* Ex. 1, ICE Notice of Release and Form I-220B Order of Supervision.

34. Petitioner dutifully reported on his OSUP from 2016 until December 2025, without incident or any failure to comply with the terms of release, as required by Respondents. Namely, he was required to appear for an ICE check-in 1-2 times per year.

35. Since being granted deferral of removal under CAT, Petitioner went on to build a life, get married, and work lawfully in the United States for many years. *See* Ex. 2, USCIS issued Employment Authorization Documents. When Respondents issued Petitioner his EAD, they 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).

36. Petitioner appeared for another annual ICE check-in appointment on December 23, 2025, at which time he was arrested and detained. Petitioner was issued a Notice of Revocation of the order of supervision. Upon information and belief, Petitioner was told that he was being detained because “Mexico is taking people now.” Petitioner’s Notice of Revocation was issued by Deportation Officer John Rife, signing on behalf of Field Office Director Michael Rose.

37. Petitioner was briefly transferred to Moshannon Valley ICE Processing Center, and is now detained at the U.S. Penitentiary at Lewisburg, in Lewisburg, Pennsylvania. At the time of the filing of this amended habeas petition, ICE’s system still reflects his presence there. *See* ICE Detainee Locator information (*available at: <https://locator.ice.gov/>* (last visited on February 6, 2026)):



38. Petitioner then received a Notice of Removal to Mexico, dated December 23, 2025. See Ex. 3, ICE Notice of Removal.

39. On January 29, 2026, Petitioner was told by immigration officers at the detention facility that he was going to be moved, and his account was shut off and his tablet was taken away. His pre-scheduled call with legal counsel did go forward on that date.

40. After conferring with family, and legal counsel, on January 29, 2026, Petitioner requested a Reasonable Fear Interview (“RFI”) pursuant to 8 C.F.R. § 208.31. Based on recent news that Petitioner and his family had learned, Petitioner fears that Mexican authorities who

receive removed individuals from the United States immediately turn around and continue deportation of those individuals back to their home countries, i.e. refoulement. Given that an immigration judge found that Petitioner more likely than not to face torture if returned to El Salvador, Petitioner's fears of removal to Mexico with a demonstrated pattern and practice of refoulment are acute and not unfounded.

41. Petitioner has no legal immigration status in any other country, and there is no third country to which Respondents can remove him, including Mexico, without that country ultimately removing him to El Salvador, where it has already been determined that he would torture. Such indirect removal—or chain refoulement—would violate the CAT just as clearly as a direct removal to El Salvador. For this reason, Petitioner has already informed ICE that he fears removal to Mexico and requested an RFI. *See* Ex. 4, Counsel's email request for an RFI.

42. Respondents currently lack any factual or legal basis to detain Petitioner, since Respondents cannot establish that that Petitioner will likely be removed from the United States in the reasonably foreseeable future.

43. 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)**

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

45. 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 the *Zadvydas* six-month presumptively reasonable period for continued removal efforts expired many years ago, and Petitioner's removal from the United States is not significantly likely in the reasonably foreseeable future.

46. 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**

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

48. 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. Respondents have rearrested and re-detained Petitioner on the assumption that Petitioner will be removable to a third country but have no factual basis to believe that such third-country removal will ever become practicable and legally permissible.

49. Respondents continue to detain Petitioner without evidence that they will be able to remove him imminently, to El Salvador or Mexico or to any other country.

50. 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:
Violation of due process/third country removal**

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

52. Petitioner has a procedural due process right not to be removed to any country to which he has expressed a fear of removal, without an Immigration Judge first reviewing his fear claim. Respondents' procedures for third-country removal do not allow him the right to go before an Immigration Judge.

**FOURTH CLAIM FOR RELIEF:
Violation of 8 C.F.R. §§ 208.31, 1208.31/third country removal**

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

54. Petitioner is an individual with a reinstated order of removal, and thus falls within the coverage of 8 C.F.R. §§ 208.31, 1208.31.

55. Petitioner has stated a fear of removal to Mexico, and has requested a Reasonable Fear Interview as to that country. 8 C.F.R. § 208.31 gives Respondents the right to a Reasonable Fear Interview, pursuant to the procedures and substantive standard set forth in that regulation and implementing caselaw. Respondents' procedures for third-country removal do not allow him a Reasonable Fear Interview, only a lesser form of screening called a third-country fear interview that is subject to fewer procedural protections and is held to a higher substantive standard, and thereby violate the regulation.

56. Furthermore, 8 C.F.R. § 1208.31(g) gives Petitioner a right to have that Reasonable Fear Interview reviewed by an Immigration Judge. Respondents' procedures for third-country removal do not allow Petitioner the right to go before an Immigration Judge, and thereby violate the regulation.

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

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

58. As set forth above, Respondents' actions in cancelling Petitioner's release on supervision and re-arresting Petitioner without an opportunity to respond to that reasoning violated 8 C.F.R. § 241.4(D), a regulation designed to protect the due process rights of noncitizens like Petitioner.

59. In addition, upon information and belief, Petitioner's Order of Supervision 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(D)(2).

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

61. In arresting and re-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 enjoining Respondents from transferring Petitioner outside of this judicial district while this case is pending;
- c) Preliminarily and permanently enjoining Respondents from removing Petitioner to El Salvador, unless and until his order of Deferral of Removal is terminated, including all appeals;
- d) Preliminarily and permanently enjoining Respondents from removing Petitioner to any other country, including but not limited to Mexico, without first providing him notice and offering him adequate opportunity to apply for Deferral of removal as to that country, including a Reasonable Fear Interview as set forth in 8 C.F.R. § 208.31 and then, subsequently, immigration judge review of any denied Reasonable Fear Interview as set forth in 8 C.F.R. § 1208.31(g), and under the same procedures and substantive standard set forth in those regulations;

- e) Setting aside the revocation of Petitioner's Order of Supervision, and restoring him to his Order of Supervision;
- f) Issuing a writ of habeas corpus, and ordering that Petitioner be released from physical custody;
- g) Granting Petitioner his costs of suit; and
- h) Granting such other relief at law and in equity as justice may require.

Date: February 6, 2026

Respectfully submitted,

/s/ Stephanie E. Gibbs
STEPHANIE E. GIBBS
New Jersey State Bar No. 047482013
Murray Osorio PLLC
50 Park Place, Mezzanine Level,
Newark, NJ 07102
Tel.: (571) 455-1915
Email: sgibbs@murrayosorio.com

*Pro Hac Vice Counsel for Petitioner
(application pending)*

/s/ Christopher M. Casazza
CHRISTOPHER M. CASAZZA
Palladino, Isbell & Casazza, LLC
1528 Walnut St, Suite 1701
Philadelphia, PA 19102
Office: (215) 576-9000
Fax: (215) 689-3531
Email: chris@piclaw.com

Local Counsel for Petitioner

LIST OF EXHIBITS

Ex. 1. ICE Notice of Release and Form I-220B Order of Supervision;

Ex. 2, USCIS issued Employment Authorization Documents;

Ex. 3, ICE Notice of Removal to Mexico;

Ex. 4, Counsel's email request for an RFI.

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 Eastern
District of Virginia
2100 Jamieson Ave
Alexandria, VA 22314

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

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

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

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

Jessica Sage, Warden
U.S. Penitentiary at Lewisburg
2400 Robert F. Miller Drive,
Lewisburg, PA 17837

Respectfully submitted,

Date: February 6, 2026

/s/ Stephanie E. Gibbs
STEPHANIE E. GIBBS
New Jersey State Bar No. 047482013
Murray Osorio PLLC
50 Park Place, Mezzanine Level,
Newark, NJ 07102
Tel.: (571) 455-1915
Email: sgibbs@murrayosorio.com
*Pro Hac Vice Counsel for Petitioner
(application pending)*

/s/ Christopher M. Casazza
CHRISTOPHER M. CASAZZA
Palladino, Isbell & Casazza, LLC
1528 Walnut St, Suite 1701
Philadelphia, PA 19102
Office: (215) 576-9000
Fax: (215) 689-3531
Email: chris@piclaw.com
Local Counsel for Petitioner