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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF TEXAS
9 EL PASO DIVISION

10 ANGEL ANTONIO AVALOS-DUARTE,
A# 

11 Petitioner,

12 v.

13 KRISTI NOEM, Secretary of Department of
Homeland Security; MARY DE ANDA-
14 YBARRA, El Paso Field Office Director; TODD
LYONS, Acting Director of Immigration and
15 Customs Enforcement; ANGEL GARITE,
Warden, ICE ERO El Paso Camp East Montana;
16 U.S. Immigration and Customs Enforcement and
Removal Operations; Department of Homeland
17 Security; PAMELA BONDI, Attorney General of
the United States of America; and DAREN K.
18 MARGOLIN, Director, Executive office of
Immigration Review.

19 Respondents.

Case No. 3:26-CV-378

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

INTRODUCTION

1. Petitioner Angel Antonio Avalos-Duarte seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to challenge his prolonged and unlawful immigration detention.
2. Petitioner, a native and citizen of El Salvador, has been detained by U.S. Immigration and Customs Enforcement ("ICE") since October 2024 (approximately sixteen (16) months). Petitioner is currently detained at ICE ERO El Paso – Camp East Montana, 6920 Digital Road, El Paso, TX 79936.
3. On March 20, 2025, an Immigration Judge granted Petitioner deferral of removal under the Convention Against Torture ("CAT"), finding he would more likely than not face torture if returned to El Salvador. The department of Homeland Security did not appeal the Decision.
4. Despite this legal bar to removal and nearly eleven (11) months since the CAT grant, ICE continues to detain Petitioner without identifying any safe third country willing to accept him.
5. Petitioner's detention exceeds the six-month presumptive period of reasonableness established in *Zadvydas v. Davis*, 533 U.S. 678 (2001) by ten months. Because removal is not reasonably foreseeable, continued detention violates 8 U.S.C. § 1231(a)(6), the Fifth Amendment Due Process Clause, and federal custody review regulations.
6. Petitioner seek immediate release with or without supervision, or, alternatively, a custody hearing where the government must prove by clear and convincing evidence that detention remains justified.

JURISDICTION AND VENUE

7. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the Constitution (Suspension Clause).
8. Petitioner challenges his detention on constitutional and statutory grounds under the Fifth Amendment and 8 U.S.C. § 1231(a)(6) as interpreted in *Zadvydas v. Davis*, 533 U.S. 678 (2001).
9. Venue lies in the Western District of Texas, El Paso Division, under 28 U.S.C. § 2241(a) and § 1391(e), because Petitioner is detained here and Respondent exercises custody within this District. *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004).

REQUIREMENTS OF 28 U.S.C. § 2243

10. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
11. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).
12. Petitioner is “in custody” for the purpose of §2241 because Petitioner is detained by Respondents

PARTIES

13. Petitioner is a native and citizen of El Salvador. Petitioner is presently detained within the state of Texas as at the time of filing of this petition.

14. Respondent KRISTI NOEM is the Secretary of Department of Homeland Security. As such she is responsible for the actions of that department, its subagencies, and its officers and personnel, including ICE. Secretary Noem has ultimate custodial authority over Petitioner. KRISTI NOEM is sued in her official capacity.

15. Respondent MARY DE ANDA-YBARRA is the Field Office Director for the El Paso Field Office, Immigration and Customs Enforcement and Removal Operations ("ICE ERO"). The El Paso Field Office is responsible for local custody decisions relating to noncitizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens in the El Paso area. MARY DE ANDA-YBARRA is the immediate legal custodian of Petitioner and is sued in her official capacity.

16. Respondent TODD LYONS is the Acting Director of Immigration and Customs Enforcement (ICE), and as such is responsible for the means by which the immigration laws of the United States are enforced. TODD LYONS is sued in his official capacity.

17. Respondent ANGEL GARITE, Warden of ICE ERO El Paso – Camp East Montana (or successor in office) is the proper Respondent as the immediate custodian exercising day-to-day control over Petitioner's detention and has physical custody of Petitioner. The Warden is the immediate legal custodian and is sued in his official capacity. See *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004).

1 18. Respondent U.S. DEPARTMENT OF HOMELAND SECURITY is an agency of the
2 United States with responsibility for the enforcement of the nation's immigration laws. It
3 is under the direction of Secretary Noem.

4 19. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible
5 for the Department of Justice, of which the Executive Office for Immigration Review and
6 the immigration court system operates is a component agency. PAMELA BONDI is sued
7 in her official capacity.

8 20. Respondent DAREN K MARGOLIN is the Director of Executive office for Immigration
9 Review (EOIR). This is the federal agency responsible for implementing and enforcing
10 INA in removal proceedings, including custody redetermination in bond hearings. DAREN
11 K. MARGOLIN is sued in his official capacity.

12 **STATUTORY REQUIREMENTS UNDER 28 U.S.C. § 2243**

13 21. Pursuant to 28 U.S.C. § 2243, the Court shall forthwith award the writ or issue an order to
14 show cause. Respondents must file a return within three days unless additional time not
15 exceeding twenty days is allowed. When the return is filed, a hearing shall be set not more
16 than five days thereafter unless good cause requires additional time. The Court shall
17 summarily hear and determine the facts and dispose of the matter as law and justice require.
18 Habeas corpus is a "swift and imperative remedy in all cases of illegal restraint or
19 confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

20 **FACTUAL BACKGROUND**

21 **A. Petitioner's Flight from El Salvador and Fear of Torture**

22 22. Petitioner fled El Salvador due to severe and credible threats to his life and safety. He is
23 perceived as a former gang member and a current gang member due to visible tattoos
24

1 associated with gang affiliation, though he has had no actual involvement with criminal
2 organizations for many years and has severed all ties with gang activity.

3 23. El Salvador's ongoing state of exception (régimen de excepción), implemented in March
4 2022 and repeatedly extended, has resulted in mass arrests, arbitrary detention, and
5 widespread human rights abuses. Individuals with visible tattoos, regardless of current
6 gang involvement, are systematically targeted by both state security forces and rival gangs.

7 24. The U.S. Department of State's Country Report on Human Rights Practices for El Salvador
8 documents pervasive torture, extrajudicial killings, and abuse of detainees, particularly
9 those perceived to have gang ties based on physical appearance, including tattoos.

10 25. Petitioner credibly and reasonably fears that if returned to El Salvador, he would be
11 subjected to torture by police or military forces acting under the state of exception, as well
12 as by gang members who would target him based on his perceived past affiliation.

13 **B. Immigration Proceedings and CAT Relief**

14 26. Petitioner was placed in removal proceedings and detained by ICE in October 2024.

15 27. Following a full merits hearing, on March 20, 2025, the Immigration Judge at the Chicago
16 Immigration Court granted Petitioner deferral of removal under the Convention Against
17 Torture pursuant to 8 C.F.R. § 1208.17(a)[7].

18 28. CAT deferral is a mandatory, non-discretionary form of protection granted when an
19 Immigration Judge finds that an individual would "more likely than not" face torture if
20 removed to their country of origin. The Immigration Judge's decision reflects a finding,
21 supported by substantial evidence, that Petitioner faces a real and substantial risk of torture
22 upon return to El Salvador.

1 29. Under 8 C.F.R. § 1208.17(b)(2), removal is deferred only to the country where torture is
2 likely—here, El Salvador. Petitioner may theoretically be removed to another country
3 where he would not face torture, but ICE has made no showing that any third country exists
4 that that is safe and would accept Petitioner.

5 6 **C. Prolonged Detention Despite CAT Relief**

7 30. Despite the March 2025 CAT grant, ICE continues to detain Petitioner without any
8 indication of when or whether removal or release might occur.

9 31. On March 26, 2025, Petitioner through counsel submitted a parole request to ICE Chicago
10 Field Office documenting the CAT grant, Petitioner's lack of danger, strong U.S. ties, and
11 absence of flight risk. ICE acknowledged the request in May 2025 but has issued no
12 decision till date.

13 32. Removal to El Salvador is legally barred by the CAT deferral. ICE has not identified any
14 safe and willing third country that would accept Petitioner.

15 33. Petitioner has been detained Sixteen months, ten months beyond the *Zadvydas* six-month
16 presumption.

17 **LEGAL FRAMEWORK**

18 **A. *Zadvydas v. Davis* 533 U.S. 678 (2001)**

19 34. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that 8 U.S.C. §
20 1231(a)(6) contains an implicit temporal limitation. Detention is authorized only for the
21 period "reasonably necessary to bring about removal." After six months, a rebuttable
22 presumption arises that removal is no longer reasonably foreseeable. Once a detainee
23 provides "good reason to believe that there is no significant likelihood of removal in the
24

1 reasonably foreseeable future," the government must rebut that showing or release the
2 individual. Id. at 689, 701

3 **B. Due Process and Custody Review**

4 35. The Fifth Amendment prohibits prolonged civil detention without meaningful process.

5 When detention exceeds the administratively necessary period, the government must prove
6 by clear and convincing evidence that continued custody is justified based on
7 individualized danger or flight risk. *Foucha v. Louisiana*, 504 U.S. 71, 80-81 (1992).

8 36. Federal regulations require meaningful custody review when removal is not foreseeable. 8
9 C.F.R. §§ 241.4(k)(2), 241.13. ICE must substantively assess release under supervision,
10 not merely continue detention indefinitely.

11 **C. CAT Deferral**

12 37. Individuals granted CAT deferral face a legal bar to removal to their home country. 8 C.F.R.
13 § 1208.17(a). Detention is permissible only if removal to a third country is reasonably
14 foreseeable or the individual poses danger justifying custody. When no third country has
15 been identified after sixteen months, continued detention lacks statutory authority under
16 *Zadvydas*.

17 **CLAIMS FOR RELIEF**

18 **COUNT I:**

19 **Violation of Fifth Amendment Right to Due Process** 20 **Unlawful Detention Under *Zadvydas v. Davis***

21 38. Petitioner restates and re-alleges all paragraphs above as if fully set forth here

22 39. The Due process clause of The Fifth Amendment to the U.S. Constitution prohibits the
23 federal government from depriving any person of "life, liberty, or property, without due
24 process of law" U.S. Const. .Amend. V. Due process protects 'all' persons, within the

1 United States, including [non-citizens], whether their presence here is lawful, unlawful,
2 temporary, or permanent. *Zadvydas*, 533 U.S. at 693.

3 40. Petitioner's sixteen-month detention violates 8 U.S.C. § 1231(a)(6) as interpreted in
4 *Zadvydas*, 533 U.S. 678 (2001).

5 41. Petitioner has been detained sixteen months, ten months beyond the *Zadvydas* six-month
6 presumption. This prolonged detention without imminent removal exceeds statutory
7 authorization.

8 42. Petitioner satisfies his burden of showing "good reason to believe that there is no
9 significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533
10 U.S. at 701.

11 43. First, removal to El Salvador is legally barred. The CAT deferral conclusively establishes
12 Petitioner would more likely than not be tortured if returned. 8 C.F.R. § 1208.17(a)
13 prohibits such removal, a legal impossibility, not administrative delay.

14 44. Second, no safe third country has been identified. Despite sixteen months of detention,
15 ICE has not been able to identify any safe third country willing to accept Petitioner or
16 engaged in removal negotiations. The *Zadvydas* Court emphasized "the likelihood of
17 successful removal" is critical. 533 U.S. at 699. Where removal to the home country is
18 legally barred and no alternative has materialized after sixteen months, removal is not
19 significantly likely.

20 45. Third, ICE's complete inaction. ICE has not initiated negotiations with any safe third
21 country, identified potential destinations, provided any removal timeline, or responded
22 substantively to Petitioner's year-old parole request. This indefinite warehousing is
23 precisely what *Zadvydas* prohibits.
24

1 46. The government cannot meet its burden through speculation that a Safe third country
2 "might" accept Petitioner, assertions that ICE is "working on" options without evidence,
3 or general claims about document difficulty. Sixteen months with no identified removal
4 destination speaks for itself.

5 47. Because removal is not reasonably foreseeable and the presumption has been exceeded
6 by ten months, continued detention is no longer authorized under § 1231(a)(6). Petitioner
7 must be released under supervision. *Zadvydas*, 533 U.S. at 701.

8 **COUNT II:**
9 **Violation of Fifth Amendment Right to Due Process**
10 **Procedural Due process**

11 48. Petitioner restates and re-alleges all paragraphs above as if fully set forth here.

12 49. Petitioner's sixteen-month detention without adequate process violates the Fifth
13 Amendment. "Freedom from imprisonment lies at the heart of the liberty that the Due
14 Process Clause protects." *Zadvydas*, 533 U.S. at 690.

15 50. Despite sixteen months of detention, Petitioner has received no meaningful custody
16 hearing where the government must prove by clear and convincing evidence that
17 detention is necessary, Petitioner may present evidence of no danger or flight risk, and an
18 impartial decision-maker evaluates continued custody justification. ICE's administrative
19 review lacks transparency. It provides no evidentiary hearing, and imposes no burden on
20 the government.

21 51. The government cannot articulate any individualized basis for continued detention.
22 Petitioner poses no danger, poses no flight risk, has strong U.S. ties, will comply with
23 supervision, and cannot be removed in the foreseeable future. Continued detention serves
24 no legitimate governmental interest. *Foucha*, 504 U.S. at 80.

52. The combination of prolonged detention, no realistic removal prospect, no individualized showing of danger or flight risk, and no meaningful hearing establishes a clear due process violation.

COUNT III:
Regulatory Violations - 8 C.F.R. §§ 241.4, 241.13

53. Petitioner restates and re-alleges all paragraphs above as if fully set forth here.

54. Respondent ICE has failed to comply with regulations requiring meaningful custody review. 8 C.F.R. § 241.4(k)(2) requires review when removal is not significantly likely; §241.13 requires evaluation of danger, flight risk, and release appropriateness.

55. Despite sixteen months of detention and a year-old parole request, ICE has made no substantive determination, conducted no meaningful custody review, provided no explanation for continued detention, and failed to consider release despite evidence of no danger or flight risk. This arbitrary failure reflects indefinite detention without individualized assessment, and is precisely what *Zadvydas* prohibits. *Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue an immediate order barring Respondents from transferring Petitioner from this District without Court notice and approval;
- c. Issue an Order to Show Cause returnable within three days as required by 28 U.S.C. § 2243;
- d. GRANT the writ of habeas corpus and ORDER Petitioner's immediate release under reasonable conditions of supervision including electronic monitoring, regular ICE

1 reporting, residence restrictions, surrender of travel documents, and compliance with all
2 immigration obligations;

- 3 e. ALTERNATIVELY, ORDER a custody hearing within fourteen days where the
4 government must prove by clear and convincing evidence that continued detention is
5 necessary, where Petitioner may present evidence of no danger or flight risk, and if the
6 government fails to meet its burden, Petitioner should be released under appropriate
7 supervision if necessary;
- 8 f. DECLARE that Petitioner's detention violates 8 U.S.C. § 1231(a)(6), the Fifth
9 Amendment, and 8 C.F.R. §§ 241.4, 241.13;
- 10 g. REQUIRE Respondents to file notice within seven days of release or hearing outcome;
- 11 h. AWARD attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. §
12 2412; and
- 13 i. GRANT such other relief as the Court deems just and proper.

14 DATED this 7th day of February, 2026.

16 */s/ Gladys N. Daniels*

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