

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

MISAEEL YOVANNI GARCIA AVALOS,
Petitioner,

v.

WARDEN, Florida Soft South Side Detention Center ,
Garrett J. Ripa, ICE ERO MIAMI FIELD OFFICE,
Kristi Noem, SECRETARY,
U.S. DEPARTMENT OF HOMELAND SECURITY,
Pam Bondi, ATTORNEY GENERAL
OF THE UNITED STATES,
Respondents.

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**PETITION FOR WRIT OF HABEAS CORPUS
(28 U.S.C. § 2241)**

INTRODUCTION

Petitioner Misael Yovanni Garcia Avalos respectfully petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. §2241.

Petitioner is currently detained by U.S. Immigration and Customs Enforcement (“ICE”) despite the fact that an Immigration Judge granted him Withholding of Removal pursuant to Immigration and Nationality Act §241(b)(3); 8 U.S.C. § 1231(b)(3) on December 15, 2023 after determining that Petitioner would more likely than not face persecution or torture if returned to Mexico, his country of birth and nationality. In addition, Petitioner has been complying with an Order of Supervision with Immigration and Customs Enforcement, Miramar Field Office, where he has appeared as requested. Respondents have not provided any facts of non-compliance with such Order that would support a cancellation of the Order of Supervision. Petitioner challenges the legality of his detention because it is arbitrary, unnecessary, and violates the Constitution

and laws of the United States. Petitioner has no criminal history, has complied with every reporting requirement imposed by ICE, and voluntarily appeared for a scheduled ICE check-in, at which time he was detained.

JURISDICTION AND VENUE

This Court has jurisdiction pursuant to 28 U.S.C. §2241(c)(3) because Petitioner is in custody under the authority of the United States in violation of the Constitution and laws of the United States. Jurisdiction also exists under 28 U.S.C. §1331 because this action arises under federal law, including the Immigration and Nationality Act and the Fifth Amendment to the United States Constitution. Venue is proper in the United States District Court for the Southern District of Florida because Petitioner is detained within this judicial district.

PARTIES

Petitioner: Misael Yovanni Garcia Avalos is a citizen of Mexico currently detained by U.S. Immigration and Customs Enforcement.

Respondent Warden of Florida Soft South Side Detention Center: The Warden of the detention facility where Petitioner is confined is responsible for Petitioner's physical custody.

Respondent Garret J. Ripa, ICE Enforcement and Removal Operations (ERO), Miami Field Office: Responsible for immigration detention decisions affecting Petitioner.

Respondent Mark Wayne Mullin, Secretary of the Department of Homeland Security: Responsible for administration of immigration enforcement.

Respondent Pam Bondi, Attorney General of the United States: Responsible for the administration of immigration laws through the Department of Justice and Executive Office for Immigration Review.

STATEMENT OF FACTS

Petitioner is a citizen of Mexico.

On February 17, 2022, Petitioner arrived at Miami International Airport with a B-1/B-2 visa and was placed in expedited removal proceedings.

On April 15, 2022, Petitioner entered the United States without inspection near McAllen, Texas.

On November 21, 2023, Petitioner filed with Krome Immigration Court Form I-589 Application for Withholding of Removal and Protection under the Convention Against Torture due to [REDACTED]

[REDACTED]

On December 15, 2023, an Honorable Immigration Judge Romy Lerner granted Petitioner's request for withholding of removal under Immigration and Nationality Act §241(b)(3); 8 U.S.C. § 1231(b)(3) after determining that Petitioner would more likely than not face persecution or torture if returned to Mexico.

After the grant of relief, Respondents issued an Order of Supervision. Among the requirements, Petitioner had to appear as requested at the Immigration and Customs Enforcement Filed Office for reporting and check-ins. Since that time, Petitioner complied fully with all ICE supervision requirements and appeared for all scheduled check-ins.

On March 9, 2026, Petitioner voluntarily reported to the ICE Enforcement and Removal Operations office in Miramar, Florida for a routine check-in appointment. ICE officers detained him during that appointment.

Petitioner remains detained despite his compliance with supervision and despite the

Immigration Judge's protection order. Respondents have not indicated any grounds of non-compliance that would trigger the cancellation of the Order of Supervision. Petitioner does not have a criminal record. Respondents cannot remove Petitioner to another country without affording him the opportunity to show if he fears for his life if he is removed to another country. Respondents cannot removal Petitioner to Mexico since that would be in violation of the Order of Protection granted by the Immigration Court, statutory framework and international agreements against *non-refoulment*.

LEGAL FRAMEWORK

Detention of noncitizens following a final order of removal is governed by 8 U.S.C. §1231.

The statute authorizes detention during a 90-day removal period. However, the Supreme Court limited the scope of this detention authority in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

In *Zadvydas*, the Supreme Court held that immigration detention is civil and must be limited to the period reasonably necessary to accomplish removal. Detention that becomes indefinite or serves no legitimate regulatory purpose violates the Constitution. The removal period, if any, commenced on December 15, 2023, when the Immigration Judge granted Petitioner's application for Withholding. At that time, Respondents decided to release Petitioner and place him under an Order of Supervision. There is no indication that Respondents attempted to remove Respondent to any other country. Therefore, detaining Petitioner more than two years after the grant of protection without any indication of violation of supervisory terms is unlawful.

ARGUMENT

Civil immigration detention must remain reasonably related to its regulatory purpose and cannot be used as a form of punishment. The Supreme Court has consistently emphasized that immigration detention is constitutionally permissible only when it serves the government's legitimate objectives, such as ensuring the noncitizen's presence for removal or protecting the community. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). When detention ceases to serve those purposes, continued confinement becomes arbitrary and violates the Fifth Amendment. *Id.*

In this case, detention no longer serves any legitimate immigration purpose. First, the Immigration Judge granted withholding of removal after determining that Petitioner would more likely than not face persecution or torture if returned to Mexico. This determination reflects a formal adjudication that returning Petitioner to Mexico would violate United States law and international obligations. *See* 8 U.S.C. §1231(b)(3). Because removal to Mexico is legally prohibited, the principal objective of immigration detention, facilitating removal, cannot be accomplished with respect to the country designated in the removal order.

Second, Petitioner poses no danger to the community and has no criminal history. Courts have recognized that public safety concerns may justify immigration detention in certain circumstances involving individuals with serious criminal convictions. *See Demore v. Kim*, 538 U.S. 510 (2003). However, Petitioner has no criminal record and therefore does not fall within the category of individuals whose detention is justified by public safety concerns.

Third, Petitioner has repeatedly demonstrated his willingness to comply with immigration supervision. Petitioner voluntarily appeared for scheduled ICE reporting appointments and complied with all conditions imposed by immigration authorities. Indeed, Petitioner was detained only after voluntarily reporting to the ICE Enforcement and Removal Operations office

in Miramar, Florida for a routine supervision appointment. These facts establish that Petitioner is not a flight risk and that detention is unnecessary to ensure compliance with immigration authorities. Where a detainee poses no danger and has demonstrated full compliance with supervision requirements, continued detention no longer serves a legitimate regulatory purpose. Under these circumstances, detention becomes arbitrary and constitutionally impermissible. See *Zadvydas*, 533 U.S. at 690. See also *Clark v. Martinez*, 543 U.S. 371 (2005), holding that immigration detention statutes must be interpreted to avoid indefinite or unjustified detention. Withholding of removal is a humanitarian protection designed to ensure that individuals are not returned to countries where they face persecution or torture. See *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987) (recognizing the humanitarian purpose underlying refugee protection statutes). The Immigration Judge's decision granting withholding of removal reflects a determination that Petitioner faces a serious risk of persecution if returned to Mexico. Detaining an individual who has already been granted humanitarian protection undermines the protective purpose of the statute. The humanitarian protection granted by the Immigration Judge necessarily reflects a judgment that Petitioner should not be exposed to further harm resulting from the threat of persecution.

Respondents may argue that detention is justified because the government may attempt to remove Petitioner to a third country. However, the mere possibility that a third country might accept Petitioner does not justify continued detention. Under *Zadvydas*, detention may continue only where removal is reasonably foreseeable in the near future. Speculative or hypothetical possibilities of removal are insufficient. 533 U.S. at 701. Respondents have not shown that Respondent would be removed to any country in the foreseeable future. If so, Respondent must be afforded an opportunity to demonstrate if he fears for his safety and his life if he is removed

to another country. Courts applying *Zadvydas* have repeatedly held that the government must demonstrate a realistic prospect of removal and cannot rely on speculative possibilities. See *Clark v. Martinez*, 543 U.S. 371 (2005).

Moreover, removal to a third country often raises serious legal and procedural issues. A noncitizen may challenge removal to a third country where such removal would violate statutory or constitutional protections. Petitioner retains the right to contest removal to any proposed third country through available administrative and judicial procedures. Detaining Petitioner while those challenges are pending would effectively punish him for exercising his legal rights. Courts have long recognized that detention should not be used to penalize individuals for pursuing lawful challenges to removal. Furthermore, removal to a third country often requires diplomatic negotiations and formal acceptance by that country. The government cannot rely on the mere possibility of such acceptance to justify continued detention. Absent concrete evidence that a third country has agreed to accept Petitioner and that removal will occur in the reasonably foreseeable future, detention remains unlawful under *Zadvydas*. The Supreme Court interpreted §1231 in *Zadvydas* specifically to avoid the constitutional problem of indefinite immigration detention. See *Zadvydas*, 533 U.S. at 690. Allowing the government to detain individuals indefinitely while it attempts to locate or negotiate with potential third countries would create precisely the type of indefinite detention the Court rejected. See also *Clark v. Martinez*, 543 U.S. 371 (2005).

If the government were permitted to continue detention merely by asserting that it is attempting to locate a third country, detention could continue indefinitely without meaningful judicial review. Such a result would be inconsistent with the constitutional limitations articulated in *Zadvydas*. The immigration statutes expressly contemplate the release of noncitizens under

supervision where detention is no longer justified. See 8 U.S.C. §1231(a)(3). Release under an order of supervision allows the government to monitor the individual while respecting the constitutional limitations on detention.

Because Petitioner has already demonstrated compliance with immigration supervision requirements and poses no danger to the community, release under appropriate supervision is both legally appropriate and consistent with the statutory scheme.

CONCLUSION

Petitioner has been granted withholding of removal after establishing that he faces persecution if returned to Mexico. Petitioner has no criminal history, poses no danger to the community, and has repeatedly complied with immigration supervision requirements.

Because removal to Mexico is legally prohibited and the government cannot demonstrate that removal to another country is reasonably foreseeable, continued detention serves no legitimate immigration purpose.

Even if Respondents assert that removal to a third country may be possible, detention remains unlawful while Petitioner exercises his right to challenge such removal.

Accordingly, Petitioner respectfully requests that the Court grant the writ of habeas corpus and order his immediate release under reasonable conditions of supervision.

CLAIMS FOR RELIEF

COUNT I

Unlawful Detention in Violation of the Fifth Amendment Due Process Clause

Petitioner realleges and incorporates by reference the preceding paragraphs as if fully set forth herein. The Fifth Amendment to the United States Constitution protects all persons within the United States from deprivation of liberty without due process of law.

Civil immigration detention must be reasonably related to legitimate regulatory purposes and may not become arbitrary or punitive. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Petitioner has no criminal history and therefore poses no danger to the community. Petitioner also demonstrated full compliance with immigration supervision requirements by voluntarily appearing for ICE check-ins and complying with all reporting obligations imposed by immigration authorities. Because Petitioner poses no danger and is not a flight risk, his continued detention serves no legitimate regulatory purpose. Accordingly, Respondents' continued detention of Petitioner is arbitrary and violates the Due Process Clause of the Fifth Amendment.

COUNT II

Detention Beyond the Limits Authorized by 8 U.S.C. §1231(a) and *Zadvydas v. Davis*

Petitioner realleges and incorporates by reference the preceding paragraphs. Post-removal-order detention is governed by 8 U.S.C. §1231(a). Under *Zadvydas v. Davis*, detention under §1231(a)(6) may continue only for the period reasonably necessary to accomplish removal. 533 U.S. at 699. Where removal is not reasonably foreseeable, continued detention is unlawful. *Id.* at 701.

COUNT III

Arbitrary Civil Detention Without Legitimate Government Purpose

Petitioner realleges and incorporates the preceding paragraphs. Civil immigration detention is constitutionally permissible only where it serves legitimate regulatory purposes such

as preventing flight or protecting the community. *See Zadvydas*, 533 U.S. at 690. In this case, neither justification exists. Petitioners have no criminal record and poses no threat to public safety. Petitioner has repeatedly demonstrated compliance with immigration supervision requirements and voluntarily appeared for ICE reporting appointments. Because detention does not serve the regulatory purposes underlying immigration detention, continued confinement is arbitrary and unconstitutional.

Petitioner was granted withholding of removal by an Immigration Judge on December 15, 2023 after establishing that he would likely face persecution or torture if returned to Mexico. Because withholding of removal prohibits the government from removing Petitioner to Mexico, the government cannot execute the removal order to that country. Respondents have not demonstrated that removal to any third country is reasonably foreseeable. Accordingly, Petitioner's continued detention violates the statutory limits on detention recognized in *Zadvydas v. Davis* and *Clark v. Martinez*, 543 U.S. 371 (2005).

COUNT IV

Detention Contrary to the Statutory and Humanitarian Purpose of Withholding of Removal

Petitioner realleges and incorporates the preceding paragraphs. Withholding of removal protects individuals from being returned to countries where their life or freedom would be threatened. *See* 8 U.S.C. §1231(b)(3). The Immigration Judge determined that Petitioner faces a substantial risk of persecution or torture in Mexico and therefore granted withholding of removal. Detaining an individual who has already established entitlement to protection from persecution undermines the humanitarian purpose of the statute. Because removal to Mexico is

legally prohibited and the government has not demonstrated that removal to another country is reasonably foreseeable, continued detention serves no legitimate immigration purpose.

COUNT V

Unlawful Detention While Petitioner Exercises His Right to Challenge Third-Country Removal

Petitioner realleges and incorporates the preceding paragraphs. Respondents may attempt to justify continued detention by asserting that the government may seek to remove Petitioner to a third country. However, the mere possibility of third-country removal does not justify detention. *See Zadvydas v. Davis*, 533 U.S. at 701.

Petitioner retains the right to challenge removal to any proposed third country through available administrative and judicial procedures. Detaining Petitioner while he exercises these rights would effectively punish him for pursuing lawful legal remedies and would create the indefinite detention problem the Supreme Court sought to prevent in *Zadvydas*.

Because Respondents cannot demonstrate that removal is reasonably foreseeable, continued detention is unlawful.

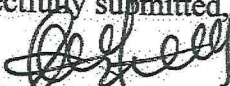
REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
1. Issue an Order to Show Cause directing Respondents to justify Petitioner's detention;
2. Declare Petitioner's detention unlawful;

3. Order Petitioner's immediate release from ICE custody under reasonable conditions of supervision; and
4. Grant any further relief the Court deems just and proper.

Respectfully submitted,


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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Misael Yovanni Garcia Avalos, and submit this verification on his/her/their behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 12 day of March, 2026.



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