

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Case No.: 2:26-cv-00793-SPC-NPM

MISAEEL YOVANNI GARCIA AVALOS,
Petitioner,

v.

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

**EMERGENCY MOTION FOR RELEASE FROM DETENTION PENDING
RESOLUTION OF PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Misael Yovanni Garcia Avalos, by and through undersigned counsel,
respectfully moves this Court for an order directing his immediate release from immigration
detention pending adjudication of his Petition for Writ of Habeas Corpus filed pursuant to 28
U.S.C. §2241. In support of this motion, Petitioner states as follows:

I. INTRODUCTION

Petitioner is currently detained by U.S. Immigration and Customs Enforcement ("ICE")
despite the fact that an Immigration Judge granted him withholding of removal on December 15,
2023 after determining that Petitioner would more likely than not face persecution or torture if
returned to Mexico.

Petitioner has no criminal history, complied fully with all ICE reporting requirements,
and voluntarily appeared for a routine ICE supervision appointment on March 9, 2026 at the ICE

Enforcement and Removal Operations office in Miramar, Florida, where he was unexpectedly detained. See Exhibit A, Order of Supervision.

Petitioner's continued detention serves no legitimate immigration purpose and violates the constitutional limitations recognized by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Because Petitioner poses no danger to the community, no risk of flight, and cannot lawfully be removed to Mexico, this Court should order his release pending resolution of his habeas petition.

II. THIS COURT HAS AUTHORITY TO ORDER RELEASE PENDING HABEAS REVIEW

Federal courts possess inherent authority to order release of a detainee pending adjudication of a habeas petition where exceptional circumstances exist and the petitioner raises substantial constitutional claims. *See Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001).

Courts exercising habeas jurisdiction under 28 U.S.C. §2241 may order release where continued detention violates the Constitution or federal law.

III. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS OF HIS HABEAS PETITION

Petitioner's habeas petition challenges his detention under the constitutional limitations established by the Supreme Court in *Zadvydas v. Davis* 533 U.S. 678 (2001). In *Zadvydas*, the Court held that detention under 8 U.S.C. §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 becomes unlawful. *Id.* at 701. Petitioner was granted withholding of removal, which prohibits the government from removing him to Mexico because he would likely face persecution or torture there. See 8 U.S.C. §1231(b)(3). Because removal to Mexico is legally barred and Respondents have not demonstrated that removal to any third country is reasonably foreseeable, Petitioner's continued detention violates the constitutional limitations articulated in *Zadvydas* and *Clark v. Martinez*, 543 U.S. 371 (2005).

IV. PETITIONER POSES NO DANGER TO THE COMMUNITY

Petitioner has no criminal history. Immigration detention based on dangerousness is generally reserved for individuals with serious criminal convictions. See *Demore v. Kim*, 538 U.S. 510 (2003). Petitioner does not fall within that category. Accordingly, Respondents cannot justify detention based on concerns regarding public safety.

V. PETITIONER IS NOT A FLIGHT RISK

Petitioner has consistently demonstrated his willingness to comply with immigration authorities. Prior to his detention, Petitioner complied with all ICE supervision requirements and appeared for every scheduled reporting appointment. On March 9, 2026, Petitioner voluntarily appeared for his scheduled ICE check-in at the ICE office in Miramar, Florida. These facts demonstrate that Petitioner is not a flight risk and that detention is unnecessary to ensure compliance with immigration authorities.

VI. CONTINUED DETENTION SERVES NO LEGITIMATE IMMIGRATION PURPOSE

Immigration detention must remain reasonably related to the government's regulatory objectives. *See Zadvydas v. Davis*, 533 U.S. at 690. Because Petitioner cannot be removed to Mexico and poses no danger or flight risk, detention no longer serves any legitimate immigration purpose. Continued detention under these circumstances is arbitrary and violates the Due Process Clause of the Fifth Amendment.

VII. PETITIONER SUFFERS IRREPARABLE HARM FROM CONTINUED

Each additional day of detention imposes a significant deprivation of liberty. Petitioner remains confined despite the fact that he poses no threat to the community and has complied with all government supervision requirements. Courts recognize that unnecessary deprivation of liberty constitutes irreparable harm. Immediate release is therefore warranted while this Court adjudicates the merits of the habeas petition.

VIII. REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Grant this Emergency Motion for Release from Detention;
2. Order Petitioner released from ICE custody immediately under reasonable conditions of supervision pending adjudication of the Petition for Writ of Habeas Corpus;
3. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of March 2026, a true and correct copy of the foregoing Emergency Motion for Stay of Removal and for Order Prohibiting Transfer Outside the Court's Jurisdiction was served upon the following:

U.S. Attorney's Office
2110 First Street
Suite 3-137
Ft. Myers, FL 33901



Lourdes Guiribitey, Esquire

EXHIBIT

A

LIST OF EXHIBITS

TABS

PAGES

- A. Department of Homeland Security, US Immigration and Customs
Enforcement Order of Supervision, Form I220B.

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DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

ORDER OF SUPERVISION

Name: GARCIA-AVALOS, MISAZEL YOVANNI

File No.: 

On February 18, 2022, you were ordered:
(Date of Final Order)

Date: December 17, 2023

- ☐ Excluded or deported pursuant to proceedings commenced prior to April 1, 1997.

- ☒ Removed pursuant to proceedings commenced on or after April 1, 1997.

Because the agency has not effected your deportation or removal during the period prescribed by law, it is ordered that you be placed under supervision and permitted to be at large under the following conditions:

- ☒ That you appear in person at the time and place specified, upon each and every request of the agency, for identification and for deportation or removal.

- ☐ That upon request of the agency, you appear for medical or psychiatric examination at the expense of the United States Government.

- ☒ That you provide information under oath about your nationality, circumstances, habits, associations and activities and such other information as the agency considers appropriate.

- ☒ That you do not travel outside State of Florida for more than 48 hours without first having notified this agency office of the dates and places, and obtaining approval from this agency office of such proposed travel.
(Specify geographic limits, if any)

- ☒ That you furnish written notice to this agency office of any change of residence or employment 48 hours prior to such change.

- ☒ That you report in person on 02/29/2024 09:00 AM to this agency office at:
(Date/Time)

See I-831

(Reporting Address)

- ☒ That you assist U.S. Immigration and Customs Enforcement in obtaining any necessary travel documents.

- ☐ Other: Your release is contingent upon your enrollment and successful participation in an Alternatives to Detention (ATD) program as designated by the U.S. Department of Homeland Security. As part of the ATD program, you will be subject to electronic monitoring and may be subject to a curfew. Failure to comply with the requirements of the ATD program will result in a redetermination of your release conditions or your arrest and detention.

If fitted with a U.S. Immigration and Customs Enforcement GPS tracking ankle bracelet, do not tamper with or remove the device. Under federal law, it is a crime to willfully damage or attempt to damage property of the United States. Damaging or attempting to damage the GPS tracking ankle bracelet or any of its associated equipment (including, but not limited to, the charging station, batteries, power cords, etc.) may result in your arrest, detention, and prosecution under 18 U.S.C. § 1361 and/or 18 U.S.C. § 641, each punishable by a fine, up to ten years imprisonment, or both.

- ☐ See attached sheet containing other specified conditions (Continue on separate sheet if required)

(Signature of ICE Official)

VINCENT, A. 6596

(Print Name and Title of ICE Official)

Alien's Acknowledgement of Conditions of Release under an Order of Supervision

I hereby acknowledge that I have (read) (had interpreted and explained to me in the Spanish language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

(Signature of ICE Official Serving Order)

(Signature of Alien)

12/27/2023

(Date)

ICE Form I-220B (10/20)

PERSONAL REPORT RECORD

ICE Form I-220B (10/20)

U.S. Department of Homeland Security

Continuation Page for Form I-220B

Alien's Name
GARCIA-AVALOS, MISAELO YOVANNI

File Number

Date

12/27/2023

LOCATION OF ICE OFFICE WHICH YOU REPORT TO

Miramar ICE/ERO Sub-Office
2805 SW 145th Avenue
Miramar, FL 33027

Signature



D. 8141 MARRERO

Title

Deportation Officer