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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

PEREZ BENITEZ, FRANCISCO

Petitioner,

v.

BRUCE SCOTT, Warden of the Northwest ICE
Processing Center;
KRISTI NOEM, Secretary of the U.S.
Department of Homeland Security

Respondents.

CIVIL ACTION NO.

**PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT TO
28 U.S.C. § 2241**

I. INTRODUCTION

Petitioner Francisco Perez Benitez (“Petitioner”) respectfully petitions this Court for a writ of habeas corpus challenging the legality of his continued immigration detention. This case presents not only an indefinite detention problem under *Zadvydas*, but also a profound due process violation where continued detention serves no legitimate purpose and is causing documented harm to his U.S. citizen children.

Petitioner has been detained since at least November 18, 2025 pursuant to a reinstated order of removal under 8 U.S.C. § 1231, despite the fact that his removal is not reasonably foreseeable. Petitioner has a pending Petition for Review before the United States Court of

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1 Appeals for the Ninth Circuit, and that court has issued a stay of removal. As a result, the
2 Government is legally barred from effectuating his removal while judicial review remains
3 pending.
4

5 Petitioner has longstanding ties to the United States spanning more than two decades and
6 is a devoted father of three children, including a son who is currently a high school senior on
7 track to graduate. Petitioner's continued detention is causing severe and ongoing psychological
8 and educational harm to his child and has destabilized his family, for whom he serves as a
9 primary source of financial and emotional support.
10

11 Petitioner has also consistently expressed a fear of return to Mexico based on violence
12 affecting his family and broader conditions of organized crime, extortion, and impunity.

13 Although his reasonable fear claim was denied, he continues to seek judicial review, and the stay
14 of removal remains in place.

15 Under *Zadvydas v. Davis*, detention is permissible only for a period reasonably necessary
16 to effectuate removal. Once detention approaches or exceeds six months, continued detention is
17 presumptively unreasonable unless the Government can demonstrate that removal is significantly
18 likely in the reasonably foreseeable future. *Id.* at 701. Here, that standard cannot be met because
19 removal is legally barred by the judicial stay.
20

21 Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment.
22 He has not received any individualized determination that he poses a danger to the community or
23 a flight risk, nor has he been afforded a meaningful opportunity to challenge his detention before
24 a neutral decisionmaker.
25

26 Because Petitioner's detention has become prolonged, is not reasonably related to
27 removal, is unsupported by any individualized justification, and lacks constitutionally required
28

1 safeguards, it is unlawful. This Court should grant the Petition for Writ of Habeas Corpus and
2 order Petitioner's immediate release.

3 **II. JURISDICTION AND VENUE**

4 This Court has jurisdiction pursuant to 28 U.S.C. § 2241 because Petitioner is in custody
5 under the authority of the United States and challenges the legality of that custody.
6

7 Jurisdiction is also proper under 28 U.S.C. § 1331 and the Due Process Clause of the
8 Fifth Amendment.

9 Venue lies in the Western District of Washington because Petitioner is detained at
10 NWIPC in Tacoma, Washington, within this District, and his immediate custodian resides here.
11

12 **III. PARTIES**

13 Petitioner is a native and citizen of Mexico and is currently detained at NWIPC.

14 Respondent Bruce Scott is the Warden of NWIPC and Petitioner's immediate physical
15 custodian. He is the proper respondent under *Rumsfeld v. Padilla*, 542 U.S. 426 (2004).
16

17 Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security,
18 the agency responsible for immigration detention and enforcement nationwide.

19 **IV. LEGAL STANDARD**

20 Federal courts have jurisdiction under 28 U.S.C. § 2241 to review the legality of
21 immigration detention. The Government bears the burden of demonstrating that detention is
22 authorized by statute and complies with constitutional requirements.
23

24 Immigration detention is governed primarily by 8 U.S.C. § 1226 and 8 U.S.C. § 1231.
25 Detention is lawful only when it falls within one of these statutory schemes and remains
26 reasonably related to its authorized purpose. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
27
28

1 The Fifth Amendment prohibits arbitrary detention. Even in the immigration context, the
2 Government must provide a lawful basis for detention and adequate procedural safeguards.

3 **V. FACTUAL BACKGROUND**

4
5 Petitioner is a native and citizen of Mexico who has longstanding ties to the United States
6 spanning more than two decades, with evidence reflecting his presence as early as 1998 and
7 continuous residence in recent years since at least 2006. During that time, he has established
8 deep and substantial ties to this country. He is a devoted father of three children, including a son
9 on track to graduate high school this year, who is experiencing extreme distress because of his
10 father's detention.

11
12 Petitioner is the primary financial provider for his family and has been a consistent and
13 active presence in his children's lives. He provides emotional, financial, and parental support and
14 has been described by educators and mental health professionals as a central and stabilizing
15 figure in his son's development. His detention has put his family in a severely difficult situation.

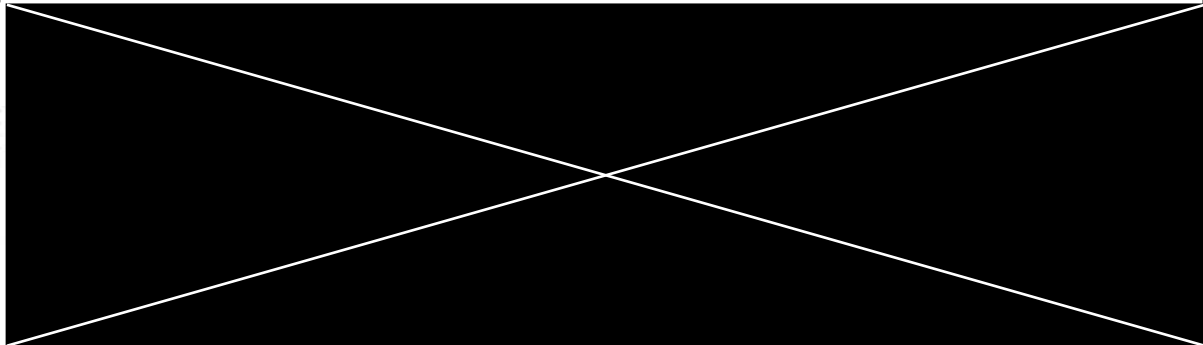
16
17 Petitioner is a long-standing member of his community who has maintained steady
18 employment, contributed to his church, and has been described by employers, community
19 members, and religious leaders as responsible, hardworking, and of good moral character.

20 These substantial ties strongly demonstrate that Petitioner is neither a danger to the
21 community nor a flight risk.

22
23 On or about November 18, 2025, Petitioner was apprehended by immigration authorities
24 and has remained detained since that time at the Northwest ICE Processing Center in Tacoma,
25 Washington. Petitioner is currently detained pursuant to a reinstated prior order of removal.
26 Following reinstatement, Petitioner expressed a fear of return and was referred for a reasonable
27 fear interview with the asylum office, but his reasonable fear determination was not established.

Fear of Return and Country Conditions

Petitioner has expressed a consistent and credible fear of returning to Mexico based on



Country conditions evidence confirms that Mexico continues to experience:

- widespread cartel violence
- extortion, kidnapping, and killings
- impunity and lack of government protection
- systemic human rights abuses

These conditions corroborate Petitioner's fear and demonstrate that removal is not a simple or routine administrative act.

Procedural Posture of Reasonable Fear Claim

Although Petitioner's reasonable fear claim was denied, that denial does not eliminate the legal and practical barriers to removal. The Immigration Judge affirmed the negative reasonable fear determination, finding no nexus to a protected ground and concluding that the harm described was motivated by personal or financial factors.

However, Petitioner has continued to assert fear of return and has sought judicial review. A stay of removal is currently in place, legally preventing removal while proceedings remain pending. Accordingly, regardless of the reasonable fear determination, removal is not presently executable, and detention remains disconnected from its statutory purpose.

Stay of Removal in the Ninth Circuit

Petitioner timely sought judicial review of that determination by filing a Petition for Review with the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit issued a stay of removal, which remains in effect. As a result, the Government is currently prohibited from removing Petitioner while his appeal is pending.

Despite the stay of removal and the pending appellate proceedings, Petitioner has remained detained for approximately since at least November 18, 2025.

Hardship to Petitioner's U.S. Citizen Child

Petitioner's continued detention is causing severe and ongoing harm to his child who is in high school. A licensed mental health professional has diagnosed Petitioner's son with Acute Stress Disorder and Major Depressive Disorder, directly linked to Petitioner's detention and the fear of losing him. The child is experiencing intrusive thoughts and anxiety related to his father's detention, sleep disruption and nightmares, emotional numbness and depression, inability to concentrate and declining academic performance, and fear for his family's safety and stability.

School officials confirm that since Petitioner's detention, the child's academic performance and emotional stability have significantly deteriorated, jeopardizing his ability to graduate.

VI. ARGUMENT

A. Detention Is No Longer Authorized Under 8 U.S.C. § 1231

Petitioner is detained pursuant to 8 U.S.C. § 1231, which governs detention following a final order of removal. Under that statute, detention is permitted only for the purpose of effectuating removal.

1 Although detention is mandatory during the initial 90-day removal period under 8 U.S.C.
2 § 1231(a)(2), that period has long expired. Petitioner's continued detention is therefore governed
3 by the constitutional limitations articulated in *Zadvydas v. Davis*.
4

5 The Supreme Court in *Zadvydas v. Davis* held that post-removal-order detention is
6 constitutionally limited. Detention is permissible only so long as it is reasonably related to the
7 Government's ability to effectuate removal. *Id.* at 690. Where removal is not significantly likely
8 in the reasonably foreseeable future, continued detention is no longer authorized. *Id.* at 701.
9

10 Once detention approaches or exceeds six months, continued detention is presumptively
11 unreasonable, and the Government bears the burden of demonstrating that removal is
12 significantly likely in the reasonably foreseeable future. *Id.*

13 Here, Petitioner has been detained since at least November 18, 2025, yet his removal is
14 not reasonably foreseeable. The Ninth Circuit has issued a stay of removal, which legally bars
15 the Government from removing Petitioner while his Petition for Review remains pending.
16 Because removal cannot occur during the pendency of judicial review, detention is no longer
17 reasonably related to its purported purpose.
18

19 Instead, Petitioner's detention has become contingent on the duration of appellate
20 proceedings—an inherently uncertain and potentially lengthy process. This renders his detention
21 indefinite in violation of *Zadvydas*.
22

23 **B. Detention Is Indefinite Due to the Stay of Removal**

24 The Government is currently prohibited from removing Petitioner due to the stay issued
25 by the United States Court of Appeals for the Ninth Circuit. Courts have recognized that when a
26 stay of removal is in place, the timing of removal becomes contingent on the duration and
27 outcome of appellate proceedings—an inherently uncertain and potentially prolonged process.
28

1 See *Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir. 2011). Under these circumstances,
2 detention shifts from administrative to indefinite.

3 Here, Petitioner's continued detention is not tied to any ongoing effort to effectuate
4 removal, but instead to the existence of pending judicial review. Because the Government is
5 legally barred from executing removal, it cannot establish that removal will occur in the
6 reasonably foreseeable future. Where removal is legally prohibited, detention ceases to serve its
7 statutory purpose and becomes purely punitive.

8 Detention that no longer serves its regulatory purpose becomes excessive and
9 constitutionally impermissible. See *Demore v. Kim*, 538 U.S. 510, 527–28 (2003); *Kansas v.*
10 *Hendricks*, 521 U.S. 346, 356–57 (1997). Accordingly, Petitioner's detention is no longer
11 reasonably related to removal, has become indefinite, and violates the Constitution.

12 **C. Petitioner's Detention Violates Due Process and Lacks Any Individualized Justification**

13 The Fifth Amendment prohibits the deprivation of liberty without due process of law.
14 Freedom from physical restraint lies at the core of the liberty protected by the Due Process
15 Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

16 Petitioner's continued detention is not supported by any individualized determination that
17 he poses a danger to the community or a flight risk. Petitioner has resided in the United States for
18 over two decades, maintained steady employment, provides for his U.S. citizen children, and is a
19 valued member of his community with good moral character. These substantial family and
20 community ties strongly demonstrate that Petitioner is neither a danger to the community nor a
21 flight risk.

22 Due process requires, at a minimum, that the Government provide a meaningful
23 opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*,

1 424 U.S. 319, 333 (1976). In the immigration detention context, this includes a custody
2 determination before a neutral decisionmaker and procedural safeguards sufficient to test the
3 legality and necessity of continued detention. See *Casas-Castrillon v. DHS*, 535 F.3d 942, 950
4 (9th Cir. 2008); *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

5
6 Here, Petitioner has not been afforded any meaningful opportunity to challenge his
7 detention before a neutral decisionmaker, nor has the Government made any individualized
8 showing that detention is necessary. At the same time, the Government is legally barred from
9 effectuating removal due to the judicial stay, eliminating the primary justification for detention.
10

11 Detention under these circumstances is arbitrary and constitutionally impermissible. The
12 Government has failed to provide the procedural protections necessary to justify continued
13 custody or to demonstrate that its asserted interests outweigh Petitioner's significant liberty
14 interest. See *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017); *Diouf v. Napolitano*, 634
15 F.3d 1081, 1086 (9th Cir. 2011).

16
17 **D. Exhaustion Is Not Required**

18 Petitioner is not required to exhaust administrative remedies before seeking habeas relief.
19 This Petition raises a constitutional challenge to the legality of Petitioner's continued detention
20 under *Zadvydas v. Davis*.

21 Even if the Court were to conclude that some form of administrative custody review is
22 available, Petitioner should not be required to exhaust administrative remedies by going before
23 an Immigration Judge. Exhaustion of administrative remedies is not required where it would be
24 futile or incapable of providing meaningful relief. See *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th
25 Cir. 2004), which is the case here.
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27
28

1 Historically, Tacoma Immigration Judges have always denied bond under *Zadvydas* with
2 a finding of flight risk to anyone who has filed a petition for review in the Ninth Circuit Court of
3 Appeals and has a stay motion in effect. They simply will not grant bond in these types of cases.

4
5 In the current political climate under the present administration, Tacoma Immigration
6 Judges are arbitrarily making individualized findings of “flight risk” across the board without
7 genuine independent review, therefore deeming them ineligible for release. As a result, findings
8 of flight risk are frequently reduced to untested, one-sided determinations rather than
9 meaningful, evidence-based adjudications. This undermines the purpose of habeas review by
10 stripping it of any practical effect and leaving Petitioner exactly where he started—detained
11 without meaningful review.
12

13 Under these circumstances, exhaustion is excused, and the Court must order Petitioner’s
14 immediate release.

15 **E. Detention Fails Under *Mathews v. Eldridge***

16 Under the framework set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), Petitioner’s
17 continued detention without an individualized determination violates due process. The *Mathews*
18 test balances (1) the private interest affected, (2) the risk of erroneous deprivation and the value
19 of additional safeguards, and (3) the Government’s interest.
20

21 First, Petitioner’s interest in freedom from physical restraint is fundamental. Immigration
22 detention constitutes a severe deprivation of liberty. *Zadvydas v. Davis*, 533 U.S. 678, 690
23 (2001). That interest is further heightened here by the direct and severe impact of Petitioner’s
24 detention on his child, who is experiencing significant psychological and educational harm as a
25 result of his father’s confinement. The consequences of continued detention therefore extend
26 beyond Petitioner himself and implicate substantial family and liberty interests.
27

1 Second, the risk of erroneous deprivation is substantial where detention continues without
2 a neutral determination of necessity. Additional procedural safeguards—such as a fair
3 individualized custody determination—would significantly reduce that risk. See *Hernandez v.*
4 *Sessions*, 872 F.3d 976, 991–92 (9th Cir. 2017). Here, the risk of error is particularly acute
5 because Petitioner remains detained despite a legal bar to removal, without any individualized
6 finding, while the harmful consequences of detention—including escalating harm to his child—
7 continue unchecked. The absence of any procedural mechanism to reassess detention under these
8 circumstances creates an unacceptably high risk of unjustified confinement.
9

10 Third, the Government’s interest does not justify continued detention under these
11 circumstances. While the Government has an interest in effectuating removal, that interest is
12 significantly diminished where removal is not reasonably foreseeable due to a judicial stay. Any
13 asserted public safety interest is likewise minimal, and the Government’s objectives can be fully
14 served through less restrictive alternatives to detention. Continued detention in the face of a legal
15 barrier to removal, and despite the substantial and ongoing harm it is causing, is excessive in
16 relation to any legitimate governmental objective.
17

18 Balancing these factors, continued detention without an individualized determination
19 violates due process.
20

21 **F. Humanitarian and Equitable Factors Confirm Detention Is Excessive**

22

23 Even where detention is statutorily authorized, it must remain proportionate to its purpose
24 and consistent with constitutional principles. Here, the humanitarian equities strongly weigh
25 against continued detention. Petitioner is a long-term resident with deep family and community
26 ties. He is the primary provider for his household and the central emotional support for his child,
27 who is currently experiencing severe psychological harm as a direct result of Petitioner’s
28

1 detention. His detention has placed the family at risk of housing instability, food insecurity, and
2 long-term hardship. This harm is not speculative—it is ongoing, documented, and severe.

3 Courts have recognized that detention becomes excessive where it imposes severe
4 collateral harm on U.S. citizen family members and where less restrictive alternatives are
5 available. The Government's interests can be fully served through supervision or conditions of
6 release.
7

8 Continued detention is excessive in relation to any legitimate governmental objective
9 where removal is legally barred, no individualized determination of danger or flight risk exists;
10 and substantial harm to Petitioner's child is ongoing.
11

12 **VII. REQUEST FOR RELIEF**

13 Petitioner respectfully requests that this Court:

- 14 1. GRANT this Petition for Writ of Habeas Corpus;
- 15 2. ORDER Respondents to release Petitioner from custody within 24 hours of the Court's
16 order;
- 17 3. In the Alternative, ORDER Petitioner's release upon payment of a monetary bond in an
18 amount deemed reasonable by the Honorable Judge, and/or under appropriate conditions
19 of supervision;
- 20 4. Order that Respondents are ENJOINED from re-detaining Petitioner after release; and
21 5. Any other relief the Court deems just and proper.
22
23

24 **VIII. CONCLUSION**

25 Petitioner's continued detention is unlawful. Because removal is legally barred by the
26 judicial stay, it is not reasonably foreseeable, and detention is no longer authorized under
27 *Zadvydas v. Davis*, rendering it effectively indefinite. His detention also violates the Due Process
28

1 Clause, as it is unsupported by any individualized determination that he poses a danger or flight
2 risk and lacks meaningful procedural safeguards. There is no individualized basis to justify
3 Petitioner's continued detention, and the Government's interests can be fully served through less
4 restrictive alternatives. At the same time, his detention is causing severe and ongoing harm to his
5 child, underscoring the excessiveness of continued confinement.
6

7 Under *Zadvydas* and *Mathews*, continued detention is unjustified, and the Court should
8 grant the Petition for Writ of Habeas Corpus and order Petitioner's immediate release.
9

10 IX. SIGNATURE AND CERTIFICATION

11 The undersigned counsel certifies that she represents the Petitioner and that this Petition
12 is filed on his behalf pursuant to 28 U.S.C. § 2241.
13

14 Respectfully submitted this 1st day of April 2026.
15

16 /s/Vicky J Currie

17 Vicky J Currie, WSBA #24192
18 Attorney for Petitioner
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CERTIFICATE OF SERVICE

I, Vicky J Currie, certify that on this 1st day of April 2026, I served true and correct copy of the **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241** upon the following Respondents by electronic service as permitted:

BRUCE SCOTT

Warden, Northwest ICE Processing Center
1623 East J Street
Tacoma, WA 98421

KRISTI NOEM

Secretary, U.S. Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528

Required Service on the United States

UNITED STATES ATTORNEY'S OFFICE

USAWAW.ImmigrationHabeasService@usdoj.gov
(Via email)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 1st day of April 2026.

/s/Vicky J Currie

Vicky J Currie, WSBA #24192
Attorney for Petitioner