IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

José Eraland Jiménez Chacón,

Petitioner,

v. No. 2:25-cv-00977-DHU-KBM

Todd Lyons, et al.

Respondents.

PETITIONER'S OPPOSITION TO RESPONDENTS' MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, through counsel, submits the following Opposition to Respondents' Motion to Dismiss the Petition for a Writ of Habeas Corpus. Respondents' Motion misapplies the governing jurisdictional statutes, overlooks constitutional defects in Petitioner's detention, and improperly seeks to dismiss a petition that raises substantial and unresolved factual and legal issues.

I.

INTRODUCTION

Petitioner's continued detention is unlawful because Petitioner's CAT deferral remains legally operative pending BIA review. Respondents' Motion to Dismiss rests on a series of fatal legal errors: 1) the Immigration Judge's order terminating CAT protection is not final under 8 C.F.R. § 1003.39 because Petitioner filed a timely appeal; 2) CAT protection remains in full force under 8 C.F.R. §§ 1208.17(b)(3) and 1003.6(a) until the BIA issues a final decision; and 3) because removal to Mexico is legally barred and all attempts to remove the Petitioner to a third county have failed, there is no significant likelihood of removal in the reasonably foreseeable future, making Petitioner's detention unconstitutional under *Zadvydas v. Davis*. DHS's own failed efforts to secure removal—and its removal of Petitioner from the "removal list" due to the BIA appeal—prove that removal is not foreseeable.

Respondents' jurisdictional arguments fail because *Zadvydas*-type detention challenges fall squarely within habeas jurisdiction and outside the narrow scope of § 1252(g). Respondents' procedural arguments also collapse: the revocation of supervision violated 8 C.F.R. § 241.4 (l), Petitioner was denied due process, and exhaustion is not required for constitutional habeas claims—especially where, as here, administrative remedies would be futile as DHS Headquarters has already made the determination to continue Petitioner's detention. For these reasons, dismissal is inappropriate, and Petitioner is entitled to habeas relief.

II.

FACTUAL BACKGROUND

Petitioner, who is 44 years old, is a native and citizen of Mexico. He first entered the United States 22 years ago on a visitor's visa and adjusted status to that of a lawful permanent resident of the United States on May 2, 2006. In February 2016, the United States Department of Homeland Security ("DHS") initiated removal proceedings against the Petitioner based on his conviction for a drug-trafficking offense. On November 2, 2016, the immigration judge ordered Petitioner's removal but granted him protection under CAT pursuant to 8 C.F.R. §1208.16(d)(2) following findings that he would likely face torture if removed to Mexico. After three countries declined to accept Mr. Chacon, DHS released him on March of 2017, under an Order of Supervision pursuant to 8 C.F.R. §241.4. Since his release in 2017, Petitioner has 1) not committed any crime or violation by any nature since November 3, 2016, 2) has resided with his U.S. citizen wife and U.S. citizen children in El Paso, Texas, and 3) creating a company with over 30 employees, 4) paying his taxes, 5) owning his home and 6) being an asset to his community and the United States.

Respondents claim that Petitioner voluntarily withdrew his CAT protection through prior counsel. Petitioner disputes this characterization as the Immigration Judge's decision to reopen and terminate CAT protection is not a final order. As such, as of today, Petitioner's CAT protection remains active. Respondents re-detained him in February 2025 at an immigration checkpoint, asserting violations of supervision terms. The day of his detention, Petitioner had his Form I-220B form and presented it to the inspection officer at the checkpoint. Petitioner explained to the officer that he missed one check-in and that after that, he never received a rescheduled check-in date from DHS. Petitioner maintained his phone number and address updated with his deportation officer in case he was rescheduled to appear. While at the checkpoint, the officer and Petitioner spoke directly to Petitioner's assigned officer. The deportation officer cleared up the issue and rescheduled Petitioner for a check-in on February 18, 2025. However, Petitioner was never released and was unable to appear at the check-in at the non-detained docket. This re-detention occurred without proper notice, without the informal interview required under applicable regulations when revocation is based on alleged violation of conditions, and without a meaningful opportunity to contest the allegations.

During this re-detention, Respondents repeatedly attempted—but failed—to obtain acceptance of Petitioner by multiple third countries. None accepted him. In light of the prolonged period of detention and the significant hardship it has caused to him and his family, Petitioner, through counsel, submitted a Motion to Reopen seeking termination of CAT/Deferral of Removal protection in July 2025. On August 11, 2025, Petitioner filed an application to stay his removal with ICE using Form I-246. The stay application was denied. On August 22, 2025, Petitioner filed a motion to withdraw his motion to reopen and terminate CAT protection. The basis for the withdrawal motion is that, after [redacted] In light of this [redacted] Petitioner sought to withdraw the motion to reopen because he fears that, if returned to Mexico, he will more likely than not be tortured or killed [redacted]

Despite this, the Immigration Judge never ruled on the withdrawal request and instead granted the original motion to reopen on September 17, 2025. Petitioner promptly appealed to the Board of Immigration Appeals on the grounds that the Immigration Judge erred by adjudicating the initial motion without first considering and ruling on Petitioner's timely request to withdraw it

Removal to Mexico is legally barred until the BIA resolves the CAT issue. Petitioner's detention has become indefinite.

III.

LEGAL STANDARD

To survive a motion to dismiss under Rule 12(b)(1) or Rule 12(b)(6), a habeas petition need only allege facts showing unlawful restraint of liberty. Because habeas corpus safeguards a fundamental liberty interest, courts must construe habeas petitions liberally and resolve ambiguities in favor of the petitioner. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). A habeas petition should not be dismissed at the pleading stage unless it appears beyond doubt that the petitioner can prove no set of facts entitling him to relief." *Hall,* 935 F. 2d. at 1106.

A district court may grant a writ of habeas corpus if a petitioner is in federal custody in violation of the Constitution or federal law. 28 U.S.C. § 224. *Sagastizado-*

Sanchez v. Kristi Noem, et al., Civil Action No. 5:25-CV-00104 (SDTX Nov. 14, 2025) "At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001). 8 U.S.C. § 2241(c)(3) authorizes "any person to claim in federal court that he or she is being held 'in custody in violation of the Constitution or laws. . . of the United States.'" *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Accordingly, 8 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear challenges to the lawfulness of immigration-related detention. *Id.* (citing 8 U.S.C. § 2241(c)(3)); *see also Demore v. Kim*, 538 U.S. 510, 517 (2003); *Baez v. Bureau of Immigr. & Customs Enf't*, 150 F. App'x 311, 312 (5th Cir. 2005) (unpublished); *Oyelude v. Chertoff*, 125 F. App'x 543, 546 (5th Cir. 2005) (unpublished).

Habeas is "the basic method for obtaining review of continued custody after a deportation order had become final" and is available "as a forum for statutory and constitutional challenges to post-removal-period detention." *Zadvydas*, 533 U.S. at 687–8 (citation omitted). "Whether a set case of particular circumstances amounts to detention within, or beyond, a period reasonably necessary to secure removal is determinative of whether the detention is, or is not, pursuant to statutory authority. The basic federal habeas corpus statute grants the federal courts authority to answer that question." *Id.* at 699 (citing 8 U.S.C. §2241(c)(3).

IV.

ARGUMENT

A. <u>The Court Has Jurisdiction Under 28 U.S.C. § 2241</u>

Respondents incorrectly argue that 8 U.S.C. § 1252(g) strips this Court of jurisdiction. Section 1252(g) is narrow, applying only to three discrete actions: the decision to commence proceedings, adjudicate cases, or execute removal orders. *Reno v Am.-Arab Anti-Discrimination Comm.* 525 U.S. 471, 482 (1999). Challenges to prolonged detention under *Zadvydas* fall outside § 1252(g), as repeatedly recognized by federal courts. Nothing in §1252(g) precludes district courts from exercising habeas jurisdiction over the detention of individuals in administrative immigration proceedings.

Petitioner does not ask this Court to review the decision or action to commence immigration proceedings against him, nor to adjudicate his case, nor to impose or eventually execute the removal order. Petitioner seeks review of his ongoing detention, a heartland habeas corpus case. Section 1252(g) does not prevent this Court from exercising jurisdiction under §2241 over Petitioner's habeas corpus claim because Petitioner is challenging the lawfulness of his post-removal order of detention and Respondents' ongoing detention. *Oyelude v. Chertoff*, 125 F. App'x 543, 546 (5th Cir. 2005) (courts have jurisdiction to review detention "insofar as that detention presents constitutional issues, such as those raised in a habeas petition").

Respondents also argues that this Court lacks jurisdiction pursuant to 8 U.S.C. §1252(B)(9). However, this argument also fails. Section 1252(b)(9) does not purport to deprive the courts of jurisdiction over petitions like the one before this Court that seek a writ of habeas corpus and challenge the legality of detention. As stated above, Petitioner is not challenging the government's actions that it has taken to remove him from the United States. However, Petitioner is challenging the basis for, and duration and conditions of his continuing detention. *See Jennings v. Rodriguez,* 583 U.S. 281, 294-95 (2018) (holding that petitioners in that case did not ask for review of the order of removal, the decision to detain them, or seek removal; under those circumstances the Supreme Court held that §1252 did not present a jurisdictional bar."). In *Jennings,* the Supreme Court stated that the applicability of §1252(b)(9) turns on whether the legal questions that we must decide 'arise from' the actions taken to remove" noncitizens. *Jennings*, 583 U.S. at 292-93. The Supreme Court rejected the argument that the act of detaining noncitizens "arises from" actions taken to remove them because that "expansive interpretation of §1252(b)(9) would lead to staggering results." *Id.* Interpreting 'arising from' in that extreme way would make claims of prolonged detention effectively unreviewable." *Id.* Where Petitioner is not seeking review of the order of removal, challenging the decision to detain him, or seek removal or the process in which removability is determined, § 12(b)(9) is not a jurisdictional bar. *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (citing *Jennings*, 583 U.S. at 294-95.)

In this case, Petitioner brings statutory and constitutional claims challenging his post-removal order detention, This Court is not barred from hearing these claims

B. <u>Respondents Misstate the Effect of the BIA Appeal and CAT Deferral Proceedings</u>

This case arrives in a highly unusual and complex procedural posture that strengthens, rather than weakens, the availability of habeas relief. Respondents' narrative depends on the assertion that Petitioner "voluntarily withdrew" CAT protection. Any "withdrawal" was immediately superseded by a timely BIA appeal, rendering Respondents' reliance on the IJ's ruling premature. Moreover, CAT deferral is not discretionary—it is a mandatory bar to removal if an applicant demonstrates a likelihood of torture. 8 C.F.R. §1208.16(d)(2). Any ambiguity regarding the validity of the deferral must favor the noncitizen, and detention cannot be justified on the basis of removal to a country where torture is likely or any failed attempts to remove the Petitioner to a third country.

Under 8 C.F.R. § 1003.39, an immigration judge's decision does not become final until: (1) the time for appeal has expired, or (2) the BIA has issued its decision. The regulation states "the decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken, *or* upon written decision of the Board of Immigration Appeals." Here, Petitioner timely appealed the immigration judge's order purporting to terminate CAT deferral. That appeal remains pending before the BIA. Because a timely appeal was filed, the IJ's order is NOT final under § 1003.39; Petitioner CAT protection remains active and has not been terminated. DHS' own conduct of removing Petitioner from the removal list after the appeal was filed, further confirms that DHS itself recognizes the non-final nature of the Immigration Judge's decision.

Accordingly, continued detention of the Petitioner violates both §1003.39 and the constitutional standards articulated in *Zadvydas.* Thus, Respondents' position—that detention is lawful because removal is possible—is both factually wrong and legally impermissible.

C. <u>Petitioner's Detention Violates *Zadvydas v. Davis*</u>

"Noncitizens, even those subject to a final order of removal, have constitutional rights just like everyone in the United States." *See Zadvydas, 533 U.S. at 693; Villanueva v. Tate*, No. 4-25-cv-03364, (TXSD. Sept. 26, 2025). Under *Zadvydas*, detention beyond six months is permissible only where there is a significant likelihood of removal in the reasonably foreseeable future. Here, no such likelihood exists. Multiple third countries have rejected DHS's removal requests in 2017 and in 2025. Removal to Mexico is legally stayed by Petitioner's pending BIA appeal; Petitioner continues to have CAT protection while his appeal is pending. Respondents' own narrative confirms that no removal can occur until the BIA resolves the case. Respondents' reliance on a hypothetical future removal does not satisfy the constitutional standard. Petitioner's prolonged and uncertain detention is unconstitutional. Due process requires that a noncitizen be detained for no longer than the time "reasonably necessary to secure removal." *See Zadvydas*, 533 U.S. 678, 699. In *Zadvydas*, the Court held that 180 days is a "presumptively reasonable" period for removal a noncitizen. *Id.* at 699-700. "But if there is no reasonably likelihood that the citizen will be removed in the foreseeable future, the government may not continue to detain him." *Id.*; *Villanueva v. Tate*, No. 4-25-cv-03364, (TXSD. Sept. 26, 2025). Even if Respondents identify a third country for removal, Petitioner's detention will further be prolonged as he contests removal to that third country. *Zavvar v. Scott*, 2025 WL 2592543, at *8 ("The fact that Zavvar likely will have the opportunity to seek further relief from the Immigration Court, and then potentially filed appeals from any adverse rulings, further demonstrates that removal is not likely in the reasonably foreseeable future."); *See Munoz-Saucedo v. Pittman*, No. 25-2258 (CPO), 2025 WL 1750346, at *7 (D.N.J. June 24, 2025).

D. Respondents Failed to Comply with Revocation Procedures

Respondents argue that they were not required to provide notice or an informal interview. This is wrong. Where revocation is based on an alleged violation of conditions of supervision, 8 C.F.R. § 241.4(l)(1) requires: 1) written notice of alleged violations; and 2) an informal interview promptly after re-detention. Respondents provided neither. Petitioner was encountered at a checkpoint while coming back from vacation with his family. He properly presented his Form I-220B to the inspecting officer. After speaking with his assigned deportation officer, he was scheduled him for a check-in. However, he was never released and has been detained since then at Otero.

Petitioner's detention lacks adequate procedural safeguards. *See United States v. Caceres* 440 U.S. 741, 760 (1979). Petitioner was afforded no meaningful opportunity to contest the allegations underlying his re-detention, no genuine custody review, and no explanation grounded in the regulatory factors governing post-order detention. The declaration of Assistant Filed Office Director Jose P. Ortez does not contain any facts showing that an order revoking Petitioner's Order of Supervision was validly signed by anyone authorized to do so. (Dkt. 18-1.) With the exception of a single missed check-in—an appointment he promptly attempted to reschedule—Petitioner fully complied with every condition of his order of supervision. Respondents' assertion that they may unilaterally recharacterize a violation-based revocation as a discretionary one in order to evade the applicable regulatory safeguards is improper and fundamentally inconsistent with due process. Furthermore, Respondents' reliance on internal custody reviews cannot cure these deficiencies, as such reviews merely rubber-stamp prior determinations rather than provide the individualized, reasoned assessment that due process requires.

When Respondents released Petitioner in 2017, they expressly determined that he posed neither a flight risk nor a danger to the community. *See* 8 C.F.R.§ 241.4 (d)(1) (permitting the release of noncitizens "if the [noncitizen] demonstrates to the satisfaction of the Attorney General or her designee that his or her release will not pose a danger to the community or to the safety of other persons or to property or a significant flight risk of flight pending such [noncitizen]'s removal from the United States.") That assessment remains fully supported today. Since his release, the circumstances of Petitioner's life have not only remained stable—they have significantly strengthened his ties to the United States. Petitioner now owns his home and business, and he continues to raise his children here. Moreover, Petitioner has not been arrested for any offense since his release, nor has he engaged in any conduct that could reasonably suggest he poses a risk to public safety. To the contrary, he has demonstrated exemplary responsibility: he maintains a stable family life, provides employment to more than 30 individuals in the El Paso area, and consistently pays his taxes. Since 2017, Petitioner has contributed meaningfully to his community and has served as the primary financial and emotional support for his wife and children.

E. <u>Exhaustion is Not Required, and if it Were, Futility Applies</u>

Courts have consistently held that administrative exhaustion is not required for constitutional habeas claims challenging prolonged detention. Even if he did request HQPDU review, it would be futile. Requiring HQPDU exhaustion as a precondition to habeas would transform a prudential doctrine into a substantive barrier, contrary to the core protection *Zadvydas* provides. Petitioner respectfully requests that this Court waive the requirement that he exhaust administrative remedies by filing an additional HQPDU custody review request, as doing so would be futile.

Petitioner has been in ICE custody since February 14, 2025. On February 19, 2025, through counsel, Petitioner submitted a written requests for release; the request was denied by the Deputy Field Office Director to pursue third-country removal. On May 2, 2025, Petitioner's custody review was denied. On May 14, 2025, Petitioner's 90-day custody review was denied due to flight risk. On August 19, 2025, Petitioner's 180-day was reviewed and released was denied due to flight risk and a public risk due to his felony drug conviction. The 180-review was within the jurisdiction over of ICE Headquarters (ERO Removal Division) in Washington, D.C. In addition to the custody reviews by DHS and his own requests for release, Petitioner also filed a stay of removal with ICE. The stay was denied.

Petitioner has already pursued and exhausted every available administrative avenue to secure his release, including review by ICE Headquarters. Requiring him to submit yet another request to the same headquarters office that has already considered and denied his release would serve no purpose and would be purely futile. Continued detention under these circumstances inflicts ongoing, irreparable harm on Mr. Chacon by unlawfully depriving him of his liberty. For these reasons, this Court should waive the exhaustion requirement and consider his petition on the merits.

V.

CONCLUSION

For all of these reasons, Petitioner respectfully request that this Court DENY Respondents' Motion to Dismiss. Petitioner also respectfully requests this Court to find that Petitioner's detention is unlawful and unconstitutional under *Zadvydas.*

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2025, I electronically filed the foregoing Petitioner's Opposition to Respondents' Motion to Dismiss Petition for Writ of Habeas Corpus of the Court using CM/ECF system, which will send notification of the filing to all registered parties.

Respectfully submitted,

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