

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

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY – NEWARK DIVISION

LUCAS DE SOUZA-FERREIRA, A# )
Plaintiff)
)
v.)
)
ALEJANDRO MAYORKAS, Secretary of DHS;)
MERRICK B. GARLAND, Attorney General;)
JOHN TSOUKARIS, Director,)
ICE Newark Field Office;)
YOLANDA PITTMAN, WARDEN,)
Elizabeth Detention Center;)
)
In Their Official Capacities,)
)
Defendants.)
)

Civil Action No. _____

**PETITION FOR WRIT OF
HABEAS CORPUS**

**EMERGENCY PRO SE MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION FOR IMMEDIATE RELEASE FROM IMMIGRATION
DETENTION PENDING HABEAS CORPUS PETITION UNDER 28 U.S.C. § 2241**

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INTRODUCTION AND RELIEF REQUESTED

Petitioner-Plaintiff, Lucas De Souza-Ferreira, respectfully moves for an Emergency Temporary Restraining Order and a Preliminary Injunction ordering his immediate release from ICE custody at the Elizabeth Contract Detention Facility, on his own recognizance, on bond, or, in the alternative, ordering his release under reasonable conditions of supervision. This motion is submitted together with a habeas corpus petition and supporting memorandum.

Mr. De Souza-Ferreira has been detained well beyond the 90-day statutory “removal period,” and his removal is not reasonably foreseeable. On August 8, 2025, an Immigration Judge granted him protection under the Convention Against Torture (CAT). According to EOIR’s Automated Case Information system, no appeal was received, and the grant is final. Because removal to Brazil is legally barred and ICE has not identified any viable alternate country for removal, continued detention violates 8 U.S.C. § 1231 as construed by *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Petitioner also suffers from significant medical conditions—epilepsy  twice daily, and severe orthopedic injuries from a 2021 accident (including left femoral neck fracture with ORIF, sacral fracture, and L5 pedicle fracture)—and is not receiving adequate treatment in detention, causing ongoing pain and risk of seizure and permanent damage. His continued detention violates the Fifth Amendment’s Due Process Clause and constitutes irreparable harm.

Petitioner asks this Court to: (1) immediately enjoin Respondents from continuing to detain him and order release within 48 hours on his own recognizance, on bond, or, alternatively, reasonable conditions of supervision; and set an expedited schedule on the habeas petition.

FACTUAL BACKGROUND

1. Detention and Post-Order Status

- Petitioner Lucas De Souza-Ferreira entered ICE custody on or about June 8, 2025, and remains detained at the Elizabeth Contract Detention Facility in Elizabeth, New Jersey. His detention has persisted despite significant legal developments in his favor. (EXHIBIT-C-1)

- On August 8, 2025, an Immigration Judge granted Petitioner protection under the Convention Against Torture (CAT) in withholding-only proceedings. This decision is documented in the Order of the Immigration Judge dated August 8, 2025 (EXHIBIT-B), and is reflected in the EOIR Automated Case Information printout, which confirms the grant and indicates no appeal was filed (EXHIBIT-C-2).
- The Department of Homeland Security (DHS) did not appeal the decision, rendering the order administratively final on or about September 8, 2025, following the 30-day appeal period. Despite this finality, Petitioner has been detained for more than 90 days post-CAT grant, exceeding the statutory removal period. Removal to Brazil is legally barred due to the CAT protection, and ICE has not identified any alternative country willing to accept him and provide him the care he needs.

2. Medical Conditions and Inadequate Care in Detention

- Petitioner suffers from significant medical conditions that have been inadequately addressed during his detention. Neurosurgery and Neurology consultations have documented his epilepsy, [REDACTED] a history of seizures, an L5 pedicle fracture, and the need for follow-up care and a brace. These details are outlined in the Cooper University Hospital records from October 2 to October 6, 2021 (EXHIBIT-D).
- Orthopedic evaluations have revealed a left femoral neck fracture and a sacral fracture, both statuses post open reduction internal fixation (ORIF) and sacroiliac (SI) screw placement as of October 3, 2021. Initial orders were for non-weight-bearing status, with ongoing follow-up needs (EXHIBIT-D).
- On July 19, 2022, Dr. Henry E. David, D.O., an orthopedic surgeon, examined Petitioner and noted that he remained symptomatic. Dr. David recommended therapy, home exercises, and periodic imaging due to the risk of avascular necrosis of the femoral head, which might necessitate hip replacement. He also observed significant surgical scarring and a limited range of motion (EXHIBIT-D).
- While in detention, Petitioner has not consistently received Keppra at the prescribed doses and has been provided only minimal analgesics for severe chronic pain. This inadequate care places him at risk of seizures and permanent orthopedic and neurological damage.

3. Administrative Efforts and ICE Policy Favoring Release

- Immigration Counsel for Petitioner has submitted multiple humanitarian and expedited release requests, citing ICE policy that favors release after a grant of relief and the medical urgency of Petitioner's condition. Despite these efforts, ICE

has not released Petitioner. These requests are documented in the Humanitarian Release Requests to ICE ERO Newark dated August 13, 2025 (EXHIBIT-E).

- ICE's policies and guidance advocate for the release of individuals when an Immigration Judge grants protection, such as CAT withholding or deferral, particularly when removal is not reasonably foreseeable and no exceptional circumstances exist. Relevant policies include ICE Directive 16004.1, the 2021 ICE Director Reminder, and the legacy DOJ OGC memo on detention and release during the removal period for aliens granted withholding or deferral (EXHIBIT-F).
- Petitioners have no criminal record, is not subject to mandatory detention, and there are no exceptional circumstances justifying continued detention.

JURISDICTION AND VENUE

- This Court has jurisdiction under 28 U.S.C. §§ 1331 and 2241. See also 28 U.S.C. § 2243.
- Venue lies in this District because Petitioner is detained at the Elizabeth Contract Detention Facility in Elizabeth, New Jersey, and the immediate custodian (the Warden) and ICE Newark Field Office are within this District.

LEGAL STANDARD

- A TRO/Preliminary Injunction is warranted where the movant shows: (1) a likelihood of success on the merits; (2) irreparable harm absent relief; (3) that the balance of equities tips in his favor; and (4) that the public interest supports relief. See *Winter v. NRDC*, 551 U.S. 7 (2008); *Nken v. Holder*, 556 U.S. 418 (2009) (stay factors substantially overlap).
- Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), detention beyond the period reasonably necessary to secure removal is unlawful under 8 U.S.C. § 1231(a)(6); once removal is not reasonably foreseeable, continued detention violates the statute and due process.

ARGUMENT

I. Petitioner Is Likely to Succeed on the Merits.

A. Continued detention violates 8 U.S.C. § 1231 as construed in *Zadvydas* because removal is not reasonably foreseeable.

- The 90-day “removal period” has elapsed. Petitioners have been in ICE custody since June 8, 2025. His CAT grant became final around September 8, 2025. Despite the passage of more than 90 days post-order, Respondents have not affected, and cannot affect, removal to Brazil because CAT protection legally bars removal there.
- Respondents have not identified any third country willing to accept Petitioner and offer the necessary care he needs for his medical conditions. Under *Zadvydas*, once removal is not reasonably foreseeable, detention is no longer authorized. 533 U.S. at 699–701. This is particularly clear where removal to the home country is legally prohibited by a final CAT grant.
- ICE’s own policies favor release following an IJ’s grant of protection absent exceptional circumstances. See ICE Directive 16004.1 and 2021 reminder; 8 C.F.R. §§ 241.4, 241.13 (requiring custody reviews and release where removal is not significantly likely in the reasonably foreseeable future). Exhibits F1–F3.

B. Detention violates the Fifth Amendment’s Due Process Clause.

- Prolonged civil detention untethered to a legitimate purpose violates due process. Petitioner cannot be removed to Brazil (final CAT protection), and the government has not shown a significant likelihood of removal to any other country in the reasonably foreseeable future. The continued deprivation of liberty serves no legitimate removal purpose and is therefore unconstitutional under *Zadvydas* and due process principles.

C. Respondents’ failure to provide adequate medical care further violates due process.

- Petitioner suffers from a documented seizure disorder requiring Keppra 750 mg twice daily, and from serious orthopedic injuries requiring ongoing specialist care and imaging. Exhibits C1–C3; D1–D2.
- In detention, he is not consistently receiving prescribed antiepileptic medication and is given only minimal analgesics for severe pain, risking seizures and permanent harm. Governmental deliberate indifference to serious medical needs violates due process.
- Petitioner has been largely immobile for approximately one year following complex hip and pelvic surgeries. To recover mobility and function, he requires constant, structured physical therapy and rehabilitation, including gait training and a supervised home-exercise program. His treating orthopedist expressly recommended that he “continue therapy,” perform home exercises, and undergo periodic imaging due to the risk of avascular necrosis of the femoral head that may necessitate hip replacement. EXHIBIT D. Cooper University Hospital also ordered that Petitioner “wear [1] brace when out of bed and [2] working with

physical therapy,” confirming the medical necessity of ongoing rehabilitation. See Cooper University Hospital Neurology/Neurosurgery/Orthopedics notes (Exhibits C1–C3).

- Despite these orders, detention has not provided Petitioner with the constant physical therapy and rehabilitation regimen required to restore mobility. The lack of consistent PT and periodic imaging has caused deconditioning, muscle atrophy, joint stiffness, increased pain, and heightens the risk of permanent functional loss and avascular necrosis—harm that is irreversible and constitutes ongoing constitutional injury.
- On November 12, 2025, Petitioner suffered an epileptic episode in detention. He was not transferred to a hospital for evaluation or diagnostic testing. Instead, facility staff administered some medication and left him in his detention room. Once able, Petitioner called his mother to report what occurred. Immigration counsel then contacted the detention center to inquire about the incident and spoke with a supervisor, who denied any incident had occurred. Counsel also attempted to contact the detention medical unit; no one answered the phone and no information was provided. This sequence—failure to transfer for emergent evaluation, lack of documentation or transparency, and refusal to communicate with counsel—further evidences deliberate indifference to Petitioner’s serious medical needs.
- Taken together, Respondents’ failure to (1) ensure consistent antiepileptic treatment, (2) provide adequate analgesia, (3) deliver the medically ordered, constant physical therapy and rehabilitation necessary to regain mobility, and (4) respond appropriately to an acute seizure event, violates the Fifth Amendment’s due process protections for civil detainees and underscores the urgency of immediate release.

II. Petitioner Faces Imminent and Irreparable Harm Without Injunctive Relief.

- Seizures can be life-threatening and cause permanent neurological injury; interruption of Keppra or inadequate dosing creates an imminent risk of harm. Exhibits C1–C2.
- Orthopedic specialists warned of the risk of avascular necrosis of the femoral head, potentially requiring hip replacement without proper follow-up and imaging. EXHIBIT-D. Delay in necessary care can cause irreversible damage and disability.
- Ongoing detention under conditions of inadequate care causes continuous pain and deterioration—harms that cannot be remedied by monetary damages and are therefore irreparable.

III. The Balance of Equities and Public Interest Favor Immediate Release.

- Petitioner has no criminal record, is not subject to mandatory detention, and is eligible for supervised release. Exhibits E2–E3. ICE policy recognizes release is favored after a grant of protection absent exceptional circumstances.
- Public interest is served by adherence to statutory limits (*Zadvydas*), by respect for final CAT orders that prohibit removal to torture, and by avoiding unconstitutional prolonged detention and preventable medical harm.
- Release on his own recognizance, on Bond or Reasonable conditions of supervision (reporting, OSUP, ATD) will address any appearance concerns without depriving liberty or endangering the public.

IV. Exhaustion and Procedural Posture.

- There is no statutory administrative appeal to challenge ongoing post-order detention where removal is not foreseeable. Petitioner sought humanitarian and expedited release from ERO Newark and filed a stay application; ICE rejected the stay and declined to release him. EXHIBIT-E
- Habeas corpus is the proper and only effective vehicle to remedy unlawful detention and prevent imminent medical harm.

REQUESTED RELIEF

Petitioner respectfully requests that the Court:

1. Issue a Temporary Restraining Order enjoining Defendants from continuing to detain Petitioner and ordering his immediate release within 48 hours on his own recognizance, on bond, or alternatively, an Order of Supervision with reasonable conditions (e.g., periodic reporting, ATD/GPS if necessary), pending final resolution of the habeas petition;
2. Set an expedited schedule for Defendants to show cause why the writ should not be granted and why continued detention is lawful under *Zadvydas* and 8 U.S.C. § 1231, with a prompt hearing;
3. Award any further relief the Court deems just and proper, including costs and immediate consideration due to medical urgency.

CERTIFICATION REGARDING NOTICE

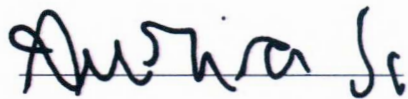
Petitioner will promptly serve this motion and accompanying habeas petition on the U.S. Attorney's Office for the District of New Jersey, the ICE Newark Field Office, the Warden of Elizabeth Detention Center, and OPLA Newark via Priority Mail. To the extent the Court deems ex parte relief necessary due to the imminent risk of seizure and medical harm, Petitioner certifies that immediate and irreparable injury will occur before Respondents can be heard in opposition.

Key contacts for service:

- **Clerk of Court, United States District Court- District of New Jersey – Newark Division**
Martin Luther King Jr. Federal Building, 50 Walnut Street, Newark, NJ 07102
- **Civil Division, U.S. Attorney's Office, District of New Jersey**
970 Broad Street, 7th Floor, Newark, NJ 07102
- **Office of the Principal Legal Advisor (OPLA) Newark**
970 Broad Street, Room 1300, Newark, NJ 07102
- **ICE ERO Newark Field Office**
970 Broad Street, 11th Floor, Newark, NJ 07102
- **Warden, Elizabeth Contract Detention Facility**
625 Evans Street, Elizabeth, NJ 07201

VERIFICATION

I, Lucas De Souza-Ferreira, declare under penalty of perjury under the laws of the United States, 28 U.S.C. § 1746, that the facts stated in this motion are true and correct to the best of my knowledge and belief, and that the attached exhibits are true and correct copies of records pertaining to my case.



Lucas De Souza-Ferreira, pro se

A# 

Physical Address:

Dated: 11 / 25 / 2025