UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

M.B.M. [redacted] (age sixteen). *Petitioners-Plaintiffs*, *v.* PAMELA BONDI, United States Attorney General; KRISTI NOEM, Secretary of the United States Department of Homeland Security; TODD M. LYONS, Director of United States Immigration and Customs Enforcement; SYLVESTER ORTEGA Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, JOSE RODRIGUEZ, in his official capacity as Warden of the Dilley Immigrant Processing Center; *Respondents.*	§	Cause No. 5:26-cv-666 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, PETITION FOR WRIT OF HABEAS CORPUS**

TABLE OF CONTENTS

I. INTRODUCTION.....3

II. JURISDICTION.....6

III. VENUE.....6

IV. REQUIREMENTS OF 28 U.S.C. § 2243, WRIT OF HABEAS CORPUS ISSUANCE, RETURN, HEARING, AND DECISION.....7

V. PARTIES.....7

VI. FACTS.....8

VII. LEGALFRAMEWORK.....10

VIII. ARGUMENT.....10

IX. CLAIMS FOR RELIEF.....20

PRAYER FOR RELIEF.....22

VERIFICATION PURSUANT TO 28 U.S.C. § 2242.....24

CERTIFICATE OF SERVICE.....25

I. INTRODUCTION

1. This case is about the authority of U.S. Immigration and Customs Enforcement ("ICE") to detain a vulnerable mother and her sixteen-year-old son whom it has failed to deport for over five years. Petitioner Ms. M.B.M. is a mother born in Mexico, and Petitioner [redacted] is her sixteen-year-old son, also born in Mexico, (hereinafter "Petitioners"). Petitioners have lived in the United States since early 2017. The family have created a life in the United States, and minor [redacted] has been enrolled and attending school at Edison High School in San Antonio. Petitioners were granted protection from their home country of Mexico by an Immigration Judge pursuant to the Convention Against Torture. *See* Exhibit 1, Written Order of Immigration Judge Granting Protection from Deportation to Mexico in the form of Protection under the Convention Against Torture. They were granted this protection on [redacted] 2019, and have been living in the United States under ICE supervision ever since. ICE has been unable to effectuate their removal to a safe third country.

2. Since the order of removal was issued, Petitioners have faithfully checked in with ICE by visiting their local ICE office. *See* Exhibit 2, ICE Check-In Sign-Ins. Petitioners have abided by their supervision requirements and have built a life in San Antonio, Texas free from the extreme abuse they suffered in Mexico. *See* Exhibit 1, Written Order of Immigration Judge Granting Protection from Deportation to Mexico in the form of Protection under the Convention Against Torture.

3. On approximately September 30, 2025, ICE unlawfully revoked Petitioners Release. *See* Exhibit 3, Notice of Revocation of Release. The Release Revocation states that ICE intended to effectuate their removal to Mexico, the exact country they were granted

protection from. *Id.* This attempt to return Petitioners to the country in which they were tortured violates principles on non-refoulment.

4. Respondents and their agents have given no explanation for Petitioners re-detention after years of complying with supervised release requirements, beyond a change in Presidential administrations. Most importantly, officials have given no indication that they have made progress on obtaining travel documents to a safe third country. In fact, the tactic employed by ICE to effectuate their removal is a consistent pressure to renounce their protection from torture in Mexico and voluntarily sign a deportation order to that country.

5. Respondents and their agents have provided no indication to Petitioners that there is a significant likelihood of their removal to a *safe* third country in the reasonably foreseeable future. Their detention serves no legitimate governmental purpose and is therefore unlawful especially considering that one Petitioner is a minor who has missed months of educational instruction.

6. Petitioners challenge their indefinite re-detention as a violation of the Immigration and Nationality Act (INA), as well as their rights under the Due Process Clause of the Fifth Amendment. Further, Petitioners challenge the detention of minor [redacted] under the Flores Settlement Agreement. *See* Exhibit 4, Flores Settlement Agreement.

7. Petitioners respectfully request this Court to grant them Writ of Habeas Corpus and order Respondents to release them from custody under reasonable conditions of supervision. Petitioners are seeking habeas relief under 28 U.S.C. § 2241, which is the proper vehicle for challenging civil immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001).

II. JURISDICTION

8. Petitioners are in the physical custody of Respondents. Petitioners are detained at Dilley Immigration Processing Center.

9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

10. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

III. VENUE

11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which Petitioner currently is detained.

12. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

14. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application

for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

V. PARTIES

15. Petitioners, [redacted], a six-teen year-old [redacted] and his mother, Ms. M.B.M., are citizens of Mexico who have been in immigration detention since approximately September 30, 2025. They are currently detained at the Dilley Immigration Processing Center.

16. Respondent, Pamela Bondi, is the Attorney General of the United States. She leads the Department of Justice, which includes the Executive Office for Immigration Review and the immigration courts. She is sued in her official capacity.

17. Respondent, Kristi Noem, is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, which is responsible for Petitioner's detention. She has ultimate custodial authority over Petitioner and is sued in her official capacity.

18. Respondent, Todd M. Lyons, is the Acting Director of U.S. Immigration and Customs Enforcement. In that role, he is responsible for ICE's immigration enforcement and detention operations and is a legal custodian of Petitioner. He is sued in his official capacity.

19. Respondent, Sylvester Ortega, is the Field Office Director for the San Antonio Field Office of ICE. He is responsible for enforcement of the immigration laws within this district and for overseeing ICE officials' compliance with agency policies and procedures. He is a legal custodian of Petitioner and is sued in his official capacity.

20. Respondent, Jose Rodriguez, is Warden of the Dilley Immigration Processing Center, operated by Core Civic. The warden has immediate physical custody of the Petitioner

pursuant to an agreement with ICE and is a legal custodian of Petitioner. The warden is sued in his official capacity.

VI. FACTS

Petitioners were granted Protection Under the Convention Against Torture and Re-detained while on an Order of Supervision.

21. Petitioners have been in the United since January 10, 2017, when they applied for admission at the United States Border. Exhibit 5, I-862 Notice to Appear. Ms. M.B.M. has maintained a hardworking, honorable life. The minor, [redacted] is currently enrolled in the San Antonio public school system and is missing essential instruction while detained. Petitioners are currently detained at Dilley Immigration Processing Center. The Petitioners are suffering mentally in detention, especially [redacted], who only wishes to return to school.

22. Upon Petitioners' entry into the United States, DHS released Petitioners on a humanitarian parole. Petitioners attended regular check-ins with ICE leading up to their final court date on August 16, 2019. *See* Exh. 1 and 2. Though Petitioners had several check-ins scheduled they always complied. *Id.*

23. On August 16, 2019, the Immigration Judge granted Petitioners protection from deportation to Mexico under the Convention Against Torture but entered a final order of removal in Petitioners case as required by law. Exh. 1. The Immigration Judge, in relation to Ms. B.M., held that "Accordingly, the Court finds that-considering the evidence of past torture inflicted upon Respondent; Respondent's inability to relocate within Mexico; and the current country conditions-Respondent would be "personally at risk of torture" should she return to Mexico. *See* 8 C.F.R. § 1208.16(c)(3); *see also S-V-*, 22 I&N Dec. at 1313. Similarly, Respondent has demonstrated sufficient [redacted] in the torture she fears in

Mexico." When evaluating minor [redacted]'s risk of torture the Immigration Judge held, that any potential harm that [redacted] "may face is based substantially on Respondent's experiences, which have already been found to put her "personally at risk" for torture in Mexico and that such torture would be [redacted] The Judge further held that in addition to his mother's experience, the record indicated that [redacted]'s [redacted]," and in regard to [redacted] specifically, the record indicated [redacted] The Judge found that the [redacted]'s [redacted] and that all of Ms. B.M.'s children '[redacted]" and that the father '[redacted]" Exh. 1. For those reasons the Immigration Judge granted protection in the form of Protection Under the Convention Against Torture to both Petitioners.

24. Protection under CAT means that the Immigration Judge enters a final order of removal, but the Petitioners could not be removed to Mexico. *Id.*

25. Following their grant of CAT protection and following the order of removal, Petitioners remained released in the United States pursuant to an Order of Supervision (1-220B or OSUP).

26. On approximately September 30, 2025, despite their compliance with their OSUP, Petitioners were arrested at a regularly scheduled ICE Check-In and are now held in custody of Respondents.

DHS and ICE Directives and Practices Regarding Third-Country Removal

27. On February 18, 2025, ICE issued a directive encouraging the use of third country removal for individuals granted withholding of removal and CAT protection. Exh. 6

28. On March 30, 2025, DHS issued a memorandum concerning "Guidance Regarding Third Country Removal." Ex. 7. This memorandum sets forth a procedure for deportation to third country of noncitizens like Petitioners, who were granted withholding of removal or CAT protection. Ex. 7. The memorandum provides that, if the Department of State has received a credible diplomatic assurance that, broadly speaking, a third country will not persecute or torture individuals deported to that country, then noncitizens like Petitioners who were granted withholding of removal or CAT protection may be removed to that country without due process. Ex.7.

29. Upon information and belief, on July 9, 2025, ICE issued a directive affirming that ICE employees should adhere to the March 30, 2025 memorandum. Ex. 8. Upon information and belief, Respondents have removed noncitizens to third countries, including El Salvador, Panama, Costa Rica, Honduras, Ghana, South Sudan, Eswatini, Uzbekistan, and Mexico. *See* Ex. 6.

30. Upon information and belief, the diplomatic assurances that the Department of State has obtained from third countries have not prevented those third countries from subsequently deporting noncitizens to the same countries where they fear persecution or torture and for which their removal by the United States had been withheld or deferred due to a grant of withholding of removal or CAT protection. See Ex. 6 at 2.

31. Ms. B.M. and C.R.B. fear for their life and freedom if they are removed to a third country.

VII. LEGAL FRAMEWORK & ARGUMENT

32. Liberty from detention is the rule, rather than the exception, under American jurisprudence. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. "Freedom from

imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause Protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

33. The Supreme Court has clearly held that due process dictates that immigration detention cannot be indefinite. Indefinite detention, in particular, raises a "serious constitutional problem" and violates the Due Process Clause. *Zadvydas*, 533 U.S. at 689–90. Accordingly, the Due Process Clause protects Mr. Yassine's liberty, and any deprivation of his liberty must be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301–02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"). In the context of post-removal immigration proceedings, the government's interest in detention is to ensure an individual's presence at the time of removal. *Zadvydas*, 533 U.S. at 680. To the extent that an individual's removal is unforeseeable, their detention becomes unconnected to the government's interest, and thus, unlawful. *Id.*

The 90-day Removal Period

34. The Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231, governs the detention and removal of noncitizens, like Petitioners, who have been ordered removed. Section 1231(a)(2) authorizes only a 90-day period of mandatory post-final-removal-order detention, during which ICE is supposed to effectuate removal. This is known as the "removal period." An individual detained by ICE is entitled to a custody redetermination following the expiration of the removal period. 8 C.F.R. § 241.4.

35. The 90-day removal period has run in Petitioners case. Petitioners were ordered removed

on August 16, 2019. Petitioners did not appeal in the appeal window. As such, their removal order became administratively final on September 17, 2019. *See* 8 C.F.R. § 1241.1(c). The 90-day removal period, once it has expired, does not restart merely upon re-arrest. *Diaz- Ortega v. Lund*, No. 1:19-CV-670-P, 2019 WL 6003485, at *8 (W.D. La. Oct. 15, 2019), report and recommendation adopted, No. 1:19-CV-670-P, 2019 WL 6037220 (W.D. La. Nov. 13, 2019) ("[T]he text of § 1231(a)(1)(B) does not mention restarting the removal period. Nor does any interpretive regulation of which the Court is aware.").

***Zadvydas* & the 180-Day Presumption of Reasonable Detention**

36. After the expiration of the removal period, § 1231(a)(6) permits certain noncitizens to be held beyond the removal period if they are inadmissible, or removable on grounds stemming from criminal convictions, security concerns, or if they have been determined to be a danger to the community or a flight risk. *See* 8 U.S.C. § 1231(a)(6). This detention, however, is subject to certain limits as outlined below. Further, § 1231(a)(6) permits these individuals to be released under certain conditions detailed in § 1231(a)(3). Finally, the government may continue to detain certain individuals under extreme circumstances, such as when an individual is a threat to public health, engaged in terrorism, or a particular danger to public safety. *See* 8 C.F.R. § 241.14. This detention is also subject to limits.

37. The Supreme Court has imposed strict limits on who can be detained beyond the 90-day removal period, noting that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690. In *Zadvydas*, the legacy Immigration and Naturalization Service had detained Kim Ho Ma, a Cambodian national, and Kestutis Zadvydas, a man born to Lithuanian parents in a

German displaced persons' camp, for years after they were ordered removed. *Id.* at 684–86. Purporting to follow the plain text of § 1231(a)(6), the government asserted that the statute committed the question of whether to detain an individual, and for how long, to the executive, not the judiciary. *Id.* at 689.

38. The Supreme Court found squarely in favor of *Zadvydas* and *Ma*, holding that their prolonged detentions violated the Due Process Clause. *Id.* The Court noted that the indefinite detention scheme in § 1231(a)(6) raised constitutional claims that it had the power to review. *Id.* Further, the Court reasoned that immigration detention, which is civil in nature, is non-punitive in purpose and effect—and must be related to achieving those goals. *Id.* at 690. The Court held that indefinite detention is not permitted in the context of § 1231(a)(6) because it fails to achieve either regulatory purpose of protecting the community or preventing flight to avoid removal—particularly where an individual's removal is a "remote possibility at best." *Id.* at 690–92.

39. Interpreting § 1231(a)(6) in a constitutional manner, the Court in *Zadvydas* provided guidance to courts facing questions of prolonged detention under the statute. First, the Court raised that the primary question for a habeas court is to answer the question of whether the length of an individual's detention is statutorily authorized—here, for the express purpose of presence at the time of removal. *Id.* at 699. In doing so, the Court instructs a habeas court to:

> ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.

Id. at 699–700.

40. Second, as an aid to courts and judicial administration, the Supreme Court in *Zadvydas* decided that detention for 180 days after a final order of removal, including the 90-day removal period, is presumptively reasonable under the INA and Due Process Clause. *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 707 (S.D. Tex. 2020) (citing *Zadvydas*, 553 U.S. at 701). The government must release a noncitizen whom it has detained beyond the presumptive 180-day period if it is unable to present documented confirmation that removal is likely to occur in the reasonably foreseeable future. *Clark v. Martinez*, 543 U.S. 371, 386 (2005).

41. In crafting this presumptively reasonable 180-day period, the Supreme Court specifically rejected the Fifth Circuit's reasoning that indefinite detention could remain "lawful as long as 'good faith efforts to effectuate . . . deportation continue' and *Zadvydas* failed to show that deportation will prove 'impossible.'" *Id.* at 702 (*quoting Zadvydas v. Underdown*, 185 F.3d 279, 294 (5th Cir. 1999), *vacated sub nom. Zadvydas v. Davis*, 533 U.S. 67 (2001)).

42. Thus, noncitizens whose removal is not reasonably foreseeable and who have been detained for a period not consistent with the purpose of effectuating removal must be released because their continued detention would violate both § 1231(a)(6) and the Due Process Clause of the Fifth Amendment. *Id.* at 701.

43. The 180-day period of reasonableness for continued detention has closed in Petitioners' case. Petitioners' order of removal became final on September 17, 2019. Following the order, Petitioners were placed on an OSUP and presented themselves faithfully to ICE officials since that time. ICE officials have presumably worked over five years since their removal to effectuate their removal, yet they have been unable to do so.

44. Respondents cannot now, years down the road, re-detain Petitioners, and attempt to take advantage of this presumption. Especially, since the revocation of release completely contradicts the Immigration Judge's order. Stating that Petitioners would be removed to Mexico. The exact place they were granted protection from torture from. Officials' re-detention of Petitioners itself violates the clear directive of the Court to ensure that any detention be for the sole purpose of their foreseeable removal.

The 180-day period is a rebuttable presumption, not a bright line rule

45. Even if the government claims it is entitled to detain Petitioners for six months of "presumptively reasonable" detention, that presumption is rebutted in this case where Petitioners have already shown no reasonable purpose to their detention.

46. Petitioners re-detention fits squarely within the *Zadvydas* framework. Like the petitioner in *Zadvydas, Petitioners* have not impeded their own removal. In fact, Petitioners have offered Respondents several options for safe third countries that Petitioners would be able to be removed to. However, Respondents have been unable to effectuate Petitioners removal to these proffered countries. ICE therefore cannot demonstrate a significant likelihood of removability in the reasonably foreseeable future, which should have been a prerequisite to re-detaining Petitioners in September of 2025. The unlikeliness is evidenced by the fact that Petitioners have been detained since September of 2025. Further, Petitioners have received pressure by ICE agents to re-open their case so that the Immigration Judge can order them removed to Mexico, forfeiting their protection against torture. Further, the ICE officers stated in the release revocation that the Petitioners would be removed to Mexico and that travel documents were being requested to effectuation that removal. ICE did not offer another country in the revocation. ICE had over five years to determine another suitable third country to send

Petitioners to. But, up to the date of their detainment, ICE stated that the Petitioners would be removed to the exact country they are being protected from. Exh. 3, Revocation of Release. Petitioners have therefore more than met their burden to establish "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

47. Nor has the government shown that there are any specific justifications for continuing Petitioners' detention under the special circumstances contained in 8 C.F.R. § 241.14; *see also Zadvydas*, 533 U.S. at 690–91. Like the petitioner in Ali, Petitioners have faithfully complied with every term of their Order of Supervision for years after their final order of removal and do not post a flight risk or a danger to the community. *See Ali*, 451 F. Supp. 3d at 709. There is even less justification when considering minor [redacted]'s detention.

Petitioner's continued detention is a violation of Due Process

48. Petitioners' indefinite detention also presents a due process challenge outside the *Zadvydas* framework. "[A]s-applied constitutional challenges remain available to address 'exceptional' cases." *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 583 (2022); *see also Castaneda v. Perry*, 95 F.4th 750, 761 (4th Cir. 2024) ("We will therefore assume . . . that as-applied due process challenges to §1231 detentions may proceed outside the *Zadvydas* framework when the alien presents, as a threshold matter, exceptional circumstances warranting that departure."). Civil detention is only allowed in narrow circumstances, "where a special justification . . . outweighs the 'individual's constitutionally protected interest in avoiding physical restraint'" under the Fifth Amendment. *Zadvydas*, 533 U.S. at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). Detention as punishment for noncriminal purposes is not allowed. *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Thus, the Fifth Amendment bars civil detention in conditions that do not reasonably relate

to a "legitimate, non-punitive governmental objective." *Cadena v. El Paso County*, 946 F.3d 717, 727 (5th Cir. 2020).

49. Petitioners' 90-day removal period has expired, and there have been no changes in circumstances in the Petitioners case since their release became supervised under Orders of Supervision in 2019. Petitioners were re-detained with no explanation other than the administration change.

50. Furthermore, ICE's revocation of release documents stating that Petitioners would be removed to Mexico, the country in which they are seeking protection from, without further explanation makes this re-detention especially troubling.

51. Further, the mental anguish that minor [redacted] is suffering as a child in a detention center for several months, especially against the background of the torture he suffered in his home country of Mexico constitutes an "exceptional" circumstance that warrants consideration of an as-applied Due Process challenge. *See Johnson v. Arteaga-Martinez*, 596 U.S. at 583.

52. Therefore, Petitioners' continued detention violates the implicit requirement in § 1231(a)(6) that detention should not become unreasonably prolonged after the 90-day statutory removal period.

53. Petitioners' continued detention serves no legitimate government purpose.

Due Process Requires DHS to Provide Notice and Opportunity to Present a Fear-Based Claim Before Deportation to a Third Country.

54. Petitioners cannot be removed to Mexico pursuant to the IJ's order granting them protection under CAT. Ex. 1. Moreover, no alternative safe countries of removal have been designated for Petitioners.

55. To date, the government has not identified a third safe country willing to accept Petitioners. Petitioners have provided several countries to ICE where they have no fear of Deportation.

ICE is unable to secure their deportation to these countries. Instead, ICE routinely pressures Petitioners to renounce their protection under CAT and sign a voluntary deportation to Mexico.

56. Although there is thus no evidence establishing Petitioners removal is substantially likely, recent events have raised concerns that, in response to this Petition, the government may now act with haste to effectuate Petitioners removal to a third country and that such removal would occur without adequate notice and opportunity to apply for protection.

57. Under the Due Process Clause and the INA, Petitioners are entitled to receive adequate notice and an opportunity to be heard on a fear-based claim before being removed to an unidentified third country. *See* U.S. Const., Amend. V; *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Mathews v. Eldridge*, 424 U.S. 319, 332-33 (1976). *See also* 8 U.S.C. 1231; 8 C.F.R. 1208.16; *Mahdejian v. Bradford*, No. 9:25-CV-00191, 2025 WL 2269796, at *4 (E.D.Tex. July 3, 2025) (stating that the noncitizen must be provided with notice of the proposed country of removal in order to exercise his due process right to be heard); *Kuhai v. INS*, 199 F.3d 909, 913 (7th Cir. 1999) (holding that the noncitizen must be given the opportunity to brief removal to a third country when there was no indication during removal proceedings that she could be removed there); *Su Hwa She v. Holder*, 629 F.3d 958, 965 (9th Cir. 2010) ("It follows that a failure to provide notice and, upon request, stay removal or reopen the case for adjudication of [the noncitizen's] applications as to Burma would constitute a due process violation if Burma becomes the proposed country of removal."); *Romero v. Evans*, 280 F. Supp. 3d 835, 847 n.24 (E.D. Va. 2017) ("DHS could not immediately remove petitioners to a third country, as DHS would first need to give petitioners notice and the opportunity to raise any reasonable fear

claims.").

58. Removal to an unknown third country without an adequate opportunity to present a fear-based claim would violate Petitioners' due process rights.

59. To ensure the protection of Petitioners due process rights, Respondents should provide Petitioners, their counsel, and the Court at least 10 days' notice and the name of the proposed country in writing before any removal is initiated.

Minor Petitioner's detention is unlawful pursuant to the Flores Settlement Agreement

60. The 1997 Flores Settlement Agreement governs the federal government's treatment and custody of immigrant children. The Flores Settlement Agreement arose from a lawsuit filed by a group of immigrant children challenging their detention and seeking to be released to family members and/or sponsors within the United States. *See Flores v. Sessions*, 862 F.3d 863, 869 (9th Cir. 2017) (discussing the history of the Flores litigation); *see also Flores v. Sessions*, Case No. CV 85-4544-DMG (C.D. Cal., July 9, 2018) (affirming the terms of the Flores Settlement Agreement). In 1997, the plaintiff children entered into a consent decree with the federal government that created a nationwide policy governing the custody and release of immigrant children by immigration authorities and applies to this case. *Flores v. Reno*, No. CV 85-4544, Settlement Agreement ("Flores Settlement Agreement"), Ex. 5. Among other things, the Agreement requires: (a) release without unnecessary delay, (b) release to an adult caregiver, with parents, legal guardians, and other family members given priority, and (c) placement in the "least restrictive setting" appropriate to the minor's needs. Flores Settlement Agreement, ¶¶ 11, 14. The Flores Settlement Agreement remains under the supervision of U.S. District Judge Dolly M. Gee in the Central District of California. *Flores v. Bondi*, No. CV 85-4544-DMG (AGRx).

61. Additionally, the Department's continued detention of Ms. M.B.M.'s minor son at the Dilley Immigration Processing Center violates the 1997 Flores Settlement Agreement (hereinafter "*Flores*"), which governs the federal government's treatment and custody of immigrant children nationwide. *Flores* requires the government to (1) release children without unnecessary delay, (2) release them to an adult caregiver, with parents and family members given priority, and (3) ensure placement in the least restrictive setting appropriate to the children's needs. Flores Settlement Agreement ¶¶ 11, 14. Exh. 4.

62. The *Flores* protections plainly apply here. Petitioners have been present in the United States since January 10, 2017. Minor petitioner, [redacted] was a student in the San Antonio public school system prior to detention. His mother, Ms. M.B.M., was working and ensuring his attendance at school as well as ensuring he complied with his obligations to ICE. These facts demonstrate not only the availability of appropriate custodial placement, but also the absence of any legitimate justification for continued detention of this child.

63. Moreover, the children's ongoing detention is causing real harm, in direct contravention of *Flores*' requirement that children be placed in the least restrictive setting appropriate to their needs. The Petitioners are suffering mentally in detention. [redacted] is suffering mentally, he has stopped eating regularly and has lost all motivation. *Flores* does not permit the government to subject children to deteriorating physical and mental health where safe release to a parent or sponsor is available.

64. In short, the government's continued detention of Petitioners violates the express terms and purpose of the Flores Settlement Agreement. Because the child can be immediately released to his mother who has been adequately caring for him in the United States since January 10, 2017, and because detention is actively harming his health and well-being,

their continued confinement at Dilley is unlawful. Immediate release is required to bring the government into compliance with Flores.

VIII. CLAIMS FOR RELIEF

COUNT ONE

Violation of The Immigration and Nationality Act – 8 U.S.C. § 1231

65. Petitioner repeats and realleges each allegation of this petition here.

66. Title 8 U.S.C. § 1231(a) governs the detention of an individual with a final order of removal.

67. The INA permits DHS to detain an immigrant during the "removal period," which is defined as the 90-day period following the issuance of a final order of removal. See 8 U.S.C. §§ 1231(a)(1)(A); 1231(a)(2).

COUNT II

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution

68. Petitioner repeats and realleges each allegation of this petition here.

69. Civil immigration detention violates due process if it is not reasonably related to its statutory purpose. *See id.* at 690 (citing *Jackson v. Indiana*, 506 U.S. 715, 738 (1972)). The Supreme Court recognized that the statutory purpose of § 1231 was to detain noncitizens with final orders of removal to effectuate removal. *Zadvydas*, 533 U.S. at 697 (§ 1231's "basic purpose" is to "effectuat[e] an alien's removal.").

70. Petitioners have already endured months of civil detention, and their re-detention is certain to continue into the indefinite future. Their re-detention has already lasted over four months and is not reasonably related to the primary statutory purpose of effectuating removal. *See id.* at 697; *Clark*, 543 U.S. at 384; *Ali*, 451 F. Supp. 3d at 707.

71. Even outside the *Zadvydas* framework, "as-applied constitutional challenges remain available to address 'exceptional' cases." *Arteaga-Martinez*, 596 U.S. at 583.

72. Here, Petitioners have presented several exceptional circumstances. Respondents issued a notice of revocation of release stating the intention to remove them to Mexico, the country they have protection from, further Petitioners, especially minor petitioner are also suffering mentally. The mental weight of prolonged detention on a child especially against the background of Petitioners' torture in Mexico cannot be treated in detention. Further, minor Petitioner is missing months of pivotal instruction in school. Therefore, Petitioners may bring an as-applied challenge to their indefinite detention as a violation of their substantive Due Process rights.

73. Thus, Petitioners' detention violates substantive due process.

COUNT III

Removal to an Undisclosed Third Country Would Violate the Due Process Clause of the U.S. Constitution

74. Petitioners restate and reallege and incorporate by reference all paragraphs above as if fully set forth herein.

75. "[T]he Fifth Amendment entitles [noncitizens] to due process of law in the context of removal proceedings." *Trump v. J. G. G.*, 604 U.S. at 673 (internal quotation marks omitted). "Procedural due process rules are meant to protect" against "the mistaken or unjustified deprivation of life, liberty, or property." *Carey v. Piphus*, 435 U. S. 247, 259 (1978). The Supreme Court has long held that "no person shall be" removed from the United States "without opportunity, at some time, to be heard." T*he Japanese Immigrant Case*, 189 U.S. 86, 101 (1903). Due process requires notice that is "reasonably calculated, under all the circumstances, to apprise interested parties" and that "afford[s] a reasonable time . . . to

make [an] appearance." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

76. Removing Petitioners without affording them notice of the country of intended removal or any opportunity to be heard on a fear-based claim would violate the Due Process Clause.

COUNT IV
Violation of the Flores Settlement Agreement

77. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

78. The *Flores Settlement Agreement* requires that if a child is not a flight risk or a danger to the community, they be released "without unnecessary delay" to a parent or sponsor. FSA ¶ 14. 80. As an immigrant minor detained in a secure facility, the minor child is a member of the Flores class detained in a facility subject to the Flores Settlement Agreement and is therefore authorized to challenge Respondents' custodial decision in this Court.

79. Respondents' continued incarceration of the minor in a secured facility, is a violation of the Flores Settlement Agreement.

IX. PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioners shall not be transferred outside the Western District of Texas while this habeas petition is pending;

(3) Issue an Order to Show Cause ordering Respondents to show why this Petition should not be granted within three days;

(4) Issue a Writ of Habeas Corpus requiring that Respondents release Petitioners or, in the alternative, provide Petitioners with a bond hearing pursuant to 8 U.S.C. § 1226(a) within three days;

(5) Declare that Petitioners' detention is unlawful;

(6) Grant the writ of habeas corpus ordering Respondents to release Petitioners on their own recognizance, parole, or reasonable conditions of supervision, or order the Respondents to conduct a bond hearing.

(7) Award costs and, if permissible, attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, preserving Petitioners' position that EAJA may apply in habeas notwithstanding *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023), and noting contrary authority, including *Vacchio v. Ashcroft*, 404 F.3d 663, 670–72 (2d Cir. 2005); *In re Petition of Hill*, 775 F.2d 1037, 1040–41 (9th Cir. 1985); *Daley v. Ceja*, No. 24-1191, — F.4th —, 2025 WL 3058588 (10th Cir. Nov. 3, 2025) (holding that habeas actions challenging immigration detention are unambiguously "civil actions" within EAJA's "any civil action" language and affirming an EAJA award where the habeas petition materially altered the parties' legal relationship by securing a bond hearing and release); *Abioye v. Oddo*, 2024 U.S. Dist. LEXIS 174205 (W.D. Pa. 2024); and *Arias v. Choate*, 2023 U.S. Dist. LEXIS 119907 (D. Colo. 2023).

(8) Grant any other and further relief that this Court deems just and proper.

DATED this 3rd day of February 2026.

/s/Amanda Aguilar
Amanda Aguilar
American Gateways
2300 W. Commerce St. #313
San Antonio, Texas 78205
Email: amandaa@americangateways.org

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

I represent Petitioners, [redacted] (age six-teen), and M.B.M., and submit this verification on 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 3rd day of February 2026.

/s/ Amanda Aguilar

Amanda Aguilar

CERTIFICATE OF SERVICE

I hereby certify that on February 3rd a true and correct copy of the foregoing Petition for Writ of Habeas Corpus and all accompanying exhibits to be served by certified mail, return receipt requested, on the following:

Justin R. Simmons | U.S. Attorney's Office for the Western District of Texas
ATTN: Civil Process Clerk
601 NW Loop 410,
San Antonio, Texas 78216
and by email at: USATXS.CivilNotice@usdoj.gov

Jose Rodriguez Jr., Warden
Dilley Immigration Processing Center
300 El Rancho Way
Dilley, TX 78017
United States

Service on the United States Attorney constitutes service on all named federal Respondents in this matter, and service has also been made directly on the Warden as Petitioner's immediate custodian.

Dated this 3rd of February, 2026.

/s/Amanda Aguilar
Amanda Aguilar
American Gateways
2300 W. Commerce St. #313
San Antonio, Texas 78205
Telephone: (512)662-9459
Email: amandaa@americangateways.com