FILED
U.S. District Court
District of Kansas
04/23/2026
Clerk, U.S. District Court
By: SND Deputy Clerk

In The United States District Court
For The District Of Kansas

Gilberto Montes Taracena
Pro Se, Petitioner

V. 26-3100-JWL

Misty Mackey, Mark Wayne Mullins,
Todd Blanche, and Todd Lyons
Respondents

PETITIONER FOR WRIT OF HABEAS CORPUS (28 U.S.C § 2241) AND MEMORANDUM IN SUPPORT.

I. INTRODUCTION

1. Petitioner Gilberto Montes Taracena, is detained by Immigration and Customs Enforcement (ICE) for the second time for the purpose of removal to Guatemala. Previously, ICE has failed to remove petitioner to the same country back in 2013.
2. Petitioner continued detention has become unreasonably indefinite because removal is not significantly likely in the reasonable future under Zadvydas V. Davis.
3. Petitioner was previously released under a yearly supervision, with requirements to check in once a year, ICE shouldn't re-detain petitioner without complying with 8 C.F.R.§ 241.13(i) including an individualized determination based on changed circumstances that removal has become significantly likely, and with required notice/interview procedure.
4. Petitioner is seeking immediate release under appropriate supervision, or other appropriate relief.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. § 2241 because petitioner is "in custody in violation of the constitution or laws or treaties of the United States." Federal Courts have jurisdiction to review Habeas challenges by noncitizens to the lawfulness of their immigration detention, including Post-removal-order detention under 8 U.S.C. §1231(1). This Court also has jurisdiction under 28 U.S.C.§ 1331 and Declaratory Judgement Act, and Nationality Act (INA) the Administrative Procedure Act (APA), and the Fifth Amendment.
6. Venue is proper because petitioner is confined at Core Civic (CCA) in Leavenworth Kansas within this district and his immediate custodian Misty Mackey is within the Courts jurisdiction.

III. PARTIES

7. Petitioner, Gilberto Montes Taracena (A[redacted]
8. Misty Mackey, CCA Warden
9. Mark Wayne Mullins, Secretary department of Homeland Security.
10. Todd Blanche, Acting Atttorney General of the United States.
11. Todd Lyons, Acting Director, ICE

12. All Government Respondents are sued in their official capacity.

IV. FACTUAL BACKGROUND

13. Petitioner, Gilberto Montes Taracena, is a native of Guatemala, he entered the United States without inspection, in 1986 in California. Petitioner is 64 years old and has resided in the United States for over 40 years.
14. Petitioner met his wife Sean Seng in 2003, who then had 4 children of her own who are all American citizens, and they tied the knot in 2013 and are still together till this day, and have 9 grand children who are all United States citizens.
15. Petitioner has been gainfully employed since entering the United States, working in the field of construction and remodeling as a Maintenance Man for several apartment complexes in the Wichita Kansas area, and is also a licensed Minister.
16. On or about March of 2013, Petitioner was picked up by ICE, detained for 21 days and subsequently released on superivision, with a once a year check in date, from 2013 through 2019.
17. Petitioner found out through his attorney that an Immigration judge ordered him deported in 2019.
18. On or about 2023, appeal was filed and in November of 2023, appeal was taken off the docket due to Petitioner not been able to financially maintain Counsel.
19. Petitioner Gilberto Montes Taracena has no Criminal Record, and currently has no Court proceedings.
20. On or about September 25th of 2025, Petitioner Gilberto Montes Taracena was again picked up by ICE, and was detained at Kay County Oklahoma, FCI Leavenworth, and currently is detained at CCA in Leavenworth Kansas.

V. LEGAL STANDARD

21. Under Zadvydas, Post-Order detention under 8 U.S.C § 1231 (a)(6) is limited to the period "Unreasonably necessary" to achieve removal, six months is presumptively reasonable, and after that the noncitizen may obtain relief by showing no significant likelihood of removal in the reasonably foreseeable future, shifting burden to the Government to rebut.
22. Individuals previously released under supervised release procedures, ICE regulation allows re-detention only if "On account of changed circumstances," ICE determines there is a significant likelihood of removal in the reasonably foreseeable future, and ICE must provide required notice and a prompt formal interview. 8 C.F.R § 241.13(i)

VI. CLAIMS FOR RELIEF

Count One: Unlawful, unreasonably indefinite detention under 8 U.S.C. § 1231 (a)(6) as construed by Zadvydas.

23. Petitioner re-alleges and incorporates by reference paragraphs 1-22.
24. Petitioner has been detained for about seven months during his second detention.
25. Petitioner's removal is not significantly likely in the reasonably foreseeable future because ICE has detained petitioner but has shown no concrete progress in this case, such as Issued Travel Document, Confirmed Acceptance Date, Confirmed Itinerary, or Confirmed Consular Issuance.
26. Under Zadvydas, continued detention is no longer authorized where removal is not

reasonably foreseeable, and the Court should order release subject to appropriate supervision conditions.

COUNT TWO: FIFTH AMENDMENT DUE PROCESS

27. Continued detention without a realistic prospect of removal becomes punitive and violates due process.

28. The lack of meaningful procedures and the absence of individualized justification for re-detention further violates due process.

COUNT THREE: PROLONGED DETENTION WITH NO SIGNIFICANT LIKELIHOOD OF REMOVAL VIOLATES DUE PROCESS AND ZADVYDAS.

29. Petitioner re-alleges and incorporates by reference paragraphs 1-28.

30. The Supreme Court held that Post-Final-Order detention may not be indefinite, after six months, if the detainee shows " no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing."

31. As detention continues, "what counts as reasonably foreseeable future" would have to shrink.

32. The district of Kansas applied these principle and ordered release where the petitioner met the burden and the Government's showing was too general and non-specific in Vegas V. Noem (D. Kan. September 29, 2025)

33. ICE cannot satisfy its burden to rebut petitioner's showing with case-specific evidence of a significant likelihood of removal in the reasonably foreseeable future.

COUNT FOUR: DETENTION IN VIOLATION OF INA AND INTERIM REGULATIONS 66 FED. REG. 56967 (NOV 14, 2001)

34. Petitioner re-alleges and incorporates by reference paragraphs 1-33.

35. Petitioner's removal is not foreseeable and therefore his detention violates a Supreme Courts response and Interim Regulations.

36. Special Circumstances justifying continued detention are:

A. If the Alien has a highly Contagious Disease that is a threat to public safety;

B. If his release would have serious adverse foreign policy consequences;

C. If there are security or terrorism concerns, and

D. If release would pose a special danger to the public. 8 C.F.R. 241.13 (b)-(d)(f)

37. There are no special circumstances that exist to justify Petitioners continued detention:

A. Petitioner is not a Alien with " Highly Contagious Disease" posing a danger to the public.

B. Petitioner's release would not cause "Serious Adverse Foreign Policy Consequences."

C. Petitioner was not and is not now detained on account of security or terrorism concerns.

D. Petitioner did not commit a crime of violence as defined in 18. U.S.C. 16 as would classify him as " Special Dangerous" under the Interim Regulation 8 C.F.R. 241.14(f)(i), and his release therefore would not pose a special danger to the public.

38. Since there is no significant likelihood of Petitioners removal in the reasonably foreseeable future, and because none of the Special Circumstances exist here to justify

Petitioner's detention, continuing to detain him would be in violation of INA and the Interim Regulations, which is Constitutionally Impermissible.

COUNT FIVE: PUBLIC INTEREST

39. Petitioner re-alleges and incorporates by reference paragraphs 1-38

40. [redacted]

41. Petitioner's wife is disabled, legally blind.

42. Petitioner's wife is suffering from emotional hardship, and having difficulty, since he is the one there everyday to aid to her day to day concerns.

43. Petitioner's wife is experiencing financial problems, without his income its been really difficult paying the bills, even with their church helping with some of it.

VII REQUEST FOR RELIEF

Petitioner respectfully asks the Court to :

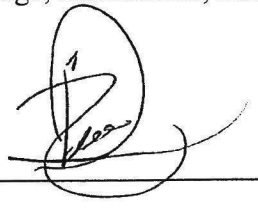
A. Grant the Petition and Order Petitioner's immediate release from ICE custody, subject to appropriate conditions of supervision; and /or

B. Order Respondents to provide an immediate custody review that complies with 8 C.F.R.§ 241.13 (i) and Zadvydas, and to release Petitioner absent a demonstrated significant likelihood of removal in the reasonably foreseeable future; and

C. Grant any further relief the Court deems just and proper.

VIII VERIFICATION

I Gilberto Montes Taracena, declare under penalty of perjury under the laws of the United States that I am Petitioner in the above entitled action; that I have read the foregoing petition for Writ Of Habeas Corpus and knowingly contend, therefore that the same is true and correct to the best of my knowledge, information, and belief.



Correction Corps of America (CCA)
Agency [redacted]
Gilberto Montes Taracena
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Leavenworth KS 66048