

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Ricardo Luis Villasmil Esparza,

Petitioner,

v.

U.S. Immigration and Customs
Enforcement ("ICE");
Attorney General of the United States;
WARDEN, Warden of Krome North Service
Processing Center

Respondents.

Case No.

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS**

EXPEDITED HEARING REQUESTED

A-Number 

INTRODUCTION

1. Petitioner, Ricardo Luis Villasmil Esparza, is in the physical custody of Respondents at the Krome North Service Processing Center in Miami, Florida. He now faces unlawful detention based on the fact that the government cannot remove him from the United States in the reasonably foreseeable future. Petitioner was previously detained by ICE following a final order of removal, reinstated on or about January 31, 2022, and was released on or about February 16, 2026. Petitioner was re-detained on or about April 27, 2026, and currently faces indefinite unlawful detention if the relief sought herein is not granted

2. Accordingly, Petitioner seeks a Writ of Habeas Corpus requiring that he be released from custody within twenty-four (24) hours.

JURISDICTION

3. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Krome North Service Processing Center in Miami, Florida

4. 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).

5. 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.

VENUE

6. 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 Southern District of Florida, the judicial district in which Petitioner is currently detained.

7. Venue is also proper 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 Southern District of Florida.

REQUIREMENTS OF 28 U.S.C. § 2243

8. The Court must grant the Petition for Writ of Habeas Corpus or order Respondents to show cause “forthwith” as to why the Petition should not be granted (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.*

9. 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).

PARTIES

10. Petitioner Ricardo Luis Villasmil Esparza is a citizen of Venezuela who has been in immigration detention since on or about April 27, 2026.

11. Respondent U.S. Immigration and Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of no citizens. Respondent is sued in his official capacity.

12. Respondent is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United State. She is sued in her official capacity.

13. Respondent Warden is the Warden of the Krome North Service Processing Center, where Petitioner is currently detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

14. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "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).

15. This fundamental due process protection applies to all noncitizens, including both

inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious.”). It also protects noncitizens who have been ordered removed from the United States and who face continuing detention. *Id.* at 690.

16. Furthermore, 8 U.S.C. § 1231(a)(1)-(2) authorizes detention of noncitizens during “the removal period,” which is defined as the 90-day period beginning on “the latest” of either “[t]he date the order of removal becomes administratively final”; “[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court’s final order”; or “[i]f the [noncitizen] is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement.”

17. 8 U.S.C. § 1231 governs the detention of non-citizens “during” and “beyond” the “removal period.” 8 U.S.C. § 1231(a)(2)-(6). The “removal period” begins once a non-citizen’s

² EOIR data indicates that approximately 386 non-citizens were granted withholding-only relief in FY 2019 and 2020. Ex. B, Data on Post-Relief Detention and Removal at 1. In response to a 2021 FOIA request, the ICE-ERO Statistical Tracking Unit provided data showing that a total of 13 people in “Case Category 5C (Relief Granted - Withholding of Deportation/Removal)” were removed in FY 2019 and 2020. *Id.* at 2. Comparing these data suggests that approximately 3.3% of non-citizens granted withholding or CAT relief were ultimately deported by ICE during that period. To the extent that the ICE data includes non-citizens removed to their home country after their withholding or CAT grant was terminated, the percentage of non-citizens removed to *third* countries following a final withholding or CAT relief grant is even lower.

removal order “becomes administratively final.” 8 U.S.C. § 1231(a)(1)(B).³ The removal period lasts for 90 days, during which ICE “shall remove the [non-citizen] from the United States” and “shall detain the [non-citizen]” as it carries out the removal, 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the non-citizen within the 90-day removal period, the non-citizen “*may* be detained beyond the removal period” if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6) (emphasis added).

18. To avoid “indefinite detention” that would raise “serious constitutional concerns,” the Supreme Court in *Zadvydas* construed § 1231(a)(6) to contain an implicit time limit, 533 U.S. at 682. *Zadvydas* dealt with two non-citizens who could not be removed to their home country or country of citizenship due to bureaucratic and diplomatic barriers. The Court held that § 1231(a)(6) authorizes detention only for “a period reasonably necessary to bring about the [non-citizen]’s removal from the United States.” *Id.* at 689. Six months of post-removal order detention is considered “presumptively reasonable.” *Id.* at 701.

19. “Within the six-month window,” the non-citizen bears the burden of “prov[ing] the unreasonableness of detention.” *Id.* After six months of detention, if there is “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the burden shifts to the Government to justify continued detention. *Zadvydas*, 533 U.S. at 701; *see also Cesar*, 542 F. Supp. 2d at 903 (“[T]he presumption

³ There are two other events that trigger the start of the removal period, which are not applicable here. *See* 8 U.S.C. § 1231(a)(1)(B)(ii)-(iii).

scheme merely suggests that the burden the detainee must carry within the first six months of [post-order] detention is a heavier one than after six months has elapsed”).

20. Although 8 U.S.C. § 1231(a)(6) permits detention “beyond the removal period” of noncitizens who have been ordered removed and are deemed to be a risk of flight or danger, the Supreme Court has recognized limits to such continued detention. In *Zadvydas*, the Supreme Court held that “the statute, read in light of the Constitution’s demands, limits [a noncitizen’s] post-removal-period detention to a period reasonably necessary to bring about that [noncitizen’s] removal from the United States.” 533 U.S. at 689. “[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.

21. In determining the reasonableness of detention, the Supreme Court recognized that, if a person has been detained for longer than six months following the initiation of their removal period, their detention is presumptively unreasonable unless deportation is reasonably foreseeable; otherwise, it violates that noncitizen’s due process right to liberty. 533 U.S. at 701. In this circumstance, if the noncitizen “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.*

22. The Court’s ruling in *Zadvydas* is rooted in due process’s requirement that there be “adequate procedural protections” to ensure that the government’s asserted justification for a noncitizen’s physical confinement “outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention:

Demore, 538 U.S. at 528. The government may not detain a noncitizen based on any other justification.

23. In *Zadvydas*, the Supreme Court held, “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” 533 U.S. at 700-01 (2001). If removal is not practically attainable, detention no longer serves its statutory purpose of “assuring the alien’s presence at the moment of removal.” *Id.* at 699. The Court found it unlikely Congress “believed that all reasonably foreseeably removals could be accomplished in [90 days].” *Id.* at 701. So, “for the sake of uniform administration in the federal courts,” it established a “presumptively reasonable period of detention” of six months—the 90-day removal period plus an additional 90 days. *Id.*

24. “Once a noncitizen’s order of removal becomes administratively final, the Government ‘shall’ remove the person within 90 days.” *Singh v. U.S. Attorney Gen.*, 945 F.3d 1310, 1313 (11th Cir. 2019) (quoting 8 U.S.C. § 1231(a)(1)(A)). The government must detain the noncitizen during the 90-day removal period, which begins when the removal order becomes administratively final. *Id.* Detention may continue after the removal period, but not indefinitely

FACTS

25. Petitioner is a twenty-seven (27) year old citizen of Venezuela.
26. Petitioner entered the United States without inspection on or about June 19, 2021.
27. Petitioner was placed in removal proceedings before immigration court.
28. Around October 2021, Petitioner was ordered removed from the United States and

29. On or about January 30, 2022, Petitioner re-entered the United States without inspection and was detained by Respondents, his final removal order was reinstated January 31, 2022.

30. After the entry of the final order of removal the Petitioner spent about sixteen (16) days in ICE detention and was released on or about February 16, 2022, because ICE could not remove Petitioner from the United States in the reasonably foreseeable future.

31. After Petitioner's release from ICE custody on or about February 16, 2022, ICE placed the Petitioner under an Order of Supervision.

32. Since then, Petitioner has been residing freely in United States for more than four (4) years and has *fully complied* with all conditions of his order of supervision from ICE. He maintains steady employment and lives with his family in Doral, Florida.

33. Petitioner has no criminal history.

34. On or about July 1, 2025, Petitioner filed I-360 Petition for Amerasian, Widower, or Special Immigrant with USCIS, Receipt No.: 

35. On or about December 4, 2025, Petitioner received a Prima Facie determination from USCIS as it relates to his I-360 Petition.

36. On or about April 27, 2026, Petitioner was detained by ICE at a check-in appointment in ICE field office in Miramar, Florida.

37. In *Andino Gonzalez v. Noem*, et al, and in *Ramos Espina v. Miami Filed Office Director*, et al., the United States District Court for the Southern District of Florida held that the proper commencement of the removal period starts at the first instance of ICE detention after entry of a final order of removal (Case No.: 2:25-cv-01176-SPC-NPM and Case No.: 2:26-cv-00269-SPC-DNF) (citing *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3 (11th Circuit), recognizing that "the

Supreme Court's rationale for establishing a presumptive reasonable "6 month period" for detention pending removal supports our conclusion that this period commences at the beginning of the removal period."

38. *Zadvydas* specifically guards against indefinite detention.

39. Therefore, the commencement of the removal period in Petitioner's case started with his initial detention by ICE after the reinstatement of his final order of removal on or about January 31, 2022. It has now been more than four (4) years since the entry of the Final Order of Removal and ICE has not removed Petitioner from the United States. Moreover, during those four (4) years Petitioner has remained in compliance with his order of supervision by ICE. Petitioner also has a pending Bonafide I-360 Petition with USCIS. Therefore, the Petitioner has established that there is good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future, thus subjecting him to indefinite detention in violation of *Zadvydas*.

40. ICE already made the determination that it could not remove the Petitioner from the United States in a reasonable time period when it released Petitioner from ICE detention on or about February 16, 2022, without executing the removal order.

41. In *Jimenez Chacon v. Lyons* (2025 WL 3496702), the Court determined that the clock for the presumptively reasonable six-month period of post-removal order detention does not "start over" for purposes of *Zadvydas* if a person is re-detained. The District Court in New Mexico also held that when a noncitizen is re-detained after years of supervision, the government cannot rely on the six-month presumption of reasonableness that applies to initial post removal detention (*id.*). See also, e.g., *Villanueva v. Tate*, — F.Supp.3d —, —, 2025 WL 2774610, at *9 (S.D. Tex. Sept. 26, 2025); *Nguyen v. Scott*, — F.Supp.3d —, —, 2025 WL 2419288, at *13 (W.D.

Wash. Aug. 21, 2025); *Sied v. Nielsen*, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018); *Chenv. Holder*, 2015 WL 13236635, at *2 (W.D. La. Nov. 20, 2015).

42. In the case at bar, the commencement of the presumptively reasonable six-month period of post removal order detention started when Petitioner was detained by ICE after the reinstatement of the final order of removal on or about January 31, 2022, and Petitioner was subsequently released from immigration detention on or about February 16 2022 because ICE could not remove him from the United States. By “starting the clock” at the time of Petitioner’s current detention on or about April 27, 2026, the Petitioner is directly subject to the type of indefinite and unlawful detention specifically safeguarded against in *Zadvydas*.

43. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

44. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

45. 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.

46. Petitioner has been detained by Respondents for more than the presumptively reasonable six-month time period since he was previously detained by ICE **after the**

47. Petitioner's removal order became administratively final on or about January 31, 2022. Thereafter Petitioner spent approximately sixteen (16) days in ICE detention until he was released around February 16, 2022. Therefore, the presumptively reasonable six-month period of detention has long passed, and there is no reason to believe that Petitioner could be removed in the foreseeable future since it has been more than four (4) years after the commencement of Petitioner's removal period.

48. Petitioner's current detention is unlawful where removal is not reasonably foreseeable based on the fact ICE could not remove the Petitioner for more than four (4) years. His current detention cannot be reasonably related to the purpose of effectuating removal and thus violates due process. *See Zadvydas*, 533 U.S. at 690, 699–700.

49. For these reasons, Petitioner's ongoing detention is unlawful and therefore violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

Violation of 8 U.S.C. § 1231(a)

50. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

51. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes detention “beyond the removal period” only for the purpose of effectuating removal. 8 U.S.C. § 1231(a)(6); *see also Zadvydas*, 533 U.S. at 699 (“[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.”). Because Petitioner's removal is not reasonably foreseeable, his detention does not effectuate the purpose of the statute and is accordingly not authorized by § 1231(a).

52. Here, the Petitioner has met his burden of establishing that he cannot be removed in the reasonably foreseeable future.

53. Petitioner was already detained after the reinstatement of his Final Order of Removal and subsequently released due to ICE's inability to remove him from the United States.

54. ICE already established that they could not remove the Petitioner in 2022. More than four (4) years have passed, and the Petitioner could not be removed from the United States. Thus, his continued detention is beyond the removal period and is therefore unlawful and in violation of 8 U.S.C. § 1231(a).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Declare that Petitioner's ongoing unlawful detention violates the Due Process Clause of the Fifth Amendment and 8 U.S.C. § 1231;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody within twenty-four hours;
- (5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(6) Grant any further relief this Court deems just and proper.

VERIFICATION

Pursuant to 28 U.S.C. §2242, the undersigned verifies on behalf of the Petitioner that I have discussed with the Petitioner the facts that give rise to this Petition, and based on those discussions that the facts stated herein are true and correct to the best of my knowledge.

DATED May 1, 2026

Respectfully Submitted,

/s/ Allison Rub, Esq.

Allison Rub, Esq.

Allison Rub, P.A.

Attorney for Petitioner

3301 Ponce de Leon Blvd., Suite 200

Coral Gables, FL 33134

Fla. Bar No.: 105529

(305) 461-5757

allison@allisonrubpa.com