

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature]
DEPUTY CLERK

Case No: 26 CV 05241 DAD SCR (Hr)
(Supplied by Clerk of Court)

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

- ☐ Pretrial detention
☒ Immigration detention
☐ Detainer
☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
☐ Disciplinary proceedings
☐ Other (explain): _____

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: _____

(b) Docket number, case number, or opinion number: _____

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

Petitioner's detention is unlawful because ICE has failed to produce a valid revocation of his Order of Supervision and therefore lacks legal authority to continue detention.

(d) Date of the decision or action: 11/24/2025

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☐ Yes ☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not appeal: _____

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☒ No

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(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes

☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a third appeal: _____

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes

☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes

☐ No

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If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

- (b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes

☒ No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: _____

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☒ Yes

☐ No

If "Yes," provide:

(a) Date you were taken into immigration custody: 11/24/2025

(b) Date of the removal or reinstatement order: _____

(c) Did you file an appeal with the Board of Immigration Appeals?

☒ Yes

☐ No

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If "Yes," provide:

(1) Date of filing: _____

(2) Case number: _____

(3) Result: appeal dismissed

(4) Date of result: 05/19/2026

(5) Issues raised: _____

Appeal of immigration Judge's decision granting relief and related removal proceedings.

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes

☒ No

If "Yes," provide:

(1) Name of court: _____

(2) Date of filing: _____

(3) Case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes

☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: _____

(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____

(d) Docket number, case number, or opinion number: _____

(e) Result: _____

(f) Date of result: _____

(g) Issues raised: _____

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Prolonged Immigration Detention Without Individualized Hearing Violates Due Process

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Petitioner has remained in ICE custody for an extended period without any meaningful opportunity to challenge the necessity of continued detention before a neutral decision maker. The Due Process Clause prohibits indefinite or unreasonably prolonged civil detention without adequate procedural safeguards.

(b) Did you present Ground One in all appeals that were available to you?

☐ Yes

☒ No

GROUND TWO: Re Detention Following Years of Successful Supervision Is Arbitrary and Violates Due Process

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Petitioner was previously released by immigration authorities and successfully complied with supervision requirements for years. ICE has not demonstrated that supervision became ineffective or that Petitioner presents a current flight risk or danger requiring detention. Because less restrictive alternatives have already proven successful, continued detention is arbitrary and excessive.

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes

☒ No

GROUND THREE: CAT Protection and Lack of a Realistic Removal Pathway Render Continued Detention Unrea

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Petitioner remains protected under the Convention Against Torture and may not be removed to Venezuela unless that protection is lawfully terminated. ICE has not identified a country willing to accept Petitioner or any travel documents authorizing removal. Continued detention despite the absence of a realistic removal pathway violates due process.

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes

☒ No

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GROUND FOUR: Continued Detention Is Not Reasonably Related to Any Legitimate Immigration Purpose

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

Civil detention may not become punitive. Given Petitioner's compliance history, CAT protection, and the absence of any demonstrated necessity for confinement, continued detention no longer meaningfully advances any legitimate immigration objective and violates the Fifth Amendment.

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☒ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: Petitioner respectfully requests,
Issue a Writ of Habeas Corpus under 28 U.S.C. § 2241.
Order Petitioner's immediate release under reasonable conditions of supervision.
Grant any further relief the Court deems just and proper.

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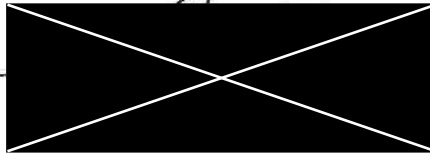
Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date:

06-29-2026



Signature of Attorney or other authorized person, if any

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

FRESNO DIVISION

MARCOS JOSE BARBOZA-VALLENILLA,

Petitioner,

v.

**WARDEN, CALIFORNIA CITY IMMIGRATION
PROCESSING CENTER; U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT; and U.S.
DEPARTMENT OF HOMELAND SECURITY,**

Respondents.

Case No.: _____

**MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

Petitioner Marcos Jose Barboza-Vallenilla,  a native and citizen of Venezuela, respectfully submits this Memorandum of Law in support of his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Petitioner has been held in continuous immigration detention since November 24, 2025 — nearly seven months — without a meaningful individualized determination that his continued confinement is necessary or that removal is realistically achievable.

On May 19, 2026, the Board of Immigration Appeals dismissed the government's appeal and rendered Petitioner's removal order final. The ninety-day statutory removal period will expire on August 17, 2026. Critically, removal to Venezuela is legally prohibited: an Immigration Judge granted Petitioner deferral of removal under the Convention Against Torture ("CAT") on October 20, 2020, and that protection remains operative and undisturbed. Respondents have identified no alternative country willing to accept Petitioner, obtained no travel documents, and articulated no concrete removal plan.

Petitioner's continued confinement violates the Due Process Clause of the Fifth Amendment. Removal to Venezuela is legally prohibited by an operative CAT deferral that has never been terminated. No alternative country willing to accept Petitioner has been identified. No travel documents have been obtained for any destination. Continued detention under these circumstances bears no reasonable relationship to any legitimate governmental purpose and risks becoming punitive rather than civil. Even if the Court concludes that the formal six-month Zadvydas presumption has not yet elapsed, 8 U.S.C. § 1231(a)(6) as construed by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), does not authorize indefinite detention where removal is legally foreclosed and no alternative removal pathway exists. Petitioner respectfully requests immediate release under appropriate conditions of supervision, or, in the alternative, an individualized bond hearing before a neutral adjudicator.

II. FACTUAL BACKGROUND

A. Entry and Immigration Proceedings

Petitioner is a fifty-three-year-old native and citizen of Venezuela, born in Caracas. On August 19, 2019, Petitioner, his wife, and their children applied for admission into the United States at the

Camino Real International Bridge Port of Entry in Eagle Pass, Texas. Petitioner expressed a credible fear of returning to Venezuela based on persecution. He was processed for Expedited Removal and placed in removal proceedings under 8 U.S.C. § 1229a after establishing credible fear.

On October 20, 2020, an Immigration Judge at the Pearsall, Texas Immigration Court granted Petitioner's application for deferral of removal under the Convention Against Torture. The government appealed. On May 19, 2026, the Board of Immigration Appeals dismissed the government's appeal, rendering the removal order final and leaving the IJ's CAT grant fully operative. The CAT deferral has never been terminated and remains in legal effect today.

B. Detention History

Petitioner was taken into ICE custody on November 24, 2025. He was initially detained at Baker County Detention Center in Sanderson, Florida, where he filed a pro se habeas petition in the United States District Court for the Middle District of Florida on January 26, 2026 (Case No. 3:26-cv-00144-JEP-PDB). That case remains pending. Petitioner was subsequently transferred to California City Immigration Processing Center, California City, California, where he remains confined.

As of the date of this filing, Petitioner has been in continuous ICE custody for approximately seven months. The ninety-day statutory removal period under 8 U.S.C. § 1231(a)(1)(A) commenced on May 19, 2026, the date the BIA's dismissal rendered the removal order final. That period expires on August 17, 2026. To date, Petitioner has received no individualized custody determination since the order became final, and Respondents have identified no country to which he can lawfully be removed.

C. CAT Protection and Removal Barriers

Petitioner's CAT deferral constitutes a binding legal determination that he faces a substantial risk of torture in Venezuela. 8 C.F.R. § 1208.16(c)(4). That protection may be terminated only through a formal proceeding before an immigration judge, initiated by the ICE District Director, in which the government bears the burden of demonstrating that Petitioner is no longer likely to be tortured. 8 C.F.R. § 1208.17(d). No such proceeding has been initiated.

Respondents have not identified any alternative country willing to accept Petitioner. They have obtained no travel documents for any country other than Venezuela. They have presented no concrete plan for third-country removal. ICE officers have nevertheless informed Petitioner that they intend to remove him to Venezuela — directly contradicting the legal bar imposed by his CAT deferral and underscoring the absence of any lawful, coherent removal plan.

D. Personal and Family Circumstances

Petitioner's wife and children — Venezuelan nationals who entered with him in August 2019 — reside in the United States. Petitioner is HIV-positive and relies on antiretroviral medication to manage his condition. He has no history of violence and no documented failure to comply with any supervision or reporting obligation. He poses no danger to the community and no meaningful flight risk. His family ties, medical needs, and compliance history all weigh against continued confinement and in favor of supervised release.

III. ARGUMENT

A. Petitioner's Detention Is Governed by 8 U.S.C. § 1231(a)(6) and *Zadvydas v. Davis*

Following the entry of a final removal order, 8 U.S.C. § 1231(a)(1) grants the government a ninety-day removal period. After that period, § 1231(a)(6) authorizes — but does not require — continued detention of certain classes of aliens. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court construed § 1231(a)(6) to avoid a serious constitutional problem: read without limits, the statute would authorize indefinite detention, which the Due Process Clause does not permit. The Court held that § 1231(a)(6) authorizes detention "only for a period reasonably necessary to bring about that alien's removal from the United States." *Id.* at 689.

To provide workable guidance, the Court established six months as a presumptively reasonable detention period following the order's finality. After six months, if the alien demonstrates "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to rebut that showing. *Id.* at 701. In *Clark v. Martinez*, 543 U.S. 371, 386 (2005), the Court extended this rule to inadmissible aliens under § 1231(a)(6), confirming that the same limiting construction applies regardless of admissibility status. The Ninth Circuit has applied *Zadvydas* consistently in this context. See *Nadarajah v. Gonzales*, 443 F.3d 1069, 1080 (9th Cir. 2006); *Diouf v. Napolitano*, 634 F.3d 1081, 1092 (9th Cir. 2011).

Although Petitioner's six-month *Zadvydas* threshold falls on November 19, 2026, the six-month period is a presumption of reasonableness — not a mandatory waiting period before a court may act. Where legal barriers to removal are categorically established before that date, courts need not require the petitioner to endure continued unconstitutional confinement while the clock runs. See *Pelich v. INS*, 329 F.3d 1057, 1059–60 (9th Cir. 2003); *Nadarajah*, 443 F.3d at 1080. The barriers here are established now, as a matter of record.

B. Removal Is Not Reasonably Foreseeable as a Matter of Law

Two independent and reinforcing barriers categorically foreclose removal in the reasonably foreseeable future.

First, Petitioner's CAT deferral prohibits removal to Venezuela. The IJ's October 20, 2020 determination — undisturbed by the BIA's May 19, 2026 dismissal — reflects a binding legal finding that Petitioner faces a substantial risk of torture in Venezuela. Absent a formal termination proceeding under 8 C.F.R. § 1208.17(d), which has not been initiated, that protection is operative and removal to Venezuela is unlawful. A removal that is legally prohibited cannot be "reasonably foreseeable." *Zadvydas*, 533 U.S. at 690 (recognizing "legal" obstacles as relevant to removability). Detention premised on an impossible removal serves no legitimate governmental interest. *Id.* at 690–91.

Second, no third-country removal pathway has been identified or pursued. Where the country of origin is unavailable, the government may seek removal to a third country under 8 U.S.C. § 1231(b)(2). Respondents have not identified any third country willing to receive Petitioner, have obtained no travel documents for any alternative destination, and have articulated no plan — not even a preliminary one — for third-country removal. The Ninth Circuit has held that absent evidence of third-country acceptance or concrete efforts to obtain it, the government cannot demonstrate a significant likelihood of removal. *Nadarajah*, 443 F.3d at 1080.

As of the filing of this memorandum, Respondents have not identified any country willing to accept Petitioner, have not produced travel documents for any destination, and have not informed Petitioner of any active efforts to secure third-country acceptance.

Taken together, these barriers make this a case where the government "cannot now, and likely will not be able to in the foreseeable future, remove" Petitioner — precisely the circumstance for which Zadvydas relief was designed. 533 U.S. at 684.

C. The Government Cannot Rebut Petitioner's Showing

Once a petitioner establishes good reason to believe that removal is not reasonably foreseeable, the government must "respond with evidence sufficient to rebut that showing." Zadvydas, 533 U.S. at 701. Respondents face a substantial burden in attempting to rebut Petitioner's showing because removal to Venezuela is legally prohibited and no alternative country has been identified. They cannot demonstrate that Venezuela removal is forthcoming because it is legally prohibited. They cannot demonstrate third-country removal is forthcoming because no country has been identified. Speculative assertions that circumstances may change, or that ICE is working on the matter, do not constitute evidence sufficient to rebut a showing grounded in an operative CAT deferral and the absence of any travel documents or third-country agreement.

Notably, ICE officers have told Petitioner directly that they intend to remove him to Venezuela — a country to which they are legally prohibited from sending him. This contradiction is not incidental: it reflects that Respondents have no lawful removal plan and are proceeding in a manner inconsistent with Petitioner's legal rights. Courts should not permit continued detention on the basis of a removal plan that, if executed, would itself constitute a legal violation.

D. Continued Detention Violates the Fifth Amendment's Due Process Clause

The Due Process Clause of the Fifth Amendment protects all persons within the United States, including noncitizens in immigration custody. Zadvydas, 533 U.S. at 693. Civil detention is constitutionally permissible only when it "bear[s] a reasonable relation to a legitimate

governmental purpose." *Id.* at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). When the governmental purpose — removal — is not achievable, detention ceases to bear the required relationship to that purpose and becomes arbitrary and punitive. See *id.* at 690–91; *Foucha v. Louisiana*, 504 U.S. 71, 79 (1992).

Petitioner has now been detained for approximately seven months. Removal to Venezuela is legally forbidden. No alternative country has been identified. The government has no constitutionally cognizable purpose for his continued confinement. His detention does not protect the public — he has no history of violence. It does not ensure his availability for removal — there is no lawful removal to ensure availability for. It is the "indefinite imprisonment" the Fifth Amendment forbids. *Zadvydas*, 533 U.S. at 692.

The Ninth Circuit has further recognized that prolonged detention without individualized justification implicates heightened due process concern and requires procedural protection. *Diouf*, 634 F.3d at 1091–92 (requiring individualized bond hearing for aliens facing prolonged detention where removal is not reasonably foreseeable). Seven months of detention, with no release in sight and no lawful removal destination, falls squarely within the constitutional violation *Diouf* addressed.

E. Petitioner's Long History of Compliance Demonstrates That Detention Is Unnecessary

For years following his prior contact with the immigration system, Petitioner complied with supervision requirements and remained available to immigration authorities. He did not abscond and did not evade government supervision. His family — his wife and children — remain in the United States, providing the strongest possible incentive for continued presence and compliance.

This history is highly relevant because it demonstrates that alternatives to detention are effective in Petitioner's case. Respondents cannot justify continued confinement merely by invoking a statutory detention provision while ignoring Petitioner's demonstrated record of compliance. The Constitution requires an individualized assessment of whether detention remains necessary. Where a petitioner has already shown that he can successfully comply with supervision in the community, continued detention becomes increasingly difficult to justify and risks becoming punitive rather than regulatory.

Standard conditions of supervised release — periodic reporting, electronic monitoring, restrictions on international travel — are plainly sufficient to address any governmental interest in ensuring Petitioner's availability. Petitioner has demonstrated through conduct that he will comply. Respondents bear the burden of explaining why supervision that worked before will not work now. Respondents have not identified any facts demonstrating why supervision that previously proved effective would now be inadequate.

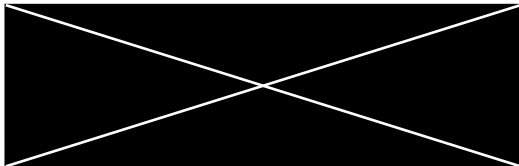
The Court should therefore consider Petitioner's history of successful supervision as compelling evidence that release under appropriate conditions is a reasonable and effective alternative to continued confinement. See *Zadvydas*, 533 U.S. at 699–700 (noting availability of supervised release as habeas remedy); *Diouf*, 634 F.3d at 1092 (supervised release appropriate where removal is not imminent).

Respondents have never explained why supervision that previously succeeded is now inadequate. Petitioner remained available to immigration authorities for years, complied with reporting requirements, and maintained family ties in the United States. Absent specific evidence that circumstances have materially changed, continued detention is arbitrary and unnecessary.

Under Zadvydas, Clark v. Martinez, and the Fifth Amendment's Due Process Clause, continued detention without a realistic removal prospect and without individualized justification is unconstitutional. Petitioner respectfully requests that this Court:

- Grant the Petition for Writ of Habeas Corpus;
- Order Petitioner's immediate release under prior conditions of supervision;
- Issue an order to show cause directing Respondents to respond within seven days; and
- Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,



Marcos Jose Barboza-Vallenilla



Petitioner, Pro Se

California City Immigration Processing Center

22330 S. Hacienda Blvd.

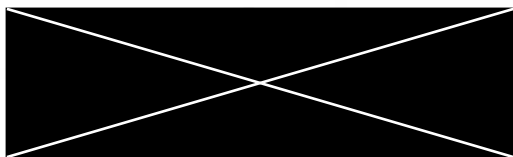
California City, CA 93505

Date: 06-29-2026

CERTIFICATE OF SERVICE.

I hereby certify that on 06-29, 2026, I placed a true and correct copy of the foregoing Memorandum of Law in Support of Petition for Writ of Habeas Corpus in the institutional mail system at California City Immigration Processing Center, postage prepaid, addressed to:

Eastern District of California



Marcos Jose Barboza-vanemina

Petitioner, Pro Se

To Whom It May Concern:

Our names are [REDACTED] and [REDACTED], and we are the children of Marcos Jose Barboza Vallenilla.

With great respect, we write this letter to express the profound impact that our father's detention has had on our family. Our father has been detained for almost seven months, and each day apart from him becomes more difficult for us.

Our father has always been a loving, responsible, and devoted parent. He has been present in our lives, supporting our education, teaching us good values, and working hard for our family. His absence has caused us great sadness and emotional pain.

We miss spending time with him, speaking with him in person, and having him at home. There are important moments in our lives when we wish he could be with us. Although we try to stay strong, this situation has been very difficult for us and for our mother.

We respectfully ask that consideration be given to the length of time our father has remained detained and the hardship that this separation has caused our family. Our greatest wish is to be together again.

We love our father deeply and continue to pray that he may return home to our family.

Thank you for your time and consideration.

Respectfully,

[REDACTED]
Marcos Barboza

[REDACTED]
Victoria Barboza

Date: 06/22/2026