

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

D.A.M. v. Kristi Noem, Pamela Jo Bondi, Todd M. Lyons, Jesus
Rocha, Jeremy Casey, and David Rivas

No. 25-CV-2657 JLS (VET) (S.D. Cal. Jan. 20, 2026) · No. 25-CV-2657 JLS (VET) · Decided January 20, 2026

SUMMARY

The court grants in part D.A.M.’s petition for a writ of habeas corpus under 28 U.S.C. § 2241, challenging prolonged immigration detention after an administratively final removal order and a grant of protection under the Convention Against Torture. Applying *Zadvydas v. Davis*, the court finds that the petitioner showed no significant likelihood of removal in the reasonably foreseeable future and that the respondents failed to rebut that showing. The court orders the petitioner’s immediate release and directs the parties to file a joint status report confirming release.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Janis L. Sammartino
JURISDICTION	United States District Court for the Southern District of California
DECIDED	January 20, 2026
DOCKET	25-CV-2657 JLS (VET)
PROCEDURAL POSTURE	Petitioner sought habeas relief under 28 U.S.C. § 2241, challenging prolonged detention following a final removal order. The district court granted the amended petition in part and ordered Petitioner's immediate release.
STANDARD OF REVIEW	The court evaluated its habeas jurisdiction under 28 U.S.C. § 2241 and applied the burden-shifting framework governing post-removal detention under <i>Zadvydas v. Davis</i> .
PARTIES	D.A.M., Petitioner v. Kristi Noem, Secretary of the Department of Homeland Security, Pamela Jo Bondi, Attorney General, Todd M. Lyons, Acting Director, Immigration and Customs Enforcement, Jesus Rocha, Acting Field Office Director, San Diego Field Office, Jeremy Casey, Warden of Imperial Regional Detention Facility, David Rivas, Warden of the San Luis Detention Center

QUESTIONS PRESENTED

1. Whether the district court had habeas jurisdiction under 28 U.S.C. § 2241 over Petitioner's challenge to prolonged detention that was collateral to the final removal order.
2. Whether Petitioner's continued post-removal detention violated the limitations recognized in *Zadvydas v. Davis* because there was no significant likelihood of removal in the reasonably foreseeable future.
3. Whether Petitioner was entitled to immediate release from custody.

HOLDINGS

1. The district court retained habeas jurisdiction under 28 U.S.C. § 2241 because the petition challenged an ancillary or collateral detention issue rather than the validity of the final removal order.
2. Petitioner satisfied the initial burden of showing good reason to believe there was no significant likelihood of removal in the reasonably foreseeable future, and Respondents failed to rebut that showing; continued detention was therefore unlawful.

FACTUAL BACKGROUND

D.A.M., a native and citizen of El Salvador, had been detained by Immigration and Customs Enforcement for more than twenty-eight months at the time of the petition. An Immigration Judge granted relief under the Convention Against Torture, and the order became administratively final on January 20, 2025. ICE made two unsuccessful attempts to remove D.A.M. to Mexico, but continued detention while purportedly seeking a third country for removal and provided no evidence identifying such a country or explaining how removal would be effectuated.

PROCEDURAL HISTORY

D.A.M. filed a First Amended Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241. Respondents opposed the petition, and Petitioner filed a traverse. The court rejected Respondents' jurisdictional objection, found that the Government had not rebutted Petitioner's showing under *Zadvydas v. Davis*, ordered immediate release, required a joint status report confirming release, and closed the case.

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 SOUTHERN DISTRICT OF
CALIFORNIA 9 10 D.A.M., Case No.: 25-CV-2657 JLS (VET) 11 Petitioner, ORDER
GRANTING IN PART 12 v. PETITION FOR WRIT OF HABEAS CORPUS 13 KRISTI NOEM,
Secretary of the Department of Homeland Security, 14 (ECF No. 22) PAMELA JO BONDI,
Attorney General, 15 TODD M. LYONS, Acting Director, Immigration and Customs
Enforcement, 16 JESUS ROCHA, Acting Field Office 17 Director, San Diego Field Office,
JEREMY CASEY, Warden of Imperial 18 Regional Detention Facility, DAVID 19 RIVAS, Warden
of the San Luis Detention Center, 20 Respondents.

21 22 Presently before the Court is Petitioner D.A.M.'s First Amended Petition for Writ of 23
Habeas Corpus pursuant to 28 U.S.C. § 2241 ("Pet.," ECF No. 22). Also before the Court 24 are

Respondents Kristi Noem's (Secretary of the Department of Homeland Security), 25 Pamela Jo Bondi's (Attorney General), Todd M. Lyon's (Acting Director, Immigration and Customs Enforcement), Jesus Rocha's (Acting Field Office Director, San Diego Field Office), Jeremy Casey's (Warden of Imperial Regional Detention Facility), and David 28 Rivas's (Warden of the San Luis Detention Center) Response in Opposition to Petitioner's 1 First Amended Habeas Petition ("Opp'n," ECF No. 26) and Petitioner's Traverse 2 ("Traverse," ECF No. 27).

For the reasons set forth below, the Court GRANTS IN PART 3 Petitioner's First Amended Petition for Writ of Habeas Corpus. 4 BACKGROUND 5 Petitioner, a native and citizen of El Salvador, alleges that they have been detained 6 by the Department of Homeland Security Immigration and Customs Enforcement, first at 7 the Imperial Regional Detention Facility and now at the San Luis Detention Center, for 8 over twenty-eight months.

Pet. at 4. On December 20, 2024, an Immigration Judge granted 9 Petitioner relief under the Convention Against Torture ("CAT"), finding that Petitioner 10 would more likely than not risk torture if they returned to El Salvador. Id. at 6.

After the 11 Immigration Judge's Order became final on January 20, 2025, Petitioner sent the Order to 12 the deportation office and "asked why they were still detained." Id. Two months later, the 13 officer responded that Petitioner had to wait ninety days after the order became final. Id. 14 The ninety days passed on April 20, and Petitioner remained in detention.

Id. at 6–7. The 15 officer then told Petitioner they had to wait 180 days from the final order of removal. Id. 16 at 7. Petitioner was thereafter moved from a detention center in Colorado to the Imperial 17 Regional Detention Center because "ICE needed to make space for more people in 18 Colorado." Id. 19 In September 2025, around 245 days after the removal order became final, 20 Petitioner was informed they would be removed to Mexico.

Id. On September 29, 2025, 21 Mexico accepted Petitioner, and Petitioner was sent to the border with Mexico. Id. at 8. 22 Petitioner showed ICE officers the Immigration Judge's Order and explained that 23 individuals from El Salvador were often "handed over from Mexico to Guatemala to El 24 Salvador." Id. Petitioner was taken back to the detention center. Id. In late October, 25 Petitioner was again taken to the border with Mexico and taken back to the detention center 26 after showing ICE officers the Immigration Judge's Order.

Id. On November 14, 2025, 27 around 300 days after the removal order became final, ICE informed Petitioner that they 28 would continue to detain Petitioner because they refused to depart within ninety days of 1 the removal order. Id. at 8–9.

On November 19, 2025, the government indicated it was 2 looking for a third country for removal. Id. Petitioner claims that their continued detention 3 violates *Zadvydas v. Davis*, 533 U.S. 678 (2001), 8 U.S.C. § 1231, and the Due Process 4 Clause of the Fifth Amendment. Id. at 13–27. 5

LEGAL STANDARD 6 A federal prisoner challenging the execution of his or her sentence, rather than the 7 legality of the sentence itself, may file a petition for writ of habeas corpus in the district of 8 his confinement pursuant to 28 U.S.C. § 2241.

See 28 U.S.C. § 2241(a). The sole judicial 9 body able to review challenges to final orders of deportation, exclusion, or removal is the 10 court of appeals. See generally 8 U.S.C. § 1252; see also *Alvarez–Barajas v. Gonzales*, 11 418 F.3d 1050, 1052 (9th Cir. 2005) (citing REAL ID Act, Pub. L. No. 109-13, 119 Stat. 12 231, § 106(a)).

However, for claims challenging ancillary or collateral issues arising 13 independently from the removal process—for example, a claim of indefinite detention— 14 federal habeas corpus jurisdiction remains in the district court. *Nadarajah v. Gonzales*, 15 443 F.3d 1069, 1076 (9th Cir. 2006), abrogated on other grounds by *Jennings v. Rodriguez*, 16 138 S. Ct. 830 (2018); *Alvarez v. Sessions*, 338 F. Supp. 3d 1042, 1048–49 (N.D.

Cal. 17 2018) (citations omitted). 18 DISCUSSION1 19 When an alien is denied asylum, granted withholding of removal under 8 U.S.C. § 20 1231(b)(3), and ordered removed, they must be detained for ninety days (90) pending the 21 government’s efforts to secure their removal to a third country. See 28 U.S.C. § 1231(a)(2). 22 This ninety-day period is referred to as the “removal period.” § 1231(a)(1)(A).

After the 23 removal period, this statute “limits an alien’s post-removal-period detention to a period 24 reasonably necessary to bring about that alien’s removal from the United States” and “does 25 26 1 Respondents first argue that the Court lacks jurisdiction over the Amended Petition because Petitioner fails to name as a respondent the warden of the facility where he is detained, as required by 28 U.S.C. 27 § 2243.

Ret. at 2. However, the Amended Petition names the wardens of the Imperial Regional Detention 28 Facility and the San Luis Detention Center. See generally *Pet.*; see also *Traverse* at 2. Therefore, the 1 not permit indefinite detention.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). A six- 2 month period of post-removal detention constitutes a “presumptively reasonable period of 3 detention.” *Id.* at 701.

After this six-month period passes, the petitioner has the burden to 4 “provide[] good reason to believe that there is no significant likelihood of removal in the 5 reasonably foreseeable future.” *Id.* If petitioner satisfies their initial burden, it then shifts 6 to the Government to rebut that showing. *Id.* “[F]or detention to remain reasonable, as the 7 period of prior post-removal confinement grows, what counts as the ‘reasonably 8 foreseeable future’ conversely would have to shrink.” *Id.* “[O]nce removal is no longer 9 reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.

10 In that case, the alien's release may be conditioned on any of the various forms of 11 conditioned release. *Id.* at 700. 12 "[T]he removal period begins when an alien is 'ordered removed,' and the removal 13 order becomes 'administratively final.'" *Johnson v. Guzman Chavez*, 594 U.S. 523, 534 14 (2021). 15 Section 1231(a)(1)(B) states that: 16 The removal period begins on the latest of the following: (i) The date the order of removal becomes administratively 17 final.

18 (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's 19 final order. 20 (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from 21 detention or confinement. 22 23 8 U.S.C. § 1231(a)(1)(B). 24 The Court finds that Petitioner has satisfied their initial burden. 25 Petitioner argues that "ICE's negligent failure to attempt a third country removal for more than 180 days 26 27 28 2 Respondents do not contest that the six-month presumptively reasonable period has passed.

See 1 creates doubt that Petitioner will be removed in the reasonably foreseeable future"—and 2 Petitioner has now been detained for almost twice as long as the presumptive 180-day 3 period. *Pet.* at 17. Nor has the government provided documentation as to removal to a 4 third country. *Id.* at 18 (citing *PenaGil v. Lyons*, No. 25-CV-03268-PAB-NRN, 2025 WL 5 3268333, at *3 (D.

Colo. Nov. 24, 2025) (granting petition where government "produced 6 no documentation regarding petitioner's deportation to a third country and were twice 7 unsuccessful in deporting petitioner to Mexico")). Because Petitioner has shown good 8 reason to believe they will not be removed in the reasonably foreseeable future, the burden 9 now shifts to Respondents to rebut Petitioner's showing.

Zadvydas, 533 at 701. 10 Respondents argue that Petitioner cannot show there is no significant likelihood of 11 removal in the reasonably foreseeable future because ICE is seeking a third country for 12 removal. *Ret.* at 4–5. Respondents, however, do not point to any evidence that they have 13 selected a third country or taken any action to effectuate removal since attempting to 14 remove Petitioner to Mexico.

See generally *Ret.*; see also *Grishchenko v. Noem*, No. 25- 15 CV-3514-JES-JLB, 2025 WL 3675070, at *2 (S.D. Cal. Dec. 17, 2025) ("Respondents do 16 not identify any potential countries which might accept Petitioner's third country removal, 17 or any factors related to Petitioner or people like him which might make a future removal 18 attempt successful when others have failed.").

As Petitioner contends, "ICE has already 19 had much more than six months to effectuate the removal" and "ha[s] done nothing for the 20 first nine months to effectuate removal." *Traverse* at

3. The Court concludes that 21 Respondents have failed to rebut Petitioner's showing that there is no significant likelihood 22 of removal.

Accordingly, the Court GRANTS IN PART the Amended Petition. 23 / / / 24 / / / 25 / / / 26 / / / 27 / / / 28 / / / 1 CONCLUSION 2 Based on the foregoing, the Court GRANTS IN PART Petitioner's First Amended 3 ||Petition for Writ of Habeas Corpus (ECF No. 22), and ORDERS Respondents to 4 ||immediately release Petitioner from custody.

The Parties are ORDERED to file a Joint 5 || Status Report by February 10, 2026, confirming that Petitioner has been released. As this 6 || concludes the litigation in this case, the Clerk of Court SHALL CLOSE the file. 7 IT IS SO ORDERED. 8 ||Dated: January 20, 2026. Lt 9 pen Janis L. Sammartino 10 United States District Judge 1] 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28