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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Santos Maradiaga-Villalta

Petitioner,

v.

Kristopher Kline, Warden, Central Arizona
Florence Correctional Complex; John E.
Cantu, Field Office Director, U.S.
Immigration and Customs Enforcement, U.S.
Department of Homeland Security; and Kristi
Noem, Secretary of U.S. Department of
Homeland Security, in their official
capacities.

Respondents.

No.

**FIRST AMENDED
PETITION FOR WRIT OF
HABEAS CORPUS
PURSUANT TO 28 U.S.C. §
2241 AND COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. The Petitioner, Santos Maradiaga-Villalta, is a national of Honduras. He is in Immigration and Customs Enforcement (ICE) custody in Florence, Arizona. Almost a year ago, on February 13, 2024, Mr. Maradiaga-Villalta's removal order became final. ICE is detaining him pursuant to U.S.C. § 1231(a)(6) as a non-citizen awaiting the execution of his final order of removal.

1 2. ICE has had ample time to remove Mr. Maradiaga-Villalta to Honduras
2 but has not been able to do so; per his understanding, Mr. Maradiaga-Villalta's birth
3 was never formally registered in Honduras. Mr. Maradiaga-Villalta was previously
4 detained between 2017 and 2019 when he was subject to a January 2006 removal
5 order. ICE succeeded in deporting Mr. Maradiaga-Villalta on July 19, 2019 after a
6 nearly two-year wait.
7

8 3. After arriving back in Honduras, Mr. Maradiaga-Villalta was attacked
9 by suspected gang members and fled for his life in 2021. He returned to the United
10 States and, after serving a prison sentence for an illegal reentry conviction under 8
11 U.S.C. § 1326, was given a Reasonable Fear Interview on February 2, 2024. After
12 finding that his fear had no nexus to a protected ground, the Asylum Officer denied
13 his fear claim, a decision affirmed by an Immigration Judge in Florence, Arizona on
14 February 13, 2024. He did not appeal that order, and it became final on the same date.
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16

17 4. Mr. Maradiaga-Villalta has been held in ICE custody since January 12,
18 2024. As of today, Respondents have held Petitioner since for 3569 days since his
19 February 13, 2024 final removal order, nearly 12 months of post-final order detention.
20

21 5. Mr. Maradiaga-Villalta's desire is to be outside of detention, either
22 through removal to Honduras, or if removal is not possible within the foreseeable
23 future, he asks for release to a sponsor on his own recognizance, under parole, or with
24 reasonable conditions of supervision.
25

26 6. Mr. Maradiaga-Villalta has consistently cooperated with ICE regarding
27 his removal to Honduras. He has responded to requests both from the Honduran
28 government and ICE. He has spoken with the Honduran Consulate six or seven times

1 while detained, yet no travel documents permitting his removal have been issued. He
2 has made every effort to comply with ICE's efforts to remove him and for the
3 Honduran government's inquiries regarding his identity.

4
5 7. Respondents have given scant information to Mr. Maradiaga-Villalta
6 about if or when he will be removed to Honduras.

7
8 8. In *Zadvydas v. Davis*, the United States Supreme Court held that 8
9 U.S.C. § 1231(a)(6) does not allow DHS to detain a noncitizen indefinitely while
10 attempting to carry out removal. 533 U.S. 678, 689 (2001). Because of the "serious
11 constitutional problem" posed by indefinite detention, DHS's authority to detain
12 noncitizens subject to final removal orders is limited to "a period reasonably
13 necessary to bring about that alien's removal from the United States." *Id.* at 682.
14 Where removal is "a remote possibility at best," immigration detention lacks a
15 reasonable relation to its purpose. *Id.* at 690.

16
17 9. Because Respondents' detention of Mr. Maradiaga-Villalta no longer
18 serves the government's interest in his removal to Honduras, Mr. Maradiaga-Villalta
19 asks this Court to find that Respondents' detention under these circumstances violates
20 the Immigration and Nationality Act and the Fifth Amendment's Due Process Clause
21 and issue a writ of habeas corpus ordering Respondents to release him to Honduras or
22 to his sponsor on his own recognizance, under parole, or with reasonable conditions
23 of supervision while he awaits removal to Honduras.

24 CUSTODY

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26
27 10. Mr. Maradiaga-Villalta is in the physical custody of Respondents and
28 held at Central Arizona Florence Correctional Complex (CAFCC) in Florence,

1 Arizona. At the time of this filing, Mr. Maradiaga-Villalta continues to be detained at
2 CAFCC. CAFCC is a facility that contracts with ICE to hold people awaiting
3 removal. Mr. Maradiaga-Villalta is in direct control of Respondents and their agents.
4

5 JURISDICTION

6 11. This action arises under the Constitution of the United States, the
7 Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et. Seq., as amended by
8 the Illegal Immigration Reform and Immigrant Responsibility Act of 1996
9 (“IRRIRA”), Pub. L. No. 104-208, 110 Stat. 1570. This Court has subject matter
10 jurisdiction and may grant relief under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. §
11 1651 (All Writs Act), and 28 U.S.C. § 1331 (federal question). This Court also has
12 jurisdiction to hear this case under the Suspension Clause of Article I of the United
13 States Constitution. *INS v. St. Cyr*, 533 U.S. 289 (2001). The Court may also grant
14 relief under 28 U.S.C. §§ 2201 (declaratory relief.)
15
16

17 12. Because Petitioner challenges his custody, jurisdiction is proper in this
18 Court. While the courts of appeals have jurisdiction to review removal orders through
19 petitions for review, *see* 8 U.S.C. §§ 1252(a)(1) and (b), the federal district courts
20 have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens
21 challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S.
22 678, 687–88 (2001); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075–76 (9th Cir. 2006).
23
24

25 VENUE

26 13. Venue is proper in the District of Arizona pursuant to 28 U.S.C. §§
27 1391(b) and (e) and local rules of this court because a substantial part, if not all, of the
28 events or omissions giving rise to these claims occurred in this district, where

1 Respondents reside, and where Petitioner is detained.

2 **REQUIREMENTS OF 28 U.S.C. § 2243**

3
4 14. The Court must grant the petition for writ of habeas corpus or issue an order
5 to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to
6 relief. *See* 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require
7 respondents to file a return “within *three days* unless for good cause additional time, not
8 exceeding twenty days, is allowed.” *Id.* (emphasis added).

9
10 15. Courts have long recognized the significance of the habeas statute in
11 protecting individuals from unlawful detention. The Great Writ has been referred to as
12 “perhaps the most important writ known to the constitutional law of England, affording as
13 it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay*
14 *v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

15
16 **PARTIES**

17 All Respondents listed below are sued in their official capacities.

18
19 16. Petitioner Santos Maradiaga-Villalta is a non-citizen who is a national
20 and citizen of Honduras. Mr. Maradiaga-Villalta’s removal order to Honduras has
21 been final since February 13, 2024. Mr. Maradiaga-Villalta has been in ICE custody
22 since about January 2024. Before that, Mr. Maradiaga-Villalta was detained by ICE
23 from about 2017 through 2019. Mr. Maradiaga-Villalta is detained by Respondents
24 pursuant to 8 U.S.C. § 1231(a)(6), which permits DHS to detain noncitizens, like
25 Petitioner, pending the execution of a final removal order.

26
27
28 17. Respondent Kristopher Kline is Warden at the Central Arizona Florence

1 Correctional Complex (CAFCC), a facility that holds Petitioner and other immigrants
2 awaiting removal in Florence, Arizona. He is the Petitioner's immediate custodian
3 and resides in the judicial district of the United States Court for the District of
4 Arizona.
5

6 18. Respondent John A. Cantu is the Field Office Director for the Phoenix
7 Field Office of U.S. Immigration and Customs Enforcement's ("ICE") Enforcement
8 and Removal ("ERO") division. The Phoenix Field Office's area of responsibility
9 includes the entire state of Arizona. Respondent Cantu has the authority to order
10 Petitioner's release or continued detention. As such, Respondent Cantu is a legal
11 custodian of Petitioner.
12

13 19. Respondent Kristi Noem is the Secretary of the United States
14 Department of Homeland Security ("DHS"). She is responsible for the
15 implementation and enforcement of the immigration laws and oversees ICE. As such,
16 Respondent Noem has ultimate custodial authority over Petitioner.
17

18 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

19 20. Mr. Maradiaga-Villalta has exhausted administrative remedies to the extent
20 required by law. He has requested a custody review and has been denied release at least
21 twice. He has fully cooperated with Respondents and has not delayed or obstructed his
22 detention. Thus, the only remedy for Petitioner's continued potentially indefinite
23 detention is by way of this constitutional habeas challenge.
24

25 **LEGAL FRAMEWORK**

26 21. Habeas corpus is at its core a constitutional protection against unlawful
27 and indefinite detention. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004); *see also*
28

1 *Zadvydas v. Davis*, 533 U.S. 678, 689 (“A statute permitting indefinite detention of an
2 alien would raise a serious constitutional problem.”).

3 22. Title 8 of the United States Code, Section 1231 governs the detention,
4 release, and removal of noncitizens ordered removed from the United States. Section
5 1231 directs the government to carry out a removal order within 90 days. 8 U.S.C. §
6 1231(a)(1)(A). The 90-day “removal period” begins when the removal order becomes
7 final. 8 U.S.C. § 1231(a)(1)(B). Detention is mandatory during the removal period. 8.
8 U.S.C. § 1231(a)(2) (“During the removal period, the Attorney General shall detain
9 the alien.”). Generally, a noncitizen who is not removed from the United States during
10 the removal period should be released subject to supervision. 8 U.S.C. § 1231(a)(3).
11

12 23. Detention of a noncitizen beyond the removal period is governed by
13 regulations that require administrative review of the noncitizen’s custody status at the
14 conclusion of the 90-day removal period, three months after the conclusion of the
15 removal period, and within one year thereafter. 8 C.F.R. § 241.4. Custody reviews are
16 performed by ICE officials, not by a neutral arbiter such as an immigration judge. *Id.*
17

18 24. A noncitizen with a removal order who is released from custody is
19 subject to numerous conditions of release. *See* 8 C.F.R. § 241.4(j) (outlining
20 conditions of release for noncitizens who are found not to pose a danger to the
21 community or a flight risk); 8 C.F.R. § 241.13(h) (outlining conditions of release for
22 noncitizens whose removal is not reasonably foreseeable). These conditions include
23 requirements that the noncitizen regularly report to ICE, notify ICE of any change of
24 address, and “continue efforts to obtain a travel document and assist [ICE] in
25 obtaining a travel document.” 8 C.F.R. § 241.5(a).
26
27
28

1 25. Although 8 U.S.C. § 1231(a)(6) permits detention “beyond the removal
2 period” of ninety (90) days when a noncitizen is deemed to be a flight risk or danger,
3 that detention is circumscribed by the Constitution. “It is well established that the
4 Fifth Amendment entitled [noncitizens] to due process of law in deportation
5 proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507
6 U.S. 292, 306 (1993)). “Freedom from imprisonment – from government custody,
7 detention, or other forms of physical restraint – lies at the heart of the liberty that [the
8 Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

9
10
11 26. In *Zadvydas*, the Supreme Court considered the cases of two petitioners,
12 both non-citizens who were unable to be removed to their countries of origin. *Id.* at
13 685. One petitioner, a native and citizen of Cambodia named Kim Ho Ma had been
14 convicted for a gang-affiliated manslaughter at age 17 and sentenced to 38 months in
15 prison. *Id.* After the expiration of the 90-day removal period, the former INS declined
16 to release Mr. Ma, noting that because of the nature of his crime and his past gang
17 affiliation, they could not be sure that “Mr. Ma would remain nonviolent” in the
18 community. *Id.* at 686.

19
20
21 27. In rejecting this position and finding that indefinite post-order detention
22 violates the Fifth Amendment, the Supreme Court held that “the statute [8 U.S.C. §
23 1231(a)(6)], read in light of the Constitution’s demands, limits [a noncitizen’s] post-
24 removal-period of detention to a period reasonably necessary to bring about the
25 [noncitizen’s] removal from the United States.” *Id.* at 689. “[O]nce removal is no
26 longer reasonably foreseeable, continued detention is no longer authorized by statute.”
27 *Id.* at 699.
28

1 28. To provide guidance to lower courts, the Supreme Court recognized six
2 months as the “presumptively reasonable period” for post-removal order detention. *Id.* at
3 701. After six months, once the noncitizen provides “good reason to believe that there is
4 no significant likelihood of removal in the reasonably foreseeable future,” the burden
5 shifts to the government to rebut that showing. *Id.* Moreover, “as the period of prior pos-
6 removal confinement grows, what counts as the ‘reasonably foreseeable future’
7 conversely would have to shrink.” *Id.*

8
9 29. Under *Zadvydas*, “if removal is not reasonably foreseeable, the court should
10 hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699–
11 700.

12
13 30. In the immigration context, the Supreme Court only recognizes two
14 purposes for civil detention: preventing flight and mitigating the risks of danger to the
15 community. *Id.* at 690; *Demore*, 538 U.S. at 528. The government may not detain a
16 noncitizen based on any other justification. The first justification, preventing flight, is “by
17 definition...weak or nonexistent where removal seems a remote possibility.” *Zadvydas*,
18 533 U.S. at 690. The second justification of protecting the community, “preventive
19 detention based on dangerousness,” is permitted “only when limited to especially
20 dangerous individuals and subject to strong procedural protections.” *Id.* at 690–91.

21 31. The government must bear the burden of proving actual danger “when
22 preventive detention is potentially indefinite.” *Id.* at 679. “This justification must also be
23 accompanied by some other special circumstance...that helps to create the danger.” *Id.*

24
25
26
27 **STATEMENT OF FACTS**

28 32. Mr. Maradiaga-Villalta was born on [REDACTED], 1984 in Catacamas,

1 Olancho, Honduras. He is a native and citizen of Honduras. He does not have any
2 other citizenship or nationality.

3 33. At the time of Mr. Maradiaga-Villalta's birth, he was not issued a
4 formal birth certificate, and his birth was never registered.

5
6 34. Mr. Maradiaga-Villalta came to the United States from Honduras on or
7 about January 25, 2006 and was subject to an order of expedited removal by an
8 immigration officer in Eagle Pass, Texas. He was detained several weeks before he
9 was removed to Honduras. After a few months, he fled Honduras again to return to
10 the United States. After his return to the U.S., he plead guilty to ~~kidnapping~~
11 Conspiracy to Seize and Detain a Foreign National and served approximately 11 years
12 in prison. *See* Exh. 7. In 2017, he was transferred to ICE custody to execute the
13 removal order. However, for about two years while in ICE custody, Honduras did not
14 recognize his citizenship due to his lack of documentation. In July 2019, he was
15 deported to Honduras.

16
17
18 35. On or about June 23, 2021, Mr. Maradiaga-Villalta returned to the
19 United States and was apprehended by immigration authorities in Eagle Pass, Texas.
20 He was sentenced to 30 months in prison for an illegal reentry conviction under 8
21 U.S.C. § 1326. *See United States v. Maradiaga-Villalta*, 2:21-CR-01199 (W.D. Texas
22 2021). While in Bureau of Prison custody, he completed a gang "debrief" program to
23 end any affiliation. He was placed in ICE detention on January 12, 2024. While in
24 ICE custody, he had a reasonable fear interview with an asylum officer who denied
25 his claim. He then appeared before an immigration judge who affirmed the denial on
26 February 13, 2024. He did not appeal that order, which became final on that date. *See*
27
28

1 Exh. 1, Immigration Judge Order Affirming Fear Claim Denial.

2 36. Since February 2024, ICE attempted to obtain appropriate travel
3 documents for Mr. Maradiaga-Villalta. However, it has been unable to effectuate the
4 removal order, even after attempting to do so for about one year.
5

6 37. Mr. Maradiaga-Villalta has already spent nearly a year in custody after a
7 final order of removal. Given ICE's inability to obtain travel documents within that
8 time, there is no reason to believe that there is a significant likelihood of removal in
9 the reasonably foreseeable future.
10

11 38. Mr. Maradiaga-Villalta has consistently cooperated with ICE and has
12 not obstructed his removal to Honduras. In fact, Mr. Maradiaga-Villalta, as detailed
13 below, has continuously asked ICE to be removed to Honduras.
14

15 39. On April 1, 2024, ICE issued a decision stating that it planned to
16 continue detaining Mr. Maradiaga-Villalta because "ICE has the necessary means to
17 obtain a travel document to effectuate your removal, and removal is practicable, likely
18 to occur in the reasonably foreseeable future, and in the public interest." *See* Exh. 2,
19 Letter from ICE dated April 1, 2024. Additionally, ICE asserted that Mr. Maradiaga-
20 Villalta is both a danger to the community and a flight risk. *Id.*
21

22 40. On July 21, 2024, ICE issued a "Decision to Continue Detention,"
23 stating that "ICE continues to work with the government of Honduras, in pursuit of a
24 travel document on your behalf. ICE has provided sufficient documentation proving
25 Honduran citizenship and is confident that a document will be issued for your
26 removal from the United States." *See* Exh. 3 "Decision to Continue Detention dated
27 July 21, 2024. The document provided no specific information about what steps ICE
28

1 had taken, nor an estimated date of removal.

2 41. On December 13, 2024, Mr. Maradiaga-Villalta wrote to ICE and asked
3 for an update “because I do not have a papers in my country.” On December 17,
4 Officer N. Martinez responded, “Call the consulate of your country and ask them.”
5 Exh. 4, Detainee Request dated December 13, 2024. On December 15, 2024, Mr.
6 Maradiaga-Villalta again asked ICE for an update on his removal, stating, “In
7 Honduras I don’t have papers/documents because I am not registered.” On the 17th of
8 December, Officer N. Martinez responded that “[y]ou have been removed to
9 Honduras many times. You will eventually be deported.” Exh. 5, Detainee Request
10 dated December 15, 2024.
11

12 42. On February 3, 2025, ICE provided Mr. Maradiaga-Villalta with an
13 additional decision informing him that he would remain detained. See Exh. 7,
14 Decision to Continue Detention. It states that “ICE continues to work with the
15 government of Honduras, in pursuit of a travel document on your behalf. ICE is
16 confident that a document will be issued for your removal from the United States.
17 Therefore, you are to remain in ICE custody, pending your removal.” Id.
18

19 43. If released, Mr. Maradiaga-Villalta has arranged housing and
20 sponsorship through Casa Marianella in Austin, Texas. *See* Exh. 6. That organization
21 provides housing, case management, and legal and medical supportive services to
22 non-citizens and asylees. *Id.*
23

24 **CLAIMS FOR RELIEF**

25 **COUNT ONE**

26 **CONSTITUTIONAL CLAIM**

44. The foregoing allegations, paragraphs 1-423, are realleged and incorporated herein.

45. Respondents' continued detention of Petitioner violates his substantive due process rights by depriving him of physical liberty without adequate justification. Because Petitioner's removal is not reasonably foreseeable, Respondents' interest in detaining him for the purpose of removal is "weak or nonexistent" and cannot outweigh Petitioner's fundamental liberty interest in freedom from physical restraint. *Zadvydas*, 533 U.S. at 690.

COUNT TWO

STATUTORY CLAIM

46. The foregoing allegations, paragraphs 1-423, are realleged and incorporated herein.

47. Respondents' continued detention of Petitioner violates 8 U.S.C. § 1231(a)(6) as interpreted by the Supreme Court in *Zadvydas*. Petitioner's removal is not significantly likely to occur in the reasonably foreseeable future. Therefore, Respondents lack statutory authority to continue detaining Petitioner.

COUNT THREE

ATTORNEY FEES AND COSTS

48. If Petitioner prevails, Petitioner requests attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days and no less than twenty days;
- c. Issue a writ of habeas corpus ordering Respondents to release Petitioner on his own recognizance, under parole, or with reasonable conditions of supervision;
- d. Award Petitioner reasonable costs and attorney's fees; and
- e. Grant any other and further relief as the Court deems just and proper.

Dated: February 36, 2025

Respectfully submitted,

/s/ Gregory Fay

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/s/ Laura Belous

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VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: February 36, 2025

/s/ Gregory Patrick Fay
Gregory Patrick Fay

CERTIFICATE OF SERVICE

I, Gregory Patrick Fay, hereby certify that on February 36, 2025, a true and correct copy of Petitioner's **FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**, was served via United States Postal Services Priority Mail on Respondents to the following addresses:

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Phoenix, AZ 85004

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Kristopher Kline, Warden
Central Arizona Florence Correctional Complex
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U.S. Attorney for the District of AZ
Two Renaissance Square, 40 N. Central Ave., Suite 1800
Phoenix, AZ 85004-4449

s/ Gregory Patrick Fay
February 36, 2025.
Gregory Patrick Fay