

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

DAINIER ALEMAN GARCIA

PETITIONER

v.

NO. 3:25-CV-522-RGJ

KRISTI NOEM, in her Official Capacity as
Secretary, Department of Homeland Security;
TODD LYONS, in his Official Capacity as
Acting Director, U.S. Immigration and
Customs Enforcement;
PAM BONDI, in her Official Capacity as
Attorney General of the United States; and
JEFF TINDALL, in his Official Capacity as
Oldham County Jailer

RESPONDENTS

RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

Respondents, Kristi Noem, in her official capacity as Secretary for the Department of Homeland Security, and Todd Lyons, in his official capacity as Acting Director for U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as Attorney General of the United States respond to the Court's Order to Show Cause why Petitioner's writ of habeas corpus should not be granted:¹

¹ This response to Petitioner's habeas petition is filed on behalf of Respondents Kristi Noem, Todd Lyons, and Pam Bondi. 28 U.S.C. § 517 allows the Office of the United States Attorney to make appearances in court to attend to the United States' interests, and consistent with that statute and *Roman v. Ashcroft*, 340 F.3d 314, 319-20 (6th Cir. 2003), this filing attends to the United States' interests to the extent that the petition names Jeff Tindall, the Oldham County Jailer, as a respondent.

INTRODUCTION

Petitioner bears the burden to show that his detention is unlawful. *Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (quoting *McDonald v. Feeley*, 535 F. Supp. 3d 128, 135 (W.D.N.Y. 2021)). Petitioner's threadbare petition merely claims that he is detained and concludes that the process for detaining him was unlawful. He does not identify any statute or regulation that outlines the process he should have received but did not. Petitioner received all the process he was owed. On July 23, 2025, an immigration judge affirmed the Department of Homeland Security's (DHS) denial of Petitioner's credible fear claim and returned the matter to DHS for Petitioner's removal. Petitioner's order of removal is "administratively final," and he is detained under the authority of 8 U.S.C. 1231(a)(2)(i). Petitioner is lawfully detained for at least 90 days while details related to his removal are finalized.

RELEVANT FACTUAL AND LEGAL BACKGROUND

- Petitioner, a native and citizen of Cuba, applied for admission to the United States on December 18, 2017, but he lacked any valid documentation permitting his entry.
- Petitioner sought asylum, but his claim was denied by an immigration judge on February 1, 2018.
- On March 5, 2018, Petitioner was removed from the United States pursuant to a final order of removal. Petitioner was notified that he was prohibited from entering the United States for five years from the date of his departure.

- On or about October 20, 2022, Petitioner illegally reentered the United States and was arrested at or near Eagle Pass, Texas. He was paroled due to lack of detention capacity and placed as an alternate to detention as a condition of his parole.
- At the time of his detention in October 2022, Petitioner again claimed credible fear of being returned to Cuba.
- On April 5, 2023, Petitioner reported to the ICE office in Louisville, Kentucky and was ordered to report to ICE again in April 2024.
- On that same date, Petitioner was provided a Form I-871, Notice of Intent/Decision to Reinstate Prior Order, which notified him that his December 2017 order of removal was being reinstated. Petitioner signed the Form I-871 and marked that he did not wish to contest this determination.
- In February 2024, Petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status under the Cuban Adjustment Act.
- In August 2024, Petitioner was notified that his Form I-485 Application was denied because his illegal entries made him ineligible to adjust his status. Petitioner was reminded in the denial letter from U.S. Citizenship and Immigration Services that ICE had reinstated his removal order on April 5, 2023. The reinstatement of the removal order also rendered him ineligible to adjust status.
- On May 13, 2025, ICE issued: Form I-200, Warrant for Arrest; Form I-205, Warrant of Removal/Deportation; a Certification of Reinstatement of Prior Order of Removal; and Form I-286, Notice of Custody Determination.

- Petitioner's final order of removal from 2017 was also validly reinstated on May 13, 2025, and Petitioner was detained. "[D]etention is statutorily required when the government reinstates a prior order of removal." *L-J-P-L v. Wamsley*, 2025 U.S. Dist. LEXIS 163955, at *14 (D. Ore. Aug. 22, 2025).

- On that same date, Petitioner was also provided a Form M-488, which explained the credible fear determination process and a list of free legal services providers.

- On May 29, 2025, USCIS interviewed Petitioner for the purpose of adjudicating his credible fear claim. Petitioner stated he wanted his attorney present for the interview, but the attorney could not be reached. Petitioner asked to reschedule the interview.

- On June 6, 2025, USCIS interviewed Petitioner again. USCIS was again unable to get in contact with counsel, who is Petitioner's attorney in this action, for a little while, but Petitioner agreed that the interview should go on. Counsel eventually joined the call. Petitioner was then dropped from the call due to technical difficulties, and the call was ended after the USCIS interviewer and counsel talked for more than 30 minutes.

- On June 10, 2025, the interview was completed with Petitioner's counsel present.

- Later that day, an asylum officer completed Form I-899 and concluded that Petitioner was credible but that his claim of reasonable fear of persecution or reasonable fear of torture were not established. And on June 11, the supervisory asylum officer approved that decision.

- On June 16, 2025, Petitioner indicated a desire for an immigration judge's review of the credible fear determination.

○ On July 23, 2025, the immigration judge affirmed the decision that Petitioner lacked credible fear and returned the matter to DHS for removal of Petitioner. Petitioner was notified that he had 30 days to file with the appropriate circuit court a petition for review of the immigration judge's decision. *See Andrade-Garcia v. Lynch*, 828 F.3d 829, 831-32 (9th Cir. 2016). That 30-day period has expired, and the undersigned is not aware of Petitioner filing a petition for review, and a search of PACER did not reveal that Petitioner had filed any appeal.

- On August 20, 2025, Petitioner filed his habeas petition.
- Petitioner is currently under a final order of removal that is "administratively final" under 8 U.S.C. § 1231(a)(1)(B)(i) and in § 1231's "removal period".
- 8 U.S.C. § 1231(a)(2) states: "During the removal period, the Attorney General shall detain the alien."

CONCLUSION

Petitioner is lawfully detained.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2025, I filed this document via CM/ECF,
which will automatically provide service to all counsel of record.

KYLE G. BUMGARNER
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/s/ Timothy D. Thompson
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