UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Rudy Alberto Delgado, *Petitioner*, v. Kristi Noem, *Secretary of Homeland Security*, Todd Lyons, *Acting Director, U.S. Immigration and Customs Enforcement*, Pamela Bondi, *Attorney General*, Robert Guadian, *Field Office Director, Washington Field Office, Immigration and Customs Enforcement*, Jeffrey Dillman, *Warden, Riverside Regional Jail* *Respondents.*	Civil Action No. _____

PETITION FOR WRIT OF HABEAS CORPUS

1. In October 2023, Petitioner Rudy Alberto Delgado won an order from an immigration judge granting him a form of relief called withholding of removal, which prohibits Respondents from removing him to his native El Salvador. Should Respondents wish to remove Petitioner to El Salvador, the law sets forth specific procedures by which they can reopen the case and seek to set aside the grant of withholding of removal. Should Respondents wish to remove Petitioner to any other country, they would first need to provide him with notice and the opportunity to apply for protection as to *that* country as well. Until they do either of these things, they cannot remove Petitioner from the United States. But Respondents have arrested Petitioner without warning and without observance of procedures required by regulation, and are detaining

him for no reason; they now appear to be seeking to deport Petitioner without observance of any legal procedures whatsoever, ripping him away from his family. Such conduct cries out for immediate judicial relief.

JURISDICTION AND VENUE

2. This Court has jurisdiction to hear this case under 28 U.S.C. § 2241; 28 U.S.C. § 2201, the Declaratory Judgment Act; and 28 U.S.C. § 1331, Federal Question Jurisdiction. In addition, the individual Respondents are United States officials. 28 U.S.C. § 1346(a)(2).

3. The Court has authority to enter a declaratory judgment and to provide temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, 28 U.S.C. §§ 2201-2202, the All Writs Act, and the Court's inherent equitable powers, as well as issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

4. Venue lies in this District because Petitioner is currently detained at the Riverside Regional Jail in Prince George County, Va.; and each Respondent is an agency or officer of the United States sued in his or her official capacity. 28 U.S.C. § 2241; 28 U.S.C. § 1391(e)(1). In addition, Robert Guadian, the Field Office Director for the Washington ICE Field Office, maintains his principal place of business in Chantilly, Virginia.

THE PARTIES

5. Petitioner Rudy Alberto Delgado (A[redacted]) is a native and citizen of El Salvador. Upon information and belief, he is currently detained by Respondents in the Riverside Regional Jail in Prince George County, VA.

6. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). She is the cabinet-level secretary responsible for all immigration enforcement in the United States.

7. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). He is the head of the federal agency responsible for all immigration enforcement in the United States.

8. Respondent Pamela Bondi is the Attorney General of the United States. The Immigration Judges who decide removal cases and application for relief from removal do so as her designees.

9. Respondent Robert Guadian, the Field Office Director of the U.S. Immigration and Customs Enforcement ("ICE") Washington Field Office, is responsible for overseeing ICE operations pertaining to noncitizens within its territorial jurisdiction, such as Petitioner, including detentions, enforcement, and removal operations. His regular place of business is in Chantilly, Va. He is the immediate legal custodian of Petitioner for purposes of a federal habeas petition.

10. Respondent Jeffrey Dillman is the warden of the Riverside Regional Jail in North Prince George, Va., where Petitioner is currently detained. He is the immediate custodian who is currently holding Petitioner in physical custody. He is sued in his official capacity.

11. All government Respondents are sued in their official capacities.

LEGAL BACKGROUND

12. Withholding of removal under 8 U.S.C. § 1231(b)(3) prohibits the government from removing a noncitizen to a country where it is more likely than not that the individual would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion. See 8 C.F.R. § 1208.16(b). This form of relief is mandatory if the applicant meets the standard and is distinct from asylum in that it does not lead to permanent residency.

13. To qualify for withholding of removal, the noncitizen bears the burden of proving that it is more likely than not that they would face persecution if returned to their country of origin.

The government may not remove an individual with a valid withholding order to that country unless the order is formally terminated following the procedures set forth in the regulations. *See* 8 C.F.R. § 1208.24(f).

14. If a noncitizen is granted withholding of removal, "DHS may not remove the alien to the country designated in the removal order unless the order of withholding is terminated." *Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021). No exceptions lie.

15. Federal regulations provide a procedure by which a grant of withholding of removal issued by an immigration judge may be terminated: DHS must move to reopen the removal proceedings before the immigration judge and must prove, by a preponderance of the evidence, that the individual would no longer face persecution. 8 C.F.R. § 1208.24(f). Only after termination may removal proceed.

16. However, withholding of removal is a country-specific form of relief. Should the government wish to remove an individual with a grant of withholding of removal to some *other* country, it must first provide that individual with notice and an opportunity to apply for withholding of removal as to *that* country as well, if appropriate. 8 U.S.C. § 1231(b)(3)(A). *See also Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf. Protsenko v. U.S. Att'y Gen.*, 149 F. App'x 947, 953 (11th Cir. 2005) (per curiam) (permitting removal to third country only where individuals received "ample notice and an opportunity to be heard").

17. Finally, for individuals with a removal order but who cannot be removed (because there is no country designated to which they can lawfully be removed, or because logistical or practical considerations prevent execution of an otherwise lawfully executable order), 8 U.S.C. §1231(a) permits the government to detain noncitizens during the "removal period," which is

defined as the 90-day period during which "the Attorney General shall remove the alien from the United States." 8 U.S.C. §1231(a)(1)(A).

18. After the expiration of the removal period, 8 U.S.C. § 1231(a)(3) provides that the government shall release unremovable noncitizens on an order of supervision (the immigration equivalent of supervised release, with strict reporting and other requirements). Pursuant to 8 U.S.C. § 1231(a)(6), even noncitizens with aggravated felony convictions may be "released" if "subject to the terms of supervision" set forth in 8 U.S.C. § 1231(a)(3).

19. Constitutional limits on detention beyond the removal period are well established. Government detention violates due process unless it is reasonably related to a legitimate government purpose. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). "[W]here detention's goal is no longer practically attainable, detention no longer 'bear[s][a] reasonable relation to the purpose for which the individual [was] committed.'" *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Additionally, cursory or pro forma findings of dangerousness do not suffice to justify prolonged or indefinite detention. *Zadvydas*, 533 U.S. at 691 ("But we have upheld preventative detention based on dangerousness only when limited to especially dangerous individuals [like suspected terrorists] and subject to strong procedural protections.").

20. The purpose of detention during and beyond the removal period is to "secure[] the alien's removal." *Zadvydas*, 533 U.S. at 682. In *Zadvydas*, the Supreme Court "read § 1231 to authorize continued detention of an alien following the 90-day removal period for only such time as is reasonably necessary to secure the alien's removal." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 699).

21. As the Supreme Court explained, where there is no possibility of removal, immigration detention presents substantive due process concerns because "the need to detain the

noncitizen to ensure the noncitizen's availability for future removal proceedings is "weak or nonexistent." *Zadvydas*, 533 U.S. at 690-92. Detention is lawful only when "necessary to bring about that alien's removal." *See id.* at 689.

22. To balance these competing interests, the *Zadvydas* Court established a rebuttable presumption regarding what constitutes a "reasonable period of detention" for noncitizens after a removal order. *Id.* at 700-01. The Court determined that six months' detention could be deemed a "presumptively reasonable period of detention," after which the burden shifts to the government to justify continued detention if the noncitizen provides a "good reason to believe that there is not significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

23. Where a petitioner has provided "good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to rebut that showing. *Zadvydas*, 533 U.S. at 701.

24. The order of supervision regulation 8 C.F.R. § 241.4 addresses continued detention beyond the period of removal. Subsection 241.4(*l*)(1) provides that "[u]pon revocation, the alien will be notified of the reasons for revocation of his or her release or parole."

25. The regulation allows re-detention, *inter alia*, when "[i]t is appropriate to enforce a removal order." 8 C.F.R. § 241.4(*l*)(2)(iii).

26. Finally, the regulation promises: "The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.4(*l*)(1).

27. Specific officials are authorized to revoke an order of supervision, namely the Executive Associate Commissioner. See 8 C.F.R. § 241.4(*l*)(2). However, that authority can be delegated to the district director when "revocation is in the public interest and circumstances do

not reasonably permit referral of the case to the Executive Associate Commissioner." *Id.*

28. An individual subject to a final order of removal, who is released on an order of supervision, is eligible for work authorization "only if the alien cannot be removed due to the refusal of all countries designated by the alien or under section 241 of the Act to receive the alien, or because the removal of the alien is otherwise impracticable or contrary to the public interest..." *See* 8 C.F.R. § 274a.12(c)(18); *see also* 8 U.S.C. § 1231(a)(7)(A).

FACTS

29. Petitioner Rudy Alberto Delgado was born in 1980 in El Salvador. He has no claim to citizenship or legal immigration status in any other country.

30. In September 2015, Petitioner first entered the United States without inspection near the southern border of the United States. *See* Ex. A at 4 (Petitioner's application for withholding of removal). He was encountered and apprehended shortly thereafter. On October 5, 2015, he received an order of expedited removal. *See* Ex. B (Petitioner's Reasonable Fear Proceeding Paperwork) at 1 (Form I-860, Notice and Order of Expedited Removal). On October 20, 2015, he was physically removed from the United States. *Id.* at 29.

31. Thereafter, Petitioner unlawfully reentered the United States in April of 2016. Ex. A at 4. Ultimately, he was encountered by ICE officers and detained. On December 1, 2022, Respondents reinstated his prior removal order pursuant to 8 U.S.C. § 1231(a)(5). *See* Ex. B at 2 (Petitioner's Form I-871, Notice of Intent/Decision to Reinstatement Prior Order).

32. Petitioner thereafter stated a fear of removal to El Salvador; accordingly, he was afforded a Reasonable Fear Interview ("RFI") pursuant to 8 C.F.R. § 208.31. On December 19, 2022, U.S. Citizenship and Immigration Services ("USCIS") conducted the RFI and entered a negative fear determination. Ex. B at 8. Petitioner requested Immigration Judge ("IJ") review, and

on December 20, 2022, USCIS referred issued a Notice of Referral to the Immigration Judge. *Id.* at 4; 8 C.F.R. § 1208.31(e). On January 10, 2023, an IJ vacated the negative fear determination made by USCIS, thereby placing Petitioner in withholding-only proceedings pursuant to 8 C.F.R. § 1208.31(g)(2). *Id.* at 31.

33. On March 17, 2023, an IJ in Annandale, Virginia found that Petitioner was more likely than not to be persecuted on account of a statutorily protected ground if he were removed to his native El Salvador, and granted him withholding of removal to that country pursuant to 8 U.S.C. § 1231(b)(3). *See* Ex. C at 10 (Immigration Judge Decision) hereto. However, Respondents appealed the IJ's decision to the Board of Immigration Appeals ("BIA") and Petitioner remained detained during the pendency of the appeal.

34. On July 27, 2023, the Board issued a decision dismissing the DHS appeal and remanding the case to the Immigration Court to allow DHS to update identity and background checks pursuant to 8 C.F.R. § 1003.47(h). *Id.* at 8-9. On October 27, 2023, the IJ re-issued the grant of withholding of removal, and it became final. *Id.* at 1. In January 2024, approximately three months after the final grant of withholding of removal, Respondents released Petitioner, who had been continuously in immigration detention since December 2022. Upon information and belief, when Petitioner was released, Respondents placed him on an Order of Supervision pursuant to 8 U.S.C. § 1231(a)(3).

35. Since being granted withholding of removal to El Salvador, Respondents have not taken any steps to reopen or rescind the grant of relief. Petitioner has maintained stable housing and employment supported by valid employment authorization. Since being granted withholding of removal, he has had no criminal convictions, and his only prior criminal history stemmed from his unlawful re-entry into the United States. *See* Ex. A at 11. Further, Petitioner was issued an

Employment Authorization Document ("EAD") on April 10, 2024, and his EAD is valid until April 9, 2029. *See* Ex. D (EAD approval notice) hereto. When Respondents issued Petitioner his EAD, it necessarily first determined that he "cannot be removed due to the refusal of all countries designated by the alien or under this section to receive the alien[.]" 8 U.S.C. § 1231(a)(7)(A).

36. On January 13, 2026, Petitioner appeared for a scheduled check-in with ICE in Chantilly, Virginia. Without prior warning, Petitioner was detained by ICE and was told he was being detained, ostensibly to deport him to Mexico.

37. Upon information and belief, Petitioner was not served with a Notice of Revocation of Release, canceling his Order of Supervision; or, if he was served with such a notice, it was signed and executed by a lower-ranking ICE officer. Nor, upon information and belief, did they provide Petitioner with an informal interview during which he could contest the basis for his re-detention.

38. On January 14, 2026, by counsel, expressed a fear of removal to Mexico, and requested a Reasonable Fear Interview as to that country. *See* Ex. E hereto.

39. Prior to his unlawful detention, Petitioner was dutifully attending scheduled check-ins with ICE pursuant to his release on supervision. Upon information and belief, he now remains in detention at the Riverside Regional Jail in Prince George County, Va., as of the time of filing this habeas corpus petition.

40. Respondents currently lack any factual or legal basis to detain Petitioner, since Respondents cannot establish that that Petitioner will likely be removed from the United States in the reasonably foreseeable future.

41. Petitioner has exhausted all administrative remedies. No further administrative remedies are available to Petitioner.

FIRST CLAIM FOR RELIEF:
Violation of 8 U.S.C. § 1231(a)(6)

42. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-41.

43. Petitioner's continued detention by the Respondents violates 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas*. Petitioner's 90-day statutory removal period and the *Zadvydas* six-month presumptively reasonable period for continued removal efforts expired many years ago, and Petitioner's removal from the United States is not significantly likely in the reasonably foreseeable future.

44. Under *Zadvydas*, the continued detention of someone like Petitioner is unreasonable and not authorized by 8 U.S.C. § 1231.

SECOND CLAIM FOR RELIEF:
Due Process/Detention

45. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-41.

46. Petitioner's detention during the removal period is only constitutionally permissible under the Due Process Clause when there is a significant likelihood of removal in the reasonably foreseeable future. Respondents have rearrested and re-detained Petitioner on the assumption that Petitioner will be removable to a third country but have no factual basis to believe that such third-country removal will ever become practicable and legally permissible.

47. Respondents continue to detain Petitioner without evidence that they will be able to remove him imminently, to El Salvador or Mexico or to any other country.

48. Respondents' detention of Petitioner no longer bears any reasonable relation to a legitimate government purpose, and thus violates the Due Process Clause.

THIRD CLAIM FOR RELIEF:
Violation of due process/third country removal

49. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-41.

50. Petitioner has a procedural due process right not to be removed to any country to which he has expressed a fear of removal, without an Immigration Judge first reviewing his fear claim. Respondents' procedures for third-country removal do not allow him the right to go before an Immigration Judge.

FOURTH CLAIM FOR RELIEF:
Violation of 8 C.F.R. §§ 208.31, 1208.31/third country removal

51. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-41.

52. Petitioner is an individual with a reinstated order of removal, and thus falls within the coverage of 8 C.F.R. §§ 208.31, 1208.31.

53. Petitioner has stated a fear of removal to Mexico, and has requested a Reasonable Fear Interview as to that country. 8 C.F.R. § 208.31 gives Respondents the right to a Reasonable Fear Interview, pursuant to the procedures and substantive standard set forth in that regulation and implementing caselaw. Respondents' procedures for third-country removal do not allow him a Reasonable Fear Interview, only a lesser form of screening called a third-country fear interview that is subject to fewer procedural protections and is held to a higher substantive standard, and thereby violate the regulation.

54. Furthermore, 8 C.F.R. § 1208.31(g) gives Petitioner a right to have that Reasonable Fear Interview reviewed by an Immigration Judge. Respondents' procedures for third-country removal do not allow Petitioner the right to go before an Immigration Judge, and thereby violate the regulation.

FIFTH CLAIM FOR RELIEF:
Violation of 8 C.F.R. § 241.4(*l*)

55. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-41.

56. As set forth above, Respondents' actions in cancelling Petitioner's release on supervision and re-arresting Petitioner without any explanation of the legal or factual basis for re-detention and without an opportunity to respond to that reasoning violated 8 C.F.R. § 241.4(*l*), a regulation designed to protect the due process rights of noncitizens like Petitioner.

57. In addition, upon information and belief, Petitioner's Order of Supervision was revoked by an individual who lacked authority to do so, without observance of proper and required formalities and without the requisite findings being made, in violation of 8 C.F.R. § 241.4(*l*)(2).

58. This violation of required procedures also violated Petitioner's due process rights under the Fifth Amendment to the U.S. Constitution.

59. In arresting and re-detaining Petitioner, Respondents violated important substantive and procedural rules designed to protect his due process rights, and the writ of habeas corpus should issue.

REQUEST FOR RELIEF

Petitioner prays for judgment against Respondents and respectfully requests that the Court enters an order:

a) Issuing an Order to Show Cause, ordering Respondents to justify the basis of Petitioner's detention in fact and in law, forthwith;

b) Preliminarily enjoining Respondents from transferring Petitioner outside of this judicial district while this case is pending;

c) Preliminarily and permanently enjoining Respondents from removing Petitioner to El Salvador, unless and until his order of Withholding of Removal is terminated, including all appeals;

d) Preliminarily and permanently enjoining Respondents from removing Petitioner to any other country, including but not limited to Mexico, without first providing him notice and offering him adequate opportunity to apply for withholding of removal as to that country, including a Reasonable Fear Interview as set forth in 8 C.F.R. § 208.31 and then, subsequently, immigration judge review of any denied Reasonable Fear Interview as set forth in 8 C.F.R. § 1208.31(g), and under the same procedures and substantive standard set forth in those regulations;

e) Setting aside the revocation of Petitioner's Order of Supervision, and restoring him to his Order of Supervision;

f) Issuing a writ of habeas corpus, and ordering that Petitioner be released from physical custody;

g) Granting Petitioner his costs of suit; and

h) Granting such other relief at law and in equity as justice may require.

Respectfully submitted,

/s/ Simon Y. Sandoval-Moshenberg
Date: January 14, 2026

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