UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DANIEL TZAY-TZAY,

Petitioner,

v. No. 26-CV-3175 (LDH)

ROBERT BROWN, et al.,
Respondents.

By ECF

Honorable Judge LaShann DeArcy Hall
United States District Judge Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Tzay-Tzay v. Brown, et al., No. 26-cv-03175 (DeArcy Hall, J.)

PETITIONER'S REPLY LETTER IN FURTHER SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Dear Judge DeArcy Hall:

Respondents seek dismissal by characterizing Petitioner's constitutional challenge as an indirect attack on a removal order. The record submitted by Respondents demonstrates otherwise. Petitioner challenges the legality of the stop, seizure, arrest, interrogation, detention, and reinstatement procedures employed by ICE. Respondents' own evidence reveals that ICE officers were initially searching for another individual, approached Petitioner based upon a mistaken identification, questioned him, and only thereafter procured a Form I-200 arrest warrant. These facts raise substantial constitutional questions and preclude dismissal.

ARGUMENT

I. ANY PRESUMPTION OF REGULARITY HAS BEEN REBUTTED BY THE GOVERNMENT'S OWN EVIDENCE AND OWN BEHAVIOR

In the instant case, DHS-ICE cannot be given a presumption of regularity. In case after case, DHS-ICE has shown utter contempt for the District Courts. The opposition to the instant *writ* lives or dies on the court's ability to take DHS-ICE at its word, and DHS is no longer trustworthy.

Please note that this in no way, shape, or form is meant to attack or impugn the character of opposing counsel. In fact, this counsel is very sympathetic to the line attorneys in the U.S.

Attorney's Office. They now get to experience what every member of the private bar does: an untrustworthy, petulant, disobedient client.

Official acts may ordinarily receive a presumption of regularity. *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926). However, that presumption is rebuttable and disappears where the record reveals irregularities or circumstances calling official conduct into question. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 174 (2004).

Courts are not required to accept agency representations uncritically. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415-20 (1971). Rather, courts must engage in a thorough and probing review where the legality of executive conduct is challenged. Id.

The Government's own evidence rebuts any presumption of regularity here. According to the Kubicz Declaration, ICE officers were attempting to locate another individual and approached Petitioner because they believed he resembled that target. Respondents further acknowledge that officers questioned Petitioner and obtained information concerning his immigration status before obtaining a Form I-200 arrest warrant.

Finally, the agencies' "expertise" no longer has to be deferred to. The Petitioner does not concede that DHS-ICE is an expert or has expertise in anything, but notwithstanding this, Chevron deference is dead, and the Court can look much more critically at the agency's determinations. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 869 (2024)

The Government thus seeks to justify Petitioner's seizure through facts allegedly learned after the seizure had already begun. Every material factual assertion concerning the stop, questioning, arrest, detention, and reinstatement process comes from declarations and forms generated by the same agency whose conduct is challenged. Respondents provide no body-camera footage, contemporaneous recordings, or independent corroboration. All we have is the word of an agency that has burned any presumption of regularity or goodwill that it once had.

Accordingly, the Court should assign diminished evidentiary weight to the Government's declarations and agency-generated forms and should not resolve disputed factual questions in the Respondents' favor.

II. RESPONDENTS MISCHARACTERIZE THE PETITION

Respondents repeatedly characterize the Petition as a challenge to a removal order. This is an attempt to obfuscate the real issues at hand regarding this illicit detention.

Petitioner does not challenge the validity of the 2013 expedited removal order. Nor does he seek review of the merits of the reinstatement determination itself. Rather, Petitioner challenges the constitutionality of the stop, seizure, arrest, detention, interrogation, and reinstatement procedures that resulted in his present confinement.

The Supreme Court has repeatedly recognized the distinction between detention challenges and removal-order challenges. *Jennings v. Rodriguez*, 583 U.S. 281, 293-94 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003).

III. THIS COURT RETAINS HABEAS JURISDICTION

The writ of habeas corpus remains available to test the legality of executive detention. *Boumediene v. Bush,* 553 U.S. 723, 779 (2008); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

Respondents rely upon 8 U.S.C. §§ 1252(a)(5), 1252(b)(9), and 1252(g). Those provisions govern review of removal orders and actions to execute removal orders. Petitioner's claims concern the constitutionality of the stop, arrest, detention, and reinstatement process itself.

Jurisdiction-stripping provisions must be construed consistently with the Suspension Clause. *INS v. St. Cyr,* 533 U.S. 289, 300-05 (2001).

Because Petitioner challenges unlawful executive detention and related constitutional violations, this Court retains jurisdiction.

IV. RESPONDENTS HAVE NOT ESTABLISHED THAT PETITIONER'S ARREST, DETENTION, AND REINSTATEMENT COMPLIED WITH THE CONSTITUTION

The Fourth Amendment applies to immigration officers. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984).

Respondents admit that ICE officers approached Petitioner while searching for someone else and obtained information from him before obtaining a Form I-200 warrant.

The Fourth Amendment requires individualized suspicion before a seizure occurs. *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968). Information obtained after a seizure cannot retroactively justify the seizure.

Respondents also rely upon a Form I-871, indicating that Petitioner allegedly refused to sign the reinstatement notice. However, Respondents have not established that Petitioner was provided meaningful access to counsel, understood the consequences of reinstatement, or knowingly waived any rights.

The Fifth Amendment protects all persons physically present within the United States. *Zadvydas*, 533 U.S. at 693; Mathews v. Diaz, 426 U.S. 67, 77 (1976).

Accordingly, substantial Fourth Amendment and Due Process questions remain unresolved.

V. RESPONDENTS HAVE NOT ESTABLISHED THAT DETENTION IS NECESSARILY LAWFUL UNDER 8 U.S.C. § 1231(a)(5)

Respondents rely heavily on *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021). Guzman Chavez addressed which detention statute applies to individuals subject to reinstated removal orders. It did not address the constitutionality of the underlying stop, seizure, arrest, interrogation, or reinstatement procedures challenged here.

Furthermore, it did not formally address when the detentions are done arbitrarily and based upon the current administration's animus toward non-citizens.

Even where detention is governed by § 1231, constitutional review remains available. Zadvydas, 533 U.S. at 690.

Thus, Respondents have not established that detention is lawful merely because a reinstatement order was later issued.

VI. THE STAY OF REMOVAL SHOULD REMAIN IN EFFECT

Respondents request that the Court vacate its stay prohibiting Petitioner's removal. That request should be denied. The Respondent has indicated that he will request a reasonable fear interview. Based on the current malfeasance by DHS-ICE, it is not beyond the realm of possibility that they will remove him before allowing him to go through the reasonable fear process.

A stay is appropriate where the applicant demonstrates irreparable harm, a substantial case on the merits, and equities favoring preservation of the status quo. *Nken v. Holder*, 556 U.S. 418, 434-35 (2009).

Removal before adjudication of Petitioner's constitutional claims would create irreparable harm and substantially impair meaningful judicial review.

Accordingly, the stay should remain in effect pending final resolution of this matter.

CONCLUSION

For the foregoing reasons, the Respondents' request for dismissal should be denied. The Court should retain jurisdiction over the Petition, maintain the stay of removal, grant the Petition for Writ of Habeas Corpus, or alternatively order an evidentiary hearing concerning the circumstances of Petitioner's seizure, arrest, detention, interrogation, and reinstatement proceedings, together with such other and further relief as the Court deems just and proper.

Dated: Brooklyn, New York
June 5, 2026

Respectfully submitted,

Patrick Caston Crowley
Sholla Law Firm P.C.
150 Broadway, 9th Floor, Ste 901
New York, NY 10038
Office: 212-680-4636
Cell: 914-406-5075
Fax: 212-898-1108
Email: pcrowley@shollalawfirm.com

CC: All Counsel of Record (via ECF)