UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

JEREMI GABRIEL MARTINEZ REYES, Petitioner, v. MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security; DAVID VENTURELLA, Acting Director of U.S. Immigration and Customs Enforcement; MARCOS CHARLES, Acting Executive Associate Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; all in their official capacities, Respondent.	)	Case No. 3:26-cv-467 **PETITION FOR WRIT OF HABEAS CORPUS** **28 U.S.C. § 2241**

INTRODUCTION

1. This is a petition for a writ of habeas corpus under 28 U.S.C. § 2241 challenging the lawfulness and constitutionality of the ongoing attempts by the Department of Homeland Security ("DHS") and Immigration and Customs Enforcement ("ICE") to physically remove the Petitioner from the United States in violation of an automatic stay of removal.

2. Petitioner, JEREMI GABRIEL MARTINEZ REYES, is an asylum seeker from Honduras. He is currently in detention subject to a removal order entered *in abstentia*. A motion to reopen the removal proceedings due to non-receipt of the hearing notice was filed on June 5, 2026, which, pursuant to the Immigration and Nationality Act ("INA") stays removal while the motion is pending.

3. Despite this stay and numerous attempts by Petitioner's counsel to communicate with ICE of its existence, ICE officials have transferred the Petitioner multiple times over the weekend, telling him he is being sent back to Honduras despite anything that may have been filed with the immigration court.

4. If the Petitioner were to be sent back to Honduras while his motion is pending, it would violate the INA. Moreover, given the nature of the Petitioner's Asylum claim, and the current conditions in Honduras for deportees, removal would place the Petitioner's life in significant danger.

5. Respondents' actions and threatened actions violate the INA, the Due Process Clause of the Fifth Amendment, and the Administrative Procedures Act.

JURISDICTION

6. Petitioner is in the physical custody of Respondents.

7. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

8. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

9. Venue is proper in the Western District of North Carolina pursuant to 28 U.S.C. § 1391(e)(1) because a substantial part of the events and omissions giving rise to Petitioner's claims occurred in this District and because federal officers acting in their official capacities are named as Respondents.

10. This action arises from Respondents' threatened removal of Petitioner notwithstanding the automatic stay of removal imposed by INA § 240(b)(5)(C) and 8 C.F.R. § 1003.23(b)(4)(ii). The stay arose from a motion to reopen filed with the Charlotte Immigration Court, which sits within the Western District of North Carolina. Petitioner's removal proceedings were adjudicated before that court, and the legal effect and enforceability of the automatic stay derive directly from proceedings conducted within this District.

11. The central issue presented is not the legality of Petitioner's physical confinement at any particular detention facility. Rather, Petitioner seeks to

prevent Respondents from violating a stay of removal arising from proceedings before the Charlotte Immigration Court and from removing him before that court adjudicates the pending motion to reopen. The operative facts giving rise to the claim therefore arise from actions connected to the Charlotte Immigration Court and Respondents' refusal to honor the automatic stay created by filings made in that court.

12. Moreover, venue in this District is particularly appropriate because Respondents have repeatedly transferred Petitioner among detention facilities in multiple states while simultaneously pursuing his removal. During the days immediately preceding this filing, Petitioner was transferred through multiple detention facilities in different jurisdictions and remains subject to further transfer at Respondents' discretion. Under these circumstances, a rule requiring Petitioner to file only in the district of physical confinement would render meaningful judicial review largely illusory and would permit Respondents to evade review through serial transfers immediately preceding removal.

13. Because the challenged governmental action is the threatened violation of an automatic stay arising from proceedings before the Charlotte Immigration Court, because substantial events giving rise to the claim occurred within this District, and because the location of Petitioner's physical confinement

is transient and subject to unilateral manipulation by Respondents, venue is proper in the Western District of North Carolina.

14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in this district.

REQUIREMENTS OF 28 U.S.C. § 2243

15. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

16. The Court should grant the petition for writ of habeas corpus "forthwith," as the relevant legal issue has already been resolved in numerous cases cited herein.

PARTIES

17. Petitioner is a citizen of Honduras who has resided in the United States for several years while seeking asylum. He has been assigned alien number [redacted].

18. Respondent MARKWAYNE MULLIN is sued in his official capacity as the Secretary of DHS. Respondent is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention, custody, and efforts at removal. Respondent is a legal custodian of Petitioner and is sued in his official capacity.

19. Respondent DAVID VENTURELLA is sued in his official capacity as the Acting Director of ICE. In this capacity, Respondent is a legal custodian of Petitioner and possesses authority over ICE.

20. Respondent MARCOS CHARLES, Acting Executive Associate Director, is sued in his official capacity as Director of ICE's Enforcement and Removal Operations. He is a legal custodian of Petitioner.

FACTS

21. Petitioner is a citizen of Honduras who entered the United States in August 2019. He previously filed a petition for asylum which was still pending at the time that he received an *in abstentia* order of removal on March 25, 2025.

22. Petitioner was recently detained by ICE and on June 5, 2026 filed a motion to reopen his proceedings based upon non-receipt of the hearing notice, which resulted in his *in abstentia* removal order. (Attached here as Exhibit 1 is a file-stamped copy of the Motion. Attached as Exhibit 2 is the filing fee receipt)

23. At the time the motion was filed, Petitioner's counsel sent email notification to the ICE office with jurisdiction over the Stewart detention center in Georgia where Petitioner was being held at that time. (Attached here as Exhibit 3 is a copy of that email notification.)

24. On Thursday June 10, 2026 ICE personnel informed Petitioner he was being deported and presented him with paperwork that Petitioner refused to sign.

25. Petitioner's immigration counsel attempted numerous times on Thursday and Friday to get in touch with someone at the Stewart Facility or with relevant ICE officials, and was either left on hold for hours or passed around, without ever being able to speak with anyone with knowledge of the situation.

26. Petitioner also told officials there was a stay in his case and was repeatedly told he was being deported.

27. Over the weekend, Petitioner was transferred multiple times, to multiple states, such that neither his family nor his counsel was aware of his whereabouts for significant periods of time. While he was temporarily housed in Texas and then in Mississippi, Petitioner's counsel attempted via telephone, fax,

and email to communicate with the relevant duty officer without success. (Attached here as Exhibits 4 and 5 are additional email attempts.)

LEGAL FRAMEWORK

28. Under INA § 240(b)(5)(C), 8 C.F.R. § 1003.23(b)(4)(ii), "[t]he removal of the alien is automatically stayed pending disposition by the Immigration Judge of the motion to reopen to rescind an in absentia order in removal proceedings."

CLAIMS FOR RELIEF

COUNT 1
Violation of the INA

29. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

30. Respondents' threatened removal of Petitioner is in violation of INA § 240(b)(5)(C), 8 C.F.R. § 1003.23(b)(4)(ii).

31. Respondents should be restrained from violating the law or violating Petitioner's rights under the INA.

COUNT TWO
Violation of Fifth Amendment Right to Due Process

32. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

33. Respondent's actions and threatened actions violate Petitioner's rights to substantive and procedural due process.

34. Respondents should be restrained from violating the law or violating Petitioner's rights under the INA.

COUNT THREE
Violation of the Administrative Procedures Act

35. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

36. The Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2), requires courts to "hold unlawful and set aside" agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. An agency acts arbitrarily and capriciously when it fails to examine relevant factors, ignores important aspects of the problem, departs from settled practice without reasoned explanation, or treats discretion as categorically unavailable where Congress has not so provided. *Judulang v. Holder*, 565 U.S. 42, 53–55 (2011).

37. In this case, Respondents ongoing efforts to remove the Petitioner despite the automatic stay is arbitrary and capricious and a violation of the APA.

38. Respondents should be restrained from violating the law or violating Petitioner's rights under the INA

COUNT FOUR
Declaratory Judgment Act

39. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

40. An actual controversy exists between Petitioner and Respondents regarding the legal effect of the pending motion to reopen filed pursuant to INA § 240(b)(5)(C) and 8 C.F.R. § 1003.23(b)(4)(ii), specifically whether an automatic stay of removal is presently in effect while that motion remains pending before the immigration court. Respondents have taken or imminently threaten to take action to execute Petitioner's removal despite the existence of regulatory provisions that, by their plain terms, stay removal upon the filing of a qualifying motion to reopen.

41. Pursuant to 28 U.S.C. § 2201, Petitioner seeks a declaration that the filing of the motion to reopen triggered an automatic stay of removal under governing statute and regulation, and that Respondents lack lawful authority to execute Petitioner's removal order while that stay remains in effect and until the immigration court adjudicates the motion. Such relief is necessary to resolve the ongoing controversy, prevent irreparable harm, and clarify the parties' legal rights and obligations before Respondents effectuate removal in violation of governing law.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Enter a declaratory judgment clearly stating that an a stay of removal is on place while Petitioner's Motion to Reopen is Pending;

c. Temporarily, preliminarily, and permanently enjoin Respondents from removing Petitioner while his motion to reopen is pending;

d. Alternatively, in the event that Respondents have already removed Petitioner in violation of the stay, required Respondents to take all actions necessary to immediately return the Petitioner; and

e. Grant any other and further relief that this Court deems just and proper.

DATED this 14th of June, 2026

Counsel for Petitioner:

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, JEREMI GABRIEL MARTINEZ REYES, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 14th day of June, 2026.

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