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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

Civil Action No. _____

Petitioner, OSWALDO VELASQUEZ
RODRIGUEZ

v. A- [REDACTED]

MERRICK GARLAND, ATTORNEY
GENERAL;
KEVIN MACALEENAN,
SECRETARY OF THE DEPARTMENT
OF HOMELAND SECURITY;
RONALD VITIELLO,
U.S. ICE FIELD OFFICE DIRECTOR FOR
THE RUSSEL WASHBURN FIELD OFFICE;
and WARDEN OF IMMIGRATION
DETENTION FACILITY,

Respondents.

PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

Petitioner, OSWALDO VELASQUEZ RODRIGUEZ, hereby petitions this Court for a

writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents. In
support of this petition and complaint for injunctive relief, Petitioner alleges as
follows:

CUSTODY

1. Petitioner is in the physical custody of Respondents and U.S. Immigration
and Customs Enforcement ("ICE"). Petitioner is detained at the

STEWART DETENTION CENTER in
LUMPKIN GEORGIA 31815
146 CCA RD

Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

2. This action arises under the Constitution of the United States, and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104 - 208, 110 Stat. 1570, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.

3. This Court has jurisdiction under 28 U.S.C. § 2241; art. I § 9, cl. 2 of the United States Constitution ("Suspension Clause"); and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651.

4. Petitioner has exhausted any and all administrative remedies to the extent required by law.

VENUE

5. Pursuant to Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 493 - 500 (1973), venue lies in the United States District Court for the

MIDDLE District OF GEORGIA, the judicial district in which Petitioner resides.

PARTIES

6. Petitioner is a native and citizen of VENEZUELA. Petitioner was first taken into ICE custody on 4/10/2024, and has remained in ICE custody continuously since that date. Petitioner was ordered removed on 10/15/2024.

7. Respondent MERRICK GARLAND is the Attorney General of the United States and is responsible for the administration of ICE and the implementation and enforcement of the Immigration & Naturalization Act (INA). As such, MERRICK GARLAND has ultimate custodial authority over Petitioner.

8. Respondent KEVIN MACALEENAN is the Secretary of the Department of Homeland Security. He is responsible for the administration of ICE and the implementation and enforcement of the INA. As such, KEVIN MACALEENAN is the legal custodian of Petitioner.

9. Respondent RONALD VIKIELLO is the Field Office Director of the UNITED STATE Field Office of ICE and is Petitioner's immediate custodian. See Vásquez v. Reno, 233 F.3d 688, 690 (1st Cir. 2000), cert. denied, 122 S. Ct. 43 (2001).

10. Respondent Warden of STEWART DETENTION CENTER, where

Petitioner is currently detained under the authority of ICE, alternatively may be considered to be Petitioner's immediate custodian.

FACTUAL ALLEGATIONS

11. Petitioner, OSWALDO VELASQUEZ RODRIGUEZ is a native and citizen of VENEZUELA. Petitioner has been in ICE custody since 4/10/2024. An Immigration Judge ordered the Petitioner removed on 10/15/2024.

12. ICE'S DECIDING OFFICIAL WAS TO REVIEW HIS CASE FOR CONSIDERATION OF RELEASE ON AN ORDER OF SUPERVISION, DEPENDENT ON HIS DEMONSTRATING TO THE SATISFACTION OF THE ATTORNEY GENERAL THAT HE WON'T POSE A DANGER TO THE COMMUNITY OR A FLIGHT RISK.

13. THE POLICY OF U.S IMMIGRATION AND CUSTOMS ENFORCEMENT IS TO PERIODICALLY THE CUSTODY STATUS OF DETAINED ALIENS WHO HAVE FINAL ORDERS OF REMOVAL, FROM THE UNITED STATES IN ORDER TO ASSESS WHETHER OR NOT HE WOULD BE RECOMMENDED FOR RELEASE.

14. THE DECIDING OFFICIAL WAS TO NOTIFY PETITIONER OF THE DECISION IN HIS CASE BUT FAILED MISERABLY TO DO SO.

15. To date, however, ICE has been unable to remove Petitioner to
VENEZUELA or any other country.

16. Petitioner has cooperated fully with all efforts by ICE to remove him
from the United States.

17. Petitioner's custody status was first reviewed on 5/2/2024.
On _____, Petitioner was served with a written decision
ordering his/her continued detention.

18. On _____, Petitioner was served with a notice transferring authority over his/her custody status to ICE Headquarters Post-Order Detention Unit ("HQPDU"). _____

LEGAL FRAMEWORK FOR RELIEF SOUGHT

19. In Zadvydas v. Davis, 533 U.S. 678 (2001), the Supreme Court held that six months is the presumptively reasonable period during which ICE may detain aliens in order to effectuate their removal. Id. at 702. In Clark v. Martinez, 543 U.S. 371 (2005), the Supreme Court held that its ruling in Zadvydas applies equally to inadmissible aliens. Department of Homeland Security administrative regulations also recognize that the HQPDU has a six-month period for determining whether there is a significant likelihood of an alien's removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(b)(2)(ii).

20. Petitioner was ordered removed on 10 15 2024, and the removal order became final on 10 15 2024. Therefore, the six-month presumptively reasonable removal period for Petitioner ended on 4/15/2025.

CLAIMS FOR RELIEF

COUNT ONE

STATUTORY VIOLATION

21. Petitioner re-alleges and incorporates by reference paragraphs 1 through 20 above.

22. Petitioner's continued detention by Respondents is unlawful and contravenes 8 U.S.C. § 1231(a)(6) as interpreted by the Supreme Court in Zadvydas. The six-month presumptively reasonable period for removal efforts has expired. Petitioner still has not been removed, and Petitioner continues to languish in detention. Petitioner's removal to VENEZUELA or any other country is not significantly likely to occur in the reasonably foreseeable future. The Supreme Court held in Zadvydas and Martinez that ICE's continued detention of someone like Petitioner under such circumstances is unlawful.

COUNT TWO

SUBSTANTIVE DUE PROCESS VIOLATION

23. Petitioner re-alleges and incorporates by reference paragraphs 1 through 22 above.

24. Petitioner's continued detention violates Petitioner's right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.

25. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty be narrowly tailored to serve a compelling

government interest. While Respondents would have an interest in detaining Petitioner in order to effectuate removal, that interest does not justify the indefinite detention of Petitioner, who is not significantly likely to be removed in the reasonably foreseeable future. Zadvydas recognized that ICE may continue to detain aliens only for a period reasonably necessary to secure the alien's removal. The presumptively reasonable period during which ICE may detain an alien is only six months. Petitioner has already been detained in excess of six months and Petitioner's removal is not significantly likely to occur in the reasonably foreseeable future.

COUNT THREE

PROCEDURAL DUE PROCESS VIOLATION

26. Petitioner re-alleges and incorporates by reference paragraphs 1 through 25 above.

27. Under the Due Process Clause of the Fifth Amendment, an alien is entitled to a timely and meaningful opportunity to demonstrate that s/he should not be detained. Petitioner in this case has been denied that opportunity. ICE does not make decisions concerning aliens' custody status in a neutral and impartial manner. The failure of Respondents to provide a neutral decision-maker to review the continued custody of Petitioner violates Petitioner's right to procedural due process.

PRAYER FOR RELIEF

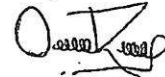
WHEREFORE, Petitioner prays that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release Petitioner from custody;
- 3) Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Petitioner;
- 4) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
- 5) Grant any other and further relief that this Court deems just and proper.

Hereby Certify that a true and correct copy of this foregoing instrument was deposited in Stewart Detention Center Mailbox that is available to all detainees with postage affixed hereto, addressed to the office of the clerk at P.O. BOX 124, Columbus GA 31902

Respectfully submitted on
1/17/25

Oswaldo Rene Velasquez Rodriguez



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Stewart Detention Center
M6 CCA RD P.O. BOX 248
Lumpkin, GA 31815



Jeanette Evans
On Jan. 17, 2025

