

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

Luis Alberto VALDEZ

Petitioner

v.

Francis J. Russo, Director of Field Operations for the
U.S. Customs and Border Protection (CBP) New
York Field Office;

Kenneth Genalo, Field Office Director of the New
York Field Office for ICE within the United States
Department of Homeland Security;

Kristi Noem, Secretary of Homeland Security in the
United States Department of Homeland Security;

And

Pam Bondi is named in her official capacity as the
Attorney General of the United States

Respondents.

Case No. _____

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

Petitioner Mr. Luis Alberto Valdez (“Petitioner” or “Mr. Valdez”) brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; and Article I, Section 9, of the Constitution of the United States. Mr. Valdez has been illegally detained in U.S. Immigration and Customs Enforcement (“ICE”) custody in violation of the Constitution and is currently facing unlawful prolonged mandatory detention under the direction of Respondents.

INTRODUCTION

Petitioner, Mr. Luis Alberto Valdez has been a lawful permanent resident of the United States since March 21, 1975 when he entered the country at the age of eleven. He is sixty-one

years old. Prior to his detention, he worked as an elevator mechanic, and resided in the Bronx, New York with his U.S. citizen wife and near his three adult U.S. citizen children.

On February 27, 2025, Mr. Valdez appeared for a Deferred Inspection appointment at JFK International airport. At his February 27, 2025, appointment, Mr. Valdez was detained by Immigration & Customs Enforcement (“ICE”) officers at Terminal 4 of JFK Airport. Since February 27, 2025, Mr. Valdez has remained in Terminal 4, handcuffed to a chair. He has not received a change of clothing, and he has not slept.

Mr. Valdez currently has a court hearing scheduled for April 11, 2025, for Post-Conviction Relief which would make him no longer inadmissible. If he is continued to be detained, he will be unable to attend his April 11, 2025, hearing before the New Jersey Criminal Court, which would constitute a violation of his constitutional due process rights. Additionally, Mr. Valdez’s deportability is currently under review and therefore his detention is an unnecessary expenditure of DHS and U.S. Customs and Border Protection (“CBP”) resources.

ICE and CBP were made aware of Mr. Valdez’s PCR proceedings, and Mr. Valdez has fulfilled all legal obligations to cooperate with ICE in the removal process.

Mr. Valdez’s continued detention violates his due process as there is no justification for such a significant deprivation of his liberty, and certainly not in the present circumstances of handcuffing a sixty-one year-old man to a chair for over 98 hours. The Immigration and Nationality Act and accompanying regulations should not be construed to permit such a result. For these reasons, Mr. Valdez respectfully requests that this Court grant a Petition for Writ of Habeas Corpus and order that an Immigration Judge conduct an individualized hearing at which the Respondents bear the burden of establishing that Mr. Valdez’s continued detention is justified.

PARTIES

1. Mr. Valdez is currently being detained at the U.S. Customs and Border Patrol Office, located at Terminal Four (4) of John F. Kennedy International Airport, Building 77, Floor 2, Jamaica, NY 11430.

2. Respondent Francis J. Russo is named in his official capacity as Director of Field Operations for the U.S. Customs and Border Protection (CBP) New York Field Office. In this capacity he is responsible for overseeing the detention of the petitioner at CBP's JFK Field Office. Respondent's address is One World Trade Center Suite 50.200 New York, NY 10007.

3. Respondent Kenneth Genalo is named in his official capacity as the Field Office Director of the New York Field Office for ICE within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations and is legal custodian of Petitioner. Respondent Genalo's address is Office of Enforcement and Removal Operations, New York Field Office Director, 26 Federal Plaza, New York, New York 10278.

4. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to Section 103(a) of the Immigration and Naturalization Act ("INA"), 8 U.S.C. §1103(a)(2007), routinely transacts business in the Southern District of New York, supervises Respondent Francis and Genalo, and is legally responsible for pursuing Petitioner's detention and removal, and as such is the legal custodian of Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, Washington, D.C. 20528.

5. Respondent Pam Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review, pursuant to INA § 103(g), 8 U.S.C. § 1003(g), routinely transacts business in the Southern District of New York, is legally responsible for administering Petitioner's removal proceedings and the standards used in those proceedings, and as such is the legal custodian of Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530

6. Respondent Department of Homeland Security ("DHS") is the federal agency responsible for enforcing Petitioner's continued detention pending his removal proceedings. DHS's address is U.S. Department of Homeland Security, Washington, D.C. 20528-0007.

JURISDICTION

7. Petitioner is currently detained in the custody of Respondents at JFK Airport, Terminal 4 in Jamaica, New York. This Court has jurisdiction over Mr. Valdez's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §§ 2241 and 1331, based on Mr. Valdez's presence in the Southern District of New York.

8. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the United States Constitution; and the All Writs Act, 28 U.S.C. § 1651. Additionally, the Court has jurisdiction to grant injunctive relief in this case pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. Petitioner's current detention as enforced by Respondents constitutes a "severe restraint" on [Petitioner's] individual liberty," such that Petitioner is "in custody in violation of the . . . laws . . . of the United States." *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).

9. The district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

VENUE

10. Pursuant to 28 U.S.C. § 2241(d), venue is proper in the Southern District of New York because Petitioner is physically present and in the custody of Respondents within the district.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

11. Petitioner has exhausted any and all effective administrative remedies available to him by seeking release from Respondents. Undersigned counsel and staff attorneys have made contact with CBP Supervisor Officer Serventi, CBP Officer Sung Kim, DI Deputy Chief Tajinder Walia, and ICE Chief Counsel for the New York District, Wen-Ting Cheng. Undersigned counsel was not notified under which section of law Respondent was being detained, was only informed that CBP was “following orders.” Additionally, prior to Mr. Valdez’s deferred inspection, this firm contacted the Deputy Chief of the DI Unit to explain that Mr. Valdez had a hearing for Post-Conviction Relief on April 11, 2025, and, if successful, he would no longer be deportable.
12. Even if meaningful administrative remedies were promptly available, Petitioner, as a noncitizen challenging the lawfulness of his ongoing immigration detention, is not required to exhaust those remedies under 8 U.S.C. § 2241. *See, e.g., Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010); *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 180 (S.D.N.Y. 2009).

STATEMENT OF FACTS

13. Mr. Valdez entered the U.S. as a lawful permanent resident on March 21, 1975, at the age of eleven.
14. Mr. Valdez has the following convictions, of which only one renders him render him inadmissible and deportable: in 1985, he was convicted under NYPL section 220.03 CPCS in the seventh degree; in 1992 he was under New York Vehicle and Traffic Law 1192; in 2012 he was convicted under NYPL section 220.03 CPCS in the seventh degree; in 2015 he was convicted in New Jersey under NJRS 2C:35(10(a) simple possession of CDS; in 2016 he was convicted under NYPL section 220.09 CPCS in the fourth degree.
15. Mr. Valdez's three NYPL controlled substance criminal convictions are *Minter* cases and therefore no longer removeable offenses. *See United States v. Minter*, 80 F.4th 406 (2d Cir. 2023)(holding that the New York statutory definition of "cocaine" is categorically broader than the federal Controlled Substances Act).
16. Mr. Valdez's 2015 conviction in New Jersey for possession under NJRS 2C:35(10(a) is the only one which would render him inadmissible, however he has Post-Conviction Relief ("PCR") pending in the form of a hearing on April 11, 2025, and his criminal attorney is currently in negotiations with the prosecutor's office. *See* emails relating to Mr. Valdez's PCR, attached as **Exhibit A**. If his Post-Conviction Relief were successful, he would no longer be inadmissible. Under all circumstances and jurisdiction, he is eligible for Lawful Permanent Resident Cancellation.
17. Mr. Valdez has been reporting to Deferred Inspection since 2023, after he was taken into CBP custody at JFK airport and then released following a family trip to the Dominican Republic. He has always been compliant and has made all requested appearances.

18. The Deferred Inspection Unit was aware of Mr. Valdez's Post-Conviction Relief proceedings and the fact that he had an upcoming hearing. *See* Emails with DI Unit and CBP Officers, attached as **Exhibit B**. Counsel at this firm requested that Mr. Valdez's appearance be rescheduled due to his PCR relief, but CBP ordered that he appear.
19. On February 27, 2025, Mr. Valdez appeared for a Deferred Inspection appointment at JFK International Airport. Mr. Valdez has always and consistently appeared, and he appeared on Thursday, February 27, at the insistence of a CBP supervisor, even while knowing that there was a likelihood of being detained. Immigration & Customs Enforcement ("ICE") never came from him. When Deferred Inspection closed in the evening, they took him to Terminal Four, where he has been in a chair ever since.
20. Since February 27, 2025, Mr. Valdez has remained in Terminal 4, handcuffed to a chair. He has not received a change of clothing, and he has not slept. He is a sixty-one-year-old man with PCR pending, who has been a lawful permanent resident of the United States for fifty years.
21. ICE and CBP have never served the Notice To Appear (NTA) on the immigration court which is how removal proceedings commence and never told Mr. Valdez or undersigned counsel what the timeline is for his removal hearings.

LEGAL FRAMEWORK

22. The detention of Mr. Valdez without the opportunity for a bond hearing is unlawful for numerous reasons. First, the Respondents' detention of Mr. Valdez without the opportunity for a bond hearing is unlawful because Respondents detained Mr. Valdez in 2025, which is ten years after his 2015 conviction for which he is currently seeking postconviction relief. This Court has repeatedly held that a noncitizen is subject to mandatory detention without

the opportunity for a bond hearing only when he is detained immediately upon release from the incarceration for the conviction providing the statutory basis for removability and detention. *See, e.g., Louisaire v. Muller*, 758 F. Supp. 2d 229, 236 (S.D.N.Y. 2010) (holding that the purpose of the mandatory detention statute was to authorize the detention of those convicted of enumerated offenses "*immediately* upon their release from criminal sentences for those *same offenses*") (emphasis in original).

23. In *Lora v. Shanahan*, this Court stated that "the clear language of the statute [INA 1226(c)(1)] indicates that the mandatory detention of aliens 'when' they are released requires that they be detained at [or near] the time of release." *Lora v. Shanahan*, 14 CIV. 2140 AJP, 2014 WL 1673129 (S.D.N.Y. Apr. 29, 2014). As a result, Lora's mandatory detention was not authorized by § 1226(c) for a "three or four-year gap between criminal release and assumption of immigration custody is an unreasonable delay for an alien such as Lora." *Id.* The Court also noted that Lora, who was a lawful permanent residence since 1990, "had strong family ties" in NY and was a "law-abiding" citizen since the time of his arrest. Therefore, Lora was entitled to a hearing to "determine whether, in these circumstances, he poses a risk of danger or flight." *Id.* (citing *Debel v. Dubois*, 2014 WL 708556 at 10).

24. In recent months, new decisions have shown that a consensus is emerging in the courts of the Southern District. Judge Hellerstein recently held that mandatory detention does not apply to noncitizens who were not detained at or around the time of their release from custody. *Araujo v. Shanahan* 14 Civ. 4231 (AKH) at *27 (S.D.N.Y. August 5, 2014); see also *Martinez-Done v. McConnell*, 14-Civ. 4231 (SAS) (S.D.N.Y. October 8, 2014); *Figueroa v. Aviles*, 1:14-cv-09360-AT (S.D.N.Y. January 29, 2015); *Cruz v. Shanahan*, 1:14-cv-09736-

VEC (S.D.N.Y. January 30, 2015); *Rodriguez v. Shanahan*, 1:14-cv-09838-SN (S.D.N.Y. January 30, 2015).

25. Furthermore, Mr. Valdez currently has a court hearing scheduled for April 11, 2025, for Post-Conviction Relief which would make him no longer inadmissible. If he is continued to be detained, he will be unable to attend his April 11, 2025 hearing before the New Jersey Criminal Court, which would constitute a violation of his constitutional due process rights. Additionally, Mr. Valdez's deportability is currently under review and therefore his detention is an unnecessary expenditure of DHS and U.S. Customs and Border Protection ("CBP") resources.
26. The Supreme Court has held, in the context of post-removal immigration detention, that if the "detention's goal is no longer practically attainable," detention becomes unreasonable and violates the detained person's Fifth Amendment right to due process. *Zadvydas*, 533 U.S. at 690. "[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699-700.
27. Mr. Valdez has been detained at JFK for over ninety-eight hours handcuffed to a chair, and his counsel has not been informed as to under what section of law Mr. Valdez is being detained. For an elderly man, this detention is abusive.

STATEMENT OF CLAIMS

28. This Court has repeatedly held that non-citizens may be detained without the opportunity for bond only if they are immediately transferred to ICE following release from custody. *See, Louisaire v. Muller*, 758 F. Supp. 2d 299, 236 (S.D.N.Y. 2010) (The clear purpose of § 1226(c)(1) is to authorize the mandatory detention of immigrants who have committed offenses enumerated within § 1226(c)(1)(A)-(D) *immediately* upon their release from

criminal sentences for those same *offenses*. . . .”(emphasis in original); *Garcia v. Shanahan*, 615 F. Supp. 2d. 175, 182 (S.D.N.Y. 2009)(“[T]he plain language of the statute is unambiguous and manifests Congress’ clear intent that there must be a nexus between the date of release and the removable offense.”). *But See, Johnson v. Orsino*, No. 12Civ. 6913 (PKC), 2013 WL 1767740, at 6 (S.D.N.Y. Apr. 24 2013) (finding the language “when . . . released” ambiguous and deferring to the government’s interpretation).

29. Mr. Valdez cannot be subject to mandatory detention because he was not detained when released from criminal incarceration. Mr. Valdez should be afforded a bond hearing immediately.
30. Mr. Valdez’s continued detention violates his due process as there is no justification for such a significant deprivation of his liberty, and certainly not in the present circumstances of cuffing a sixty-one year-old man to a chair for over 98 hours. The Immigration and Nationality Act and accompanying regulations should not be construed to permit such a result. For these reasons, Mr. Valdez respectfully requests that this Court grant a Petition for Writ of Habeas Corpus and order that an Immigration Judge conduct an individualized hearing at which the Respondents bear the burden of establishing that Mr. Valdez’s continued detention is justified.
31. Petitioner repeats and incorporated by reference the allegations in the preceding paragraphs as fully set forth herein.
32. Under the Due Process clause of the Fifth Amendment, a non-citizen is entitled to a timely and meaningful opportunity to demonstrate that he should not be detained. Mr. Valdez has been denied that opportunity. ICE does not make decisions concerning a noncitizen’s custody status in a neutral and impartial manner. *See* 8 C.F.R. § 241.13 (explaining that ICE

reviews a detainee's custody status and that "There is no administrative appeal from the HQPDU decision denying a request from an alien under this section."). Respondents have yet to provide undersigned counsel with a reason for Mr. Valdez's prolonged detention and have not been responsive about the status of his request for release. Respondents have not scheduled an interview with Mr. Valdez, 8 C.F.R. § 241.13(e)(5), or referred his case to the State Department, 8 C.F.R. § 241.13(e)(3).

33. Mr. Valdez has been appearing to Deferred Inspection since 2023. He has always appeared and is not a flight risk or a threat to the community. His most recent conviction occurred ten years ago, he is an elderly man and the husband and father of U.S. Citizens, and he has been living in this country as a lawful permanent resident for nearly fifty years, since the age of eleven. He is eligible for Lawful Permanent Resident Cancellation of Removal. 96 hours in a chair is cruel and inhumane, and the lackadaisical attitude and insistence that Mr. Valdez appear at his Deferred Inspection appointment, despite knowing he would be detained, therefore, the urgency on their part coupled with the lack of progress, with the result of an elderly man handcuffed to a chair for four days is also cruel and inhumane.

VI. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to:

- (1) Assume jurisdiction over this matter;
- (2) Issue a Writ of Habeas Corpus ordering an Immigration Judge to conduct an individualized hearing at which Respondents bear the burden of establishing that Mr. Valdez's continued detention is justified;
- (3) Award Petitioner his costs and reasonable attorneys' fees in this action as provided by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statute; and

(4) Grant such further relief as the Court deems just and proper

Respectfully Submitted,

Dated: March 3, 2025

/s Eileen Collins Bretz
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