

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ERICK OBREGON-FLORES,

Petitioner,

Index No.: 2:25-cv-1876

PETITION FOR A
WRIT OF HABEAS
CORPUS

-against-

KRISTI NOEM, Secretary, Department of Homeland Security (DHS);
CALEB VITELLO, Acting Director, US Immigration and Customs Enforcement, DHS;
JOHN TSOUKARIS, Field Office Director, Newark Field Office, Immigration and Customs
Enforcement, DHS;

Respondents.

INTRODUCTION

1. Petitioner Erick Obregon-Flores is a citizen of Peru who has been living in the US since 2002. He was detained by ICE from October 2012 until February 2013, when he was released on an Order of Supervision, with whose terms he continues to comply. Mr. Obregon-Flores was granted withholding of removal by an Immigration Judge in 2017, meaning that although he is subject to an order of removal, he cannot be removed to Peru because of persecution on account of his sexual orientation. Mr. Obregon-Flores is not a citizen or national of any country other than Peru, nor does he have the right to reside in any country other than Peru and the US.
2. As stated above, Mr. Obregon Flores has been free from ICE custody since 2013. He has fully complied with the conditions of the Order of Supervision, reporting annually to the Newark Field Office of Immigration and Customs Enforcement, keeping them informed of any changes in his address and not leaving New Jersey without notifying them. He has never been arrested or charged with any criminal offense, and has been gainfully

employed and filed taxes every year since 2013.

3. Nonetheless, at his annual check-in, on February 25, 2025, ICE instructed Mr. Obregon-Flores to return for another check-in on March 25, and to bring with him a ticket to depart the US for a third country – any third country – and told him that if he did not do so, ICE would detain and deport him. This is in keeping with DHS’s recent stated intent to deport to third countries all people who have been granted withholding of removal in the US.
4. U.S. law prohibits this. Mr. Obregon Flores is not required to arrange to deport himself as a condition of his continued freedom from detention or of his withholding of removal. Furthermore, under the INA, Respondents cannot deport him to a third country without first notifying him of the country to which they plan to deport him, and affording him a meaningful opportunity to contest it. However, without intervention by this Court, Respondents intend to do just that.
5. For that reason, Petitioner is seeking a writ of habeas corpus to prevent Respondents from detaining him and from deporting him to a third country without first providing him with advance notice of the country to which they intend to deport him and a meaningful opportunity to contest it.

JURISDICTION

6. This action arises under the U.S. Constitution and the Immigration and Nationality Act, at 8 U.S.C. §1101 et seq. This Court has habeas corpus jurisdiction pursuant to 5 U.S.C. §703, 28 U.S.C. §2241 et seq., and Article I, §9, clause 2 of the United States Constitution (suspension clause).
7. Being subject to an order of supervision constitutes “custody” for habeas purposes.

8. Petitioner is in custody under color of the authority of the United States, in violation of the constitution and laws of the United States.

VENUE

9. Venue lies in this Court because this is the district in which Petitioner and Respondent Newark ICE Field Office reside. Petitioner is in the legal custody of Respondent Newark ICE Field Office.

PARTIES

10. Petitioner Erick Obregon-Flores, is a citizen of Peru, who was granted withholding of removal to Peru in 2017. He has been on an order of supervision with Respondent ICE Newark Field Office since February 2013.
11. Respondent Kristi Noem is Secretary of the Department of Homeland Security (DHS), an agency of the US government responsible for administration and enforcement of the nations' immigration laws, including Petitioner's Order of Supervision and his threatened detention and deportation.
12. Respondent Caleb Vitello is the Acting Director of US Immigration and Customs Enforcement (ICE), a division within Respondent DHS, and is responsible for enforcement of the nations' immigration laws, including Petitioner's Order of Supervision and his threatened detention and deportation.
13. Respondent John Tsoukaris is the Newark ICE Field Office Director, and is Respondent's legal custodian based on the Order of Supervision. Respondent John Tsoukaris is responsible for Petitioner's Order of Supervision and his threatened detention and deportation complained of herein.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. There are no administrative remedies to exhaust in this case.

RELEVANT LAW

15. Under the reinstatement of removal provisions of the Immigration and Nationality Act (“the INA”), “If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.” 8 U.S.C. § 1231(a)(5). The only exception is if the non-citizen is found by an Immigration Judge to have a reasonable fear of persecution in the country of deportation, in which case they cannot be deported, see 8 U.S.C. § 1231(b)(3) (“the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion...”).
16. In such cases, once the initial removal order is reinstated, and the non-citizen expresses a fear of return, they have a “reasonable fear interview” with an asylum officer. 8 C.F.R. § 1241.8(e). If the asylum officer makes a so-called “positive credible fear” finding, the matter is referred to an Immigration Judge for a hearing on withholding of removal and deferral of removal under the Convention Against Torture. Withholding of removal is

analytically similar to asylum, requiring the non-citizen to show a well-founded fear of persecution on account of a protected ground (which includes sexual orientation).

17. A grant of withholding allows the person to remain indefinitely in the US, and they are eligible for employment authorization, but it does not confer the right to travel in and out of the US or to seek permanent residence. It also does not prevent the non-citizen's removal to a country other than the one to which removal was withheld, subject to the procedures set forth below (see ¶¶ 18 – 21). Withholding of removal is typically granted to those individuals who can show a fear of persecution but, like Petitioner, are statutorily ineligible for asylum.

18. The procedure for designating a country for removal is set forth at 8 U.S.C. § 1231(b)(2).

19. The noncitizen is initially entitled to select a country of removal, 8 U.S.C. § 1231(b)(2)(A). The Immigration Judge or DHS can disregard a designation if the noncitizen “fails to designate a country promptly,” if the designated country is nonresponsive or unwilling to accept the person, or if removal to the designated country would prejudice U.S. interests, 8 U.S.C. § 1231(b)(2)(C). The Immigration Court or DHS may designate an alternative country of removal of which the person “is a subject, national, or citizen,” unless such country is nonresponsive or unwilling to accept them, 8 U.S.C. § 1231(b)(2)(D).

20. Finally, the Immigration Judge or DHS may designate or select certain specified additional alternative countries, including the country: (i) from which the noncitizen was admitted; (ii) of the noncitizen's port of departure for the United States or a foreign contiguous territory; (iii) where the noncitizen resided before entering the United States;

(iv) where the noncitizen was born; (v) having sovereignty over the noncitizen's place of birth at the time of birth; (vi) where the noncitizen's birthplace is located at the time of the removal order; or (vii) if removal to one of these countries is "impracticable, inadvisable, or impossible" may DHS remove the noncitizen to "another country whose government will accept them." 8 U.S.C. § 1231(b)(2)(E). However, all of this is subject to 8 U.S.C. § 1231(b)(3), providing that DHS cannot deport a person to a country where they would be persecuted on account of a protected ground.

21. Stated more succinctly, "Paragraph (1) lists all of the countries to which an alien "arriving at the United States" may be removed. Paragraph (2) lists all of the countries to which "[o]ther aliens" may be removed". And paragraph (3)(A)—the statutory-withholding provision—states that "[n]otwithstanding paragraphs (1) and (2), the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." *Johnson v. Guzman Chavez*, 594 U.S. 523, 543, 141 S. Ct. 2271, 2289, 210 L. Ed. 2d 656 (2021).¹

22. Thus, in the event DHS wishes to deport a non-citizen to somewhere other than the country designated for removal in the Immigration Court proceedings, DHS are required to first notify the non-citizen, so that they can seek protection from removal to such country, if protection is necessary or appropriate.

¹ At oral argument in the Supreme Court in this case, the government counsel acknowledged that a non-citizen in withholding proceedings could not be deported to a third country unless they were first provided with notice of the third country as well as an opportunity to contest removal to it. Transcript of Oral Argument, *Johnson v. Guzman Chavez*, No. 19-897, at 20-21 (U.S. Jan. 11, 2021).

STATEMENT OF FACTS

23. Petitioner is a forty-three-year-old native and citizen of Peru. He initially attempted to enter the US through Puerto Rico in July 2000, using a fake Peruvian passport. He was detained by immigration inspection officers, to whom he admitted that the passport was not his. He stated that he was fearful of being returned to Peru and requested an asylum hearing, but then withdrew that request, and was deported back to Peru in August 2000. He re-entered the US in 2002, by crossing the US-Mexican border.

24. On or about August 24, 2012, Petitioner filed an application for asylum and withholding of removal with the Newark Asylum Office, claiming a fear of persecution on account of his sexual orientation if returned to Peru. In his application, Petitioner acknowledged the previous deportation, and was aware of the likelihood that that deportation order would be reinstated and that he risked detention.

25. On October 3, 2012, when Petitioner appeared for his asylum interview, Respondent ICE re-instated the 2000 removal order (O'Dwyer Declaration, Exhibit A) and took Petitioner into custody. On or about November 26, 2012, after a "reasonable fear" interview by an asylum officer, Petitioner was found to have a reasonable fear of persecution if returned to Peru, and was issued with a Notice of Referral to the Immigration Judge for a "withholding-only" proceeding.

26. In February 2013, Petitioner was released from ICE custody on an order of supervision (O'Dwyer Declaration, Exhibit B), after he filed a petition for a writ of habeas corpus with this Court, challenging his detention, Case No. 2:13-cv-00984-SDW.

27. On May 16, 2017, the Immigration Judge granted Petitioner's application for withholding of removal to Peru, and DHS waived any appeal from that decision. (O'Dwyer Declaration, Exhibit C)

28. Since then, Petitioner has continued to live in New Jersey, where he works as manager of an industrial laundromat, servicing hotels and similar industries. He has had his current position for a year, and before then had a similar position with a different company for seven years. He files and pays taxes every year, and has never been arrested or charged with a crime.

29. Petitioner has also been fully compliant with the terms of his order of supervision, checking in with ICE in person each year. (O'Dwyer Declaration, Exhibit B, p. 4)²

30. On February 18, 2025, ICE issued a directive which generally called for increased deportations of non-citizens. With regard to people who have been granted withholding of removal, this directive instructed ICE officers to "review the case to determine the viability of removal to a third country and accordingly whether the alien should be detained." (O'Dwyer Declaration, Exhibit D)

31. On February 25, 2025, at his annual ICE check in, Petitioner was told by his deportation officer that he had to return to ICE on March 25 with his passport and a ticket to leave the country, and that if he did not do so, ICE would come to his home and detain and deport him to a third country.

32. Indeed, within the last two months, the US government has deported hundreds, if not

thousands, of non-citizens to so-called “third countries”, i.e., countries other than their country of nationality or citizenship. None of these non-citizens have been granted permission to reside in the third countries to which they have been deported, and instead are either placed in detention camps in such countries, and/or then deported onwards to their country of citizenship or nationality.

33. Petitioner does not have the right to live or reside in any country other than Peru.

**AS AND FOR A FIRST CAUSE OF ACTION: VIOLATION OF THE
IMMIGRATION AND NATIONALITY ACT**

34. The INA, at 8 U.S.C. § 1231(b)(3), provides that “the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion...” This statutory provision codifies US obligations under international law, specifically the 1951 United Nations Convention Relating to the Status of Refugees, as well as the 1967 United Nations Protocol Relating to the Status of Refugees.

35. The INA as well as the Due Process clause of the US Constitution requires that a non-citizen be given advance written notice of the country to which DHS intends to deport them, along with a meaningful opportunity to assert a fear of persecution in such country.

36. Respondents intend to detain and then deport Petitioner to a third country if he does not leave the US voluntarily, without informing him of which country to which they intend to

² The Order of Supervision, which was issued in 2013, requires Petitioner to take specific steps to obtain a travel document for Peru. As Petitioner has been granted withholding of removal to Peru, those requirements are moot, and

deport him, and thus without allowing him to challenge the designation of such third country and to assert a fear of persecution in such country.

37. Accordingly, Respondent's threat to detain and deport Petitioner to a third country, without giving him advance notice of advance notice of whatever country or countries ICE intends to deport him to, as well as a meaningful opportunity to both challenge the designation of such third country and to seek protection from deportation to such county, violates the INA at 8 U.S.C. § 1231(b)(3)

AS AND FOR A SECOND CAUSE OF ACTION: VIOLATION OF THE DUE PROCESS CLAUSE OF THE US CONSTITUTION

38. The Fifth Amendment to the US Constitution guarantees Petitioner due process of law in all stages of the deportation proceedings against him. This due process guarantees him, at a minimum, the right to be heard at a meaningful time and in a meaningful manner. In this case, it includes advance notice of whatever country or countries ICE intends to deport him, and a meaningful opportunity to seek protection from deportation to such county or countries.
39. Respondents have stated to Petitioner that unless he departs himself, they will detain and then deport him to a third country, without providing him with advance notice of what that country is. This deprives him of any meaningful opportunity to challenge the designation of such country for deportation, and/or seek protection from deportation to such county.
40. Respondents' threatened actions thus violate Petitioner's rights to due process of law as guaranteed by the Fifth Amendment to the US Constitution.

in any event Petitioner has never been required to comply with them.

AS AND FOR A THIRD CAUSE OF ACTION: RETALIATION IN VIOLATION OF THE FIRST AND FIFTH AMENDMENTS TO THE US CONSTITUTION

41. Respondents have told Petitioner that if he does not agree to leave the country imminently, notwithstanding his grant of withholding of removal, they will come to his home, detain him, and then deport him to an as-yet unknown third country, without giving him any meaningful opportunity to challenge the designation of such country or to seek protection from such deportation. If Petitioner provides proof to Respondents that he will leave the US imminently, they will (according to themselves) not detain and deport him.³ The only country of which Petitioner is a citizen and national is Peru, and he does not have the right to reside in any other country.

42. However, Petitioner has been granted withholding of removal under the Immigration and Nationality Act at 8 U.S.C. § 1231(b)(3), which allows him to remain living in the US unless he can be deported to a third country, designated in accordance with 8 U.S.C. § 1231(b)(2), where he will not face harm on account of his sexual orientation.

43. Respondents' threat to detain and deport Petitioner for continuing to exercise the rights granted him by the order of withholding of removal and elsewhere under the INA constitute retaliation.

44. This retaliation for exercise of a statutory right violates Petitioner's rights under the First and Fifth Amendment to the US Constitutions.

AS AND FOR A FOURTH CAUSE OF ACTION: VIOLATION OF THE FIFTH AMENDMENT TO THE US CONSTITUTION

³ It is entirely possible, if not likely, that if Petitioner does what ICE have demanded and shows up for his next check in with a ticket for a third country, that they will detain him anyway and deport him to that country.

45. Respondents initially detained Petitioner in 2012, when they reinstated his order of removal. They agreed to release him on parole in 2013, thus resolving a petition for a writ of habeas corpus which Petitioner had filed in this Court. In the intervening twelve years, Petitioner has complied at all times with the terms and conditions of his 2013 release/parole from custody. He has reported diligently to ICE when required, has kept them apprized of his address, has never been arrested, and done whatever else was required of him.
46. Petitioner therefore has a protected liberty interest in his continued freedom from detention. This protected liberty interest cannot be revoked without, inter alia, a just cause for the revocation as well as an opportunity to contest it in a meaningful time and manner.
47. Respondents have no just cause for revoking Petitioner's freedom from detention, which he has had since 2013. He has not violated any of the terms of his Order of Supervision, and Respondents do not have any specific plan to deport Petitioner (as evidenced by the fact that they have asked him to make arrangements to deport himself). Instead, their plan is to take him into custody if he doesn't agree to depart the US voluntarily, and then find a country to deport him to.
48. Even if they had a specific plan, Petitioner would be entitled to advance notice of the country to which they plan to deport him as well as an opportunity to seek protection from such deportation. Petitioner is entitled to freedom from detention while he pursues that opportunity, should it be necessary, as he was during his withholding of removal proceedings.
49. Thus, Respondents' stated threat to re-detain Petitioner and then deport him, if he does not

make arrangements to leave the US voluntarily in the near future, unconstitutionally violates his protected liberty interest in freedom from detention.

PRAYER FOR RELIEF

Wherefore, Petitioner prays that this Court:

- A. Enjoin Respondents from detaining Petitioner;
- B. Enjoin Respondents from removing Petitioner from the jurisdiction of this Court and from the United States;
- C. Direct Respondents to inform Petitioner and his counsel, in writing, of whatever country they seek to remove him to, in the event that they decide to remove him to another country, and afford him a reasonable opportunity to seek protection from removal to such country;
- D. Award Petitioner costs and attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- E. Grant any other and further relief that this court may deem necessary and proper.

Dated: New York, New York,
March 12, 2025

/s/ Alexander Rossebo
Alexander Rossebo
Attorney for Petitioner
Law Office of Paul O'Dwyer PC
11 Broadway, Suite 715
New York NY 10004

(646) 230-7444
alex@paulodwyerlaw.com

/s/ Paul O'Dwyer
Paul O'Dwyer
Attorney for Petitioner pro hac vice
Law Office of Paul O'Dwyer PC
11 Broadway, Suite 715
New York NY 10004
(646) 230-7444
paul.odwyer@paulodwyerlaw.com

VERIFICATION

I am the Petitioner's attorney, and I am fully aware of all the facts and circumstances of this case. I am seeking admission to this Court for this case *pro hac vice*. All of the statements made in this Petition are true to the best of my own knowledge, except where stated to be on information and belief, and as to those statements I believe them to be true.

Dated: New York, New York
March 12, 2025

/s/ Paul O'Dwyer
Paul O'Dwyer
Law Office of Paul O'Dwyer PC
Attorney for Petitioner *pro hac vice*
11 Broadway, Suite 715
New York NY 10004
(646) 230-7444