

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

HENRRY VILLATORO SANTOS

Petitioner,

v.

RUSSELL HOTT, *in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Washington Field Office*; KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security*; and PAM BONDI, *in her official capacity as Attorney General of the United States,*

Respondents.

**FIRST AMENDED
PETITION FOR A WRIT OF
HABEAS CORPUS**

Case No. 1:25-cv-735

INTRODUCTION

¹ Petitioner Henry Villatoro Santos (“Mr. Villatoro” or “Petitioner”) is currently in the detention of Immigration and Customs Enforcement (ICE) without legal basis. In 2022, on the Government’s own motion, an Immigration Judge (IJ) dismissed the removal proceedings pending against Mr. Villatoro based on his approved petition for Special Immigrant Juvenile Status. Now, after abruptly moving to dismiss the federal criminal charge it had brought against Mr. Villatoro just weeks prior, the Government says it will instead remove him from the United States expeditiously. But the Government can neither detain nor deport Mr. Villatoro without issuing him a Notice to Appear and placing him back in removal proceedings under 8 U.S.C. § 1229a, through

which he can apply for various forms of relief from removal. On information and belief, the Government has not yet done so.¹

2. Mr. Villatoro's detention by Respondents violates the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment. Similarly, any effort to remove Mr. Villatoro from the United States without issuing him a Notice to Appear and placing him in removal proceedings violates the INA and the Due Process Clause.²

JURISDICTION & VENUE

3 This Court has subject matter jurisdiction under Art. I § 9, cl. 2 of the U.S. Constitution ("the Suspension Clause"), 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. § 2201 (Declaratory Judgment Act).

4. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

5. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is currently detained in this district and events or omissions giving rise to this action occurred in this district

PARTIES

6. Petitioner Henry Villatoro Santos is a native and citizen of El Salvador who is 24 years old.

¹ Petitioner files this Amended Petition as a matter of right pursuant to Federal Rule of Civil Procedure 15(a)(1).

² Petitioner concurrently and separately moves for an emergency injunction preventing his unlawful removal from the United States and his transfer outside of the Eastern District of Virginia.

7. Respondent Russell Hott is the Field Office Director for the ICE Washington Field Office. In that capacity, he is charged with overseeing all ICE detention centers and holding facilities in Virginia and has the authority to make custody determinations regarding individuals detained there. As far as counsel is aware, Mr. Villatoro is currently in the custody of the ICE Washington Field Office, in transit to or from, or temporarily detained in, a holding cell in Virginia. *See Ozturk v. Trump*, No. 2:25-cv-374, 2025 WL 1145250, at *8 (D. Vt. Apr. 18, 2025) (finding that Field Office Director was plausibly petitioner’s immediate custodian because petitioner “was not at a prison or jail when the Petition was filed – she was in a vehicle being transported to an ICE Field Office”). Therefore, Respondent Hott is the immediate custodian of Petitioner.³ He is sued in his official capacity.

8. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS). She supervises ICE, an agency within DHS that is responsible for the administration and enforcement of immigration laws and has supervisory responsibility for and authority over the detention and removal of noncitizens throughout the United States. Secretary Noem is the ultimate legal custodian of Petitioner. Respondent Noem is sued in her official capacity.

9. Respondent Pam Bondi is the Attorney General of the United States. As the Attorney General, she oversees the Executive Office for Immigration Review (EOIR), including all Immigration Judges. Respondent Bondi is sued in her official capacity.

STATEMENT OF FACTS

³ To the extent the Government later argues that someone other than Respondent Hott was Petitioner’s immediate custodian at the time this petition was filed, Petitioner argues in the alternative that this Court has jurisdiction and venue under the “unknown custodian exception.” *See Demjanjuk v. Meese*, 784 F.2d 1114 (D.C. Cir. 1986).

10. Henry Villatoro Santos was born in El Salvador in the year 2000. He came to the United States as an unaccompanied minor in 2014. At the border, immigration authorities issued him a Notice to Appear (NTA) in removal proceedings to commence at an unknown date and time. The NTA charged Mr. Villatoro as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for entering the United States “without being admitted or paroled.” Ex. 1, NTA.

11. Pursuant to procedures for unaccompanied migrant children, immigration authorities resettled Mr. Villatoro with his mother in Virginia.

12. In 2016, the Juvenile and Domestic Relations Court of Prince William County, Virginia found that Mr. Villatoro had been abandoned and neglected by his father in El Salvador and placed him in the legal custody of his mother in the United States. The Court later updated this order in 2019 with additional findings.

13. With this state court predicate order, Mr. Villatoro applied for Special Immigration Juvenile Status (SIJS). U.S. Citizenship and Immigration Services (USCIS) granted his I-360 application for SIJS in March 2019. Ex. 2, I-360 Approval Notice.

14. In May 2022, USCIS granted Mr. Villatoro a form of “Deferred Action” based on his approved I-360 application. The notice stated that “[d]eferred action is an act of administrative convenience to the government which gives some individuals lower priority for removal from the United States for a specified period of time.” Ex. 3, Deferred Action.

15. In August 2022, DHS moved to dismiss Mr. Villatoro’s removal proceedings based on his approved I-360 application. On August 31, 2022 the IJ granted the motion and dismissed the removal proceedings without prejudice. Ex. 4, IJ Dismissal of Removal Proceedings. The IJ noted as the basis for dismissal: “Respondent has an approved SIJ petition with a current visa available in September 2022.” *Id.* According to publicly available information on EOIR’s

Automated Case Information System, Mr. Villatoro's removal proceedings remain dismissed. Ex. 5, EOIR Info.

16. On March 27, 2025, federal law enforcement officers arrested Mr. Villatoro in Virginia and charged him with possession of a firearm by a non-citizen under 18 U.S.C § 922(g)(5)(A). That same day, ICE issued a detainer requesting to take Mr. Villatoro into its custody when he is released from the custody of the U.S. Marshals. Ex. 6, ICE Detainer.

17. On April 3, 2025, USCIS purported to terminate Mr. Villatoro's Deferred Action status. Ex. 7, Termination of Deferred Action. The notice, however, clarifies that "USCIS approved your Form I-360, which granted you SIJ classification on March 8, 2019 and it *remains approved.*" *Id* (emphasis added).

18. On April 9, 2025, the Government moved to dismiss the federal criminal complaint against Mr. Villatoro, ostensibly to proceed with his removal from the United States. Petitioner moved to delay dismissal, citing concerns about ICE's recent history of summarily and illegally removing non-citizens without due process. The Court scheduled a hearing on both motions for April 15, 2025.

19. The Government has refused to share specific information about its plans to remove Mr. Villatoro from the United States, other than that it intends to remove him quickly. Talking to the media, Attorney General Bondi remarked that "he won't be living in this country much longer" and "as a terrorist, he will now face the removal process."⁴ Virginia Governor Glen Youngkin said

⁴ See <https://www.politico.com/news/2025/04/09/drop-criminal-case-man-called-gang-leader-00283355>

“the charges . . . were dropped so that the person can be deported immediately and get out of this country and go back to prison in El Salvador.”⁵

20. The government has recently summarily deported hundreds of migrants to El Salvador without any due process rights and in violation of both the Immigration and Nationality Act and the Fifth Amendment. Those migrants were promptly detained by Salvadoran officials and incarcerated without any process at the notorious Centro de Confinamiento del Terrorismo (CECOT) in Tecoluca, El Salvador. Numerous human rights organizations have documented the abuses, severe overcrowding, isolation, and inhumane and degrading conditions at CECOT. *See* Ex. 10 (CECOT Declaration of Human Rights Watch Director, Americas Division).

21. Concerned that ICE intended to summarily deport Mr. Villatoro to El Salvador without due process, undersigned counsel asked several officials working within ICE’s Washington Field Office whether ICE had issued, or plans to issue, a Notice to Appear to Mr. Villatoro. ICE responded that it would not share any information until it takes custody of Mr. Villatoro.

22. Undersigned counsel moved to delay dismissal of the federal criminal charge until ICE first explained how it plans to proceed with Mr. Villatoro’s removal and assured the Court that he would not be unlawfully removed without due process. At a hearing on the motion on April 15, 2025, Magistrate Judge Fitzpatrick denied Petitioner’s motion and granted the Government’s motion to dismiss the charges, but he stayed his order until Friday, April 18 at 10 AM. Judge Fitzpatrick specifically ordered that “the Defendant may not be transferred to the custody of the

⁵ *See* <https://www.wvtf.org/news/2025-04-10/youngkin-backs-removal-of-alleged-ms-13-gangleader-without-trial>.

Department of Homeland Security before 10:00am on Friday, April 18, 2025.” Ex 8, Order Dismissing Charge.

23. At the hearing on April 15, Judge Fitzpatrick noted that Petitioner is “concerned about larger issues, issues that occur with respect to deportation proceedings, I just don’t think this is the right forum.” Ex. 9, Transcript from Motion Hearing at 13. On April 16, undersigned counsel noticed an appeal of the Magistrate Judge’s decision to a District Judge and moved to stay the Magistrate Judge’s order pending appeal. On April 17, the Magistrate Judge stayed his order during the pendency of the appeal.

24. On April 30, during a hearing on the appeal, District Judge Hilton affirmed the dismissal of the charge by the Magistrate Judge. An ICE agent was present in the courtroom and approached Petitioner at the end of the proceedings. Judge Hilton entered the order dismissing the charges at approximately 4:21 PM.

25. On information and belief, Mr. Villatoro entered the custody of the ICE Washington Field Office shortly after the order was entered and shortly before this filing. As of the time of this filing, he remains in ICE custody and within the jurisdiction of the Eastern District of Virginia.

26. As of the time of this filing, counsel for Mr. Villatoro has not received an NTA from ICE, nor has Mr Villatoro to the best of counsel’s knowledge.

LEGAL BACKGROUND

27. Section 1229a of Title 8 of the U.S. Code (Section 240 of the INA) describes the primary process through which the Government removes non-citizens from the United States. It specifies that “[u]nless otherwise specified in this chapter, a proceeding under this section *shall be*

the sole and exclusive procedure for determining whether an alien may be . . . removed from the United States.” 8 U.S.C. § 1229a(a)(3) (emphasis added).

28. The other processes for removal are not applicable to Mr. Villatoro. Expedited removal under 8 U.S.C. § 1225 applies to non-citizens who are seeking admission at the border. Expedited removal under 8 U.S.C. § 1228 applies to non-citizens convicted of an “aggravated felony.” Mr. Villatoro is neither seeking admission nor has he ever been convicted of an “aggravated felony.”

29. To initiate removal proceedings against a non-citizen under Section 1229a, the Government must issue the non-citizen an NTA. 8 U.S.C. § 1229(a)(1).

30. In removal proceedings under Section 1229a, a non-citizen can seek three main forms of relief from deportation based on their fear of returning to their country of origin: asylum, withholding of removal, and protection under the Convention Against Torture (CAT). There are several restrictions on eligibility for asylum, 8 U.S.C. § 1158(a)(2), fewer restrictions on eligibility for withholding of removal, *id.* § 1231(b)(3)(B)(iii), and no restrictions on eligibility for CAT deferral of removal. 8 C.F.R. § 1208.16. Mr. Villatoro is facially eligible for all three forms of relief.

31. Section 1226 of Title 8 of the U.S. Code (Section 236 of the INA) is the default provision that governs the detention of non-citizens “pending a decision on whether the [non-citizen] is to be removed from the United States.” 8 U.S.C. § 1226(a).

32. In 1990, Congress established SIJS “to protect abused, neglected or abandoned children who . . . illegally entered the United States . . .” *Osorio-Martinez v. Attorney General*, 893 F.3d 153, 163 (3d Cir. 2018) (internal quotation marks and citations omitted). In doing so, Congress exempted SIJS recipients from several grounds of removability from the United States.

See 8 U.S.C. § 1227(c) (“Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), and (3)(A) of subsection (a) . . . shall not apply to a special immigrant described in section 1101(a)(27)(J) of this title based upon circumstances that existed before the date the [non-citizen] was provided such special immigrant status.”). Thus “although a juvenile with SIJ status can be removed on certain grounds, such as having been convicted of a serious criminal offense, he cannot be removed for having entered the country illegally.” *Rodriguez v. Perry*, No. 1:24-cv-651, 2024 WL 4024047, at *4 (E.D. Va. Sept. 3, 2024).

33. An SIJS recipient is eligible to adjust their status to that of a Lawful Permanent Resident (LPR), once a visa becomes available to them.⁶ 8 U.S.C. § 1255(h); *id.* § 1153(b)(4). While adjustment of status typically occurs through USCIS, IJs have jurisdiction to adjust a non-citizen’s status in removal proceedings. 8 C.F.R. § 1245.2(a)(1)(i). Mr. Villatoro’s visa became available in September 2022, *see* Ex. 4, and he is therefore facially eligible to adjust his status through USCIS or in removal proceedings.

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

34. The INA authorizes the detention of a noncitizen “pending a decision on whether [he] is to be removed from the United States.” 8 U.S.C. § 1226(a).

⁶ SIJS recipients are subject to numerical caps on visas. Each month, the Department of State issues a visa bulletin with charts showing the visa availability based on an SIJS recipient's "priority date" (the date their SIJS petition was approved). As long as an SIJS recipient's priority date is on or before the date on the visa bulletin, their priority date is "current," and they may apply for adjustment of status.

35. The IJ dismissed the removal proceedings against Mr. Villatoro in 2022. Moreover, the sole ground of removability in Mr. Villatoro's original NTA from 2014 is not a ground upon which he can currently be removed, due to his active SIJS. 8 U.S.C. § 1227(c). *See supra* para. 32.

36. Because Mr. Villatoro has not yet received a new NTA, nor is he yet in removal proceedings, no decision on whether he is to be removed from the United States is currently "pending."

37. Respondents therefore lack a statutory basis under the INA for Mr. Villatoro's present detention.

COUNT II

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

38. The Supreme Court has found that the "Due Process Clause applies to all persons within the United States, including [non-citizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 682.

39. Mr. Villatoro's SIJS provides him with enhanced due process rights. *See Rodriguez*, 2024 WL 4024047, at *5 (citing *Osorio-Martinez*, 893 F.3d at 168-171).

40. Immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690). Since there are currently no removal proceedings pending against Mr. Villatoro, his detention is not reasonably related to its purpose and thereby violates his due process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Assume jurisdiction over this matter,

- b. Order, under the All Writs Act, 28 U.S.C. § 1651, or Fed. R. Civ. P. 65, that Respondents not transfer Petitioner outside of the jurisdiction of the U.S. District Court for the Eastern District of Virginia, nor remove him from the United States, during the pendency of this petition;⁷
- b. Declare that Respondents' actions or omissions violate the Immigration and Nationality Act and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- c. Order Petitioner's release from ICE custody, with any condition the Court deems proper; and
- d. Grant any other further relief this Court deems just and proper.

Respectfully submitted,

Dated: April 30, 2025

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⁷ Petitioner concurrently and separately moves for an emergency injunction providing this relief.

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT
TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated. April 30, 2025

/s/ Muhammad Elsayed

Muhammad Elsayed

Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system, which will send a notice of electronic filing (NEM) to all counsel of record.

Dated: April 30, 2025

/s/ Muhammad Elsayed
Muhammad Elsayed

Counsel for Petitioner