

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division**

EDIN PORTELA-HERNANDEZ

Petitioner,

v.

Donald J. TRUMP, *et al*

Respondents.

Case No. 1:25-cv-1633-BAH

**AMENDED
PETITION FOR
WRIT OF HABEAS CORPUS
AND COMPLAINT**

INTRODUCTION

1. This case concerns the unlawful detention, now exceeding 5 days, of Edin Portela-Hernandez, a citizen and national of Guatemala, and who won an order of withholding of removal to Guatemala based on a likelihood of violence due to his sexual orientation on February 28, 2020 by Respondent's immediate custodian, the Baltimore Field Office of US ICE, Enforcement & Removal Operations (ERO).
2. Undersigned counsel filed a G-28 entry of appearance notifying ICE that Petitioner is represented by counsel, and after several unsuccessful attempts at reaching anyone at Baltimore ERO by phone, emailed the G-28 and the immigration judge's withholding of removal order on May 21, 2025 at approximately 10:00 am. *See* Exhibit 1, G-28 and email to Baltimore ERO.
3. Edin Portela Hernandez is a 44-year-old Guatemalan citizen. Mr. Portela Hernandez, a gay man, came to the United States in December 1999, twenty-five years ago, because of his fear of persecution in his home country due to his sexuality. For seventeen years, he lived in the United States, forging a new life. He tried to suppress his sexuality and to

start a family. But when the truth came out, in 2017, his sexuality became known to his family in Guatemala.

4. In 2020, an immigration judge found that Mr. Portela Hernandez established a likelihood of future persecution should he be returned to Guatemala. His family has long since cut ties with him, foreshadowing the reactions the rest of Guatemalan society will have. *See* Exhibit 2, IJ Withholding of Removal Order.
5. Mr. Portela-Hernandez has a documented history of trauma in Mexico. In a sworn declaration submitted with his I-589 (asylum and withholding of removal) application and admitted into evidence and deemed credible by the presiding immigration judge during his merits hearing, he described being kidnapped and sexually assaulted by multiple men in Mexico while en route to the United States in 1999.
6. These facts support a credible and reasonable fear of torture in Mexico and invoke both withholding of removal and CAT protections under INA § 241(b)(3) and 8 C.F.R. §§ 208.16–208.18.
7. Mr. Portela-Hernandez has worked diligently running a roofing company that works throughout the expanded Washington, DC metropolitan area. Upon information and belief, he has three traffic citations, two for driving without a license in 2011 and 2013, and a speeding ticket from 2022. He also was arrested on suspicion of assault, but he was acquitted. *See* Exhibit 3, criminal records.
8. Mr. Portela-Hernandez reported for a customary and routine ICE check-in on May 20, 2025 when he was detained. On or about May 21, 2025 he was served with a Notice of Intent to Remove to a third country in English and Spanish (with the English appearing before the Spanish pages), to-wit: Mexico.

9. On May 23, 2025, undersigned Counsel filed a Declaration in this case, serving ICE via email and official ICE e-service, demanding that Petitioner be scheduled for a Reasonable Fear Interview. In the Declaration, Counsel (whose firm represented Petitioner in his removal proceedings from 2017 to 2020) stated his trauma-related concerns about Petitioner's ability to speak about his sexuality to request a reasonable fear interview (RFI) from the ICE as to Mexico. Counsel was able to communicate with his client and, while apologizing for the need to retraumatize him, stated that it was necessary to demand an RFI as soon as possible.
10. Since May 23, Petitioner has informed Counsel that he has demanded an RFI no less than three times from three different officers, all of whom either did not respond, or told him "there is no time." Earlier this evening, Counsel received a text from Daniela again reiterating that all verbal requests for an RFI were ignored, and Respondent was only told that "this is a detention center" and that the center does not say anything "about your process." To date, Counsel has received no notification of an intent to schedule an RFI.
11. Instead, although as of this writing close to midnight on Sunday May 25, 2025 ICE's online detainee locator still lists Petitioner as being in Baltimore, he was in fact transferred to Winn Correctional Center in Winnfield, Louisiana nearly 36 hours ago. *See* Exhibit 4, ICE Locator Printout.
12. As Counsel pled in the original habeas complaint and again brought up during the status conference in this matter held on May 22, 2025, there was a substantial likelihood that the Government would move Petitioner to a detention facility within the Fifth Circuit, widely regarded as one of the most favorable jurisdictions for the Government. That is what happened.

13. There is no jurisdiction at the agency level for an immigration judge to consider bond or release, as bond is moot when a noncitizen “is granted relief from removal by the Immigration Judge, and the Department of Homeland Security does not appeal.” If a bond redetermination request was filed with the Department, it would take several days to be denied as moot, during which time Petitioner would likely be moved to a faraway jurisdiction, hampering his access to counsel.
14. Petitioner resides in 1501 Handys Meadow, Salisbury, MD 21801. He lives with his spouse, Daniela Duque-Ramirez, who is herself an asylum seeker from Peru. Together they run Eddie Roofing Solution, LLC, which last year earned gross income of approximately \$1.957 million and employs ten workers, all of whom rely on Petitioner for their employment. He therefore maintains strong ties to Maryland.
15. In such case, Petitioner must be afforded notice and an opportunity to determine whether he merits withholding of removal or other protection in that case, too. There has been no filing of any sort in immigration court, to date, regarding Petitioner.
16. Undersigned counsel’s firm represented Petitioner in his withholding case from 2017 to 2020, and also had successfully won Petitioner’s release on bond pending removal proceedings, which he fully attended, won, and has since appeared at every ICE check-in, beginning in Salisbury, MD and then on to Baltimore, MD.
17. The fact that despite being in custody for five days, Counsel’s declaration demanding an RFI, and Petitioner’s repeated requests for same, no RFI has been scheduled and detention center officers have failed to even acknowledge that Petitioner will be so scheduled signifies an intent to breach the Government’s obligation under *DVD*.
18. While detention itself may be procedurally lawful, detention becomes unlawful if executing the removal would be done unlawfully. Habeas relief is therefore available to remedy such an anticipated violation.

19. Petitioner's detention is a vehicle for an imminent violation of due process and the Government's obligations under *DVD*.
20. Applying the four-factor standard from *Mapp v. Reno*, Petitioner meets the criteria for release during the pendency of this habeas action. He raises substantial legal claims rooted in *DVD v. DHS*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025) asserting that ICE seeks to remove him to a third country without affording him the required opportunity to assert a fear of persecution or torture. This constitutes both a statutory and constitutional violation.
21. Petitioner's circumstances are extraordinary: he has previously suffered rape and kidnapping in Mexico, and he has not yet been scheduled for the mandatory reasonable fear interview required by federal injunction, and has been affirmatively denied or ignored repeated requests for same.
22. He is not a flight risk, having complied with his immigration proceedings for years and maintained stable family ties. He also presents no danger to the community.
23. Accordingly, this Court should grant release on recognizance or impose minimal bond conditions consistent with due process and the Court's habeas authority.
24. Petitioner is neither a flight risk nor a danger to the community, and there has been no showing from the Government that he is either.

PARTIES

25. Petitioner Edin Portela-Hernandez is a recipient of withholding of removal to Guatemala, is in the United States lawfully, with lawful permission to work, and is not currently charged with any crime, and has no record besides traffic offenses.
26. Respondent Donald J. Trump is named in his official capacity as the President of the United States. In this capacity, he is responsible for the policies and actions of the executive branch, including the Department of State and Department of Homeland

Security. Respondent Trump's address is the White House, 1600 Pennsylvania Ave. NW, Washington, D.C. 20500.

27. Respondent Matthew Ellison is named in his official capacity as the Field Office Director of the Baltimore US-ICE ERO, within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and is the "immediate custodian" of Petitioner. Respondent Ellison's address is Baltimore ICE ERO, 31 Hopkins Plz, 6th Floor, Baltimore, MD 21201.
28. Respondent Todd Lyons is named in his official capacity as the Acting Director of US-ICE ERO, within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and is a custodian of Petitioner. Respondent Lyon's address is 500 12th St., SW, Washington, DC 20536.
29. 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 INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the District of Maryland; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.
30. Respondent Pamela Bondi is the Attorney General of the United States. In this capacity, she routinely transacts business in the Eastern District of Virginia; is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(g) (2007); and as such is a custodian of the Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530- 0001.

JURISDICTION & VENUE

31. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2241, Article I, §9, cl. 2 (the Suspension Clause) and Article III of the U.S. Constitution, and 28 U.S.C. § 2201 (Declaratory Judgment).
32. An actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201, and this Court has authority to grant declaratory and injunctive relief. *Id.* §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651.
33. 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 a substantial part of the events or omissions giving rise to this action occurred and continue at the ERO office in Baltimore, Maryland.

CLAIMS FOR RELIEF

FIRST CLAIM

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution

34. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein.
35. The Constitution establishes due process rights for “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
36. The government’s detention of Mr. Portela-Hernandez is wholly unjustified. The government has not demonstrated that Mr. Portela Hernandez, who has been in the United States for 25 years, and runs a successful business with no serious criminal record and who won withholding of removal - needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring

the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Mr. Portela-Hernandez cannot be safely released back to his family.

37. Moreover, Petitioner's detention is punitive as it bears no "reasonable relation" to any legitimate government purpose. *Zadvydas*, 533 U.S. at 690 (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). The sole basis of his detention appears to be a vague intention to strip him of his currently protected status, and perhaps, upon information and belief, a vague bed quota mandate. These are not lawful bases to detain Petitioner for so long. As such, it is incarceration "for other reasons." *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring).

SECOND CLAIM

Release on Bail Pending Adjudication

38. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein.
39. Under 28 U.S.C.A. § 2241, federal district courts are granted broad authority, "within their respective jurisdictions," 28 U.S.C.A. § 2241(a), to hear applications for writs of habeas corpus filed by persons claiming to be held "in custody in violation of the Constitution or laws or treaties of the United States." *Timms v. Johns*, 627 F. 3d 525 (4th Cir. 2010).
40. This petition raises numerous substantial constitutional and statutory claims challenging Mr. Portela-Hernandez's retaliatory detention. Extraordinary circumstances exist that make his release essential for the remedy to be effective. His detention without counsel is flatly illegal.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Enjoin Respondents from transferring the Petitioner from the jurisdiction of this District pending these proceedings;
- 3) Order the immediate release of Petitioner pending these proceedings;
- 4) Declare that Respondents' actions to arrest and detain Petitioner violate the Fifth Amendment;
- 5) Award reasonable attorneys' fees and costs for this action; and
- 6) Grant such further relief as the Court deems just and proper.

Dated: May 25, 2025
Sterling, Virginia

/s/Hassan Ahmad
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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 electronic notification to all parties.

Dated: May 25, 2025

/s/Hassan Ahmad

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