



Massachusetts, and was not the person ICE was seeking but rather is what ICE seems to refer to as a "collateral" detainee.

#### Jurisdiction

2. This Court has jurisdiction under 28 USC sec. 1331 (general federal question jurisdiction); 28 USC sec. 2241 (habeas corpus); 5 USC sec. 701 (Administrative Procedure Act); 28 USC sec. 2201 (declaratory judgment); and Amendment 5 to the United States Constitution (substantive and procedural due process of law).

#### Parties

3. As stated in the above caption, Pamela Bondi is the United States Attorney General; Kristi Noem is Secretary of the United States Department of Homeland Security which includes US Immigration and Customs Enforcement (ICE) of which Todd Lyons is Director; and the Warden of Wyatt Detention Center, Central Falls, RI is the current custodian of petitioner acting under contract with ICE.

#### Facts and Proceedings

4. Petitioner Sergio Cruz Cruz, born in 1994, is a member of the minority indigenous Mixteca-De-Oaxaca community within the country of Mexico which is descended from the earlier Aztec civilization prior to European contact. His original indigenous language, his first language that he grew up with, is Mixteco. The US Department of State's 2023 country conditions report for Mexico cites a poll among Indigenous persons in Mexico, the majority of whom "considered their rights were respected 'little or not at all.'"

5. In 2010 when Sergio was 16 years old his father disappeared. Those responsible called Sergio's mother at her house demanding money which they did not have, and threatened the family. Sergio's father was never seen or heard from again.
6. Fearful of this and other events, in 2014 Sergio attempted to enter the United States at the border as an unaccompanied child (see 8 USC sec. 1101(b)(1), definition of "child" under federal immigration law). He was turned away that same day and left the following day. He saw a paper but it was never explained to him in any language he understood; nor was anything explained to him under the applicable federal regulations. Subsequently he entered the United States again in 2014.
7. Title 8, United States Code sec. 1158(a)(1) states "[a]ny alien who is physically present in the United States..., irrespective of such alien's status, may apply for asylum in accordance with this section." Accordingly, in 2018 Sergio applied for asylum and withholding or removal in the United States by filing a Form I-589 with US Citizenship and Immigration Services (USCIS), received a receipt therefor, and submitted to the required biometrics which have the following purpose:

"Biometrics collection allows USCIS to verify a person's identity, produce secure documents, and facilitate required criminal and national security background checks to protect national security and public safety, as well as to ensure that the person is eligible for the benefit sought. Biometrics collection and security checks enhance national security and protect the integrity of the immigration process by ensuring that USCIS only grants benefits to eligible requestors." USCIS Policy Manual, ch. 1, sec. A, citing 8 CFR 103.16, 103.2.

Subsequently Sergio's biometrics were checked several times as he applied for federal employment authorization documents (EAD), the most recent authorizing him to legally work in the United States until 2029. Exhibit 1. He has paid his taxes due to his employment. Exhibit 2. Sergio has no criminal record.

8. Sergio and his partner have a US citizen son born in 2024. Exhibit 3.
9. Sergio lived peacefully and without incident in the United States until May 2025 when he was detained by ICE which apparently was looking for another person and Sergio became a "collateral" detainee.
10. When Sergio was detained in 2025, ICE issued a Form I-871 "Notice of Intent/Decision to Reinstate Prior Order." Exhibit 4. Following the filing of the original Petition in this case, Sergio's counsel asked for a copy of the "Prior Order" from 2014. Counsel was provided with three pages, one page identified as "Form I-860 (Rev. 08/01/07)" which says "See I-831"; one page which says at the top "Continuation Page for Form I-860" but at the bottom is written "Form I-831 Continuation Page (Rev. 08/01/07)"-- and this form starts off with the word "NARRATIVE", but there is no "narrative"; and the final page identified as Form I-296 (1/12). Exhibit 5. It is unclear whether this is the entire 2014 record.
11. Regardless, there is nothing in the three pages from 2014 described above and recently provided to Sergio's counsel to show that the 8 CFR sec. 235.3 (entitled "Inadmissible Aliens and expedited removal") subsections (b)(2) and (b)(4) were followed or complied with. Accordingly, there was no basis to "reinstate" in 2025 that 2014 "order." In addition, nowhere in the record did ICE acknowledge the pendency since 2018 of Sergio's Form I-589 asylum application which provided authorization to remain in the United States and be employed legally while that application is pending..
12. Respondents' "Opposition to Petition for Writ of Habeas Corpus and Motion to Dismiss" dated September 5, 2025, and the Exhibits thereto, are almost entirely reliant on

the three pages from 2014 discussed in paragraphs 10 and 11 above, as well as the 2025 "reinstatement."

13. Sergio has been in ICE detention since May 24, 2025. He was given an undated "Notice to Alien of File Custody Review" (Exhibit 6) which Sergio passed on to counsel who timely entered an appearance (Form G-28) with ICE with a cover letter and enclosures supporting release from custody. Exhibit 7. In particular, counsel enclosed a copy of the Immigration Court's recent decision vacating an asylum officer's ruling, and finding that Sergio had a "reasonable fear" of being returned to Mexico and was entitled to a "withholding only" hearing in the Immigration Court.

14. ICE at a later time issued an undated "Decision to Continue Detention" (Exhibit 8) but in violation of 8 CFR sec. 241.4(d)(3) did not send a copy of the decision to Sergio's attorney.

15. Although ICE's file custody review letter refers to ten (10) factors to be considered, and custody review factors are set forth in 8 CFR sec. 241.4(e) and (f), there is no mention of any positive factors, and indeed no analysis at all in the ICE decision.

16. In its custody decision, ICE writes:

"ICE is in receipt of or expects to receive the necessary travel documents to effectuate your removal, and removal is practicable, likely to occur in the reasonably foreseeable future, and in the public interest."

However, this language makes no sense in light of the Immigration Court's positive finding that Sergio faces a "reasonable possibility of persecution" if removed and is entitled to a hearing in the Immigration Court with appeal rights if necessary to the Board of Immigration Appeals (BIA) and a federal circuit court. The laws and rules underlying these court procedures express the "public interest", as opposed to ICE's conclusory

statement. As stated, the Immigration Court's "reasonable possibility of persecution" finding was presented to ICE prior to its custody review decision, but is nowhere mentioned.

17. The ICE custody decision also states the "decision has been made based on a review of your file", but there is no mention of Sergio's 2018 pending Form I-589 asylum application or the government-issued employment authorization card with an expiration date of 2029.

18. In its decision, ICE also writes it is extending custody because:

"On February 7, 2014, you were arrested by Customs and Border Patrol (CBP) at the San Ysidro, CA Port of Entry. On that same date CBP served you a Form I-860, Notice and Order of Expedited Removal and removed you to Mexico. On an unknown date, at an unknown time and unknown location, you re-entered the United States, without admission or parole from an immigration official."

However, as stated above, at that time ICE acted without regard to the requirements of 8 CFR sec. 235.3(b)(2) and (b)(4), and ignoring the fact Sergio was a child under federal immigration law and also a part of the Indigenous minority who spoke the Mexico language of the ancient Aztecs. In Sergio's view, the above statement is compounding the prior ICE/CBP errors to Sergio's prejudice.

19. Finally in its decision, ICE writes Sergio must demonstrate "you are cooperating with ICE's efforts to remove you by taking whatever actions ICE requests to affect [sic] your removal." Again, this ignores the fact, known to ICE, that Sergio has a withholding of removal case pending in the Immigration Court.

20. The failures of the federal agencies, ICE and CBP, in both the purported 2014 expedited removal process and the purported 2025 intent to reinstate without apparent examination of the 2014 record, the 2018 asylum application and EAD approvals, all

have prejudiced Sergio in that now he is considered at most to be eligible for "withholding only" relief, and although legally granted an EAD under his 8 USC sec. 1158(a)(1) asylum application, he is unable to work and provide for his family including his one-year old son.

#### CAUSES OF ACTION

##### Count I -- Habeas Corpus, 28 USC sec. 2241(c)(3)

21. Paragraphs 1-20 above, as well as the Exhibits hereto, are incorporated herein by reference.
22. The February 7, 2014 Notice and Order of Expedited Removal and the May 24, 2025 "Notice of Intent/ Decision to Reinstate Prior Order" are in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution, and also in violation of the statutes, rules and regulations discussed above and in the following paragraphs.
23. Continued Detention: "[D]istrict courts retain jurisdiction over challenges to the legality of detention in the immigration context." Kong v. United States, 62 F4th 608, 614 (1<sup>st</sup> Cir 2023). "Freedom from imprisonment -- from government custody, detention, or other forms of physical restraint -- lies at the heart of the liberty that Clause [US Const., Amend. 5] protects." Zadvydas v. Davis, 533 US 678, 690 (2001). "[T]he more time an individual spends in the community, the lower her bail risk is likely to be, and the more probable it is that a fair custody review would result in her release." Castaneda v. Souza, 810 F3d 15, 41 (1<sup>st</sup> Cir 2015). For the reasons stated above, ICE's "custody review" in this matter was not a review at all but rather was a denial of any meaningful review.

##### COUNT II -- Administrative Procedure Act (APA), 5 USC sec. 701, et seq.

24. Paragraphs 1-23 above, as well as the Exhibits hereto, are incorporated herein by reference.

25. "[A]s Justice Anthony Kennedy wrote in his dissent in Zadvydas, without dispute from the majority, '[w]ere the [DHS], in an arbitrary or categorical manner, to deny an alien access to the administrative process in place to review continued detention, habeas jurisdiction would lie to redress the due process violation caused by the denial of the mandated procedures...' ... Justice Kennedy's position was a particular application of a long line of Supreme Court and other decisions holding that regulations are laws that the government must obey." Jimenez v. Cronen, 317 F Supp 3d 626, 634 (D Mass 2018).

26. In petitioner Sergio's view, ICE's "custody review" so ignored the requirements of 8 CFR 241.4 and the factors stated therein, the submitted evidence, other evidence known to ICE including the 2018 pending asylum application (Exhibit 9), and Supreme Court and other court precedent concerning detention, as to result in no meaningful review at all.

27. Accordingly, DHS/ICE's custody decision denying release, even under conditions and/or bond, was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 USC sec. 706(a)(2)(A).

#### PRAYERS FOR RELIEF

WHEREFORE, petitioner Sergio Cruz Cruz hereby prays the Court grant the following relief:

1. Declare the 2014 expedited removal order and the 2025 notice of intent and reinstatement violated the applicable laws, rules and regulations, and also are in violation of the Due Process Clause of Amendment 5 to the

United States Constitution;

2. Declare ICE's custody review did not comply with the requirements of 8 CFR sec. 241.4, the Due Process Clause of Amendment 5 to the United States Constitution, and the numerous federal court decisions concerning detention under the immigration laws; and also do not survive scrutiny under 5 USC sec. 706(a)(2)(A).
3. Order petitioner's immediate release from custody/detention with conditions the Court deems appropriate.
4. Such other relief as the Court determines to be just and appropriate.

Respectfully submitted,

/s/ William A. Hahn

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CERTIFICATE OF SERVICE

I hereby certify that, on 17 September 2025, I caused the foregoing document to be filed by means of this Court's Electronic Case Filing (ECF) system, thereby serving it upon all registered users in accordance with FR Civ P 5(b)(2)(E) and Local Rules Gen 304.

/s/ William A. Hahn

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Attorney for Petitioner