

Related Relief" with nine (9) Exhibits which contain a great deal more information of events that have occurred since May. That pending filing with motion to amend is incorporated herein by reference.

Briefly, the proposed amended petition adds a count under the Administrative Procedures Act (APA), 5 USC sec. 701 et seq. asking the Court to scrutinize the government's actions and whether they are in compliance with 8 CFR sec. 235.3 ("Inadmissible Aliens and expedited removal") and subsections (b)(2) and (b)(4) thereof, and 8 CFR 241.4 (detention and custody) and subsections (e) and (f). "[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).

In his proposed amended petition, petitioner is asking for an adjudication under both the CFR provisions cited above. As noted in the case just cited, these "regulations are law" with "mandated procedures" and petitioner is asking the Court to analyze the required procedures in light of the facts of this case and the actions taken by ICE. In particular, petitioner contends the purported "custody review" by ICE in August was woefully inadequate essentially ignoring the framework of 8 CFR sec. 241.4. Additionally, petitioner has pleaded claims under the Due Process Clause of the Fifth Amendment to the United States Constitution.

Respondents claim the original petition is "premature" but the proposed amended petition adds much more content based on what has occurred in the last three months. Respondents continually cite Zadvydas v. Davis, 533 US 678 (2001), but "[t]he presumption created by Zadvydas, that up to six months of detention is reasonable, is based on the assumption that ICE followed the process prescribed by its regulations to ensure that continued detention was justified." Jimenez, above, 317 F Supp 3d at 636. "ICE must give an alien notice and an opportunity to be heard before detaining him or her for longer than 90 days." Id. at 633. "ICE has a duty to obey these regulations even if they provide greater protection than is constitutionally required." Id. at 635, citing Nelson v. INS, 232 F3d 258, 262 (1st Cir 2000). "ICE has repeatedly demonstrated an inability to perform lawfully and to decide fairly whether detention is justified." Id. at 656-657.

Accordingly, petitioner asks the Court allow his case to proceed under the proposed amended petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on 19 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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