UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARIO HERNANDEZ ESCALANTE,
A[redacted],

Petitioner

v.

KRISTI NOEM, U.S. Secretary of Homeland Security; TODD M. LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; NIKITA BAKER, in her official capacity as Field Director of the ICE Baltimore Field Office,

Respondents

Case No. 1:25-CV-1799

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Mario Hernandez Escalante ("Mr. Hernandez"), a native and citizen of El Salvador, challenges his detention in the custody of Immigration and Customs Enforcement ("ICE") to be an unconstitutional and unjustified deprivation of his physical liberty, and seeks immediate relief from this Court.

2. In 2019, an immigration judge renewed an order to remove Mr. Hernandez from the United States, but granted Mr. Hernandez protection from removal to El Salvador under the U.N. Convention Against Torture ("CAT"). *See* 8 C.F.R. § 208.17(a) ("[A noncitizen] who: has been ordered removed; has been found under § 208.16(c)(3) to be entitled to protection under the Convention Against Torture; and is subject to the provisions for mandatory denial of withholding

of removal under § 208.16(d)(2) or (d)(3), shall be granted deferral of removal to the country where he or she is more likely than not to be tortured.").

3. Following the immigration court grant of protection, Mr. Herandez was released from detention and lived for years in the U.S. under supervision. However, he was recently taken back into immigration custody and is currently detained at the ICE Baltimore Hold Room.

4. Mr. Hernandez has been informed that Respondents are seeking to remove him to a third country, but upon information and belief, as of the time of filing no third country has been identified to accept Mr. Hernandez. He is not likely to be imminently removed. There has also been no effort by DHS to reopen Mr. Hernandez's protection under the CAT.

5. Respondents are not permitted to detain Mr. Hernandez in the vain hope that they may someday effectuate his removal. Absent a third country willing to accept him or reconsideration of the protection he has been granted, ICE's efforts to obtain a third country of removal are merely speculative, and accordingly violate a longstanding principle that "if removal is not reasonably foreseeable . . . continued detention [is] unreasonable and no longer authorized by statute. *Zadvaydas v. Davis*, 533 U.S. 678, 699-700 (2001).

6. Mr. Hernandez seeks a writ of *habeas corpus* from this Court requiring Respondents to immediately release him, and if a third country is identified, order that Respondents must provide Mr. Hernandez with notice of the identified country of removal and an opportunity to seek protection from removal if necessary.

JURSIDICTION AND VENUE

7. The ICE Baltimore Field Office and Mr. Hernandez are within the District of Maryland.

8. This action arises under the Suspension Clause, the Due Process Clause of the Fifth Amendment, and the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq*.

9. This Court has subject-matter jurisdiction under U.S. CONST. art. 1, § 9, cl. 2 (Suspension Clause), 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1346 (original jurisdiction), 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. §§ 2201-02 (declaratory relief), as Mr. Hernandez is presently held in custody under or by color of the authority of the United States. His detention by Respondents is a "severe restraint" on his individual liberty "in custody in violation of the . . . laws . . . of the United States." *See Hensley v. Municipal Court, San Jose-Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973).

10. In addition to the habeas protections in the Constitution and Immigration and Nationality Act ("INA"), federal district courts have subject matter jurisdiction under 28 U.S.C. § 1331 (federal questions) to hear claims by individuals challenging the lawfulness of agency action.

11. In sum, this Court has jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by U.S. immigration officials. *See, e.g.*, *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas*, 533 U.S. at 687.

12. Venue is proper because Mr. Hernandez is currently detained within the District.

PARTIES

13. Petitioner, Mario Hernandez Escalante, is a native and citizen of El Salvador. As of 12:05 a.m. Eastern Time on June 6, 2025, he is detained in ICE custody in Baltimore, Maryland.

14. Respondent Kristi Noem is the Secretary of Homeland Security, and in that capacity is responsible for the Department of Homeland Security and all sub-cabinet agencies of DHS, including ICE and USCIS. She is sued in her official capacity.

15. Respondent Todd M. Lyons is the Acting Director of Immigration and Customs Enforcement, responsible for ICE's detention and removal operations among all its other functions. He is sued in his official capacity.

16. Respondent Nikita Baker is the Field Office Director of the ICE Baltimore Field Office, and is responsible for ICE's operations in Maryland. Upon information and belief, she is the immediate custodian of Mr. Hernandez who is held in the Baltimore Holding Facility. She is sued in her official capacity.

EXHAUSTION

17. The decision to re-detain Mr. Hernandez is subject to challenge through a petition for a writ of *habeas corpus*, and he need not exhaust any administrative remedies which might be available to him before seeking this Court's review. *Darby v. Cisneros*, 509 U.S. 137 (1993) ("an appeal to 'superior agency authority' is a prerequisite to judicial review only when expressly required by statute or when an agency rule requires appeal before review and the administrative action is made inoperative pending that review.").

18. Moreover, because detaining Mr. Hernandez violates his right to due process, a constitutional right, administrative exhaustion is excused. *See Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when . . . a plaintiff has raised a 'substantial constitutional question.'").

STATEMENT OF FACTS

19. Mr. Hernandez first entered the United States in 1990, when he was approximately fourteen years old. Mr. Hernandez has twice since been deported to El Salvador. Upon reentering the U.S., he was placed into withholding-only proceedings under 8 C.F.R. § 1208.31(e). On December 12, 2019, Immigration Judge Karen Donoso-Stevens granted Mr. Hernandez deferral of

removal under the CAT. The Department of Homeland Security ("DHS") waived any appeal of this decision. Mr. Hernandez was thereafter released from immigration custody and has since lived under ICE supervision in the U.S.

20. Mr. Hernandez is now married and has two United States citizen children.

21. Mr. Hernandez has complied with all DHS and ICE directives to report and stay in communication with the agency. He also had an ankle monitoring device.

22. Notwithstanding his compliance with the terms of his supervision, Mr. Hernandez was recently re-detained in immigration custody and is currently being held in ICE custody in Baltimore.

23. DHS cannot lawfully remove Mr. Hernandez to his native country of El Salvador based on the grant of CAT protection.

24. Upon information and belief, following his re-detention, DHS informed Mr. Hernandez that it will now attempt to remove him to a third country other than El Salvador.

25. Upon information and belief, no viable third country of removal has been identified and the quest to find a third country is merely speculative.

26. Mr. Hernandez remains afraid of returning to El Salvador where the immigration court concluded he faces a likelihood of torture by, or with the acquiescence of, the Salvadoran government.

27. Upon information and belief, Mr. Hernandez has expressed a fear of being removed to other countries as well. Because Mr. Hernandez has a removal order, he is a class member of *D.V.D. v. DHS*, 1:25-cv-10676-BEM (D. Mass.), 2025 U.S. Dist. LEXIS 74197 at *27 (D. Mass. Apr. 18, 2025).

CLAIMS FOR RELIEF

COUNT ONE

Mr. Hernandez's Detention Violates His Right to Substantive Due Process under the Fifth Amendment

28. Petitioner re-alleges and incorporates by reference the paragraphs above.

29. As a person living within the United States for the better part of more than 30 years, Mr. Hernandez is entitled to due process of law. U.S. Const. amend. V; *see generally Zadvydas*, 533 U.S. 678.

30. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. To that end, due process demands "adequate procedural protections" to ensure that the Government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (internal quotation marks omitted). The Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and prevent flight. *See Demore v. Kim*, 538 U.S. 510, 528 (2003); *see also Matter of Patel*, 15 I. & N. Dec. 666 (BIA 1976) ("An alien generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security, or that he is a poor bail risk[.]" (internal citation omitted)).

31. However, the INA only provides a 90 day "removal period" during which noncitizens who have been ordered removed—including those who have prevailed and been granted deferral of removal under the CAT—shall be removed. *See* 8 U.S.C. § 1231(a)(1).

32. The INA only authorizes an extension of the removal period "if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the

alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C).

33. During the removal period, a noncitizen may be detained. 8 U.S.C. § 1231(a)(2). After the removal period has run, if removal cannot be effectuated, the INA contemplates that a noncitizen should be released from custody under supervision. 8 U.S.C. § 1231(a)(3).

34. Mr. Hernandez's immigration order is in two parts, 1) an order of removal from the United States; and 2) an order that he may not be removed to El Salvador. The order is administratively final.

35. When a noncitizen is held beyond the 90-day removal period, the longer one is held the more it becomes an unconstitutional deprivation of liberty. Ultimately, the constitution does not allow for indefinite civil detention. *Zadvydas*, 533 U.S. at 700. Specifically, the Supreme Court holds that if removal is not "reasonably foreseeable" then the noncitizen's further detention is not authorized by the INA. *Id.* at 699-700. From there, the government must justify further detention by providing evidence that removal is imminent. *Id.* at 701.

36. For Mr. Hernandez, that period of time began to run on December 12, 2019 and lasted for 90 days until March 11, 2020. *See* 8 U.S.C. § 1231(a)(1)(B). He was not removed during the removal period.

37. Respondents have not identified a potential country for removal and thus have not established a significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701.

38. Thus, Mr. Hernandez's continued detention violates his right to due process and this Court should order his immediate release.

COUNT TWO

Mr. Hernandez's Detention Violates His Right to Procedural Due Process under the Fifth Amendment in Seeking a Third Country of Removal Without an Opportunity to Establish a Fear of Harm From Such Removal

39. Petitioner re-alleges and incorporates by reference the paragraphs above.

40. Upon information and belief, DHS has detained Mr. Herandez under the guise of attempting to establish an as-yet-unknown third country which will accept him for removal. DHS has failed to identify to Mr. Hernandez to which country or countries it will seek to remove him. This failure to provide notice violates his constitutional right to procedural due process by depriving him of the opportunity to seek protection from such a removal.

41. Specifically, Mr. Hernandez is a member of the nationwide class defined in *D.V.D. v. DHS*, which includes "[a]ll individuals who have a final removal order . . . whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed." 2025 U.S. Dist. LEXIS at *27. Having found a violation of due process, the Court ordered that " prior to removing any alien to a third country, *i.e.*, any country not explicitly provided for on the alien's order of removal, Defendants must: (1) provide written notice to the alien—and the alien's immigration counsel, if any—of the third country to which the alien may be removed, in a language the alien can understand; (2) provide meaningful opportunity for the alien to raise a fear of return for eligibility for CAT protections; (3) move to reopen the proceedings if the alien demonstrates 'reasonable fear'; and (4) if the alien is not found to have demonstrated 'reasonable fear," provide meaningful opportunity, and a minimum of 15 days, for that alien to seek to move to reopen immigration proceedings to challenge the potential third-country removal." *Id.* at *55.

42. As a class member, Respondents are precluded from removing Mr. Hernandez to a third country unless and until they provide notice of the third country and provide an opportunity for Mr. Hernandez to submit an application for protection to the immigration court.

43. Respondents have failed to comply with this process with respect to Mr. Hernandez. As noted above, it may be that no third country has agreed to accept Mr. Hernandez—however, if that is the case, Respondents must concede that Mr. Hernandez is detained in violation of the Fifth Amendment as interpreted by the Supreme Court in *Zadvydas*—far beyond the removal period and without any likelihood of removing him in the reasonably foreseeable future.

44. On the other hand, if a third country has been identified by DHS but no notice provided to Mr. Hernandez, Respondents are in violation of his right to procedural due process as protected by the preliminary injunction issued in *D.V.D.*

45. Ultimately, Mr. Hernandez cannot be removed to a third country until Respondents comply with this process and he therefore requests this Court issue an order barring his removal from the United States to any country unless he is afforded sufficient process under the injunction and the Fifth Amendment.

PRAYER FOR RELIEF

Based on the foregoing, Mr. Hernandez requests that this Court:

a. Assume jurisdiction over the matter;

b. Issue an emergency order staying Petitioner's transfer outside the District of Maryland and his removal or deportation from the United States;

c. Declare that the continued immigration detention of Mr. Hernandez violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

d. Issue a writ of *habeas corpus* ordering Respondents to immediately release Mr. Hernandez from their custody;

e. Alternatively issue a writ of *habeas corpus* ordering Respondents to comply with the requirements of the *D.V.D.* preliminary injunction with respect to notice and opportunity to seek protection from removal to a third country;

f. Award Petitioner all costs incurred in maintaining this action, including attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412; and on any other basis justified by law; and

g. Grant any other and further relief this Court deems just and proper.

Respectfully submitted,

/s/ Joseph Moravec
Joseph Moravec, Esq.
MSB 2011090005
Blessinger Legal, PLLC
7389 Lee Highway, Suite 320
Falls Church, VA 20042
(703) 738-4248