

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

|                                                               |   |                             |
|---------------------------------------------------------------|---|-----------------------------|
| <b>Douglas Menjivar,</b>                                      | ) |                             |
|                                                               | ) | Case No. 4:25-cv-02730      |
| Petitioner,                                                   | ) |                             |
|                                                               | ) | <b>PETITION FOR WRIT OF</b> |
| v.                                                            | ) | <b>HABEAS CORPUS</b>        |
|                                                               | ) |                             |
| <b>Randall Tate</b> , Warden, Montgomery Processing Center;   | ) |                             |
| <b>Bret Bradford</b> , Director of Houston Field Office, U.S. | ) | <b>ORAL ARGUMENT</b>        |
| Immigration and Customs Enforcement; <b>Kristi Noem</b> ,     | ) | <b>REQUESTED</b>            |
| Secretary of the U.S. Department Homeland Security,           | ) |                             |
| and <b>Pam Bondi</b> , Attorney General of the United States, | ) |                             |
| in their official capacities,                                 | ) |                             |
|                                                               | ) |                             |
| Respondents.                                                  | ) |                             |

**INTRODUCTION**

1. Petitioner, Douglas Menjivar, files this petition for a writ of habeas corpus. He is detained by U.S. Immigration & Customs Enforcement at the Montgomery Processing Center in Conroe, Texas. Mr. Menjivar is a citizen of El Salvador. Mr. Menjivar has a hearing pending with the immigration court on his claim to withholding of removal under 8 C.F.R. §241.8(e). Mr. Menjivar has learned that his deportation to Mexico is imminent even though he has a statutory and regulatory right to a hearing on his claim to withholding of removal under 8 U.S.C. §1231(b)(3)(A). His removal from the United States would violate his right to seek protection. Accordingly, to vindicate Petitioner's statutory and regulatory rights, this Court should grant the instant petition for a writ of habeas corpus.
2. Petitioner asks this Court to find that removing Mr. Menjivar without a hearing on his withholding claim would violate his statutory and regulatory right to seek protection and

order the Respondents not to remove him from the United States until he has had a hearing and taken any necessary appeals.

### **JURISDICTION**

3. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
4. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
5. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

### **VENUE**

6. Venue is proper because Petitioner is detained at Montgomery Processing Center in Conroe, Montgomery County, Texas, which is within the jurisdiction of this District.

### **REQUIREMENTS OF 28 U.S.C. § 2243**

7. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).
8. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a

*swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

### **PARTIES**

9. Petitioner is a native of El Salvador who is currently detained by U.S. Immigration & Customs Enforcement at the Montgomery County Processing Center in Conroe, Texas. He is in the custody, and under the direct control, of Respondents and their agents.
10. Respondent Randall Tate is the Warden of Montgomery Processing Center and he has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement (ICE) to detain noncitizens and is a legal custodian of Petitioner. Respondent Tate is a legal custodian of Petitioner.
11. Respondent Bret Bradford is sued in his official capacity as the Director of the Houston Field Office of U.S. Immigration and Customs Enforcement. Respondent Bradford is a legal custodian of Petitioner and has authority to release him.
12. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner’s detention and custody. Respondent Noem is a legal custodian of Petitioner.
13. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive

Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

### **STATEMENT OF FACTS**

14. Petitioner is a 50-year-old citizen of El Salvador. He is married to United States citizen Monica Logan, who is undergoing treatment for advanced stage breast cancer. Mr. Menjivar has lived with Ms. Logan for the last 10 years.
15. Petitioner entered the United States for the first time in September 2004 and was apprehended upon entry. He was placed into removal proceedings and failed to appear for his hearing and the immigration judge ordered his deportation on March 1, 2005. Mr. Menjivar was unaware of his order of deportation.
16. Petitioner returned to El Salvador in December 2012 to care for his ailing father. Due to threats made against him by members of the Salvadoran police working with criminal gangs, Petitioner fled to the United States in May 2013, where he was apprehended and detained by U.S. immigration authorities, first at Polk County Detention Center and then at Joe Corley detention Center.
17. While at Joel Corley, Petitioner made a claim that, while in detention he was sexually assaulted by four Salvadoran nationals bearing Ms-13 tattoos. Petitioner stated that his effort at reporting these crimes was rebuffed.
18. Upon his apprehension at the U.S. border, Petitioner expressed a fear of harm if deported to El Salvador and was referred to an asylum officer for a "Reasonable Fear Interview." On August 26, 2013, the asylum office determined that Mr. Menjivar did have a reasonable fear of torture should he be returned to El Salvador and placed Mr. Menjivar into "withholding-only" proceedings.

19. On February 26, 2014, the Immigration Judge denied Mr. Menjivar's applications for withholding of removal and protection under the Convention Against Torture. Mr. Menjivar appealed that decision and the Board of Immigration Appeals affirmed on January 15, 2015.
20. On March 27, 2015, U.S. Immigration & Customs Enforcement released Mr. Menjivar from custody and placed him on an order of supervision. From May 6, 2015 until June 10, 2025, Mr. Menjivar reported faithfully to ICE offices under the terms of the order of supervision.
21. On January 29, 2024, Mr. Menjivar filed a motion to reopen his withholding-only proceedings before the Board of Immigration Appeals asserting ineffective assistance of counsel.
22. On September 19, 2024, the Board of Immigration Appeals granted Mr. Menjivar's motion to reopen stating that Mr. Menjivar "has established that he was prejudiced by the actions or inactions of his prior attorney and a reasonable probability that the result of the removal proceedings would have been different had the errors not occurred." The Board found that "based upon the constitutionally deficient performance by prior counsel, the applicant has he established that he was prejudiced by his prior counsel's actions."
23. Since the Board's decision in September 2024, Petitioner has been waiting for the immigration court to schedule a hearing on his claim to withholding.
24. On June 10, 2025, while reporting to ICE as he has regularly for the past ten years, Respondents took Petitioner into custody and have informed him that they will deport him either today (6/11) or tomorrow (6/12) despite the fact that he has not gotten the hearing promised by the Board's order reopening the case.

**LEGAL FRAMEWORK**

25. An individual who enters the United States after having been previously deported or departing the United States under an order of removal is subject to having the original order of removal reinstated. 8 U.S.C. §1231(a)(5). Such an individual does not have a right to be brought before an immigration judge for new removal proceedings.
26. However, an individual who expresses a fear of returning to their home country, the individual “shall be immediately referred to an asylum officer for an interview to determine whether the alien has a reasonable fear of persecution or torture.” 8 C.F.R. §241.8(e).
27. If an individual establishes in such an interview a reasonable possibility of persecution or torture, the DHS shall issue a Notice of Referral to the Immigration Judge for withholding of removal proceedings, where the applicant gets an opportunity to obtain the protection of withholding of removal or the Convention Against of Torture. 8 C.F.R. §208.2(c)(2).
28. The immigration judge in withholding-only proceedings must conduct a hearing and take testimony and receive evidence but may only consider those issues that relate to eligibility to withholding of removal or Convention Against Torture relief. 8 C.F.R. §208.2(c)(3)(i).
29. If the immigration judge rules against a grant of withholding of removal or protection under the Convention Against Torture, an individual is allowed only one motion to reopen which must be filed within 90 days.
30. The 90-day deadline can be equitably tolled due to extraordinary circumstances in the form of ineffective assistance of counsel. *See., e.g., Matter of Grijalva*, 21 I.&N.Dec.

472 (BIA 1996). Equitable tolling of motion deadlines requires the applicant to demonstrate: (1) diligent pursuit of rights; and (2) an extraordinary circumstance prevented him from timely filing the motion.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

#### **Violation of Fifth Amendment Right to Due Process**

The allegations in the above paragraphs are realleged and incorporated herein.

31. The Board of Immigration Appeals determined that his proceedings were constitutionally deficient due to ineffective assistance of counsel and reopened Petitioner's withholding only proceedings for a new hearing. Failure to allow Respondent to have a hearing that complies with the 5<sup>th</sup> Amendment's guarantee of due process violates Petitioner's rights.
32. For these reasons, Petitioner's imminent removal violates the Due Process Clause of the Fifth Amendment.

#### **COUNT TWO**

#### **Violation of 8 U.S.C. §1231(b)(3) and Implementing Regulations**

The allegations in the above paragraphs are realleged and incorporated herein.

33. Having passed a reasonable fear interview, petitioner is entitled to a hearing on his withholding of removal/ Tortue Convention Claims before he can be removed from the U.S.
34. For these reasons, Petitioner's removal 8 U.S.C. §1231(b)(3) and 8 C.F.R. §208.2(c)(2).

**PRAYER FOR RELIEF**

Wherefore, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
3. Declare that Petitioner's removal violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1231(b)(3) and 8 C.F.R. §208.2(c)(2);
4. Issue a Writ of Habeas Corpus ordering Respondents to cease efforts to remove the Petitioner until the Petitioner can have a full and fair hearing before the immigration judge and exhaust any appeals.
5. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
6. Grant any further relief this Court deems just and proper.

Dated: June 11, 2025

Respectfully submitted,

/s/ Brian Scott Green

Brian Scott Green  
Colorado Bar ID # 560876  
Law Office of Brian Green  
9609 S University Boulevard  
#630084  
Highlands Ranch, CO 80130  
Tel: (443) 799-4225  
Email: briangreen@greenUSimmigration.com

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, Douglas Menjivar, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 11th day of June, 2025.

s/Brian Scott Green

Brian Scott Green

Law Office of Brian Green

9609 S University Boulevard, #630084

Littleton, CO 80130

Phone (443) 799-4225

BrianGreen@greenUSimmigration.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
  
Douglas Menjivar  
  
**(b)** County of Residence of First Listed Plaintiff Montgomery County  
(EXCEPT IN U.S. PLAINTIFF CASES)  
  
**(c)** Attorneys (Firm Name, Address, and Telephone Number)  
  
Brian S. Green, Law Office of Brian Green, 9609 S Univ. Blvd., #630084, Littleton, CO 80130; (443) 799-4225

**DEFENDANTS**  
  
Randall Tate, Bret Bradford, Kristi Noem, & Pam Bondi  
  
County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)  
  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.  
  
Attorneys (If Known)  
  
U.S. Attorney for the Southern District of Texas  
1000 Louisiana, Suite 2300, Houston, TX 77002

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)  
  
☐ 1 U.S. Government Plaintiff  
  
☒ 2 U.S. Government Defendant  
  
☐ 3 Federal Question (U.S. Government Not a Party)  
  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)  

|                                         | PTF                        | DEF                        |                                                               | PTF                        | DEF                        |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation                                                | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)  

| CONTRACT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | TORTS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | FORFEITURE/PENALTY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | BANKRUPTCY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | OTHER STATUTES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice<br><br><b>PERSONAL INJURY</b><br><input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other<br><br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Management Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Employee Retirement Income Security Act<br><br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><br><b>INTELLECTUAL PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application<br><input type="checkbox"/> 840 Trademark<br><input type="checkbox"/> 880 Defend Trade Secrets Act of 2016<br><br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395f)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><br><b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)<br><input type="checkbox"/> 485 Telephone Consumer Protection Act<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities Exchange<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes |

**V. ORIGIN** (Place an "X" in One Box Only)  

|                                                           |                                                     |                                                          |                                                   |                                                                        |                                                                |                                                                   |
|-----------------------------------------------------------|-----------------------------------------------------|----------------------------------------------------------|---------------------------------------------------|------------------------------------------------------------------------|----------------------------------------------------------------|-------------------------------------------------------------------|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
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**VI. CAUSE OF ACTION**  

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. Section 1331 (federal question) and 28 U.S.C. Section 2241 (habeas corpus) and 28 U.S.C. Section 2243

Brief description of cause:  
Petition for writ of habeas corpus challenging the illegal detention of a non-citizen.

**VII. REQUESTED IN COMPLAINT:**  
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.  
**DEMAND \$** \_\_\_\_\_  
**JURY DEMAND:** ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY** (See instructions):  
JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

**DATE**  
6/11/2025  
**SIGNATURE OF ATTORNEY OF RECORD**  
s/Brian Scott Green

| RECEIPT # | AMOUNT | APPLYING IFP | JUDGE | MAG. JUDGE |
|-----------|--------|--------------|-------|------------|
|-----------|--------|--------------|-------|------------|