

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

MANUEL ANTONIO CASTRO ZUMBA

Petitioner,

v.

E.L. TATUM, JR., Warden of the
Federal Correctional Institute, Berlin;
PATRICIA H. HYDE, Acting Field Office
Director of the Immigration and Customs
Enforcement, Enforcement and Removal
Operations, Boston Field Office

Respondents.

Case Number:

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

INTRODUCTION

Petitioner Manuel Antonio Castro Zumba is a noncitizen from Ecuador who has been detained by Respondents under 8 U.S.C. § 1231 since March 1, 2025. Petitioner was arrested by Respondents during an immigration raid because he had a prior removal order. Upon the arrest, Respondents reinstated his prior removal order pursuant to 8 U.S.C. § 1231(a)(5). Despite this reinstatement of a prior removal order, Respondents have no authority to remove Petitioner from the United States.

On June 10, 2025, Petitioner received a T (trafficking victim) nonimmigrant *bona fide determination* from the United States Citizenship and Immigration Services (USCIS), which has automatically stayed the execution of his removal order. *See* 8 C.F.R. § 214.205(g)(1) (“If USCIS determines that an application is bona fide it automatically stays the execution of any final order

of removal, deportation, or exclusion.”); Ex. 1. In light of the stay of removal, the detention’s justification of “preventing flight . . . is weak or nonexistent [since] removal seems a remote possibility at best.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Nor is the justification of “protecting the community” present, as Petitioner has no violent criminal record other than unlicensed operation of a vehicle and unlawful entries. *Id.*; Ex. 4 at 18.

First, this Court should find that Petitioner’s detention is impermissible under *Zadvydas*. “[W]here detention’s goal is no longer practically attainable, detention no longer ‘bears [a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* (quoting *Jackson v. Indiana*, 406 U.S. 715 (1972)).

Second, in the alternative, the Court should hold that Petitioner is entitled to a bond hearing before an Immigration Judge (IJ) under the Due Process Clause. *See, e.g., G.P. v. Garland*, 2024 DNH 001, 2024 U.S. Dist. LEXIS 14841, at *13 (D.N.H. Jan. 29, 2024) (“Noncitizens who have been detained during lengthy withholding-only proceedings [under 8 U.S.C. § 1231(a)(6)] retain the right to challenge their detention on constitutional grounds even though their proceedings are ongoing.”), *affirmed on other grounds in G.P. v. Garland*, 130 F.4th 898 (1st Cir. 2024).

Third, this Court should release Petitioner on bail pending the Court’s disposition of the merits of the petition. *See Gomes v. U.S. Dep’t of Homeland Sec.*, 460 F. Supp. 3d 132, 144 (D.N.H. 2020) (“[A] district court entertaining a petition for habeas corpus has inherent power to release the petitioner pending determination of the merits.”) (quoting *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972) (per curiam)).

Petitioner further alleges as follows:

PARTIES

1. Petitioner Manuel Antonio Castro Zumba is a noncitizen from Ecuador who resides in Medway, Massachusetts, and is currently detained by Respondents at Federal Correctional Institution (FCI) Berlin in Berlin, New Hampshire.

2. Respondent E.L. Tatum, Jr. is the warden of FCI Berlin, and he is being sued in his official capacity as the warden. He is Petitioner's immediate custodian.

3. Respondent Patricia Hyde is the Acting Boston Field Office Director, U.S. Immigration and Customs Enforcement, and she is being sued in her official capacity. She is Petitioner's legal custodian.

JURISDICTION AND VENUE

4. The Court has jurisdiction under 28 U.S.C. § 1331, 2241 (habeas corpus) and Article I, Section 9, Clause 2 of the U.S. Constitution ("Suspension Clause").

5. Venue is proper in the District of New Hampshire because Petitioner is currently detained at FCI Berlin in Berlin, New Hampshire, which is in the territorial jurisdiction of this Court. 28 U.S.C. § 1391; *Vasquez v. Reno*, 233 F. 3d 688, 696 (1st Cir. 2000)..

FACTS

6. Petitioner came to the United States for the first time in 2000 through Arizona.

7. Petitioner was granted voluntary departure to Ecuador in or about 2008.

8. On April 8, 2010, Petitioner received an order of expedited removal at the southern border when he attempted to reenter the United States. Ex. 5 at 33.

9. On May 7, 2010, Petitioner was removed to Ecuador. Ex. 5 at 32.

10. In the same year, Petitioner reentered the United States without lawful entry.

11. Petitioner has not left the United States since 2010.

12. During his stay in the United States, Petitioner survived a severe form of human trafficking. Ex. 4 at 47-53.

13. He reported the crime to law enforcement. Ex. 4 at 52.

14. On March 6, 2023, Petitioner filed a Form I-914, Application for T Nonimmigrant Status. Petitioner concurrently filed a Form I-192, Application for Advance Permission to Enter As Nonimmigrant, to excuse his inadmissibility as he had a prior removal order that has been reinstated. Ex. 2 & Ex. 3.

15. Petitioner is the principal applicant for his spouse and child, who filed applications for nonimmigrant status. Ex. 4.

16. On March 1, 2025, Respondents arrested Petitioner during an immigration raid.

17. On the same day, Respondents reinstated Petitioner's prior removal order. Ex. 5 at 32.

18. Because Petitioner expressed his fear of returning to Ecuador, Petitioner received a reasonable fear interview in May 2025. Ex. 5.

19. The asylum officer did not find that Petitioner had a reasonable fear of persecution or torture. Ex. 5.

20. On June 25, 2025, an Immigration Judge affirmed the asylum officer's negative reasonable fear of persecution determination. Ex. 6. However, this determination does not affect Petitioner's pending T visa application as they are independent from each other.

21. Because USCIS had not acted on Petitioner's T visa application, Petitioner filed a mandamus and Administrative Procedure Act (APA) lawsuit against USCIS in the District Court for the District of Massachusetts on April 16, 2025. *See Castro Zumba v. Scott*, 1:25-cv-10989-JFK (D. Mass. Apr. 16, 2025). This lawsuit is pending.

22. After filing the lawsuit, USCIS issued a positive *bona fide determination* on his T visa application on June 10, 2025.

23. In light of this positive bona fide determination, Petitioner's removal has been stayed pursuant to 8 C.F.R. § 214.205(g)(1).

24. Petitioner's confinement has separated him from his family and caused mental anguish.

CLAIMS FOR RELIEF

COUNT 1
8 U.S.C. § 1231

25. The foregoing allegations are realleged and incorporated herein.

26. Petitioner's continued detention is impermissible under 8 U.S.C. § 1231, as interpreted in *Zadvydas*, in light of the stay of removal.

COUNT 2
U.S. CONSTITUTION - FIFTH AMENDMENT

27. The foregoing allegations are realleged and incorporated herein.

28. The Due Process Clause of the Fifth Amendment to the United States Constitution provides that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend V.

29. Petitioner's continued detention without a bond hearing before a neutral decisionmaker violates the Due Process Clause of the Constitution. *See, e.g., G.P. v. Garland*, 2024 DNH 001, 2024 U.S. Dist. LEXIS 14841, at *13 (D.N.H. Jan. 29, 2024).

COUNT 3
U.S. CONSTITUTION - FIFTH AMENDMENT

30. The foregoing allegations are realleged and incorporated herein.

31. This Court has “inherent power to release the petitioner pending determination of the merits.” *Gomes v. US Dep’t of Homeland Sec.*, 460 F. Supp. 3d 132, 144 (D.N.H. 2020).

32. This Court “may grant bail to a habeas petitioner if: (1) the petitioner has a clear case on the law and facts, or (2) exceptional circumstances are present and the petitioner demonstrates a substantial claim of constitutional error.” *Id.*

33. First, “Petitioner has raised substantial claims as to whether [h]e has a protectable interest in having h[is] application for T Nonimmigrant Status adjudicated.” *S.N.C. v. Sessions*, 2018 U.S. Dist. LEXIS 199761, at *18 (S.D.N.Y. Nov. 26, 2018). Indeed, Petitioner already received a *bona fide determination* from USCIS.

34. Second, as a survivor of human trafficking, “Petitioner’s case also presents extraordinary circumstances that require granting bail for any remedy related to the adjudication of h[is] visa applications to be effective.” *Id.* at *18-19.

PRAYER FOR RELIEF

Petitioner asks that this Court grant the following relief:

- (1). Assume jurisdiction over this matter;
- (2). Issue a Writ of Habeas Corpus directing Respondents to immediately release Petitioner from custody;
- (3). In the alternative, issue a Writ of Habeas Corpus ordering Respondents to provide a bond hearing before an Immigration Judge at which Respondents bear the burden to prove that Petitioner is a danger to the community and a risk of flight under clear and convincing evidence;
- (4). Grant bail to Petitioner pending determination of the merits of this habeas corpus petition; and
- (5). Order any further relief this Court deems just and proper.

Respectfully submitted this 27th day of June 2025.

Manuel Antonio Castro Zumba,

By and through his Counsel,

/s/ SangYeob Kim

Gilles R. Bissonnette (NH Bar: 265393)

SangYeob Kim (NH Bar: 266657)

Chelsea Eddy (NH Bar: 276248)

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