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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

Allan Michel Diaz-Cruz,

Plaintiff,

-against-

KRISTI NOEM, in her official capacity as
Acting Secretary of Homeland Security;
PETE R. FLORES, in his official capacity as
Commissioner of the U.S. Customs and
Border Protection; and RICARDO WONG, in
his official capacity as Field Office Director
of the ICE ERO Chicago, C. Carter in his
official capacity as WARDEN of FCI
Leavenworth,

Defendants.

25 CV 3162-JWL

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Allan Diaz-Cruz (A# ) a citizen of Honduras with a prior removal order, has been in U.S. Immigration and Customs Enforcement (“ICE”) custody since May 2, 2024, when ICE revoked his release citing a “significant likelihood of removal.” On July 3, 2024, ICE served him with a custody review notice; during that process, he expressed a fear of return and was placed in withholding-only proceedings.

2. On December 17, 2024, an Immigration Judge granted him withholding of removal under INA § 241(b)(3), finding it more likely than not that his life or freedom would be threatened

in Honduras. No appeal was filed, making the order final. Despite the legal bar to his removal, ICE has continued to detain him, stating it would seek travel documents from Honduras, a process allegedly taking up to 90 days.

3. Petitioner's detention—now prolonged with no foreseeable end—is unconstitutional and unlawful. His removal is not reasonably foreseeable, and absent this Court's intervention, he will remain indefinitely detained in violation of his statutory, constitutional, and regulatory rights.

JURISDICTION

4. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

5. 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). Jurisdiction is proper because Petitioner challenges the legality of his ongoing immigration detention, which has become unreasonably prolonged in violation of the Constitution, federal statutes, and regulations.

6. 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

7. Venue is proper because Petitioner is detained at the Leavenworth Detention Center in Leavenworth, Kansas, which is within the jurisdiction of this District.

8. Venue is also proper because Respondents are officers, employees, or agencies of the United States, and Warden of FCI Leavenworth, resides in this District. In addition, a

substantial part of the events or omissions giving rise to this action occurred in this District, and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

9. 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). Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention.

PARTIES

10. Petitioner Allan Diaz-Cruz is a citizen and national of Honduras, who is currently detained at the FCI Leavenworth. He is in the custody and under the direct control of Respondents and their agents.

11. Respondent C. Carter is the Warden of the FCI Leavenworth, where Petitioner is currently detained. Respondent Carter has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner.

12. Respondent Ricardo Wong is sued in his official capacity as the Field Office Director of the ICE Enforcement and Removal Operations (ERO) Chicago Field Office. Respondent Wong is a legal custodian of Petitioner and has authority to release him from ICE custody.

13. Respondent Pete R. Flores is sued in his official capacity as the Commissioner of U.S. Customs and Border Protection (CBP). In this capacity, Respondent Flores is responsible for

the administration and enforcement of the nation's immigration laws at and between ports of entry. Respondent Flores is a legal custodian of Petitioner.

14. 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.

STATEMENT OF FACTS

1. Petitioner Allan Diaz-Cruz, A# [REDACTED] is a citizen of Honduras with a prior removal order. He has been in U.S. Immigration and Customs Enforcement ("ICE") custody since May 2, 2024, when he was taken into custody at his scheduled ICE check-in. On that date, ICE issued a Notice of Revocation of Release, citing a "significant likelihood of removal" and stating that Petitioner would remain detained.

2. On July 3, 2024, ICE Officer Yactayo served Petitioner with a custody review notice. During the review process, Petitioner expressed a fear of return to Honduras and was placed in withholding-of-removal-only proceedings with a docket date of July 3, 2024. Petitioner also received a "Notice to Alien of File Custody Review" stating that his custody would be reviewed on July 31, 2024. On November 19, 2024, he was interviewed at his current detention location to determine whether he would be recommended for release.

3. On December 17, 2024, an Immigration Judge granted Petitioner withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, finding that Petitioner's life or freedom would be threatened if returned to Honduras. No appeal was filed, and the decision became administratively final. Petitioner remains in ICE custody to date.

4. On the date of his grant of withholding, Petitioner inquired with ICE Officer Peralta Vargas about his release date. ICE responded that it would attempt to secure travel documents from Honduras and that the process could take up to 90 days.

5. Since the withholding decision on December 17, 2024, Petitioner has continued to be held in ICE custody, with no clear indication from Respondents as to when or if he will be released.

6. His continued detention is unconstitutional and unlawful because it has become prolonged without a foreseeable end in sight, and his removal to Honduras is not reasonably foreseeable given the substantial, well-documented likelihood that he will be tortured or killed upon return. Accordingly, to vindicate Petitioner's statutory, constitutional, and regulatory rights, this Court should grant the instant petition for a writ of habeas corpus and order his immediate release under appropriate conditions of supervision.

7. Absent an order from this Court, Petitioner will remain in indefinite and unlawful immigration detention, deprived of his liberty without a foreseeable removal date, and subjected to continued harm in violation of his statutory, constitutional, and regulatory rights.

LEGAL FRAMEWORK

8. Federal law authorizes the government to detain certain noncitizens during removal proceedings or after the entry of a final order of removal. See 8 U.S.C. §§ 1226, 1231. Such detention, however, is subject to constitutional limits.

9. The Supreme Court has held that immigration detention is civil in nature and must be reasonably related to its purpose—ensuring the noncitizen's appearance at removal proceedings and protecting the community. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention that is

prolonged, indefinite, or no longer reasonably related to its purpose violates the Due Process Clause of the Fifth Amendment. *Zadvydas*, 533 U.S. at 699–701.

10. Under *Zadvydas*, when removal is not reasonably foreseeable, detention beyond six (6) months is presumptively unreasonable and unconstitutional absent a showing by the government that removal is significantly likely in the reasonably foreseeable future. *Id.* at 701.

11. The writ of habeas corpus under 28 U.S.C. § 2241 provides a vehicle for noncitizens to challenge the legality of their detention and to secure release where detention is unlawful or unconstitutional. The Suspension Clause of Article I, § 9, cl. 2 of the U.S. Constitution preserves the writ as a check against unlawful executive detention.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

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

13. Petitioner’s ongoing detention—now approaching eight months since he was granted withholding of removal—is arbitrary, excessive, and no longer reasonably related to its lawful purpose of securing removal.

14. Petitioner’s removal to Honduras is not reasonably foreseeable given the substantial risk of torture or death he faces there, and the absence of any concrete removal timeline.

15. Prolonged immigration detention without a bond hearing or other meaningful process to determine whether continued confinement is justified violates the Due Process Clause of the Fifth Amendment to the United States Constitution. See *Zadvydas v. Davis*, 533 U.S. 678 (2001).

16. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

Violation of 8 U.S.C. § 1231(a)(6)

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

18. Under 8 U.S.C. § 1231(a)(6) and its implementing regulations, the government may detain a noncitizen after a final order of removal only for a period reasonably necessary to effectuate removal. The Supreme Court has construed this statute to prohibit detention beyond six months where removal is not reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001).

19. Petitioner has been detained well beyond the six-month presumptively reasonable period, and there is no significant likelihood of removal in the reasonably foreseeable future. ICE has taken no concrete steps to effectuate his removal, and substantial, well-documented barriers—including credible threats to Petitioner's life and the likelihood of torture in Honduras—make such removal impracticable.

20. By continuing to detain Petitioner without demonstrating that his removal is significantly likely in the reasonably foreseeable future, Respondents are violating 8 U.S.C. § 1231(a)(6) and the implementing regulations governing post-order custody reviews.

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 detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1231(a)(6);
4. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately under appropriate conditions of supervision; and
5. Grant any further relief this Court deems just and proper.

Respectfully submitted,


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

I represent Petitioner, Allan Diaz-Cruz, 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 13 day of August, 2025.

/s/ Maya King
Maya King, Esq.
Attorney for Petitioner