

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

ARTURO RODRIGUEZ MARTINEZ,	)	
	)	
Petitioner,	)	Civil Action No. 1:25-cv-00919
	)	
v.	)	
	)	
PAM BONDI,	)	Hon.
Attorney General of the	)	
United States of America,	)	
	)	
KRISTI NOEM,	)	
Secretary of the Department of	)	Alien Registration # 
Homeland Security, (DHS),	)	
	)	
TODD LYONS,	)	
Acting Director,	)	
United States Immigration and	)	
Customs Enforcement (ICE), and,	)	
	)	
Director,	)	
Batavia Federal Detention Facility,	)	
	)	
Respondents.	)	
	)	

**PETITIONER'S BRIEF IN SUPPORT OF HIS
REQUEST FOR AN ORDER TO SHOW CAUSE**

INTRODUCTION

Petitioner is a 48-year-old, native and citizen of Mexico who is detained at the Batavia Detention Facility in New York and upon information and belief is being unlawfully detained as he has an open removal case in New Jersey and no materially changed circumstances that would warrant his detention and removal outside of this jurisdiction. He challenges the legality of his detention and requests issuance of a Order to Show Cause ("OSC") barring his transfer outside of the Western District of New York while this habeas petition is pending.

FACTS OF THE CASE

Petitioner, Arturo Rodriguez Martinez is a 48-year-old native and citizen of Mexico who entered the United States without inspection on or around May 16th, 1999, and has not left. He is married and has three US citizen children who reside with him in Hammonton, New Jersey.

A Notice to Appear in Removal Proceedings was issued to the Petitioner on March 26, 2025. See Exhibit 1. In Removal Proceedings, the Petitioner applied for cancellation of Removal proceedings based on exceptional and extremely unusual hardship to his now 12-year-old US citizen daughter, V.R.C., who is diagnosed with a severe form of autism, ADHD, and anxiety disorder that requires intervention by medical professionals and educators. See Exhibit 2.

The Petitioner is currently scheduled for his Master Calendar Hearing before an Immigration Judge in Newark, New Jersey on October 4th, 2028. See Exhibit 3. On the week of September 15th, the Petitioner who has a valid work permit and NJ Driver's License, was sent on a work trip to Buffalo New York. Sometime on the weekend of September 19th, he and his work colleagues were shopping for items at a Walmart in Buffalo. They were approached by a Customs and Border Patrol Agent, who arrested Mr. Rodriguez Martinez and his two other colleagues. He was then transferred to the Batavia Detention Facility.

On Tuesday, September 23rd, 2025, Petitioner, through counsel, informed the Respondent, ICE, that the Respondent's removal case was open, that there had been no criminal contacts since his removal case began on March 23, 2025, that he was eligible for release under INA 236(a); 8 USC 1226, and that his detention was unlawful but ICE

has continued to detain the Petitioner hundreds of miles away from his family in Hammonton, New Jersey.

The Petitioner has no criminal record. The Petitioner does not have a final order of removal. The Petitioner's removal proceedings are pending before the Newark Immigration Court. The Petitioner has no warrants or negative criminal history that would change circumstances to warrant his arrest and removal. Petitioner has exhausted all administrative remedies as the Board of Immigration Appeals has mandated detention for any individual who has entered the United States without permission. *See Matter of Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025). He has notified ICE that his case is open in Newark, New Jersey and that his detention is premature and unlawful but Respondents nonetheless seek to continue to detain him and remove him from the U.S. Petitioner's removal from the United States cannot be effectuated in the reasonably foreseeable future. Absent judicial review of his custody claim, Petitioner will suffer irreparable injury by being deprived of his physical liberty. He seeks the only avenue of judicial review available to him, habeas review.

LEGAL ARGUMENT

I. THIS COURT HAS JURISDICTION OVER THIS HABEAS PETITION AND SHOULD ISSUE AN ORDER TO SHOW CAUSE

The Writ of Habeas Corpus has a pre-eminent role in our constitutional system and "is the fundamental instrument for safeguarding individual freedom against arbitrary or lawless state action." *Harris v. Nelson*, 294 U.S. 286, 290 (1969); U.S. Const. Art. I §9 cl2. Recently, in *INS v. St. Cyr.*, 533 U.S. 289 (2001), the United States Supreme Court reaffirmed that aliens detained by the INS can petition for writs of habeas corpus under 28 U.S.C. §2241. The Court held that "[a]t its historic core, the writ of habeas

corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been the strongest.” Id. at 301. Similarly, in the Supreme Court case of Zadvydas v. Davis, 533 U.S. 678 (2001), the Court held that it had jurisdiction to review detention pursuant to INA Section 241, 8 U.S.C Section 1231(a)(6); See Ngo v. INS, 192 F.3d 390, 393 (3d Cir. 1999) (jurisdiction over habeas custody review of an excludable alien). Thus, in the instant case habeas review should unquestionably be available.

Specifically, this Court has jurisdiction because it has met two requirements. First, a habeas petition has been filed. And second, the Petitioner is physically in this district.

II. PETITIONER’S DETENTION IS UNLAWFUL AND HE IS LIKELY TO PREVAIL ON THE MERITS

To obtain restraints in federal court, an alien must show four things: a) likelihood of success, b) harm, c) equities, and d) public interest. See Winter v. Nat. Res. Def. Council, Inc., 555 US 7, 20 (2008). First, the Petitioner is likely to prevail on the merits because his detention is in no way related to a possibility of removal in the foreseeable future. The Respondents cannot effectuate Petitioner’s removal in the reasonably foreseeable future since he is in removal proceedings before the Newark Immigration Court and material circumstances regarding his immigration status have not changed since his case was docketed by the Immigration Court. Respondents will likely state that they have discretion to detain him. However, the power to detain is only correlated to the power to remove. Petitioner is not challenging the fact that he is in removal proceedings. He is challenging his detention under the instant circumstances because his detention is in no way correlated with his removal since his removal proceedings have not concluded and he is not subject to a final order.

The US Supreme Court has consistently stated that the lawfulness of ICE detention is related to objective of detention (to remove the alien) and detention is unlawful if it is arbitrary or used to simply terrorize the population or scare the Petitioner into giving up their right to seek relief in removal proceedings. In Zadvydas v. Davis, 533 U.S. 533 U.S. 678, 682 (2001), the United States Supreme Court interpreted the post-removal mandatory detention statute and addressed the issue of the continued detention of an alien who had been ordered removed and even then has stated that detention is only lawful if related to the government's efforts to actually remove the alien. Concluding that "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem," the Court in Zadvydas read into the statute a provision to limit a deportable alien's "post-removal period detention to a period reasonably necessary to bring about the alien's removal from the United States." Id. at 689. Borrowing from the previous statute, the Court recognized six-months as a presumptively reasonable period of post-removal-period detention. Id. at 699.

As mentioned below, there is no foreseeable possibility in the immediate future to effectuating Mr. Rodriguez Martinez' removal from the U.S. because he does not have a final order of removal and should not have been detained absent criminal or immigration violations of change in circumstances. Thus, without reasonable proof that Petitioner is actually subject to a final order of removal or has triggered a specific detention provision since the Immigration Court docketed his case in order to give him the right to seek relief, he should be released and that his detention is unconstitutional. In any case, his transfer outside of the Western District of New York should be stayed.

III. THE PETITIONER WILL SUFFER IRREPERABLE HARM IF THIS ORDER TO SHOW CAUSE IS NOT ISSUED

The Petitioner will suffer harm and the public interest is protected by issuing the requested order. If the Petitioner's continued detention or potential transfer outside of the Western District of New York is not stayed, this man, who is the major provider for his family including his 12-year-old autistic daughter, will suffer irreparable harm. His case was docketed by the Immigration Court in order to allow him to present his cancellation of removal case under the circumstances of his U.S. citizen daughter's exceptional hardship. He has an open removal case. He has no warrants. He has not engaged in any illegal activity. Nonetheless, last weekend, CBP agents arrested him for speaking Spanish in a Walmart in Buffalo New York. The Petitioner showed the arresting officers his work permit and valid New Jersey Driver's License, informed them that he was in removal proceedings in New Jersey. Absent any changed circumstances, his detention with an eye to removing him is unlawful. His daughter and the rest of his US citizen family, which consists of two adult US citizen children and grandchildren, are suffering on behalf of his continued and unwarranted detention.

Finally, the public interest is protected in not allowing ICE to arbitrarily detain individuals who have not committed any offenses and are waiting for their upcoming court hearing per Immigration Court order. The proper functioning of an immigration court system without allowing aliens to be arbitrarily ripped from their families have a ripple effect affecting not only his employer, his wife and children, and the rest of his community. It has no rhyme or reason and the only objective is to sow fear in the community.

CONCLUSION

For the foregoing reasons, this Court should grant the instant writ and immediately order Petitioner released on any reasonable conditions as the DHS may set, or issue an Order to Show Cause staying his transfer out of the Western District of New York and setting a three-day deadline for a response from the Respondents.

Dated: September 23, 2025

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