UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

GS,

Petitioner,

v.

JOHN DOE, Warden, Orange County Jail, Goshen, New York;
KRISTI NOEM, Secretary, Department of Homeland Security (DHS);
JUDITH ALMODOVAR, Acting Director, New York City Field Office, US Immigration and Customs Enforcement;
PAMELA BONDI, US Attorney General;
Respondents.

Case No. 1:25-cv-08150-MKV

CORRECTED FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner GS hereby seeks a writ of habeas corpus releasing him immediately from detention, or in the alternative, directing that he be provided with a bond hearing before an Immigration Judge forthwith.[1]

2. Petitioner is a native and citizen of Honduras, who has been living in the United States for nearly six years, since December 2, 2019. An Immigration Judge (IJ) at the Immigration Court in New York found him inadmissible to the US under Section 212 of the Immigration and Nationality Act, 8 U.S.C. § 1182, and ordered him removed *in absentia* in November 2023, after he failed to appear for a scheduled court hearing. That decision is currently under appeal at the Board of Immigration Appeals, on the

[1] This petition corrects a typo in the caption and first paragraph of the First Amended Petition, which referred to Petitioner as "CS" rather than "GS", and in Paragraph 26 which referred to him as Plaintiff rather than Petitioner. Otherwise there are no changes to the First Amended Petition.

basis that he did not receive notice of the hearing. An administrative stay of removal is in place while that appeal is pending.

3. Petitioner was detained by Respondent ICE on July 18, 2025, and he is detained at the Orange County Jail in Goshen, Orange County, New York. However, because of the stay of removal, he cannot be deported.

4. Pursuant to the Immigration and Nationality Act at 8 U.S.C. § 1231(A)(1), Respondents are allowed to detain a non-citizen for a period of ninety days after the entry of a final order of removal, which can be extended in the case of certain non-citizens, including those who have been found inadmissible to the US, 8 U.S.C. § 1231(a)(6). However, those non-citizens are entitled to a "post-order custody review" prior to the ninety-day period, at which ICE reviews eligibility for release, taking into account whether or not they pose a flight risk or a danger to the community. If they are neither (unless removal is imminent), they should be released on supervision.

5. However, even if they are not released on supervision after a post-order custody review, continued detention is subject to constitutional limitations, and after six months, if the person's removal is not "reasonably foreseeable", they are entitled to release on supervision.

6. On or about October 14, 2025, after a putative post-order custody review which did not comply with any of the procedural requirements, Respondents informed Petitioner that they would not release him from custody on the basis that he is a danger to the community, based solely on his immigration history. However, Petitioner has never been arrested or had any contact with law enforcement (other than in connection with his detention by Respondents), and there is no allegation that he has committed or even

attempted to commit a crime. Respondents' decision to continue his detention thus lacked any basis.

7. Furthermore, because he has a stay of removal from the Board of Immigration Appeals, Petitioner's removal is not "imminent" and in fact there is no likelihood of his removal in the "reasonably foreseeable future".

8. Accordingly, Petitioner asks that the Court order Respondents to release him from custody, subject to appropriate conditions of supervision, as required by 8 U.S.C. § 1231(a)(3).

JURISDICTION

9. This action arises under the U.S. Constitution and the Immigration and Nationality Act, at 8 U.S.C. §1101 et seq. This Court has habeas corpus jurisdiction pursuant to 5 U.S.C. §703, 28 U.S.C. §2241 et seq., and Article I, § 9, Clause 2 of the United States Constitution (suspension clause).

10. Federal courts also have federal question jurisdiction, through the APA, to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus"). The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702.

11. Petitioner is in custody under color of the authority of the U.S., in violation of the constitution and laws of the U.S.

VENUE

12. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(e), because Petitioner is physically detained in this District and Respondents' principal place of business is in this district.

PARTIES

13. Petitioner GS is a citizen of Honduras who has been living in the US since 2019, and in the custody of Respondents since July 2025. He is currently detained at the Orange County Jail in Goshen, NY.
14. Respondent John Doe is the warden of the Orange County Jail in Goshen New York, where Petitioner is detained. He is Petitioner's immediate custodian.
15. Respondent Francis J. Russo is Director of the New York City Immigration and Customs Enforcement (ICE) Field Office, and is legally responsible for pursuing Petitioner's detention and removal; and as such is Petitioner's legal custodian.
16. Respondent Kristi Noem is Secretary of the Department of Homeland Security of the United States, an agency of the US government, responsible for administration and enforcement of the nations' immigration laws, including the apprehension and detention of non-citizens, including Petitioner.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. Petitioner has no administrative remedies to exhaust. There is no administrative appeal from a decision to keep a non-citizen in detention after expiration of the 90-day removal period.

18. Further, there are no exhaustion requirements with regard to the claim of unlawful detention, and exhaustion is only required when specifically mandated by Congress.

RELEVANT LAW

19. 8 U.S.C. § 1231(a)(2) mandates the detention of a non-citizen during a 90-day "removal period", which begins on the latest of: (i) the date the order of removal becomes administratively final; (ii) if the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order; or (iii) if the alien is detained or confined (except under the removal process), the date the alien is released from detention or confinement. 8 U.S.C. § 1231(a)(1)(B).

20. A non-citizen such as Petitioner who has been found inadmissible under 8 U.S.C. § 1182 and who has not been removed within the initial 90-day removal period *may* be detained beyond it, 8 U.S.C. § 1231(a)(6), subject to a custody review by ICE.

21. Comprehensive regulations governing such custody review are at 8 C.F.R. § 241.4. These regulations set forth the timing of the review, who conducts it, what notice is required, the factors to be considered, and subsequent reviews if the non-citizen is not released.

22. The initial review is conducted by the director of the ICE Detention and Removal Field Office "prior to the expiration of the removal period", and consists of "review of the alien's records and any written information submitted" on his behalf, 8 C.F.R § 241.4(h)(1). The non-citizen is entitled to advance notice of this review, and an opportunity for written submissions as well as assistance by "a person of his choice", 8 C.F.R § 241.4(h)(2). The regulations anticipate an opportunity for the non-citizen to "demonstrate[s] to the satisfaction of the Attorney General or her designee that [ ]

release will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending such alien's removal from the United States." The regulations repeat this standard elsewhere, stating that the review shall address whether or not the person is a flight risk or a danger to the community, 8 C.F.R. § 241.4(e), (f), and if "immediate removal… is not practicable", §§ 241.4(e)(1), 241.4(g)(3)(k)(1)(i). Service of the custody decision shall be on the non-citizen, as well as his legal representative ((§ 241.4(d)(2), (3)).

23. Even if release after this custody review is denied, the ongoing detention is subject to constitutional constraints, and becomes presumptively unreasonable after six months, unless the government shows a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001).

24. A removal order entered *in absentia* becomes final "immediately upon entry of such order." 8 C.F.R. § 1241.1(e), which in this case was in November 2023. 8 U.S.C. § 1231(a)(1)(C) tolls the removal period if an alien "conspires or acts to prevent the alien's removal." However, this tolling of the removal period requires some affirmative action on the part of the non-citizen to prevent his or her removal, by a "bad faith failure to cooperate." *Farez-Espinoza v. Chertoff,* 600 F. Supp. 2d 488, 501–02 (S.D.N.Y. 2009) The mere fact of non-departure is insufficient to constitute action to precent removal.

25. If the removal order is judicially reviewed and there is a court-ordered stay of removal, the removal order is no longer final, 8 U.S.C. § 1231(a)(1)(B)(ii), and the statutory basis for detention changes to 8 U.S.C. § 1226 (the pre-removal detention statute).

FACTS

26. Petitioner is a native and citizen of Honduras, who entered the US on December 2, 2019, by crossing the US-Mexico border. He was initially detained by US Customs and Border Protection, and was served with a Notice to Appear in removal proceedings "at a time and date to be set". On or about December 28, 2019 he was released to the care of his brother, in Rhinebeck NY, and informed ICE that he would be living at 38 Violet Place, Rhinebeck, NY 12572.

27. The Notice to Appear was then filed with the Immigration Court in New York on April 2020, and a hearing was scheduled for April 9, 2020, but prior to the hearing date the hearing was cancelled and rescheduled to a different date. According to Respondents, this happened "several times". Upon information and belief, many of these re-schedules were due to the COVID shutdown, which resulted in the New York Immigration Court closing in March of 2020, with the re-openings repeatedly postponed until they finally reopened in July 2021.

28. A hearing was eventually scheduled for March 17, 2023, which Petitioner attended, but the Immigration Judge ("IJ") was not present and the case was adjourned. Another hearing was then scheduled for August 4, 2023, but Petitioner did not attend. It is unclear whether or not notice of that hearing had been sent to him, as the Immigration Judge did not enter a removal order (as would be required if there was proof that the hearing notice had been mailed to him, see 8 U.S.C. § 1229a(b)(5)(A))), but instead rescheduled the case to November 3, 2023. EOIR records indicate that notice of this hearing was mailed to Petitioner at his address in Rhinebeck, but he did not receive it and accordingly did not appear at the hearing. As a result, the IJ ordered him removed

in absentia. Petitioner also did not receive a copy of this removal order, which became "final" thirty days later, on December 3, 2023.

29. On July 18, 2025, Petitioner was apprehended by ICE, during an immigration "sweep", and became aware of the *in absentia* order for the first time. Through previous counsel, he filed a petition for a writ of habeas corpus in the Southern District of New York, Case No. 1:25-cv-05941-MMG, and a temporary order was issued, staying removal from the US and also from the Southern District of New York (Case No. 1:25-cv-05941-MMG, ECF 11). That petition was dismissed for lack of jurisdiction on July 29, 2025 (Case No. 1:25-cv-05941-MMG, ECF 20).

30. On the same date, July 29, 2025, Petitioner filed a motion with the Immigration Court, to rescind the removal order and reopen the proceedings, stating that he intended to apply for asylum and related relief, based on persecution that he suffered in the past and would suffer in the future in Honduras. (ECF 1-7)[2] That motion to reopen was supported by a declaration from Petitioner, in which he stated that he had never received notice of the removal hearing at which he had been ordered deported, as well as a declaration from another person, Yorleny Weigel, who had been living at the same address as Petitioner in 2023. Ms. Weigel stated that she had actually lived at that address for twenty-two years, and that there were repeated problems with receiving mail. She also stated that she had accompanied Petitioner to the Immigration Court hearing at which the Immigration Judge did not show up, and that he had never received any further notice of an Immigration Court hearing. The motion was also supported by

[2] Unless otherwise noted, references to the ECF Docket are to this case, Case No. 1:25-cv-08150-MKV

declarations from other people who lived on the same mail route in Rhinebeck as Petitioner, stating that they too had experienced problems but both receiving and sending mail, and from one person stating that they constantly received mail addressed to other people.

31. On August 1, 2025 the IJ denied the motion to reopen, stating that Petitioner had "provided no evidence beyond their self- interested statement that they did not receive the document in the mail" and that he "failed to exercise due diligence" between the date of the removal order in November 2023 and the date of filing the motion to reopen in July 2025.

32. On August 14, 2025, Petitioner filed an appeal with the Board of Immigration Appeals (BIA) along with a motion to remand the case back to the IJ.

33. On August 15, 2025, the BIA issued an Order staying Petitioner's removal pending the outcome of the appeal, which itself remains pending. Briefs in that case are due on November 12, 2025.

34. On September 2, 2025, through his immigration counsel, Petitioner submitted a letter to Respondent ICE, seeking his release, supported by an affidavit of support from a US citizen in Rhinebeck, who offered to ensure his attendance at any future immigration appointments, as well as over fifty declarations from people in the community, attesting to his good nature and character. Petitioner's counsel did not receive any response from ICE to this request.

35. On or about October 14, 2025, Respondents met with Petitioner and told him that his detention was being extended and gave him a letter, dated October 14, 2025. A copy of this letter is annexed hereto as Exhibit A. This letter stated that Petitioner would be

continued in custody based upon the factors at 8 C.F.R. §§ 241.4(e), (f) and (g), and because he had not demonstrated that, if released, he "will not pose a danger to the community or to the safety of other persons." The decision further stated that "based on the above, you are to remain in ICE custody pending the outcome of your motion to reopen proceedings and or removal from the United States, as ICE is unable to conclude that the factors set forth at 8 CFR § 241.4(e) have been satisfied."

36. Petitioner has had no disciplinary infractions during his time in custody, and has no criminal history or history of arrest, other than by immigration authorities. There is no evidence whatsoever that he is a danger to the community.

37. Petitioner is being irreparably harmed by his ongoing unlawful detention without a bond hearing.

CLAIMS FOR RELIEF

COUNT ONE: Violation of 8 U.S.C. 1231(a) and Associated Regulations

38. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1231.

39. Under § 1231 and its associated regulations, Petitioner is entitled to a post-order custody review with procedural protections.

40. Petitioner has not been provided with the custody review as required by the regulations at 8 C.F.R. § 241.4

41. Petitioner's continuing detention is therefore unlawful.

COUNT TWO: Violation of Fifth Amendment Right to Procedural Due Process

42. Because Petitioner is a person arrested and detained inside the United States, his detention is subject to the Due Process Clause of the Fifth Amendment.

43. Due process requires that he receive protection from arbitrary and unnecessary detention, in the form of a meaningful custody review with specific procedural protections, after which he is entitled to release unless Respondents show that he is a danger to the community or a flight risk.

44. Petitioner has not been provided with such a custody review. The review which he did receive lacked any of the procedural protections and safeguards required by regulation.

45. Petitioner's continuing detention therefore violates his rights to procedural due process as guaranteed by the Fifth Amendment to the US Constitution.

COUNT THREE: Violation of Fifth Amendment Right to Substantive Due Process

46. Immigration detention is only authorized for a ninety-day period after the removal order becomes administratively final. After that, Petitioner can only be detained if he is a danger to the community or a flight risk.

47. Respondents have detained Petitioner beyond that ninety-day period on the sole basis that he is a danger to the community, despite the fact that he has no criminal history whatsoever, and that there is no evidence that he poses any danger to people or property.

48. Petitioner also has a stay of removal, and so he cannot be removed while his immigration proceedings are continuing before the Board of Immigration Appeals.

49. Because there is no lawful basis for Petitioner's detention, it violates his right to substantive due process under the Fifth Amendment to the US Constitution.

COUNT FOUR: Violation of the INA and the Administrative Procedures Act: Arbitrary and Capricious

50. The Administrative Procedures Act (APA) provides that courts must "hold unlawful and set aside" agency action that is "arbitrary, capricious, [or] an abuse of discretion." 5 U.S.C. § 706(2)(A).

51. Respondents made a decision to continue Petitioner in custody on the basis that he is a danger to the community. Respondents reached this conclusion without complying with the procedures required by regulation, and in the utter absence of any evidence to support their conclusion.

52. Respondents' decision is final agency action within the meaning of the APA, and is "arbitrary, capricious, [or] an abuse of discretion" in violation of the APA, 5 U.S.C. § 706(2)(A).

COUNT FIVE: Violation of the INA and the Administrative Procedures Act: Arbitrary and Capricious

53. The Administrative Procedures Act (APA) provides that courts must "hold unlawful and set aside" agency action that is "unsupported by substantial evidence." 5 U.S.C. § 706(2)(E).

54. Respondents' decision to continue Petitioner in custody on the basis that he is a danger to the community is unsupported by any evidence whatsoever, and was taken despite a plethora of evidence to the contrary.

55. Respondents' decision therefore violates the APA at 5 U.S.C. § 706(2)(E).

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Declare that Petitioner's detention is unlawful;

(3) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, on such conditions that the Court deems just and proper;

(4) Order that Petitioner shall not be transferred outside the Western District of New York during the pendency of this case;

(5) Award Petitioner his reasonable litigation costs and attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

(6) Any further relief this Court deems just and proper.

Dated: New York, New
October 30, 2025

/s/ Paul O'Dwyer
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