


UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VIRGILIO GODINEZ SANTAMARIA,

File Number 

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department of
Homeland Security; PAM BONDI, Secretary,
U.S. Department of Justice, RUSSELL HOTT,
Field Office Director, Chicago Field Office,
Immigration and Customs Enforcement,

Respondents.

Case No. 25-cv-12150

**PETITION FOR WRIT OF HABEAS CORPUS AND
COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF**

The Petitioner, VIRGILIO GODINEZ SANTAMARIA, by and through his own and proper person and through his attorneys, NICOLE PROVAX and JENNIFER PEYTON, of the LAW OFFICES OF KRIEZELMAN BURTON & ASSOCIATES, LLC, petition this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful removal to Honduras in violation of his constitutional and statutory rights, and to issue an order returning him to the United States.

Introduction

1. Petitioner is presently in Honduras, having been removed there on or around September 22, 2025. Prior to his removal, he was detained by U.S. Immigration and Customs Enforcement (“ICE”) at the Broadview Detention Center, located in Broadview, Illinois, and then transferred to additional facilities for purposes of travel.
2. Petitioner is a native and citizen of Honduras. He has been present in the United States for more than 20 years.

3. Petitioner's unlawful removal is a substantial deprivation and burden that puts Petitioner and his family at risk without his support. Prior to his removal, Petitioner was a derivative on a pending application for asylum before USCIS. Additionally, he was eligible for alternate relief of EOIR 42B, cancellation of removal for non-lawful permanent residents.
4. Prior to his unlawful removal, Petitioner was not advised of his rights to have an asylum case heard, nor was he provided an opportunity to seek other available relief before the Immigration Courts. Petitioner has three United States citizen children for whom he is the sole financial support, and he is single parent to his US citizen nineteen year old son; further, he has a fear of returning to Honduras due to past and future harm to him and his family.
5. Petitioner's removal to Honduras is an unlawful violation of due process and an incorrect interpretation of immigration law. This unlawful return to Honduras is a restriction on Petitioner's liberty.
6. Petitioner was initially detained on September 16, 2025 in Chicago, Illinois. The circumstances surrounding the encounter are unknown, but Petitioner has no criminal record.
7. Petitioner was held at Broadview Detention Center, located in Broadview, Illinois from September 16, 2025 until September 21, 2025, when he was transferred to other facilities during his unlawful return to Honduras.
8. Petitioner respectfully asks this Court to issue a temporary restraining order directing Respondents to return the Petitioner to the United States to have his removal proceedings heard, and if necessary, a bond hearing to ensure his due process rights.

9. In the alternative, Petitioner respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243.

Jurisdiction and Venue

10. The action arises under the Constitution of the United States, the Immigration and Nationality Act of 1952, as amended (“INA”), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*
11. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241, and Article I, section 9, clause 2 of the United States Constitution (the “Suspension Clause”), as Petitioner is presently subject to immediate detention and custody under color of authority of the United States government, and said custody is in violation of the Constitution, law or treaties of the United States.
12. This action is brought to compel the Respondents, officers of the United States, to accord Petitioner the due process of law to which he is entitled under the Fifth and Fourteenth Amendments of the United States Constitution.
13. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1361 (mandamus), and the All Writs Act, 28 USC § 1651.
14. Venue is proper in the Northern District of Illinois because Petitioner was detained by Respondents at Broadview Detention Center – which is located within the Northern District. 28 U.S.C. § 1391(b), (e)(1). The Northern District of Illinois is where the material events took place, where the Petitioner resided prior to his unlawful removal, and where records and witnesses pertinent to Petitioner’s claim are likely to be found.

Parties

15. Petitioner VIRGILIO GODINEZ SANTAMARIA is a native and citizen of Honduras.

Petitioner was detained at Broadview Detention Center, located in Broadview, Illinois, prior to his unlawful removal to Honduras on or around September 22, 2025.

16. RICKSY MABELIN ZUNIGA ROMERO is the petitioner's spouse, a native and citizen of Honduras, and mother of two of his United States children.

17. Respondent PAM BONDI is being sued in her official capacity only. She is the Attorney General of the United States, and head of the U.S. Department of Justice (DOJ). She shares responsibility for the administration and enforcement of the immigration laws.

18. Respondent KRISTI NOEM is being sued in her official capacity only. She is the Secretary of the U.S. Department of Homeland Security (DHS). Pursuant to the Homeland Security Act of 2002, Pub. L. 107-296, Defendant NOEM, through her delegates, has broad authority over the operation and enforcement of the immigration laws.

19. Respondent RUSSELL HOTT is being sued in his official capacity only, as the Field Office Director of the Chicago Field Office of ICE. As such, he is charged with the detention and removal of aliens which fall under the jurisdiction of the Chicago Field Office.

Custody

20. Petitioner VIRGILIO GOZDINEZ SANTAMARIA was unlawfully detained by ICE, and was returned to Honduras without due process of law.

21. Petitioner is presently in Honduras, and his unlawful removal there is a restraint upon his liberty.

Factual and Procedural Background

22. Petitioner VIRGILIO GOZDINEZ SANTAMARIA is a native and citizen of Honduras. He has been present in the United States for more than 20 years.
23. Petitioner is married to Rickys Mabelin Zuniga Romero. They were married on April 26, 2024 in Chicago Illinois.
24. On or around July 2024, Petitioner was included as a derivative on his wife's application for asylum filed with U.S. Citizenship and Immigration Services ("USCIS"). See Exhibit 1.
25. Petitioner has three United States citizen children, including L [REDACTED] G [REDACTED] born [REDACTED] [REDACTED] 2006, who presently is studying architecture at University of Illinois at Urbana Champaign, T [REDACTED] A [REDACTED] born [REDACTED] 2023, and D [REDACTED] born [REDACTED] 2024. See Exhibit 2.
26. Petitioner is the sole financial support for I [REDACTED], and has raised I [REDACTED] as a single parent for almost fifteen years.
27. Petitioner entered the U.S. in November 2005 without inspection and has remained in the country since that time.
28. On July 1, 2024, the Petitioner's wife, Rickys Mabelin Zuniga Romero filed an application for asylum with the Nebraska Service Center, and included the Petitioner on the application. In this application, she explained her fear of return to Honduras.
29. On August 19, 2024, the Petitioner attended his biometric (fingerprint) appointment, in compliance with an I-797 Appointment Notice. See Exhibit 3.
30. On September 16, 2025, the Petitioner was arrested by ICE officers, detained by DHS and taken to Broadview Detention Center in Broadview, Illinois.

31. Respondent DHS failed to schedule or adjudicate the Petitioner's pending I-589 Application for Asylum before removing him from the United States.
32. Respondent DOJ failed to schedule or offer Petitioner an opportunity to be heard on the relief of cancellation of removal for non-lawful permanent residents.
33. Upon information and belief, Petitioner has never been served with a Notice to Appear, the charging document that initiates removal proceedings. Upon information and belief, Petitioner has never been served with a warrant, nor a notice of custody determination.
34. Upon information and belief, Petitioner did not consent to a stipulated order of removal.
35. Petitioner's removal Honduras, without due process of law, or an opportunity to be heard, separates him from his family, prohibits him from being able to financially provide for his family, and inhibits his removal defense in many ways, including by making it difficult to communicate with witnesses, gathering evidence, and afford legal representation, among other related harm. Additionally, as Petitioner seeks the relief of asylum due to past harm in Honduras or future harm in Honduras, his presence in Honduras places him in grave danger.

Legal Framework

Due Process Clause

36. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

37. In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.
38. “The fundamental requirement of due process is the opportunity be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). In this case, to determine the due process to be afforded to Petitioner, the Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government’s interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.
39. Asylum seekers come to the United States seeking protection from persecution in their country of origin. Any noncitizen who is in the United States or seeking admission at a port of entry may apply for asylum. 8 U.S.C. §§ 1158(a)(1), 1231(b)(3)(A). An applicant must demonstrate either past persecution or a fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. §§ 1101(a)(42)(A), 1158(b)(1)(B)(i), 1231(b)(3)(A).
40. A grant of asylum provides a path to lawful permanent residence and U.S. citizenship. A person may apply for lawful permanent residence one year after being granted asylum and

for naturalization to U.S. citizenship five years after becoming a lawful permanent resident. 8 U.S.C. §§ 1159(b), 1427(a).

41. With limited exceptions not relevant here, USCIS has jurisdiction over all asylum applications filed by a noncitizen who is not in removal proceedings. 8 C.F.R. § 208.2. Applications filed with USCIS are commonly referred to as “affirmative asylum applications.”
42. USCIS interviews all asylum applicants over whom it has jurisdiction prior to making a decision. See generally 8 U.S.C. § 1158(d)(5)(A)(ii); 8 C.F.R. § 208.9.
43. The Attorney General may cancel the removal and adjust the status of a non-lawful permanent resident such as Petitioner if Petitioner has been physically present for at least ten years prior to issuance of a Notice to Appear, has been a person of good moral character for ten years, has not been convicted of an offense under INA § 212(a), § 237(a)(2) or § 237(a)(3), and petitioner’s removal would result in exceptional and extremely unusual hardship to his United States citizen children.

Claims for Relief

FIRST CAUSE OF ACTION

Violation of the Due Process Clause of the Fifth Amendment
of the United States Constitution

44. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.
45. The Due Process Clause asks whether the government’s deprivation of a person’s life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty by refusing him the opportunity to

have his asylum case heard, or to provide him an opportunity to hear his request for non-lawful permanent resident cancellation of removal.

46. It is well settled law that the constitutional protections of due process apply to all persons within the United States. *See, Zadvydas v. Davis*, 121 S.Ct. 2491, 2493 (2001) (“Once an alien enters the country, the legal circumstance changes, for the due process clause applies to all persons within the United States.”) It is axiomatic that these due process protections apply to the respondent’s encounter with the immigration agents.
47. The Asylum statute states that in the case of a petitioner granted asylum, the Attorney General shall not remove the applicant to the applicant’s country of nationality. 8 USC § 1158 (c)(1).
48. The Respondents’ unlawful removal of Petitioner to Honduras without providing him an opportunity to be heard on his potential application is unjustified. The Respondent’s violation of law, as set forth herein, is causing Petitioner irreparable harm with each day he spends outside of the United States.
49. Petitioner asks the Court to immediately order Respondents to take all steps reasonably available to them, proportionate to the gravity of the ongoing harm, to return Petitioner to the United States.
50. For these reasons, Petitioner’s removal to Honduras without due process of law violates the Due Process Clause of the Fifth Amendment.

SECOND CAUSE OF ACTION

Violation of the Immigration and Nationality Act

51. Petitioner repeats and incorporates by reference all allegations above as though fully set forth fully herein.

52. An immigration judge is authorized to conduct proceedings to decide the inadmissibility or deportability of an alien. 8 USC § 1229a.
53. Petitioner has been removed from the United States without having an opportunity to be heard by an immigration judge.
54. During the proceedings, the non-citizen is afforded rights as outlined in the regulations, and provided an opportunity to be heard. 8 USC § 1229(b)(4).
55. The unlawful removal has resulted in the Petitioner being denied his opportunity to be heard by an immigration judge, and to have his relief from removal evaluated under the immigration laws and regulations.

THIRD CAUSE OF ACTION

Deportation without deportation order

56. Petitioner repeats and incorporates by reference all allegations above as though fully set forth fully herein.
57. Petitioner was removed from the United States on or around September 22, 2025.
58. Upon understanding and belief, Petitioner is not the subject of a removal order.
59. Accordingly, as Petitioner has no executable removal order, and he has been removed from the United States, his removal essentially is deportation without a deportation order, and therefore unlawful.

FOURTH CAUSE OF ACTION

Accardi Doctrine

60. Petitioner repeats and incorporates by reference all allegations above as though fully set forth fully herein.
61. Petitioner was detained within the Northern District from September 16, 2025, and

removed from the United States on or around September 22, 2025.

62. Under the *Accardi* Doctrine, Defendants are required to follow their own rules and procedures. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.”)
63. The Code of Federal Regulations note that “[a]t the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are complete, the respondent may be arrested and taken into custody under the authority of Form I-200, Warrant of Arrest.” 8 CFR § 236.1(b).
64. Additionally, a copy of any decision regarding the Petitioner’s release or detention “shall be provided to the detained alien”. 8 CFR § 241.4(d)(2). This decision shall set forth the reason for the continued detention. 8 CFR § 241.4(d).
65. The Service “shall notify the Immigration Court having administrative control over the Record of Proceeding of any change in custody location or release from, or subsequent taking into, Service custody of a respondent.” 8 CFR § 236.1(f)
66. During his detention and prior to his removal, while the Petitioner was still within the geographical confines of the Northern District, the Petitioner was not provided a warrant of arrest, nor was he given a decision regarding his release or detention from the custodial officer. Upon his transfer from the Northern District during his return to Honduras, upon information and belief, the DHS did not notify the Immigration Court regarding any change in custody location for the Petitioner.
67. These failures were in violation of the regulations, and therefore, this Court should issue an order for the Respondents to comply with their laws and regulations.

FIFTH CAUSE OF ACTION

ADMINISTRATIVE PROCEDURE ACT

5 USC § 706(2)(A)

68. Petitioner repeats and incorporates by reference all allegations above as though fully set forth fully herein.
69. Petitioner was removed from the United States on or around September 22, 2025.
70. The Administrative Procedure Act provides that courts “shall...hold unlawful and set aside agency action:” that is “arbitrary, capricious, an abuse of discretion.” 5 USC § 706(2)(A).
71. Respondents’ actions as set forth herein were arbitrary, capricious, and an abuse of discretion.
72. Respondents’ arbitrary and capricious actions, as set forth herein, are causing Petitioner irreparable harm with each day that he spends outside of the United States.
73. Petitioner asks the Court to immediately order Respondents to take all steps reasonably available to them, proportionate to the gravity of the ongoing harm, to return Petitioner to the United States.

Prayer for Relief

WHEREFORE, Petitioner respectfully request that this Honorable Court:

- A. Accept jurisdiction over this action;
- B. Declare that Respondents’ actions to detain Petitioner violate the Due Process Clause of the Fifth Amendment and violates the Immigration and Nationality Act;
- C. Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order Respondents to return the Petitioner to the United States within 5 days of the order and;

D. Award reasonable attorneys' fees and costs for this action; and

E. Grant such further relief as the Court deems just and proper.

Dated: October 3, 2025

Respectfully Submitted,

/s/ Nicole Provax

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