

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FAUSTINO HERNANDEZ TAPIA,)
(A )
Petitioner,)
v.)
KRISTI NOEM, Secretary, U.S Department of)
Homeland Security; PAM BONDI, Secretary, U.S.)
Department of Justice, and ROBERT LYNCH,)
Field Office Director, Detroit Field Office,)
Immigration and Customs Enforcement,)
Respondents.)
)

Case No. 25-cv-1291

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

The Petitioner, FAUSTINO HERNANDEZ TAPIA by and through his own and proper person and through his attorney, BRITTNI RIVERA, of KRIEZELMAN BURTON & ASSOCIATES, LLC, petition this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful removal to Mexico 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 Mexico, having been removed from the United States on October 23, 2025. Prior to his removal, he was detained by U.S. Immigration and Customs Enforcement (“ICE”) at the North Lake Correctional Facility, located in Baldwin, Michigan. He was then transferred to several facilities for purposes of travel before his removal.

2. Petitioner is a native and citizen of Mexico. He has been present in the United States since 2013, when he entered the United States without inspection.
3. Prior to his removal, Petitioner applied for Cancellation of Removal, EOIR 42B and lost his case on October 10, 2025. Due to a misunderstanding, Petitioner waived his right to appeal.
4. Undersigned counsel was retained by Petitioner's family on October 22, 2025. That same day, undersigned counsel attempted to file an appeal (timely) on Petitioner's 42B application, and on October 23, 2025 in the morning, and before Petitioner's removal, filed a motion to reopen proceedings with the Detroit Immigration Court, asking to give Petitioner the opportunity to reserve appeal in his case.
5. Both Detroit ERO and El Paso ERO (where Petitioner was later held) were alerted of these developments in the case. Additionally, undersigned counsel and Petitioner's stepdaughter called ICE several times to ascertain Petitioner's whereabouts, and to ask if removal was imminent – to which no answers were given. Even though ICE was aware that Petitioner had an attorney, no information was given, and no warning was issued that Petitioner would be removed on October 23, 2025.
6. Petitioner's unlawful removal is a substantial deprivation and burden that puts Petitioner and his family at risk without his support.
7. Prior to his unlawful removal, Petitioner was not advised properly about his right to appeal his denied EOIR 42B case before the Board of Immigration Appeals.
8. Less than two weeks after his removal hearing, Petitioner realized he in fact wanted to reserve appeal on his case, and ICE/ERO was alerted of this fact multiple times.

9. Petitioner's unlawful removal to Mexico is an unlawful violation of due process and an incorrect interpretation of immigration law. This unlawful return to Mexico is a restriction on Petitioner's liberty, and his detention in general was a violation of due process.
10. Petitioner was initially detained on July 20, 2025. The circumstances of his arrest are unknown, but Petitioner had no criminal record and a warrant was not issued for his arrest.
11. Petitioner was held at North Lake Processing Center in Baldwin, Michigan, through the middle of October 2025. He was then unlawfully removed to Mexico on October 23, 2025.
12. Petitioner respectfully asks this Court to issue a temporary restraining order directing Respondents to return Petitioner to the United States to be able to appeal his case, and if necessary, a bond hearing to ensure his due process rights.
13. 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

14. 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.*
15. 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.

16. 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.

17. 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.

18. Venue is proper in the Western District of Michigan because Petitioner was detained by Respondents in Detroit, Michigan and then placed at North Lake Processing Center – which is located within the Western District. 28 U.S.C. § 1391(b), (e)(1). The Western District of Michigan is where the material events took place, where Petitioner resided prior to his unlawful removal, and where records and witnesses to Petitioner's claim are likely to be found.

Parties

19. Petitioner FAUSTINO HERNANDEZ TAPIA is a native and citizen of Mexico. Petitioner was detained at North Lake Processing Center, in Baldwin, Michigan, prior to his unlawful removal to Mexico on October 23, 2025.

20. Respondent KRISTI NOEM is being sued in her official capacity only. 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.

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

22. Respondent ROBERT LYNCH is being sued in his official capacity only, as the Field Office Director of the Detroit Field Office of ICE. As such, he is charged with the detention and removal of aliens which fall under the jurisdiction of the Detroit Field Office. *Roman v. Ashcroft*, 340 F.3d 314 (6th Cir. 2003).

Custody

23. Petitioner FAUSTINO HERNANDEZ TAPIA was unlawfully detained by ICE, and was returned back to Mexico without due process of law.

24. Petitioner is presently in Mexico, and his unlawful removal there is a restraint upon his liberty.

Factual and Procedural Background

25. Petitioner FAUSTINO HERNANDEZ TAPIA is a native and citizen of Mexico. He first entered the United States in 2013 without inspection. He has remained in the United States ever since.

26. Petitioner is married to Gloria Gutierrez, a lawful permanent resident. He also has three stepchildren, all U.S. citizens, who he has raised since they were small children.

27. Petitioner is the sole financial support for Gloria.

28. On or about July 20, 2025, Petitioner was driving when he was stopped randomly by ICE and taken into custody. He was eventually taken to North Lake Processing Center and placed into removal proceedings.

29. Petitioner then applied, through previous counsel, for Cancellation of Removal (Form EOIR 42B) stating that his wife, Gloria, would suffer extreme and unusual hardship in the event of his removal from the United States.
30. Immigration Judge Mark Jebson denied the application on October 10, 2025, and for some reason, Petitioner's previous attorney waived his appeal rights. See Exhibit A.
31. Upon information and belief, Petitioner did not fully understand what his appeal rights were after he lost his removal case. Upon speaking to his wife and children, it was made clear that Petitioner had not understood what his previous attorney had told him about appealing the case.
32. On or about October 22, 2025, Petitioner retained undersigned counsel to file an appeal on his behalf and ultimately file a habeas corpus petition to secure his release from custody.
33. On October 22, 2025, undersigned counsel filed the appeal for Petitioner's case to the Board of Immigration Appeals and paid the necessary fees. That appeal has not been accepted and remains pending. The attempt to file the appeal was well within the thirty-day appeal period pursuant to the regulations. *See Exhibit B.*
34. That same day, undersigned counsel informed Detroit ICE/ERO that Petitioner intended to appeal his case. *See Exhibit C.*
35. Detroit ICE/ERO did not answer any of counsel's numerous emails or phone calls. *Id.*
36. On October 22, 2025, counsel placed a telephone call to ICE call center asking for information on Petitioner. Specifically, counsel asked where he was, and whether removal was imminent, as Petitioner was no longer trackable in the ICE detainee locator online. Counsel was told someone would call back but never received a call.

37. On October 23, 2025, Petitioner filed a Motion to Reopen Proceedings in the morning, for the purposes of reserving appeal. The Motion to Reopen was accepted by the Detroit Immigration Court, and a copy was furnished to Detroit ERO and El Paso ERO, asking for more information regarding Petitioner's whereabouts and ICE's plan going forward. No answer was given, and no call back was received. *See* Exhibits D, E and F.

38. Petitioner called his family on October 23, 2025 in the late evening, stating that he had been dropped off at the Mexican border.

39. Petitioner's removal to Mexico, without due process, or an opportunity to be heard on appeal, separates him from his family, prohibits him for being able to financially provide for his family, and inhibits his removal defense in many ways, including making it difficult to communicate with witness

Legal Framework

Due Process Clause

40. "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).

41. 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.

42. "The fundamental requirement of due process is the opportunity to 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.
43. The Attorney General may cancel the removal and adjust the status of a 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 the his lawful permanent resident wife.

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 to allow him to appeal his case to the Board of Immigration Appeals.

46. It is well settled law that the constitutional protections of due process apply to all persons within the United States. *See Zadyas v. Davis*, 121 S. Ct. 2491, 2493 (2001).

That case states, “once an alien enters the country, the legal circumstances changes, for the due process clause applies to all persons within the United States. *Id.*

47. The government’s unlawful removal to Mexico of Petitioner is unjustified. Petitioner indicated that he wished to appeal his case, and did file the appeal. He also filed a motion to reopen and ICE was informed. 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.

48. For these reasons, Petitioner’s removal to Mexico violates the Due Process Clause of the Fifth Amendment.

SECOND CAUSE OF ACTION

Violation of the Immigration and Nationality Act

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

50. An immigration judge is authorized to conduct proceedings to decide the inadmissibility or deportability of an alien. 8 USC § 1229(a).

51. Petitioner was ordered removed from the United States and was not able to appeal his case. He filed a motion to reopen less than two weeks after his final decision, and filed the appeal with the Board of Immigration Appeals less than two weeks after the IJ’s

decision.

52. The unlawful removal has resulted in the Petitioner being denied his opportunity to be heard by the Board of Immigration Appeals, and to have his relief from removal evaluated under the immigration laws and regulations.

THIRD CAUSE OF ACTION

ADMINISTRATIVE PROCEDURE ACT

5 USC § 706(2)(A)

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

54. Petitioner was removed from the United States on October 23, 2025.

55. 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).

56. Respondents’ actions as set forth herein were arbitrary and capricious actions, as set forth herein, are causing Petitioner irreparable harm with each day that he spends outside of the United States.

57. 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 and subsequently remove 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 the immediate return of Petitioner within 5 days of the order;
- 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 24, 2025

Respectfully Submitted,

/s/ Brittni Rivera

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