IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHER DISTRICT OF TEXAS
DALLAS DIVISION

ANSELMO FLORES PEREZ, Petitioner, v. U.S. DEPT. OF HOMELAND SECURITY, KRISTI NOEM, in her capacity as Secretary of Department of Homeland Security; et. al., Respondents.	Case No. 3:25-CV-2920-K

PETITIONER'S REPLY IN SUPPORT OF EMERGENCY MOTION REQUESTING ENTRY OF ORDER

Petitioner Anselmo Flores Perez ("Petitioner"), by and through undersigned counsel, files this Reply in Support of Motion for Entry of Order.

The government filed a response to Mr. Flores Perez' motion for entry of an order. Aside from completely ignoring the fact that the FCR found Petitioner has been and continues to be unlawfully detained and deprived of his liberty, the response also argues that this Court should allow his unlawful detention to continue rather than immediately remedy the unlawful detention by releasing Mr. Flores Perez to return home to his family. In so doing, the government makes two equally unavailing arguments.

First, the government objects to the timeliness of the specific request for immediate relief made in the timely filed response to its objections. This is a bit ironic given that the government itself raised new arguments in the very objections Petitioner's filing was in response to. Indeed, the objections explicitly stated: "The government recognizes that it

did not discuss the effect of § 1252 in its prior brief in this case, but nonetheless because the issue is jurisdictional it cannot be waived."[1]

But just like the government, Mr. Flores Perez' response acknowledged that this specific relief of immediate release was different from the precise remedy recommended by the FCR.[2] But like the government's untimely raised arguments, Mr. Flores Perez' is jurisdictional in nature. More specifically, as the government has conceded in similar cases in other districts, "[T]he only relief available to Petitioner through habeas is release from custody."[3] Said differently, the online relief courts have jurisdiction to grant under a habeas petition is immediate release.

Nonetheless, here the government argues "there is no valid legal basis for ordering Petitioner's release by noon tomorrow . . .or at any other time."[4] This claim by the government is simply wrong. The fact that immediate release is not merely the only way to remedy unlawful detention but also the only remedy courts may provide is just that—a fact. And it has been since at least 1779. Indeed, the Supreme Court recently reaffirmed this indisputable fact in *Dep't of Homeland Sec. v. Thuraissigiam*, explaining:

> [N]either respondent nor his *amici* have shown that the writ of habeas corpus was understood at the time of the adoption of the Constitution to permit a petitioner to claim the right to enter or remain in a country or to obtain

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[1] ECF No. 14 p. 6.

[2] ECF No. 15. pp. 26-27.

[3] *Hurculano v. Noem, et. al.*, 3:25-cv-428-LS, ECF No. 12 filed 10/15/2015; citing 28 U.S.C. § 2241 and *DHS v. Thuraissigiam*, 591 U.S. 103, 118–19 (2020).

[4] ECF No. 17 p. 2.

administrative review potentially leading to that result. The writ simply provided a means of contesting the lawfulness of restraint and securing release.

In 1768, Blackstone's Commentaries—usually a "satisfactory exposition of the common law of England," *Schick v. United States*, 195 U.S. 65, 69, 24 S.Ct. 826, 49 L.Ed. 99 (1904)—made this clear. Blackstone wrote that habeas was a means to "remov[e] the injury of unjust and illegal confinement." 3 W. Blackstone, Commentaries on the Laws of England 137 (emphasis deleted). Justice Story described the "common law" writ the same way. See 3 Commentaries on the Constitution of the United States § 1333, p. 206 (1833). Habeas, he explained, "is the appropriate remedy to ascertain ... whether any person is rightfully in confinement or not." *Ibid.*

We have often made the same point. See, *e.g.*, *Preiser v. Rodriguez*, 411 U.S. 475, 484, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973) ("It is clear ... from the common-law history of the writ ... that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody"); *Wilkinson v. Dotson*, 544 U.S. 74, 79, 125 S.Ct. 1242, 161 L.Ed.2d 253 (2005) (similar); *Munaf v. Geren*, 553 U.S. 674, 693, 128 S.Ct. 2207, 171 L.Ed.2d 1 (2008) (similar).

In this case, however, respondent did not ask to be released.[13] Instead, he sought entirely different relief: vacatur of his "removal order" and "an order directing [the Department] to provide him with a new ... opportunity to apply for asylum and other relief from removal." App. 14 (habeas petition). See also *id.*, at 31 ("a fair procedure to apply for asylum, withholding of removal, and CAT relief"); *id.*, at 14 ("a new, meaningful opportunity to apply for asylum and other relief from removal"). Such relief might fit an injunction or writ of mandamus—which tellingly, his petition also requested, *id.*, at 33—but that relief falls outside the scope of the common-law habeas writ.[5]

The discussion above leaves no doubt that release is the only appropriate remedy under habeas—and it has been since 1789. Meanwhile, for all the reasons stated in the FCR, (which were nearly identical to those adopted by this Court in a similar case recently). Mr.

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[5] *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117–18 (2020).

Flores Perez has been and continues to be unlawfully detained. Mr. Flores Perez' immediate release, therefore, is the remedy that he respectfully requests this Court urgently grant.

For the reasons stated above and in all the prior filings in this case, including the FCR, Mr. Flores Perez respectfully requests the Court order his release from ICE custody immediately.

RESPECTFULLY SUBMITTED,

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