

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY-NEWARK

Jose Enmanuel REYES GUZMAN,

Petitioner,

-against-

KRISTI NOEM, in her capacity as Secretary for the
United States Department of Homeland Security;
CORY CHU, Acting Field Office Director of New
Jersey, Immigration and Customs Enforcement, in
his official capacity, PAMELA BONDI, in her
official capacity as the Attorney General of the
United States,

Respondents.

Case No. 2:25-CV-17067

**PETITION FOR A WRIT OF HABEAS
CORPUS**

PRELIMINARY STATEMENT

1. Petitioner, Jose Emmanuel Reyes Guzman (“Petitioner” or “Mr. Reyes Guzman ”), by and through undersigned counsel, respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner is a citizen of El Salvador or and an ABC class member under the terms of the American Baptist Churches v. Thornburgh settlement agreement (“ABC Settlement”), approved by the United States District Court for the Northern District of California in 1991. Recently, he was detained by the Respondents’ and will likely be removed immediately.
2. On or about May 1990, the Petitioner entered the United States. Exhibit A. In May 1991, he applied for and received Temporary Protected Status from the legacy INS. (Please see the form I-765 under Category A12 approved on June 12, 1991 as well as the employment authorization card bearing the A12 TPS category). Exhibit B. On account of the past persecution he suffered in El Salvador, on March 27, 1995 Mr. Reyes Guzman submitted an application for asylum with Legacy INS. Exhibit C.
3. He was arrested by agents and he was placed in removal proceedings. Subsequently, he was released from DHS custody on bond. Although his asylum application filed in 1995 was still pending before USCIS at that time, on March 05, 2002 due to a lack of resources to litigate the matter before the EOIR Mr. Reyes Guzman sought and obtained the minimal relief of voluntary departure.
4. Later, when he failed to depart the United States, the aforesaid order of voluntary departure converted to an order of removal. Recently, while driving to work on October 24, 2025 Mr. Reyes Guzman was arrested by agents of the Department of Homeland Security in Central Islip, NY.

I. PARTIES

5. Petitioner Reyes Guzman is a man who is a citizen of El Salvador who has resided in the USA since May 1990.
6. Respondent Cory Chu is named in his official capacity as Field Office Director New Jersey for the U.S. Immigration and Customs Enforcement. In this capacity, he is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a); routinely transacts business in the District of New Jersey, and is legally responsible for pursuing Petitioner's detention and removal; and as such is the legal custodian of Petitioner. Respondent Chu's address is Peter Rodino Federal Building 970 Broad St # 904, Newark, NJ 07102.
7. Respondent Kristi Noem is named in her capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a); routinely transacts business in the District of New Jersey, and is legally responsible for pursuing Petitioner's detention and removal; and as such is the legal custodian of Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, Washington, District of Columbia 20528.
8. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review, pursuant to INA § 103(g), 8 U.S.C. § 1103(g), routinely transacts business in the District of New Jersey, is legally responsible for administering Petitioner's removal proceedings and the standards used in those proceedings, and as such is the legal custodian of Petitioner. Respondent Bondi's

address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.

II. JURISDICTION

9. This Court has subject matter jurisdiction over the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl.2 of the United States Constitution; All Writs Act, 28 USC § 1651; the Administrative Procedure Act, 5 USC § 701; and for injunctive relief the Declaratory Judgment Act, 28 USC § 2201. Petitioner's current detention as enforced by Respondents constitutes a "severe restraint on [Petitioner's] individual liberty," such that Petitioner is "in custody in violation of the...laws...of the United States." See *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241.

III. VENUE

10. Venue is proper in the District of New Jersey-Newark under 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because the Respondent is detained in the DHS detention facility located at 451 Doremus Avenue Newark, NJ 07105. See generally *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) ("[T]he proper respondent to a habeas petition is 'the person who has custody over the petitioner.'" (citing 28 U.S.C. § 2242).

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

11. A district court may waive exhaustion when the pursuit of administrative remedies would either be futile or render the legal issue moot. See, e.g., *Carmona v. United States Bureau of Prisons*, 243 F.3d 629, 634–35 (2d Cir.2001) (procedural default may be excused where prisoner shows further appeals would be futile); *Monestime v. Reilly*, 10 Civ. 1374(WHP),

2010 WL 1427672, at *3 (S.D.N.Y. Apr. 9, 2010) (failure to exhaust excused where “DHS declined to revisit [petitioner's] mandatory detention status”); *Goren v. Apker*, 05 Civ. 9006(PKC), 2006 WL 1062904, at *4 (S.D.N.Y. Apr. 20, 2006).

12. Petitioner’s counsel emailed the Respondents and filed a motion to reopen with the immigration court. There is no forum where he could seek redress pursuant to the ABC Settlement Agreement. The appropriate forum to seek redress for the ABC Settlement Agreement is in federal court. Despite Petitioner’s submission to the Respondents’ they are unlikely to act prior to his removal.

V. STATEMENT OF FACTS

13. Petitioner, Jose Emmanuel Reyes Guzman (“Petitioner” or “Mr. Reyes Guzman ”), is a citizen of El Salvador or and an ABC class member under the terms of the American Baptist Churches v. Thornburgh settlement agreement (“ABC Settlement”), approved by the United States District Court for the Northern District of California in 1991. On or about May 1990, the Petitioner entered the United States. Exhibit A. In May 1991, he applied for and received Temporary Protected Status from the legacy INS. (Please see the form I-765 under Category A12 approved on June 12, 1991 as well as the employment authorization card bearing the A12 TPS category). Exhibit B. On account of the past persecution he suffered in El Salvador, on March 27, 1995 Mr. Reyes Guzman submitted an application for asylum with Legacy INS. Exhibit C.
14. He sought to remain in the USA through applications he submitted to USCIS. Exhibit C. In September 2001, he was placed in removal proceedings. Subsequently, he was released from DHS custody on bond. Although his asylum application filed in 1995 was still pending

before USCIS at that time, on March 05, 2002 due to a lack of resources to litigate the matter before the EOIR Mr. Reyes Guzman sought and obtained the minimal relief of voluntary departure. Later, when he failed to the depart the United States, the aforesaid order of voluntary departure converted to an order of removal. Recently, while driving to work on October 24, 2025 Mr. Reyes Guzman was arrested by agents of the Department of Homeland Security in Central Islip, NY.

I. THE PETITIONER SHOULD BE RELEASED BECAUSE HE IS AN ABC CLASS MEMBER AND RELEASE IS MANDATED BY THE SETTLEMENT AGREEMENT.

15. In 1985, a group of non-profit organizations filed a class action lawsuit in federal court against the Immigration and Naturalization Service (INS) (now the USCIS), the Executive Office for Immigration Review (EOIR) and the United States Department of State (DOS). The suit is known as **American Baptist Churches v. Thornburgh**, 760 F. Supp. 796 (N.D. Cal. 1991). It is commonly referred to as the ABC lawsuit.
16. A federal judge subsequently certified a class of Guatemalan and Salvadoran nationals as plaintiffs in the lawsuit. The plaintiffs alleged, among other things, that the INS (now USCIS), EOIR and DOS engaged in discriminatory treatment of asylum claims made by Guatemalans and Salvadorans. In 1990, the government and attorneys representing the certified class settled the class action lawsuit. The ABC settlement agreement was approved by a federal court in January 1991.
17. Under the ABC settlement agreement, certain qualified Salvadorans are entitled to the following benefits, which chiefly include: a de novo asylum interview and adjudication by a USCIS asylum officer, regardless of the outcome of an initial asylum application.
Significantly, even if subject to a final order of removal, the alien is protected from both

the execution of such an order (ABC Settlement agreement Paragraph 19) and from detention by the US Department of Homeland Security (ABC Settlement agreement Paragraph 17)

18. To enjoy the aforesaid benefits of the ABC class, a Salvadoran national must meet the following three distinct elements:

- a. He or she must have been physically present in the United States on or before September 19, 1990;
- b. He or she must have registered for ABC benefits *or filed an application for temporary protective status* by October 31, 1991;
- c. He or she must have applied for asylum by January 31, 1991.

19. In the instant case, Mr. Reyes Guzman arrived in the United States in May 1990. Please see **EXHIBIT A**. Although he did not register for ABC benefits, he did file an application for temporary protective status on May 29, 1991. Please see **EXHIBIT B**. That application was later approved on June 12, 1991. Please see **EXHIBIT A**. Subsequently, Mr. Reyes Guzman filed an application for asylum with Legacy INS on March 27, 1995. Please see **EXHIBIT C**.

20. A careful review of the internal records from the US Department of Homeland Security, obtained via FOIA Request, reveal that Mr. Reyes Guzman is indisputably protected from detention and removal. A printout from a DHS database notes that on July 14, 1998 Mr. Reyes Guzman was “added to the Special Group ABC.” Please see **EXHIBIT C**. Furthermore, a DHS document prepared on January 19, 1999 titled “ABC Checklist” confirms that Mr. Reyes Guzman is entitled to ABC Benefits. Please see **EXHIBIT C**. Ultimately, in contravention of the ABC Settlement agreement, the Department of Homeland Security never made a decision on Mr. Reyes Guzman’s application for asylum as the application was administratively closed on August 25, 2004.

21. **In light of the foregoing facts, the Respondent’s eligibility for all the benefits and protections conferred by the ABC settlement agreement is beyond the realm of dispute. As such, even though Mr. Reyes Guzman is subject to a final order of removal issued in 2002, his ABC class membership effectively renders the outstanding order of removal a nullity and additionally eviscerates the legality of his present detention.**
22. To corroborate the Respondent’s claim of ABC class membership please find attached the following documentation.
- A. **Proof of Physical Presence in the US before 09/19/1990**
 - B. **Proof of TPS Filing Before 10/31/1991**
 - C. **Evidence of Asylum filing before 01/31/1996**
 - D. **DHS Internal Documents confirming entitlement to ABC Benefits**
23. The Petitioner seeks the Court’s assistance in preventing his imminent removal. Despite the fact that the Petitioner has notified Respondents of the information herein, they have not taken any steps to release him and will remove him imminently.

FIRST CAUSE OF ACTION

VIOLATION OF THE ABC SETTLEMENT

24. ABC Class members can not be detained. Petitioner’s continuing detention is therefore unlawful.

SECOND CAUSE OF ACTION

Violation of Fifth Amendment Right to Due Process
(Failure to Provide an Individualized Hearing for Domestic Civil Detention)

25. “In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).

26. The Fifth Amendment’s Due Process Clause specifically forbids the Government to “deprive[]” any “person . . . of . . . liberty . . . without due process of law.” U.S. CONST. amend. V. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); see *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)

(“[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law”); cf. *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020) (holding noncitizens due process rights were limited where the person was not residing in the United States, but rather had been arrested 25 yards into U.S. territory, apparently moments after he crossed the border while he was still “on the threshold”).

27. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” protected by the Due Process Clause. *Zadvydas*, 533 U.S. 678 at (2001).

28. The Supreme Court has thus “repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection,” including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); see also *Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

29. Petitioner was arrested inside the United States and is being held without being provided any individualized detention hearing. He can not be detained pursuant to the ABC Settlement Agreement.

30. Petitioner's continuing detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

THIRD CAUSE OF ACTION
Violation of Fifth Amendment Right to Due Process
(Substantive Due Process)

31. Because Petitioner is not being released, the government is not taking any steps to effectuate its substantive obligation to ensure that immigration detention bears a "reasonable relation" to the purposes of immigration detention (*i.e.*, the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring).

32. Petitioners' detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

WHEREFORE, Petitioner respectfully requests this Court to:

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from removing Petitioner from the United States pending the resolution of this case;
3. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

4. Declare that Petitioner's detention violates the Immigration and Nationality Act,
5. Declare that Petitioner's detention violates the Administrative Procedure Act;
6. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody on his own recognizance or under parole, bond, or reasonable conditions of supervision;
7. Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. §2412, or other statutes;
8. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

By: /s/ Perham

Makabi

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COUNSEL FOR PETITIONER

Dated: New York, New York
October 30, 2025