

PERHAM MAKABI, Esq.
Attorneys for the Petitioner
8015 Lefferts Blvd Suite 1R
New York, NY 11415
(718) 261-6870

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY-
NEWARK

REYES GUZMAN, Jose Enmanuel

Plaintiff/Petitioner,

Case No.: 2:25-cv-17067-MEF

-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,

Defendants/Respondents.

MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

PRELIMINARY STATEMENT

Plaintiff/Petitioner, Jose Enmanuel Reyes Guzman, is a native and citizen of El Salvador who is detained awaiting imminent removal. Mr. Reyes Guzman is a native and citizen of El Salvador who was born on [REDACTED] Mr. Reyes Guzman fled El Salvador to escape [REDACTED] [REDACTED] and entered the US in May of 1990, without inspection. *Please see EXHIBIT A* of Docket Entry 1. On May 29, 1991, he applied for Temporary Protected Status from the legacy INS, which was granted on June 12, 1991. *Please see EXHIBIT B* of Docket Entry 1. 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. *Please see EXHIBIT C* of Docket Entry 1. Since he was present in the United States before September 19, 1990, and applied for TPS and asylum prior to the prescribed deadlines, Mr. Reyes Guzman qualifies as an ABC Settlement class member.

Later, due to a family emergency, Mr. Reyes Guzman was forced to depart the United States. He returned to the United States without inspection on September 27, 2001. After his arrival, while traveling through Texas, Mr. Reyes Guzman was arrested by agents of the Department of Homeland Security in Falfurrias, Texas, many miles north of the US/Mexico border. Upon his arrest, 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 depart the United States, the aforesaid order of voluntary departure converted to an order of removal. His asylum application was ultimately administratively closed by USCIS on August 25, 2004. 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. He was detained in Newark, New Jersey in DHS Custody and subsequently transferred to Louisiana, where he remains in DHS custody currently.

However, as a registered ABC class member, Mr. Reyes Guzman is protected from being detained. *Please see* Paragraph 17 of the ABC Settlement Agreement, *Am. Baptist Churches v. Thornburgh*, 760 F. Supp. 796, 804 (N.D. Cal. 1991). Furthermore, Mr. Reyes Guzman cannot be removed until he receives a de novo asylum adjudication, a right guaranteed by the ABC Settlement agreement. *Please see* Paragraph 19 of the ABC Settlement Agreement, *Am. Baptist Churches v. Thornburgh*, 760 F. Supp. 796, 805 (N.D. Cal. 1991).

Lastly, Mr. Reyes Guzman has significant family ties in the United States. He lives in the United States with his wife, two children, and grandchildren. Mr. Reyes Guzman's son Franklin is a lawful permanent resident and his grandchildren are US citizens. His siblings are also US citizens.

Mr. Reyes Guzman brings this Motion for Injunctive Relief ("Complaint-Petition") pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the Immigration and Nationality Act ("INA") and regulations thereunder; the Administrative Procedure Act ("APA"), 5 U.S.C § 701, and Article I, Section 9, Clause 2 of the United States Constitution (Suspension Clause), and the First, Fourth and Fifth Amendments of the United States Constitution.

THE AMERICAN BAPTIST CHURCHES ("ABC") SETTLEMENT AGREEMENT

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.

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.

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. Mr. Reyes Guzman is indisputably a registered ABC Class Member. To enjoy the aforesaid benefits of the ABC class, a Salvadoran national must meet the following three distinct elements: 1) He or she must have been physically present in the United States on or before September 19, 1990; 2) He or she must have registered for ABC benefits *or filed an application for temporary protective status* by October 31, 1991; 3) He or she must have applied for asylum by January 31, 1996.

In the instant case, Mr. Reyes Guzman arrived in the United States in May 1990. *Please see EXHIBIT A* of Docket Entry 1. 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* of Docket Entry 1. That application was later approved on June 12, 1991. *Please see EXHIBIT B* of Docket Entry 1. Subsequently, Mr. Reyes Guzman filed an application for asylum with Legacy INS on March 27, 1995. *Please see EXHIBIT C* of Docket Entry 1.

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 shows that on July 14, 1998 Mr. Reyes Guzman was “added to the Special Group ABC.” *Please see EXHIBIT C* of Docket Entry 1. Furthermore, a DHS document prepared on January 19, 1999 titled “ABC Checklist” confirms that Mr. Reyes Guzman is entitled to the benefits of the ABC settlement. *Please see EXHIBIT C* of Docket Entry 1. 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 by USCIS on August 25, 2004.

In light of the foregoing facts, Mr. Reyes Guzman’s eligibility for all the benefits and protections conferred by the ABC settlement agreement is beyond the realm of dispute.

In this regard, pursuant to the Settlement agreement **he cannot be removed from the United States** until he receives the rights afforded under the agreement, principally a de novo asylum interview and adjudication by a USCIS asylum officer. *Please see* Paragraph 19 of the ABC Settlement Agreement, *Am. Baptist Churches v. Thornburgh*, 760 F. Supp. 796, 805 (N.D. Cal. 1991).

To avert removal, on October 30, 2025, Petitioner filed a motion to reopen with the Dallas Immigration Court, seeking to reopen his removal proceedings. *Please see EXHIBIT A*, “Motion to Reopen.” The aforesaid motion to reopen was predicated on Petitioner’s ABC class membership and his eligibility for NACARA relief. Pursuant to 8 CFR §1240.66, ABC class members can seek lawful permanent resident status in the United States if they meet the following requirements: 1) They are a person of good moral character; and 2) They have been living in the United States for a continuous period of 7 years immediately preceding the adjudication of the NACARA

application. Additionally, an applicant for NACARA relief must demonstrate that removal would cause extreme hardship to the applicant or a qualifying family member. Concerning the extreme hardship requirement, in accordance with the governing regulation 8 CFR §1240.64(d), the Petitioner enjoys a rebuttable presumption of extreme hardship. In the absence of DHS evidence rebutting the presumption, the Petitioner has met the extreme hardship requirement.

On November 3, 2025, the Dallas Immigration Court denied the motion to reopen. *Please see EXHIBIT B*, “Immigration Judge’s Denial of Motion to Reopen.” Immediately thereafter, on November 04, 2025, Petitioner appealed the denial of the motion to the Board of Immigration Appeals. *Please see EXHIBIT C*, “Appeal and Motion for a Stay of Removal.” In conjunction with the appeal, the Petitioner simultaneously sought a stay of removal from the Board of Immigration Appeals. At this time, no decision has been made on the appeal and the related motion for a stay of removal.

If proceedings were reopened on appeal, Mr. Reyes Guzman could seek NACARA special rule cancellation of removal before the Court, as a registered ABC Class member.

In light of the circumstances and the compelling humanitarian factors present in the instant case it would be a gross miscarriage of justice to remove Mr. Reyes Guzman, who, despite being an ABC Settlement class member entitled to a de novo asylum interview and adjudication by a USCIS asylum officer, never received these benefits.

LAW REGARDING PRELIMINARY INJUNCTION

The Third Circuit Court of Appeals has held that the standard for granting a preliminary injunction in examining requests for a stay of removal is the same for requesting a stay of removal during the pendency of a petition for review:

- (1) a likelihood of success on the merits of the underlying petition;
- (2) that irreparable harm would occur if a stay is not granted;
- (3) that the potential harm to the moving party outweighs the harm to the opposing party a stay is not granted; and
- (4) that the granting of the stay would serve the public interest.

See Douglas v. Ashcroft, 374 F.3d 230, 233 (3d Cir. 2004) quoting *Arevalo v. Ashcroft*, 344 F.3d 1, 7–8 (1st Cir. 2003); *Mohammed v. Reno*, 309 F.3d 95, 100 (2d Cir. 2002).

The test whether to grant a motion for a preliminary injunction or a temporary restraining order is identical. *De Jesus Martinez v. Neilson*, 341 F.Supp.3d 400 at 407 (D.N.J. Sept. 14, 2018) quoting *Highmark, Inc. v. UPMC Health Plan, Inc.*, 276 F.3d 160, 170-71 (3d Cir. 2001). Each factor will be addressed below.

(1) A LIKELIHOOD OF SUCCESS ON THE MERITS OF THE UNDERLYING PETITION

Petitioner, JOSE ENMANUEL REYES GUZMAN (“Petitioner” or “Mr. Reyes Guzman”), brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 Massachusetts U.S.C. § 1651; the Immigration and Nationality Act (“INA”); the Administrative Procedure Act (“APA”), 5 U.S. § 701, and Article I, Section 9, Clause 2 of the United States Constitution (the “Suspension Clause”). Mr. Reyes Guzman’s current detention constitutes a “severe restraint” on his individual liberty such that Mr. Reyes Guzman is “in custody” of the Respondents in “violation of the Constitution or laws . . . of the United States.” *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241.

Unless habeas relief and immediate injunctive relief are granted, Mr. Reyes Guzman faces removal to a country that he left in order to escape certain death. Mr. Reyes Guzman has not returned to his home country of El Salvador in more than two decades. There is nothing left there for him, and his family is here in the United States.

Further, pursuant to Mr. Reyes Guzman's right to exhaust the process to obtain his Constitutional right to a full and fair hearing in his immigration proceedings, *see Cabrera-Perez v. Gonzales*, 456 F.3d 109, 115 (3d Cir. 2006), Mr. Reyes Guzman requests the Court stay his removal from the United States until he receives the benefits of the ABC settlement agreement, the adjudication of his asylum application.

On November 3, 2025, the Immigration Judge denied the Motion to Reopen. *Please see EXHIBIT B*, "Immigration Judge's Denial of Motion to Reopen." On November 4, 2025, Mr. Reyes Guzman submitted a corresponding appeal and a motion for a stay based on the appeal. *Please see EXHIBIT C*, "Appeal and Motion for a Stay of Removal." If Mr. Reyes Guzman is removed then his Motion to Reopen, currently on appeal, is rendered null and void. To seek NACARA relief, a foreign citizen must be physically present in the United States for 7 years immediately preceding the adjudication of the NACARA application. *Please see* 8 C.F.R. 1240.66(b)(2). Once removed, Mr. Reyes Guzman will no longer have the requisite period of seven years of continuous physical presence to seek NACARA relief. *Please see* 8 C.F.R. 1240.66(b)(2).

The process to file a motion to reopen is "an 'important safeguard' intended 'to ensure a proper and lawful disposition' of immigration proceedings." *Kucana v. Holder*, 558 U.S. 233, 242 (2010) (quoting *Dada v. Mukasey*, 554 U.S.1, 18 (2008); *see also* *Toor v. Lynch*, 789 F.3d 1055, 1061 (9th Cir. 2015) (invalidating a regulation that barred post-departure motions to reopen on the grounds that the INA provides a "statutory right to file a motion to reopen"); *Prestol Espinal v.*

Attorney Gen. of U.S., 653 F.3d 213, 218 (3d Cir. 2011) (similar). Mr. Reyes Guzman has a statutory and regulatory right to pursue a motion to reopen his removal order before the BIA. *See* 28 U.S.C. §1229a(c)(7); *see also* 8 C.F.R. § 1003.2.

In accordance with due process, a non-citizen must be afforded “a meaningful opportunity to participate in her removal proceedings.” *See Nolasco v. Holder*, 637 F.3d 159, 163 (2d Cir. 2011). This includes “a reasonable opportunity [] to present evidence on her own behalf.” *Lian Yu Piao v. Holder*, Fed.Appx. 15, 16 (2d Cir. 2010); *see also Cabrera-Perez v. Gonzales*, 456 F.3d 109, 115 (3d Cir. 2006) (“In the context of an immigration hearing, due process requires that aliens threatened with removal are provided the right to a full and fair hearing that allows them a reasonable opportunity to present evidence on their behalf.”). Mr. Reyes Guzman’s motions made a strong case that as an ABC Settlement class member, he is entitled to protection from removal. Therefore, there is a high likelihood of success on appeal on the merits of the underlying petition.

(2) THAT IRREPARABLE HARM WOULD OCCUR IF A STAY IS NOT GRANTED

It is well settled that unlawful detention itself constitutes irreparable harm. “If, as here, a party alleges a violation of a constitutional right, a presumption of irreparable harm attaches.” *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) *overruled by City of Boerne v. Flores*, 521 U.S. 507, 117 S. Ct. 2157, 2158, 138 L. Ed. 2d 624 (1997). Several courts in the 2nd circuit have concluded that the deprivation of an alien’s liberty is, in and of itself, irreparable harm. *Peralta- Veras v. Ashcroft*, 2002 WL 1267998, at *6 (E.D.N.Y. Mar. 29, 2002); *see also Hardy v. Fischer*, 701 F. Supp. 2d 614, 619 (S.D.N.Y. 2010) (“Ongoing unlawful deprivations of liberty and the threat of unlawful detention and reimprisonment would violate plaintiffs' constitutional rights and therefore constitute quintessential irreparable harm.”); *Lynch v. Campbell*, 1997 WL 18141, at *2 (N.D.N.Y.

Jan. 15, 1997) “Deprivation of liberty due to unnecessary incarceration clearly constitutes irreparable harm.” *Sajous v. Decker*, 2018 WL 2357266, at *12 (S.D.N.Y. May 23, 2018). Further, “the harm from detention pursuant to an unlawful policy cannot be remediated after the fact”, *R.I.L-R v. Johnson*, 80 F.Supp.3d 164, 191 (D.D.C. 2015), thus making it irreparable by nature. *See Also Kanivets v. Riley*, 286 F. Supp. 2d 460, 468 (E.D. Pa. 2003) (“Petitioner would be irreparably harmed if removed before his habeas petition was reviewed fully by this Court. Under the circumstances, Kanivets would not be allowed to return to the United States, even to visit his mother, who has been granted asylum, for a period of ten years”).

Simply put, if Mr. Reyes Guzman is removed then his appeal as well as his application for asylum are rendered null and void. Preventing Mr. Reyes Guzman from seeing through the full adjudication of his appeal and his asylum application would thus cause him irreparable harm. Due process protects a noncitizen’s liberty interest in the adjudication of applications for relief and benefits made available under the immigration laws. *See Arevalo v. Ashcroft*, 344 F.3d1, 15 (1st Cir. 2003) (recognizing protected interests in the “right to seek relief” even when there is no “right to the relief itself”). Mr. Reyes Guzman has a protected due process interest in the full adjudication of his appeal, as it determines his ability to have his asylum case adjudicated de novo under the ABC Settlement, and to remain in the United States and ultimately receive lawful permanent residence status through seeking NACARA relief. Any efforts by DHS to remove Petitioner, without allowing him to avail himself of the procedures created by the INA and its regulations, as well as the ABC Settlement, violate procedural due process in the Constitution.

(3) AND (4) THE POTENTIAL HARM TO THE PETITIONER IF THE STAY IS DENIED OUTWEIGHS THE HARM TO DEFENDANTS- RESPONDENTS, AND THAT

RELIEF WOULD SERVE THE PUBLIC INTEREST.

The third and fourth factors, harm to the opposing party and the public interest, merge when the Government is the opposing party. Although there is always a public interest in prompt execution of removal orders, see *Reno V. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 490, which may be heightened by circumstances such as a particularly dangerous alien, or an alien who has substantially prolonged his stay by abusing the processes provided to him, that plainly is not the case here. Mr. Reyes Guzman is a model community member who does not pose any danger to the public. He has now been residing in the United States for over 20 years, and is a devoted husband, father, and grandfather. Mr. Reyes Guzman has met all of his financial obligations to the United States by paying his taxes. He has no arrests or criminal convictions and he is an upstanding member of the community who works hard to provide for and support his family.

Mr. Reyes Guzman's liberty and property interests heavily outweigh any government interest in his deportation. If he is removed now, he will lose NACARA eligibility due to the continuous physical presence requirement, destroying his chances of gaining lawful residency in the United States before he even has the chance to see the adjudication through until the end. Once again, any efforts by DHS to remove Petitioner, without allowing him to avail himself of the procedures created by the INA and its regulations, as well as the ABC Settlement, would violate procedural due process in the Constitution.

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that this Court:

- a. Exercise jurisdiction over this matter;
- b. Temporarily stay Mr. Reyes Guzman's removal pursuant to Paragraph 19 of the ABC Settlement agreement;
- c. Declare that any deportation of Mr. Reyes Guzman prior to the full adjudication of his asylum application and his Motion to Reopen would violate the Due Process Clause of the Fifth Amendment, and federal regulations;
- d. Order Mr. Reyes Guzman's immediate release pursuant to Paragraph 17 of the ABC Settlement agreement

Respectfully submitted,

/s PERHAM MAKABI
PERHAM MAKABI, Esq.
Attorneys for the Petitioner
8015 Lefferts Blvd Suite 1R
New York, NY 11415
(718) 261-6870

Dated: New York, New York
November 05, 2025