



U.S. Department of Justice

United States Attorney
District of New Jersey
Civil Division

ALINA HABBA
ACTING UNITED STATES ATTORNEY

Alex Silagi
Assistant United States Attorney
Deputy Chief, Civil Division

970 Broad Street, Suite 700
Newark, NJ 07102
alex.silagi@usdoj.gov

main: (973) 645-2700
direct: (973) 353-6001
fax: (973) 297-2010

November 10, 2025

BY ECF

The Honorable Michael E. Farbiarz, U.S.D.J.
U.S. District Court for the District of New Jersey
2 Federal Square
Newark, NJ 07101

**Re: *Reyes Guzman v. Pamela Bondi*, No. 25-17067
Answer to § 2241 Petition**

Dear Judge Farbiarz:

This Office represents Respondents in this habeas matter filed by Petitioner Jose Emmanuel Reyes-Guzman, a noncitizen in the custody of U.S. Immigration and Customs Enforcement (“ICE”). We write in response to the petition, which the Court should dismiss, stay, or deny for the reasons below.

I. Factual Background & Procedural History

A. Petitioner’s Immigration History

Petitioner is a native and citizen of El Salvador. Pet. ¶ 1. He entered the United States without inspection through California in May 1990. *Id.* ¶ 2 & Pet. Ex. B. In May 1991, he applied for and received Temporary Protected Status (“TPS”) from the Immigration and Naturalization Service (“INS”), which is the predecessor to the Department of Homeland Security (“DHS”). In March 1995, he applied for asylum. Pet. ¶ 13. In September 2001, while the asylum application was still pending, the Department of Homeland Security (“DHS”) initiated removal proceedings against him in immigration court and released him from detention on parole. *Id.* ¶ 14. On March 5, 2002, the immigration court granted Petitioner’s request for voluntary departure in lieu of removal. Ans. Ex. A, Order of the Immigration Judge dated Nov. 3, 2025 (“IJ Order”) at 3. When Petitioner failed to depart by the scheduled departure date, his departure order converted into a final order of removal. *Id.* at 3.

On October 24, 2025, U.S. Immigrations and Customs Enforcement (“ICE”) arrested Petitioner and has detained him since then pursuant to his final order of

removal. Pet. ¶ 14; *see also* 8 U.S.C. § 1231(a)(6) (permitting detention pending removal of certain noncitizens with final orders of removal).

On October 30, 2025, Petitioner filed a motion to reopen his removal proceedings before the immigration court. Ans. Ex. A, IJ Order at 3. Petitioner argued that his final order of removal should be terminated, and his removal case reopened, because he did not receive his protections under the ABC Settlement Agreement. *Id.* at 3-4.

B. The ABC Settlement Agreement

The ABC Settlement Agreement arose from a lawsuit alleging that INS mishandled asylum proceedings for certain central Americans. *See Am. Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (the “ABC Settlement Agreement”), attached as Ex. D. In essence, the lawsuit claimed that INS denied Guatemalans and Salvadorians fair asylum proceedings because it “systematically” misapplied the asylum standards to their applications. *See Jacobo v. Att’y Gen. of U.S.*, 459 F. App’x 112, 115 (3d Cir. 2012). The ABC Settlement Agreement thus provided its class members *de novo* asylum interviews and adjudications. *Id.* ¶¶ 2, 10. The Settlement Agreement protects class members from removal “until the class member has had the opportunity to effectuate his or her rights under the agreement.” *Id.* ¶ 19. It also protects them from detention while they are “eligible for relief” under the Agreement. *Id.* ¶ 17. If the class member receives those rights, immigration officials can proceed with removal. *Id.* ¶ 20(a).

The ABC Settlement Agreement grants individual class members a right to judicial review in any federal court to enforce the Agreement’s terms. (except review is not available for certain procedural challenges not at issue here). *Id.* ¶ 35. The Agreement expressly permits class members to challenge their detention through a petition for writ of habeas corpus. *Id.* ¶ 36(e).

C. Petitioner Seeks ABC Relief Before the Immigration Court

On November 3, 2025, the IJ denied his motion to reopen, holding that Petitioner received all rights available under the ABC Settlement Agreement. The IJ stated,

a class member is only protected from removal until he has had the opportunity to obtain a *de novo* asylum adjudication from USCIS. *See American Baptist Churches*, 760 F. Supp. at 799, 805. The record reflects that Respondent filed an asylum application with USCIS as an ABC class member on March 27, 1995 and had an interview scheduled for August 5, 2004. MTR, Tab C. However, Respondent failed to appear at that interview, and so his application was administratively closed. *Id.* Thus, the record shows that Respondent received his benefit as a class

member but failed to take advantage of the benefit by failing to attend the interview. Because Respondent already received his benefit of being a class member he is no longer protected from removal twenty years later.

IJ Order at 4.

The next day, on November 4, 2025, Petitioner, through counsel, filed an appeal to the Board of Immigration Appeals (“BIA”) of the IJ’s November 3 order denying the motion to reopen. Ans. Ex. B, Appeal of IJ Order at 1-2. Petitioner argues in his notice of appeal that the IJ’s order was based on an error of fact about why he did not attend the asylum interview, claiming he never received notice of the interview *Id.* According to Petitioner’s counsel, the appeal is pending.

Along with the appeal, Petitioner also filed on November 4 a motion to stay removal before the BIA. Ans. Ex. C, Motion for Stay of Removal. According to Petitioner’s counsel, the motion is pending as well.

D. Petitioner’s Habeas Petition

Petitioner filed this habeas action on October 30, the same day he filed his motion to reopen with the IJ. ECF No. 1. He asserts that his detention and planned removal violate the ABC Settlement Agreement and due process, including the *Zadvydas* prolonged detention standards. Pet. ¶¶ 24-32 & ¶ 31 (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). Central to these counts is his argument that he is protected by the ABC Settlement Agreement because DHS incorrectly dismissed his asylum application after failing to notify him of his asylum interview. On November 5, 2025, this Court issued an Order enjoining Respondents from removing Petitioner from the United States. ECF No. 7.

II. Argument

As an initial matter, the Court lacks subject matter jurisdiction over Petitioner’s request that his removal is unlawful in light of the ABC Settlement Agreement. Although the Settlement Agreement permits class members to challenge their detention through habeas petitions, *see* Settlement Agreement ¶ 36(e), it does not permit a class member to bring habeas challenges to their removal orders. Nor could it. Such a claim is expressly barred by the INA, 8 U.S.C. § 1252(a)(5), which retroactively prohibits habeas challenges to removal orders. Accordingly, this Court lacks habeas jurisdiction to decide if the ABC Settlement bars Petitioner’s removal. *See Segura-Mundo v. Hudson*, No. 09-1717, 2009 WL 10711802, at *3 (S.D. Tex. Nov. 30, 2009) (holding § 1252(a)(5) barred ABC class member’s habeas challenge to removal order based on rights under ABC Settlement Agreement).

This Court does have jurisdiction over Petitioner’s habeas challenge to the lawfulness of his detention pending removal. But its jurisdiction is not exclusive. The power to resolve fact questions—such whether a petitioner had good cause for missing an asylum interview—is ordinarily the responsibility of the immigration court with appellate review in the BIA and the Courts of Appeals. *See, e.g., Jacobo v. U.S. Att’r Gen.*, 459 Fed. App’x 112 (3d Cir. 2012) (reversing BIA’s denial of motion to reopen ABC class member’s claim that administrative error caused INS to deny her a de novo asylum interview); *Reyes-Escobar v. Holder*, 366 F. App’x 760, 762 (9th Cir. 2010) (affirming BIA’s denial of motion to reopen ABC class member’s removal order following agency dismissal of asylum claim when petitioner failed to appear). Although the ABC Settlement Agreement could be read to grant federal district courts jurisdiction to resolve fact questions related to the Agreement, we are aware of no court that has done so.

Given the fact-finding limitations of a federal court sitting in habeas, the Court should stay or dismiss without prejudice the habeas petition while appellate process plays out before the BIA and Court of Appeals. *See Jerez v. Lynch*, No. 08-522, 2009 WL 483871, at *3 (D. Neb. Feb. 24, 2009) (involving ABC class member’s habeas petitioner, court stayed matter pending 8th Circuit’s review of parallel challenge to removal order based on failure to appear at asylum interview). Alternatively, the Court could resolve the habeas detention claim under the *Zadvydas* and determine whether there is a “reasonable foreseeability of removal.” *Segura-Mundo*, 2009 WL 10711802, at *3 (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). We are aware of no court in this circuit to have faced the issue of how to procedurally resolve a habeas claim involving the ABC Settlement Agreement.

Under either approach—stay of proceedings or a *Zadvydas* analysis—Respondents prevails on the petition for now. This Court may stay this action and await a decision from the BIA. If the BIA does not render a decision quickly, this Court could address any claim of prolonged detention at that time. Similarly, if this Court performs a *Zadvydas* analysis of the likelihood of removal in the reasonably foreseeable future, Respondents have demonstrated efforts to remove Petitioner to his native country, those efforts resulted in a stay of removal by this Court, and Petitioner’s detention since October 24th comports with due process because it is far less than the six months that *Zadvydas* deemed presumptively reasonable. *See Kevin A.M. v. Essex Cnty. Corr. Facility*, No. 21-11212 (SDW), 2021 WL 4772130, at * 2 (D.N.J. Oct. 12, 2021) (challenge to post-removal-order detention by alien detained for less than six months must be dismissed as premature); *Luma v. Aviles*, No. 13-6292 (ES), 2014 WL 5503260, at *4 (D.N.J. Oct. 29, 2014) (same).

Lastly, even if the Court reaches the merits of the petition involving the ABC Agreement, Petitioner’s arguments fail. The issue is whether Petitioner had “the opportunity” to pursue asylum before being detained. *See Settlement Agreement* ¶ 19. That, in turn, depends on why his asylum proceeding concluded in 2004. If he simply failed to appear for the August 5, 2004, interview, ICE could detain and

remove him because he forfeited “the opportunity” for the asylum interview provided under the Settlement Agreement. *See id.* ¶¶ 17, 20(a) (permitting detention and removal after class members receives rights under Agreement). But if he had no notice of his interview, then he did not have the “opportunity,” and he is still entitled to it. *See Jacobo*, 459 Fed. at 116 & n.6 (“[A]t issue here is whether an administrative error by the INS in the 1990s deprived Jacobo of a ‘significant benefit’ to which she was entitled—namely, of the opportunity to file a de novo asylum application under ABC . . . If the INS had committed such error, Jacobo should not be penalized for failing to request administrative closure in 1996.”).

Here, Petitioner offers no proof that he lacked notice of the asylum interview. Petitioner only alleges, without citation to record evidence, that DHS “never made a decision on [Petitioner’s] application for asylum as the application was administratively closed on August 25, 2005.” Pet. ¶ 20. Nor does Petitioner explain his lack of diligence in pursuing his rights under the ABC Settlement Agreement during a twenty-year period. Absent any proof that he lacked notice of the interview, his claim that he has not had an opportunity to pursue ABC class relief lacks merit.

We thank the Court for its attention to this matter.

Respectfully submitted,

TODD BLANCHE
U.S. Deputy Attorney General

ALINA HABBA
Acting United States Attorney
Special Attorney

By: s/ Alex Silagi
ALEX D. SILAGI
Assistant United States Attorney
Deputy Chief, Civil Division

cc: Counsel of record (by ECF)