UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Jose Sergio Tenezaca-Quiroz, Petitioner, v. Tammy Marich, Acting Director of Buffalo Field Office of Immigration and Customs Enforcement; Kristi Noem, Secretary of the Department of Homeland Security; Pamela Bondi, Attorney General, in their official capacities, Respondents.	Case No. 25-cv-1166 (LJV) **FIRST AMENDED VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Jose Sergio Tenezaca-Quiroz, is an alien from Ecuador with a reinstated removal order. His withholding-only proceedings are currently pending.

2. Petitioner entered the United States on January 20, 2015.

3. On June 7, 2024, Petitioner Filed affirmatively for Asylum.

4. On Aug 19, 2025, Petitioner was granted Employment Authorization Document (EAD), which is set to set to expire on Aug 18, 2030. The fact that Petitioner was eligible for his work permit, was due to his application for asylum.

5. On November 5, 2025 around 7:00 am, Petitioner was on his way to work, in Rochester NY, when he was stopped by ICE with his brother.

6. Upon being stopped he furnished his EAD, which the officer remarked, that "this is garbage", and without warning or apparent justification, proceeded to arrest him.

7. ICE subsequently took Petitioner into custody, at the Buffalo Federal Detention Facility, in Batavia New York.

8. Upon information and belief, as of the time of the filing of this Habeas Petition, Petitioner remains in custody at the Buffalo Federal Detention Facility, in Batavia New York.

9. To vindicate Petitioner's constitutional rights, this Court should grant the instant petition for a writ of Habeas Corpus.

JURISDICTION

10. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

12. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

13. Venue is proper because—on information and belief—Petitioner is detained at 4250 Federal Drive Batavia, NY 14020, which is within the jurisdiction of this Court.

PARTIES

14. Petitioner, Jose Sergio Tenezaca-Quiroz, is a national of Ecuador.

15. On November 5, 2025 around 7:00 am, Petitioner was on his way to work, in Rochester NY, when he was stopped by ICE, and without warning or apparent justification, proceeded to arrest him.

16. ICE subsequently took Petitioner into custody, at the Buffalo Federal Detention Facility, in Batavia New York. Upon information and belief, as of the time of the filing of this Habeas Petition, Petitioner remains in custody at the Buffalo Federal Detention Facility, in Batavia New York.

17. Tammy Marich is the Acting Director of ICE's Buffalo Field Office.[1] In his official capacity, he is charged with carrying out the functions of that office, including by making and overseeing decisions regarding immigration detention throughout the Buffalo, including the Batavia Detention Center. He therefore has custody over Petitioner, in that he can order his release from ICE custody.

18. Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"), which is ICE's parent agency. In her official capacity, she is charged with making determinations as to removability, asylum eligibility, and immigration custody, all of which are binding on DHS. She therefore has constructive custody over Petitioner, in that she has the capacity to order DHS to release Petitioner from custody.

19. Pamela Bondi is the Attorney General. In her official capacity, she is charged with making determinations as to removability, asylum eligibility, and immigration custody, all of which are binding on DHS. She therefore has constructive custody of Petitioner, in that she has the capacity to order DHS to release Petitioner.

[1] The original Petition erroneously listed Edward Newman in this role.

STATEMENT OF FACTS

20. Jose Sergio Tenezaca-Quiroz, is an alien from Ecuador, who most recently entered the United States on January 20, 2015. He has a reinstated removal order, and his withholding-only proceedings remain pending.

21. On June 7, 2024, Petitioner Filed affirmatively for Asylum. On July 26, 2024, Petitioner scheduled and appeared for USCIS biometrics.

22. On Aug 19, 2025, Petitioner was granted Employment Authorization Document (EAD), which is set to set to expire on Aug 18, 2030. The fact that Petitioner was eligible for his work permit, was due to his application for asylum.

23. On November 5, 2025 around 7:00 am, Petitioner was on his way to work, in Rochester NY, when he was stopped by ICE with his brother.

24. Upon being stopped he furnished his EAD, which the officer remarked, that "this is garbage", and without warning or apparent justification, proceeded to arrest him.

25. ICE subsequently took Petitioner into custody, at the Buffalo Federal Detention Facility, in Batavia New York.

26. Upon information and belief, as of the time of the filing of this Habeas Petition, Petitioner remains in custody at the Buffalo Federal Detention Facility, in Batavia New York.

27. Mr. Jose Sergio Tenezaca-Quiroz, fears that ICE intends to transfer him to a remote detention facility beyond the reach of his family, and attorneys, here in New York. Cf., e.g., *Ozturk v. Hyde,* 136 F.4th 382 (2d Cir. 2025) (attempted transfer to ICE detention center in Louisiana); *Mahdawi v. Trump,* 136 F.4th 443 (2d Cir. 2025) (same).

LEGAL FRAMEWORK

28. Aliens with reinstated orders of removal are detained pursuant to 8 U.S.C. § 1231. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 526 (2021).

"Post-Order" Detention under Section 1231

29. "Once an alien is ordered removed, DHS must physically remove him from the United States within a 90-day 'removal period.'" *Id.* at 528 (quoting 8 U. S. C. § 1231(a)(1)(A)). "The removal period begins on the latest of three dates: (1) the date the order of removal becomes 'administratively final,' (2) the date of the final order of any court that entered a stay of removal, or (3) the date on which the alien is released from non-immigration detention or confinement." *Id.* (quoting 8 U.S.C. § 1231(a)(1)(B)); *see also Perez Flores v. Bondi*, 25 Civ. 306 (LJV), 2025 WL 1921748, at *3 (W.D.N.Y. Jul. 14, 2025) (observing that "[s]ection 1231(a) . . . . provides for a 'removal period,' which it defines as the 90 days 'following an order of removal . . . . [and] [u]nder the statute's explicit terms, that period begins 'on the latest' of [the] three possible dates" just listed (quoting *Hechevarria v. Sessions*, 891 F.3d 49, 54–55 (2d Cir. 2018))). "During the removal period, detention is mandatory." *Guzman Chavez*, 594 U.S. at 528 (citing 8 U.S.C. § 1231(a)(2)). But unless an "exception applies, an alien who is not removed within the 90-day removal period will be released." *Id.* at 529 (citing 8 U. S. C. § 1231(a)(3); 8 CFR § 241.5).

30. "Although the statute does not specify a time limit on how long DHS may detain an alien in the post-removal period, th[e] [Supreme] Court has 'read an implicit limitation' into the statute 'in light of the Constitution's demands,' and has held that an alien may be detained only for 'a period reasonably necessary to bring about that alien's removal from the United States.'" *Id.* (quoting *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001)). "And according to the Court, a period

reasonably necessary to bring about the alien's removal from the United States is presumptively six months." *Id.* (citing *Zadvydas*, 533 U.S. at 701).[2, 3]

31. In other words, section 1231 mandates detention during the ninety days following entry of a final removal order, presumptively allows detention in the ninety days after, and then requires the Government to release the detainee unless removal is foreseeable.

Reinstatement of a Prior Removal Order

32. "DHS's regulations set out the process for reinstating an order of removal. In short, the agency obtains the alien's prior order of removal, confirms the alien's identity, determines whether the alien's reentry was unauthorized, provides the alien with written notice of its determination, allows the alien to contest that determination, and then reinstates the order." *Guzman Chavez*, 594 U.S. at 530 (citing 8 C.F.R. §§ 241.8(a)–(c), 1241.8(a)–(c)).

33. An individual whose removal order has been reinstated is subject to detention under section 1231. "First, [such persons] have been 'ordered removed[,]'" in that they were "previously removed pursuant to [] valid order[s] of removal. . . . later reentered the United States without authorization, [and] those prior orders were 'reinstated from [their] original date[s]' under § 1231(a)(5)." *Id.* at 534 (penultimate and final alterations in *Guzman Chavez*). "Second, [] reinstated removal orders are 'administratively final,'" and will typically "have long been" so,

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[2] Although *Zadvydas* considered only the situation of "aliens who were admitted to the United States but subsequently ordered removed," 533 U.S. at 682, the Supreme Court subsequently extended its holding "to the category of aliens ordered removed who are inadmissible under § 1182," *Clark v. Martinez*, 543 U.S. 371, 378 (2005) (cleaned up).

[3] As this Court has previously explained, our analysis is tethered to the duration of the "removal period," and not to the length of detention per se. *See Davis v. Garland*, No. 24 Civ. 223 (LJV), 2025 WL 3361799, at *5 (W.D.N.Y. Jul. 10, 2024) ("Once the Third Circuit issued a final decision in his case, Davis's removal order became final, and the removal period under section 1231(a) began to run. Because it has been less than five months since the Third Circuit's decision, Davis's detention during the removal period is well within the time deemed presumptively reasonable—and, indeed, constitutional—by the Supreme Court. . . . The fact that Davis has been detained for more than four and a half years in total—a very long time, to be sure—does not change that analysis." (citation omitted)).

because someone who is subject to a reinstated order "had the opportunity to seek review in the BIA after the initial removal order was entered, and § 1231(a)(5) explicitly prohibits them from seeking review or relief from the order after it is reinstated." *Id.* at 534–35.

34. As a result, individuals whose removal orders have been reinstated are subject to the same three-phase detention framework summarized in the previous section.

Calculating "Removal Period" in Reinstatement Cases

35. The statute is not entirely clear about when the "removal period begins in reinstatement cases, but the Supreme Court has offered some clues.

36. We begin with the Supreme Court's textual analysis. "Recall that under § 1231(a)(1)(B), the removal period begins 'on the latest of' three events: (1) '[t]he date the order of removal becomes administratively final'; (2) '[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order'; and (3) '[i]f the alien is detained or confined' outside the immigration process, the date of the alien's release." *Guzman Chavez*, 594 U.S. at 534. The statute "further provides that when an alien reenters the country after having already been removed, 'the prior order of removal is reinstated *from its original date* and is not subject to being reopened or reviewed.' In that scenario, 'the alien is not eligible and may not apply for any relief under this chapter' and 'shall be removed under the prior order at *any time after the reentry*.'" *Id.* at 533 (quoting 8 U.S.C. § 1231(a)(5)) (emphasis added); *see also Perez-Flores*, 2025 WL 1921748, at *4 ("The 'removal period' under the statute begins when the noncitizen is ready to be removed."). On a literal reading, then, the statute would seem to indicate that Petitioner's removal period began, at the latest, on the date that he reentered the United States, which was approximately January 20, 2015.

37. But a literal reading of the statute is probably not a reasonable one. Requiring the Government to detain unauthorized reentrants *instantaneously* would hold our Nation's immigration bureaucracy to standards of omniscience and alacrity that Congress is unlikely to have imposed. *See Perez Flores*, 2025 WL 1921748, at *4 (proper analysis must be "based *both* on the 'clear language' of section 1231 *and* on the provision's 'structure and logic'" (quoting *Hechevarria*, *supra*)) (emphasis added).

38. Luckily, *Guzman Chavez* offers an alternative. The detainees in *Guzman Chavez*, like Petitioner, were "aliens who were removed from the United States and later reentered without authorization," and the facts of their case offer a logical standard for determining when the removal period can be said to begin in earnest: "When DHS *discovered their presence*, it reinstated their prior removal orders." *Id.* at 532 (emphasis added). Calculating the removal period by reference to the date of discovery—rather than the date of entry—gives as much effect to the statutory language we have just discussed as is possible without producing absurd results. Under this rule, Petitioner's removal period would have begun—at the latest—on July 7, 2024, when he alerted DHS to his presence in the United States by applying for asylum and withholding of removal with USCIS. *See* Dkt. No. 1 at ¶ 3.[4]

CLAIM FOR RELIEF
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

39. Petitioner's ongoing detention under section 1231 is constitutionally suspect because the removal period in his case, construed reasonably and generously to the Government's interests, lapsed over eighteen months ago. The Government concedes that the removal period has long since

[4] Instead of detaining Petitioner when it discovered his presence, DHS provided him with employment authorization. *See id.* at ¶ 4.

run in this case, and actually argues against its own interest that the period lapsed years ago. *See* Dkt. No. 14 at 2.

40. Petitioner's has made a prima facie showing that his removal is not reasonably foreseeable, because (1) it has been more than eighteen months since the removal period began, and the Government has not managed to remove him; (2) his withholding-only proceedings remain ongoing before and immigration judge; and (3) this Court lifted its own stay of removal roughly two weeks ago, *see* Dkt. No. 18, based on the Government's assurance that this stay was the *only* thing preventing Petitioner's removal, *see* Dkt. No. 12, but the Government *still* has not removed Petitioner.

41. The Government has failed to rebut that showing. In its motion to dismiss, the only "evidence" the Government points to for why removal is foreseeable is its prior letter. *See* Dkt. No. 20-1 at 2 n.1 (citing Dkt. No. 12). As noted *supra*, that letter claimed that Petitioner's removal was imminent, and the only obstacle was this Court's stay. But the Government conceded that this assertion was premature in a subsequent letter. *See* Dkt. No. 16. And the fact is that the stay of removal—the sole obstacle to removal, per the Government's only identified "evidence"—was lifted two weeks ago, and no action has been taken to remove Petitioner.

42. Under these circumstances, Petitioner's ongoing detention could extend indefinitely, both over the course of his withholding-only removal proceedings, as well as subsequent to those proceedings if the Government makes good on its threat of third-country removal. *See* Dkt. No. 16. The Government's only "evidence," Dkt. No. 20-1 at 2 n.1, is a letter stating that "[t]he only impediment to removal is this Court's order staying it[,] [and] [i]f this Court lifts its order, Petitioner can be removed within the next 14-21 days." Dkt. No. 12. The stay was lifted 13 days ago, *see* Dkt. No. 18, and no action has been taken to remove Petitioner. The Court should hold

the Government to its word. If it fails to remove Petitioner on or before January 8, 2026 (21 days after the stay was lifted), it should be ordered to release him.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

(1) Assume jurisdiction over his petition;

(2) Enjoin Respondents from transferring Petitioner outside of this judicial district;

(3) Declare Petitioner's ongoing detention to be violative of the Due Process Clause of the Fifth Amendment;

(4) Issue a writ of habeas corpus directing Respondents to release Petitioner on January 8, 2026 unless they remove him on or before that date;

(5) Provide such other relief as the Court deems just and proper.

Dated: December 31, 2025
Kew Gardens, New York

/s/ Reuben S. Kerben, Esq.
Counsel for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Mr. Jose Sergio Tenezaca Quiroz, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: December 31, 2025
Kew Gardens, New York

/s/ Reuben S. Kerben, Esq.
Counsel for Petitioner