

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

Aldegundo Rodriguez Hernandez

Petitioner,

v.

Kristi Noem, United States Secretary, Department of Homeland Security;
Todd M. Lyons, Acting Director, United States Immigration and Customs Enforcement (ICE);
Marcos Charles, Acting Executive Associate Director, ICE Enforcement and Removal
Operations;
Kelei Walker, ICE Denver Field Office Director;
Juan Baltasar, Warden, GEO-ICE immigration detention facility in Aurora, CO; and
Pamela Bondi, United States Attorney General.

Respondents.

WRIT OF HABEAS CORPUS

The Petitioner, Mr. Aldegundo Rodriguez Hernandez (“Rodriguez Hernandez”) by and through his undersigned counsel, hereby respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to challenge his continued and indefinite detention by the Respondents, despite having been granted withholding of removal pursuant to 8 U.S.C. § 1231(b)(3)(A) by the Immigration Court in Denver, Colorado, on April 17, 2019.

I. PARTIES

1. The Petitioner, Aldegundo Rodriguez Hernandez is a citizen of Mexico, currently detained at the GEO-ICE immigration detention facility in Aurora, Colorado.
2. Respondent Kristi Noem is the Secretary of the United States Department Homeland Security (DHS).
3. Respondent Todd M. Lyons is the Acting Director of United States Immigration and Customs Enforcement (ICE).
4. Respondent Marcos Charles is the Acting Executive Associate Director of ICE Enforcement and Removal Operations (ICE-ERO).
5. Respondent Kelei Walker is the ICE Denver, CO, Field Office Director.
6. Respondent Juan Baltasar is the Warden at the GEO-ICE Immigration Detention Facility in Aurora, Colorado, where Rodriguez Hernandez is currently detained.
7. Respondent Pamela Bondi is the United States Attorney General.
8. Suit is brought against each Respondent in their official capacity.

JURISDICTION & VENUE

9. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 because Rodriguez Hernandez is in custody within this District under the authority of the United States.
10. Jurisdiction is proper because Rodriguez Hernandez challenges the legality of his detention.
11. Venue is proper pursuant to 28 U.S.C. § 1391(e) because Rodriguez Hernandez is in custody within this District and the Respondents are exercising authority over him.

FACTS

12. Rodriguez Hernandez was previously granted “withholding of removal” by an Immigration Judge in Denver, Colorado on April 17, 2019. Counsel for the DHS waived appeal.¹
13. Rodriguez Hernandez checked in with ICE in Centennial, Colorado, on a scheduled meeting on November 30, 2025. He was instructed by ICE to return for another check-in on June 30, 2026.
14. On December 19, 2025, Rodriguez Hernandez was apprehended by unknown federal agents at the Denver International Airport upon his entry to the airport.
15. Rodriguez Hernandez has no criminal convictions in the United States, or in any other country.
16. Rodriguez Hernandez is a registered business owner and a homeowner in the United States who duly pays his income taxes.

¹ **Exhibit One**, Immigration Judge Order granting withholding of removal under Article III of the Convention Against Torture (04/17/2019)

17. Rodriguez Hernandez suffers from lifetime pulmonary issues and is currently on a lung transplant waitlist at the University of Colorado Hospital in Denver, Colorado. Currently he has been given an oxygen tank at the GEO-ICE detention facility in Aurora, CO, but he has not received any of his regular medication.
18. The Respondents detained Rodriguez Hernandez to immediately deport him even though he has been granted “withholding of removal” to Mexico, and he is not a citizen or national of any other country.
19. The Respondents are not in possession of a valid, unexpired Mexican passport for Rodriguez Hernandez.
20. Removal is not reasonably foreseeable because the Defendants are precluded from deporting him to Mexico and have not made any effort to reopen his removal proceedings to attempt to deport him to a third country.

ARGUMENT

I. THE RESPONDENTS’ ACTIONS IN THEIR DETENTION AND ATTEMPT TO REMOVE RODRIGUEZ HERNANDEZ FROM THE UNITED STATES ARE *ULTRA VIRES*, AND ARBITRARY & CAPRICIOUS.

21. Detention following a final order of removal is governed by 8 U.S.C. § 1231.
22. First, the statute requires removal within a period of 90 days from the order signed on April 17, 2019. “[W]hen an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 (the “removal period”). 8 U.S.C. § 1231(a)(1)(A) (emphasis added).

23. Second, detention is authorized “during the removal period.” 8 U.S.C. § 1231(a)(2)(A).
24. Here the Respondents detained Rodriguez Hernandez 2,438 days (six years, eight months, and 3 days) after the order withholding his removal to Mexico entered on April 17, 2019.
25. Third, 8 U.S.C. § 1231(b)(3)(A) prohibits removal when the “alien’s life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.”
26. An Immigration Judge determined that Rodriguez Hernandez’ life or freedom would be threatened in Mexico on the protected grounds.²
27. The exceptions to 8 U.S.C. § 1231(b)(3)(A), found in 8 U.S.C. § 1231(b)(3)(B) are inapplicable. Rodriguez Hernandez has no criminal history in the United States and the Respondent’s have no grounds to suggest he is a danger to the security of the United States.

II. The Respondents have no authority to unilaterally withdraw the Immigration Court’s grant of withholding of removal.

28. The DHS must file a motion to reopen or reconsider the Immigration Court’s decision and prove by a preponderance of the evidence that Rodriguez Hernandez does not merit a grant of withholding of removal. *See generally*, 8 U.S.C. § 1229a (c)(7); 8 C.F.R. § 1003.23(b)(1) (Immigration Judge authority to reopen removal proceedings).
29. No motion to reopen has been filed by the Respondents in Immigration Court.

² See, Exhibit One

30. Due process of law is violated when the DHS provides no notice or opportunity to be heard to Rodriguez Hernandez regarding their attempt to rescind his grant of withholding of removal. U.S. Const. amend. V.
31. There are no specific findings by an Immigration Judge granting reopening of the underlying removal case, making new factual findings, holding the DHS to its burden of proof, or withdrawing the grant of withholding of removal.
32. Because withholding of removal is a mandatory protection under the law once established, the DHS must establish statutory or regulatory grounds justifying reopening and termination. The DHS is refusing to comply with its statutory obligations.
33. The DHS must provide Rodriguez Hernandez with notice of intent to terminate his withholding of removal grant, in conjunction with reopened removal proceedings. 8 C.F.R. § 1208.24(f). Rodriguez Hernandez has not been notified of any such intention by the DHS.
34. DHS cannot demonstrate that the grant of withholding of removal was due to fraud or misrepresentation in the original grant. *See, e.g.*, 8 C.F.R. § 1208.24(a)(1).
35. No statutory bars to withholding of removal apply. 8 U.S.C. § 1231(b)(3)(B).
36. The Defendants must provide Rodriguez Hernandez with due process of law if they are attempting to deport him to a third country, including providing him with an opportunity to identify and defend against removal to countries where his life would be in danger based on the protected grounds identified in the CAT standard. U.S. Const. amend V. *See*

also, Noem v. Abrego Garcia, 604 U.S. ____ (2025) (facilitating the return of a person deported after a grant of withholding of removal, though not to a third country).

III. RODRIGUEZ HERNANDEZ IS SUFFERING IRREPERABLE HARM DUE TO THE RESPONDENTS' *ULTRA VIRES* ACTIONS.

37. Because he is detained, he cannot run his Colorado construction business, incurring losses and potential liability due to his inability to fulfill pre-existing contractual obligations.
38. Because he is detained, his already precarious physical health is deteriorating.
39. He fears imminent relocation from Colorado to detention in a far-away city where the Respondents attempt to cut him off from his local counsel, his business, and his community.
40. He fears imminent deportation to a country with zero connection to him or his life, and where he may be tortured or deprived of lifesaving medical treatment.

IV. THE APA PROHIBITS THE RESPONDENTS' *ULTRA VIRES* CONDUCT

41. The Respondents' detention places Rodriguez Hernandez in legal limbo, indefinitely.
42. The Administrative Procedures Act (APA) states in relevant part: "Actions Reviewable: Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review." 5 U.S.C. § 704.
43. The Supreme Court interprets the APA authority as creating a "cause of action" for parties who have been adversely affected by agency action. *See Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230, n.4 (1986) (noting that § 704 expressly creates a "right

of action'...absent some clear and convincing evidence of legislative intent to preclude review").

44. The APA instructs that a person who is "suffering [a] legal wrong because of agency action," or who is "adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702.
45. "[A]gency action" is defined to include "the whole or part of agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13).
46. The Respondents are without legal authority to detain Rodriguez Hernandez or to remove him to a third country without due process of law.
47. This Court should "hold unlawful and set aside agency actions, findings and conclusions" when they are: 1) arbitrary, capricious, and not in accordance with the law; 2) contrary to constitutional right; 3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; 4) without observance of procedures required by law; 5) unsupported by substantial evidence; and 6) unwarranted by the facts. 5 U.S.C. § 706(2)(A)-(F); *see also, Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 413-14 (1971) (citing 5 U.S.C. § 706(2)(A)-(D)) ("In all cases agency action must be set aside if the action was 'arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law' or if the action failed to meet statutory, procedural, or constitutional requirements.").
48. This Court should hold unlawful and set aside the Respondents' detention of Rodriguez Hernandez because every factor anticipated by the APA for so holding is satisfied in this case.

49. Rodriguez Hernandez is within the “zone of interest” protected by the underlying statutes and regulations concerning reopening of removal proceedings and terminations of a grant of withholding of removal. *Hernandez-Avalos v. I.N.S.*, 50 F.3d 842, 846 (10th Cir. 1995). *See*, 8 U.S.C. § 1232(b)(3)(A) (withholding of removal grant by an Immigration Judge); 8 C.F.R. § 1208.24(f). (DHS must provide notice of intent to terminate withholding grant, in conjunction with reopened removal proceedings); 8 U.S.C. § 1229a (c)(7) (motions to reopen); 8 C.F.R. 1003.23(b)(1) (Immigration Judge authority to reopen removal proceedings).
50. The Respondents did not follow existing statutes or regulations when they arbitrarily and capriciously detained Rodriguez Hernandez on December 19, 2025. Thus, they failed to perform the task assigned to them by Congress.

PRAYER FOR RELIEF

51. Because the Respondents have no legal grounds to detain him, Rodriguez Hernandez seeks immediate release from detention.
52. Because he fears the Respondents may attempt to divest this court of *in personam* jurisdiction, he files a concurrent Complaint for Declaratory Judgment and Injunctive Relief against his removal from Colorado to another state or country during the pendency of this Court’s review of his claims.
53. If the Court finds that the Defendants’ position in this case is erroneous and without legal justification, pursuant to the Equal Access to Justice Act (“EAJA”), Rodriguez Hernandez

seeks attorneys' fees and costs if he is found to be the prevailing party. *See* 28 U.S.C. § 2412(d) and 5 U.S.C § 504 *et seq.*

54. The Tenth Circuit Court of Appeals agrees that the EAJA authorizes the award of fees in habeas actions challenging immigration detention. *Daley v. Choate*, 24-1191 (10th Cir. Nov. 3, 2025).
55. Award any other relief that this Court deems reasonable and proper.

December 24, 2025.

Respectfully,

/s/ Catherine A. Chan

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CERTIFICATE OF SERVICE

COPY SENT VIA PREPAID U.S. CERTIFIED MAIL TO THE FOLLOWING ON DECEMBER 24, 2025:

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/s/ Catherine A. Chan
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12/24/2025