

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

Thelma Elizabeth Sierra Poz

Petitioner,

v.

Kristi Noem, in her official capacity as Secretary of the U.S.
Department of Homeland Security;

Melissa Harper, in her official capacity as Field Office
Director of New Orleans, Louisiana Field Office of
ENFORCEMENT AND REMOVAL OPERATIONS,
IMMIGRATION AND CUSTOMS ENFORCEMENT,

Todd Lyons in his official capacity as Senior Official
Performing the Duties of the Director of IMMIGRATION
AND CUSTOMS ENFORCEMENT; and

Pamela Bondi, in her official capacity as U.S. Attorney
General.

Respondents.

Case No.: 3:26-cv-29

**PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241
OR, IN THE ALTERNATIVE,
COMPLAINT FOR INJUNCTIVE RELIEF AND DECLARATORY JUDGEMENT**

INTRODUCTION

On May 30, 2025, Plaintiff, Thelma Elizabeth Sierra Poz, filed a Motion to Reopen her immigration proceedings with the El Paso Immigration Court, which prohibited her removal from the United States by Respondents. Despite notification of the filing and associated automatic stay of removal, Respondents deported Petitioner Sierra Poz to Guatemala. Respondents' violations of the due process rights of Petitioner Sierra Poz and of the laws of the United States require swift judicial relief.

JURISDICTION AND VENUE

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

2. This Court has jurisdiction to hear this case under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1346(a)(2) (Respondents are United States Officials).

3. This Court has the authority to grant relief pursuant to 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act), 28 U.S.C. § 2241 (habeas corpus), and Rule 65 of the Federal Rules of Civil Procedure.

4. This Court has the authority to enter a declaratory judgment pursuant to 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act), and Rule 57 of the Federal Rules of Civil Procedure.

5. Venue lies in this District because a substantial part of the events giving rise to Petitioner’s claims occurred in the Western District of Texas.

PARTIES

6. Petitioner, Thelma Elizabeth Sierra Poz, is a citizen of Guatemala who, before detention and deportation, lived in Hyattsville, Maryland. Respondents deported her to Guatemala under an order of removal that was automatically stayed and in violation of federal statutes prohibiting her removal.

7. Respondent, Kristi Noem, is the Secretary of the Department of Homeland Security (“DHS”). Secretary Noem is responsible for the implementation and enforcement of the INA and oversees Immigration and Customs Enforcement (“ICE”), which is responsible for Petitioner’s detention. Secretary Noem has ultimate custodial authority over Petitioner and is sued in her

official capacity.

8. Respondent, Melissa Harper, is the Field Office Director of the New Orleans, Louisiana Field Office of Enforcement and Removal Operations, Immigration and Customs Enforcement. As such, Ms. Harper was Petitioner's constructive custodian and is responsible for Petitioner's detention and deportation. Ms. Harper is sued in her official capacity.

9. Respondent, Todd Lyons, is the Senior Official Performing the Duties of the Director of Immigration and Customs Enforcement. He oversees all ICE personnel and immigration enforcement, including apprehension, detention, and removal of noncitizens. Mr. Lyons is sued in his official capacity.

10. Respondent, Pamela Bondi, is the Attorney General of the United States. Ms. Bondi is responsible for the Department of Justice ("DOJ"), of which the Executive Office for Immigration Review ("EOIR"), and the immigration court system it operates, is a component agency. The DOJ has instructed criminal law enforcement divisions to pursue civil immigration enforcement. Ms. Bondi is sued in her official capacity.

LEGAL FRAMEWORK

11. The INA sets forth two main processes for removal of a noncitizen from the United States: general removal proceedings under 8 U.S.C. § 1229a and expedited removal under 8 U.S.C. § 1225(b).

12. General removal proceedings under 8 U.S.C. § 1229a are "the sole and exclusive procedure for determining whether [a noncitizen] may be admitted to the United States or, if the [noncitizen] has been so admitted, removed from the United States. 8 U.S.C. § 1229a(a)(3).

13. Noncitizens in general removal proceedings may be represented by counsel at no expense to the government and shall have the opportunity to present evidence on their own behalf,

as well as confront and cross-examine evidence and witnesses provided by the government. 8 U.S.C. § 1229a(b)(4).

14. A noncitizen who has received proper notice of their hearing but fails to attend “shall be ordered removed *in absentia* if the [government] establishes... that the written notice was so provided and that the [noncitizen] is removable.” 8 U.S.C. § 1229a(b)(5)(A).

15. An order of removal *in absentia* may be rescinded “upon a motion to reopen... if the [noncitizen] demonstrates that [they] did not receive notice” as required. 8 U.S.C. § 1229a(b)(5)(C). The filing of a motion to reopen (“MTR”) an *in absentia* removal order due to improper notice “**shall stay the removal** of the [noncitizen] pending disposition of the motion” by the Immigration Judge. *Id.* (emphasis added); 8 C.F.R. § 1003.23(b)(4)(ii). Upon the grant of a MTR, the noncitizen is placed back into removal proceedings under 8 U.S.C. § 1229a and has the opportunity to apply for relief or protection from removal before the Immigration Judge.

16. Under expedited removal, low-level immigration officers are authorized to order deportation of individuals from the United States. 8 U.S.C. § 1225(b)(1). Unless a noncitizen expresses a fear of returning to their country of origin to the satisfaction of the officer, the noncitizen will not have access to an immigration judge or the procedural protections available in general removal proceedings. *See* 8 C.F.R. 208.30.

17. Expedited removal applies to: (i) a noncitizen “who is arriving in the United States” and is inadmissible under 8 U.S.C. § 1182(a)(6)(c) or (a)(7) and (ii) a noncitizen “who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that [they] have been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i); 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

18. The Fifth Amendment guarantees that “[n]o person shall be... deprived of life, liberty, or property without due process of law.” U.S. Const. amnd. V. “The right to be heard before being condemned to suffer grievous loss of any kind... is a principle basic to our society.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (internal quotations omitted).

19. The Fifth Circuit has held that “the loss of constitutional freedoms for even minimal periods of time... constitutes irreparable injury.” *BST Holdings v. Occupational Safety & Health Admin.*, 17 F.4th 604, 608 (5th Cir. 2021) (internal quotations omitted).

FACTS

20. Petitioner is a 42-year-old native and citizen of Guatemala who entered to the United States on or around September 1, 2005.

21. On May 14, 2025, counsel for Petitioner received a response to the Freedom of Information Act (“FOIA”) request submitted to EOIR. The EOIR FOIA response included, *inter alia*, proof that Petitioner never received proper notice of her immigration proceedings in 2005, in which she was ordered removed *in absentia*.

22. On May 23, 2025, Petitioner was detained by ICE around 8:30 AM.

23. On May 29, 2025, Petitioner filed a MTR based on improper notice with the El Paso Immigration Court, the court in which Petitioner’s immigration proceedings were originally held. Petitioner’s case is not eligible for electronic filing, so the MTR was sent via FedEx to the El Paso Immigration Court and the Office of the Principal Legal Advisor (“OPLA”) overnight with expected delivery on May 30, 2025, at 8:00 AM.

24. Petitioner’s counsel did not know Petitioner’s whereabouts until May 29, 2025, when a search for Petitioner on the ICE Online Detainee Locator System showed petitioner was detained at the South Louisiana ICE Processing Center. The address of the South Louisiana ICE

Processing Center is 3843 Stagg Ave., Basile, Louisiana 70515.

25. El Paso Immigration Court received the MTR on May 30, 2025, at 7:46 AM MT and accepted the MTR on May 30, 2025, at 8:09 AM MT. OPLA El Paso received notice of the filing on May 30, 2025, at 8:59 AM MT.

26. On May 30, 2025, counsel alerted the ICE ERO New Orleans Field Office of the filed MTR and automatic stay of removal under 8 U.S.C. § 1229a(b)(5)(C).

27. On May 31, 2025, Petitioner was unlawfully removed to Guatemala.

28. Petitioner is constructively detained by Respondents because she cannot return to the United States without the knowledge or acquiescence of Respondents, lest she violate the immigration laws of this country.

29. Petitioner's MTR was granted on June 26, 2025.

30. Petitioner is scheduled for a master calendar hearing on January 13, 2026 at 1:00 PM MT.

31. Petitioner's ability to work and provide financial and emotional support to her family has been stripped from her. Petitioner suffers irreparable harm every day that she is unable to return to the United States.

32. Undersigned Counsel has attempted to communicate with OPLA to facilitate Petitioner's return, but has not received any return communication.

33. Undersigned Counsel and Petitioner are ready, willing, and able to work with Respondents to return Petitioner to the United States.

CLAIMS FOR RELIEF

COUNT ONE

**Violation of the Stay of Removal Statute and Implementing Regulations,
8 U.S.C. § 1229a(b)(5)(C)**

34. Petitioner incorporates here paragraphs 1-34.

35. The Stay of Removal Statute, 8 U.S.C. § 1229a(b)(5)(C), prohibits Respondents from removing a noncitizen from the United States with a pending MTR of an *in absentia* order due to improper notice until that motion is ruled on by an Immigration Judge.

36. Respondents removed Petitioner to Guatemala after Petitioner filed the MTR and after receiving multiple notices of the filing, violating this law.

37. Respondents' violation of law has, and continues to, cause irreparable harm to Plaintiff as she is unable to meaningfully pursue her reopened immigration proceedings. Petitioner is therefore entitled to the relief requested.

COUNT TWO

**Procedural Due Process,
U.S. Constitution, Amendment V**

38. Petitioner incorporates here paragraphs 1-36.

39. Petitioner has a procedural due process right to not be removed from the United States in contravention of the procedures codified in statute and federal regulations.

40. Respondents removed Petitioner during the pendency of her MTR, which violated her procedural due process rights under the Fifth Amendment to the United States Constitution.

41. Respondents' violation of law and Petitioner's due process rights has, and continues to, cause irreparable harm to Petitioner. Petitioner is therefore entitled to the relief requested.

COUNT THREE

Substantive Due Process, U.S. Constitution, Amendment V

42. Petitioner incorporates here paragraphs 1-40.

43. The Fifth Amendment to the United States Constitution provides that no person shall “be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. This protection extends to all persons within the United States, including noncitizens, regardless of manner of entry. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

44. At the core of the liberty the Due Process Clause protects is freedom from physical restraint by the government, a right that may be curtailed only in the most exceptional circumstances and for purposes consistent with law. *Id.* at 690.

45. Immigration detention, though civil in form, must remain regulatory in purpose—it may not become punitive. Detention is justified only to ensure attendance at proceedings or to protect the community from danger. *Jennings v. Rodriguez*, 583 U.S. 521, 540–41 (2018).

46. When detention extends beyond the period reasonably necessary to achieve those purposes, or when it occurs without any individualized determination of necessity, it violates the substantive due process guarantee that government action not be arbitrary, excessive, or purposeless. *Demore v. Kim*, 538 U.S. 510, 528 (2003); *Zadvydas*, 533 U.S. at 690.

47. Respondents’ arrest, detention, removal, and subsequent constructive detention of Petitioner without any access to legal representation, no individualized determination, and in contravention of the law violate Petitioner’s substantive due process rights and cause Petitioner irreparable harm. Petitioner is therefore entitled to the relief requested.

COUNT FOUR

**Administrative Procedure Act,
5 U.S.C. § 702**

48. Petitioner incorporates here paragraphs 1-46.

49. The Administrative Procedure Act (“APA”) provides that “a person suffering legal wrong because of agency action or adversely affected or aggrieved by agency action... is entitled to judicial review thereof.” 5 U.S.C. § 702.

50. Because an automatic stay of removal is attached to the filing of a MTR based on improper notice, the filing of Petitioner’s MTR automatically stayed her removal until the Immigration Judge made a determination on the motion.

51. Respondents’ removal of Petitioner after notice of the MTR filing is arbitrary, capricious, and contrary to law.

52. This Court has authority to “hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Petitioner is therefore entitled to the relief requested.

COUNT FIVE

**Habeas Corpus,
28 U.S.C. § 2241**

53. Petitioner incorporates here paragraphs 1-51.

54. This constitutional safeguard predates the Bill of Rights and stands as the fundamental guarantee that government officials may not imprison individuals without accountability to an independent judiciary. The Great Writ is not a mere procedural device; it is the constitutional mechanism through which the people ensure that executive detention remains subject to law. *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *Boumediene v. Bush*, 553 U.S. 723, 739–46 (2008).

55. The Supreme Court has consistently held that the writ must remain available to test the legality of executive detention, even in the immigration context. In *INS v. St. Cyr*, the Court reaffirmed that “a serious Suspension Clause issue would be presented if a federal court were denied jurisdiction to hear a pure question of law” regarding detention or removal. 533 U.S. at 305–06.

56. Likewise, in *Boumediene v. Bush*, the Court emphasized that the writ’s core function is to ensure that the Executive “does not detain individuals except in accordance with law.” 553 U.S. at 779.

57. These decisions confirm that the constitution minimum requires a judicial forum capable of determining whether the Government has lawful authority to detain a person and to order release if that authority is lacking.

58. As Professor Kamin explains in *The Great Writ as Popular Sovereignty*, the Suspension Clause embodies the principle that the legitimacy of government itself depends upon the continual availability of the writ to test the lawfulness of confinement. 77 Stan. L. Rev. 297 (2025). When the Government constructs a scheme that removes an entire category of persons from judicial review, it acts in derogation of the people’s reserved right to demand legal justification for state restraint, and the principles of popular sovereignty. *See Id.* at 302 (“[T]he principal purpose of American habeas is the vindication not of individual physical liberty, but of popular sovereignty. More simply put, we should understand American habeas as a Great Writ of Popular Sovereignty”).

59. Petitioner’s constructive detention thus violates the structural command of the Constitution and causes Petitioner irreparable harm. Petitioner is therefore entitled to the relief requested.

REQUEST FOR RELIEF

Petitioner prays for judgment against Respondents and respectfully requests that this Court enter an order:

- a) Declaring that Respondents' actions, as set forth herein, violated the laws of the United States and the Fifth Amendment to the U.S. Constitution;
- b) Ordering Respondents to take all steps reasonably available to them, proportionate to the gravity of the ongoing harm, to return Petitioner Sierra Poz to the United States;
- c) Issuing an Order to Show Cause, ordering Respondents to justify the basis of Petitioner's arrest, detention, and removal in fact and in law, forthwith;
- d) Granting Petitioner's costs and fees under the Equal Access to Justice Act; and
- e) Granting such other relief at law and in equity as justice may require.

Respectfully submitted this 9th day of January 2026,

s/Christopher M. Casazza

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