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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

JOSE ARIEL LOPEZ HERNANDEZ an adult,	)	Case No. 1:26-cv-689
	)	
	)	Agency No. A[redacted]
v.	)	
	)	
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT ("ICE"); TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY; and PAMELA BONDI, Attorney General of the United States,	)	**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT** TO 28 U.S.C 2241
	)	
	)	ORAL ARGUMENT REQUESTED
	)	
	)	Expedited Hearing Requested
Respondents.	)	

INTRODUCTION

1. Petitioner Jose Ariel Lopez Hernandez ("Mr. Lopez Hernandez"), a native and citizen of Honduras, challenges his detention in the custody of Immigration and Customs Enforcement ("ICE") to be unconstitutional and unjustified deprivation of his physical liberty, and seeks immediate relief from this Court.
2. Mr. Lopez Hernandez is being unlawfully detained by Respondents, despite a grant of Withholding of Removal by a prior immigration court and no additional grounds for arrest or detention.

JURISDICTION AND VENUE

3. Mr. Lopez Hernandez is detained at Riverside County Jail, which is within the Eastern District of Virginia.
4. This action arises under the Suspension Clause, the Due Process Clause of the Fifth Amendment, and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.*
5. This Court has subject-matter jurisdiction under U.S. CONST. art. 1, § 9, cl. 2 (Suspension Clause), 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1346 (civil actions against the United States), 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. §§ 2201-02 (declaratory relief), as Mr. Lopez Hernandez is presently held in custody under or by color of the authority of the United States. His detention by Respondents is a "severe restraint" on his individual liberty "in custody in violation of the . . .laws . . .of the United States." See Hensley v. Municipal Court, San Jose-Milpitas Jud. Dist., 411 U.S. 345, 351 (1973).
6. In addition to the habeas protections in the Constitution and Immigration and Nationality Act ("INA"), federal district courts have subject matter jurisdiction under 28 U.S.C. § 1331 (federal questions) to hear claims by individuals challenging the lawfulness of agency action.

7. Venue is proper because Mr. Lopez Hernandez is currently detained within the District.

PARTIES

8. Petitioner Jose Ariel Lopez Hernandez is a native and citizen of Honduras. He is detained in ICE custody at the Riverside Regional Jail, North Prince George, VA.
9. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). He is the head of the federal agency responsible for all immigration enforcement in the United States.
10. Respondent Kristi Noem is the Secretary of Homeland Security, and in that capacity is responsible for the Department of Homeland Security and all sub-cabinet agencies of DHS, including ICE and USCIS. She is sued in her official capacity.
11. Pamela Bondi is the Attorney General of the United States of America and is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review. * U.S.C. § 1103(g). She is legally responsible for Petitioner's detention and as such, she is the legal custodian of Petitioner. Respondent Bondi is sued in her official capacity.

FACTUAL BACKGROUND

12. Mr. Lopez Hernandez is a citizen of Honduras.
13. Mr. Lopez Hernandez has been present in the United States since 2016 and has never departed.
14. Mr. Lopez Hernandez has no significant criminal history. His only criminal offense is a DWI 1st conviction from November 2018, for which he fully complied with all court-ordered

requirements, including payment of all court costs and successful completion of the Virginia Alcohol Safety Action Program (VASAP).

15. Since that 2018 DWI conviction, Petitioner has had no new arrests or criminal charges.
16. On November 21, 2022, an Immigration Judge granted Petitioner withholding of removal, allowing him to remain in the United States and preventing his removal to his country of origin. *See Exhibit A, Order from Immigration Judge.*
17. Petitioner currently holds valid employment authorization issued under Category A10, which is granted to individuals who have been granted withholding of removal. *See Exhibit B, Approval Notice for Employment Authorization Document.*
18. Mr. Lopez Hernandez was arrested by Respondents or others acting under their authority while attending a scheduled check-in appointment, with which he had fully complied. He was taken into ICE custody and transported to the Riverside Regional Jail. He remains detained there.
19. Petitioner's detention occurred while he was appearing for a routine ICE supervision appointment.
20. Since the detention of Mr. Lopez Hernandez, his family has been facing significant emotional and financial hardship.
21. All Respondents now consider that Mr. Lopez Hernandez is detained pursuant to 8 U.S.C. § 1225(b)(2). See Yajure Hurtado, 29 I. & N. Dec. 216. Accordingly, it would be futile for Petitioner to request a bond hearing from an Immigration Judge. Exhaustion of administrative remedies would therefore be futile.
22. Petitioner seeks immediate release prior to pursuing bond because the custody determination process, as currently implemented, does not provide a meaningful opportunity for release.

Immigration Judges are repeatedly invoking "flight risk" as a conclusory basis for continued detention, without engaging in individualized analysis or weighing substantial evidence to the contrary. *See Exhibit C, Affidavit from Counsel Jorge Artieda.*

23. As documented in the attached declaration of counsel, this practice has become sufficiently uniform that the availability of bond exists in name only. Where detention is prolonged based on a categorical presumption rather than a fact-specific determination, exhaustion is not required because the administrative process is incapable of providing meaningful relief. Continued detention under these circumstances violates due process and warrants immediate judicial intervention.

CLAIMS FOR RELIEF

COUNT ONE: HABEAS

Mr. Lopez Hernandez' Detention Violates His Right to Due Process under the Fifth Amendment

24. As a person living within the United States for more than ten (10) years, Mr. Lopez Hernandez is entitled to due process of the law. U.S. Const. Amend. V. Due process protects "all persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." Zadvydas, 533 U.S. 678.

25. Mr. Lopez Hernandez is detained in violation of his right to due process.

COUNT TWO: IMMIGRATION AND NATIONALITY ACT

Mr. Lopez Hernandez' Detention under 8 U.S.C. § 1225 Violates the INA.

26. 8 U.S.C. § 1225 authorizes the mandatory detention of "arriving aliens," those noncitizens who cannot demonstrate they have "been physically present in the United States continuously for the 2-year period immediately prior[.]" 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

27. As noted above, Mr. Lopez Hernandez has lived in the United States for more than ten (10) years. Mr. Lopez Hernandez is being held as an arriving alien not eligible for bond and not processed through removal proceedings under 8 U.S.C. § 1229a.

28. Through this petition and complaint, Mr. Lopez Hernandez seeks an order from this court directing Respondents to hold a bond hearing for Mr. Lopez Hernandez.

PRAYER FOR RELIEF

Based on the foregoing, Mr. Lopez Hernandez requests that this Court:

a. Assume jurisdiction over the matter.

b. Issue an emergency order staying Petitioner's transfer outside the Eastern District of Virginia and his removal or deportation from the United States.

c. Declare that the immigration detention of Mr. Lopez Hernandez violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

d. d. Order the immediate release of Mr. Lopez Hernandez from immigration detention, subject to reasonable conditions of supervision as the Court deems appropriate.

e. In the alternative, Order Respondents to hold a bond hearing for Mr. Lopez Hernandez at the appropriate immigration court to determine whether Mr. Lopez Hernandez should remain detained or otherwise order him released from Respondent's custody.

f. Grant any other and further relief this Court deems just and proper.

Respectfully submitted,

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