

**NO: 20-11181-D**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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**ROGERIO CHAVES SCOTTON,  
(A203085029)  
Petitioner,**

**V.**

**WILLIAM P. BARR,  
United States Attorney General,  
Respondent.**

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**PETITIONER'S OBJECTION TO THE RESPONDENT'S OPPOSITION RESPONSE  
TO PETITIONER'S EMERGENCY AMENDED MOTION REQUESTING RELEASE  
FROM ICE CUSTODY**

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**ROGERIO CHAVES SCOTTON, PRO SE  
ICDC# 70926  
IRWIN COUNTY DETENTION CENTER  
132 COTTON DRIVE  
OCILLA, GA 31774**

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On April 17, 2020, the Respondent filed a motion, which apparently been filed to the wrong Circuit (“**Third Circuit**”), opposing the Petitioner’s emergency amended motion to request his release from ICE custody.

The Respondent opposition motion has inaccurate information under page 5 and 6, in which is addressed below.

On page 5 and 6 of the “RELEVANT BACKGROUND”, the Respondent provided incomplete information regarding the Petitioner criminal case. Indeed, the Petitioner has currently pending an Habeas Corpus pursuant to 28 U.S.C. § 2255, in which he challenge his conviction as well as the alleged loss mentioned on the restitution order. See, **ROGERIO CHAVES SCOTTON vs. UNITED STATES, case no: 17-CV-62428-KMW.**

On page 6 of opposition motion, the respondent alleged that the DHS issued a notice of intent to issue a final administrative removal order, on January 24, 2020. Said notice was not served on the Petitioner.

Furthermore, the Respondent outline that after 48 days since the January 24, 2020 notice to intent was issued, the DHS issued a final administrative removal order against the Petitioner on March 12, 2020.

The Petitioner assert that he was not served with said notice dated January 24, 2020. In fact, the “only” occasion he was served with I-851 was on November 15, 2019 (which the government themselves cancelled), as well as the undated and signed notice which was served on January 29, 2019. (See, **attached exhibit 1**). There is no notice of intent served on the Petitioner that was issued on January 24, 2020. Therefore, the final administrative removal order issued on March 12, 2020 and served on March 13, 2020 is premature and unlawful. The Petitioner due process to be served and to contest said notice were violated.

Finally, the Respondent stated under the opposition motion that, the Petitioner has not filed a petition for habeas corpus challenge his immigration detention. This statement is also inaccurate.

On March 31, 2020, the Petitioner submitted his application pursuant to § 2241 to the Middle District of Georgia challenge the ICE custody and requesting his release. See, **ROGERIO CHAVES SCOTTON vs. WARDEN, IRWIN COUNTY DETENTION CENTER, case no: 7:20-CV-59-HL-MSH**. (exhibit 4). Said petition is currently pending resolution. The Respondent previous suggesting is false and without merit.

The Petitioner contends that he was denied the right to a fair immigration process. In fact, the DHS insist to engage on procedural shenanigan to obtaining Petitioner’s removal unlawfully, and on the other hand, misleading this Court the truthful facts behind.

On January 17, 2020, the government provide this Court with assurance that all final removal order against the Petitioner was cancelled. No reason for the cancellation was provided for the Court nor, was provided to Petitioner.

On the same day that the government assured to cancel all final order, they issued a new notice to intent to issue a final administrative removal order and a final administrative removal order. However, the government now, insist on the theory that the notice of intent to issue a final administrative removal order were issued on January 24, 2020. This is false because **1)** The notice was served on January 29, 2020 and did not have signature and title of issuing office, **2)** did have the city and state of issuance and **3)** did not have date and time. (**see, exhibit 1**). However, all other documents related to the said notice to intent to issue a final administrative removal order was issued on January 17, 2020. How could such be possible? Indeed, the form I-200, warrant for arrest of alien was also issued on January 17, 2020 and also served on January 29, 2020, as was the notice of intent. (**see, exhibit 9**).

Therefore, the government theory that said notice of intent to issue a final administrative removal order was issued on January 24, 2020, is to only cover-up the first act of shenanigan under they assurance that all notices were cancelled on January 17, 2020. Along of documents issued on January 17, 2020, which was served on the Petitioner, form I-200, form I-851A, form I-294, form I-205. All those forms clearly shows that was issued on January 17, 2020, which was the same day that the government provided assurance to this Court that all previous EOIR forms including the notice of intent to issue and, the final administrative removal order were cancelled. The new final administrative removal order does not even show when said form was issued. (**See, exhibit 1**).

Another clear proof that all the documents was issued on January 17, 2020 (the same day the government assurance that all notices was cancelled), the DHS have obtained a copy of the Petitioner's judgment and indictment. Both documents was certified by DHS that said convictions

records was received electronically from the Court's record repository on January 17, 2020. (**See, exhibit 10**).

The DHS also rely on the wrong court's records. The indictment obtained by DHS shows twenty-six (26) counts of mail fraud. However, the Petitioner was convicted by a second superseding indictment containing twenty-seven (27) counts of mail fraud. Thus, DHS rely on the wrong record to make the findings that the Petitioner is an aggravated felon convicted of twenty-seven (27) counts as mentioned under the notice of intent, form I-851. Under this type of malicious shenanigans, there is no way to defeat a system that only believe on win at any cost, instead of justice for the accused. The government conduct in this case is truly shocking, so outrageous that it is fundamentally unfair. The violation of due process here have occurred on the rarest and most outrageous circumstance. This deportation so far has been secured through numerous acts of misconduct and wrongfully assumption that the Petitioner is an aggravated felon.

In this case, the government have avoided to address the claims made by the Petitioner under his two judicial review motions, engage in an unconscionable plan to violate the law and pervert the course of justice. However, continuing engage in using procedural shenanigan all to win case, and accomplish the objective, which is to the Petitioner removal. The fact that the Petitioner's criminal conviction has not already been overturned rests on a court that either does not understanding the serious fraud committed in his criminal case or finds "contrary to law" by ignoring the Petitioner's constitution rights, case law and the rule of procedure.

If the Honorable Court continues to endorse the fraud in this case, that the Petitioner is an aggravated felon based on a wrongfully charges of mail fraud without recipient, loss amount and based solely on the restitution order, then the government has defeated the system, negating the need for Judged, Juries and the Courts in general. Petitioner rights were violated.

## **ARGUMENT OF AUTHORITY**

### **I. THE COURT SHOULD GRANT THE PETITIONER'S EMERGENCY AMENDED MOTION AND RELEASE FROM DETENTION PENDING RESOLUTION OF HIS REMOVAL OR THE ALTERNATIVE TO EXPEDITE THE PROCEEDING FOR GOOD CAUSE**

The Petitioner contends that the DHS served him within an undated and unsigned notice to intent to issue a final administrative removal order, on January 29, 2019. (See, **exhibit 1**). The Final Administrative removal order was issued on January 17, 2020 by SSDO Jeffrey Grant. Although the DHS chose to issue "another" final administrative removal order on March 12, 2020, the final administrative removal order dated January 17, 2020 was not cancel and thus, still valid.

Therefore, based on the January 17, 2020 final administrative removal order, the 90 days removal period established by section 241(a)(1)(A) has end on "**April 17, 2020**".

The Petitioner contends that he has been served on three occasion, final administrative removal orders containing the same argument that he is an aggravated felon under 1101(a)(43)(M)(i) based solely on the restitution imposed on his previously criminal case. The first final order was served on November 15, 2019 which the Respondent cancelled on January 17, 2020. The second final removal order was issued on January 17, 2020 by SDDO Jeffrey Grant and served on January 29, 2020. The third final removal order was served on March 13, 2020. Hence, the only final administrative removal order cancelled was the notice issued on November 13, 2019. Both notice, January 17, 2020 and March 12, 2020 are currently active. Thus, the Petitioner was not removed nor, has the DHS requested his travel documentation from the Brazilian Consulate.

The Petitioner contends that a serious constitutional problem [arise] in this case because his detention is currently indefinite, perhaps a death sentence since, **1**) the risk of been contaminated by the Corona virus which he is subject now at Irwin County Detention Center, **2**) DHS failed to

request the Petitioner's travel documents from the Brazilian Consulate under three final administrative removal orders, **3)** the Brazil border is currently closed due the Corona Virus pandemic which clear shows that the Petitioner removal is indefinite and, **4)** both petition for judicial removal and the petition to stay removal are currently pending resolution in this Court.

The Petitioner contends that he is unlawfully detained by ICE who has deprived him from his human rights of liberty without any [procedural] protection.

The Petitioner has attempted to resolve his removal on numerous occasion while serving his sentence. (**See, exhibit 2**). No one request made under 8 U.S.C. § 1252(i) was responded. On the other hand, ICE failed to remove the Petitioner within the required rational purpose time and established law, under three final administrative removal orders. SHERATA vs. ASHCROFT, No. 02 CIV. 2490(LMM), 2002 WL 538845 at \*2 (S.D.N.Y. April 11, 2002) ('Here, on the other hand, the 90 day period is quite limited in time, and serves a rational purpose, to allow INS to effect removal of a person already determined to be removable.'); see also BADIO vs. UNITED STATES, 172 F. Supp. 2d 1200, 1205 (D. Minn. 2001) ('Zadvydas does not apply to petitioner's claim because pre-removal-order proceedings do have a termination point.'). The holding in Zadvydas rests upon considerations of substantive due process. Although the Supreme Court did not expressly label its decision as one based on "substantive due process," it made it clear that this was the foundation of its reasoning as it explicitly invoked the Fifth Amendment's Due Process Clause, see Zadvydas, 533 U.S. at 690.

The Petitioner's liberty interest is, at the least, strong enough to raise a serious question as to whether, irrespective of the procedures used, the Constitution permits detention that is indefinite and potentially unreasonable.

The DHS conduct under three final administrative removal order, violates the Petitioner substantive due process because it is so extreme and intrusive that it can be said to “shock the conscience.” Rochin v. California, 342 U.S. 165, 172 (1952).

The DHS is constitutionally required to “proceed with reasonable dispatch to arrange removal. See, Memorandum for Michael A. Pearson, Executive Associate Commissioner, Office of Field Operations from Dea Carpenter, Deputy General Counsel, Re: Authority to Detain During the 90-Day Removal Period at 1 (Jan. 28, 2002) (‘INS Memorandum’). Here in this case, the DHS failed to follow their own rules and federal laws. As a result, subjected the Petitioner to unnecessary incarceration time on the taxpayers’ resource.

The Petitioner contends that DHS did not have all of the mechanical steps that are necessary to effectively remove him from the United States, and such steps have not been taken as required by law. Thus, the Constitution imposes some limitations on the purposes for which it is permissible to further delay the Petitioner’s removal while keeping him in detention. In Zadvydas, the Supreme Court explained that the reasonableness of an alien’s detention must be measured “primarily in terms of the statute’s basic purpose,” which the Supreme Court identified as securing the alien’s removal. Zadvydas, 533 U.S. at 699.

In this case, the requirements of substantive due process are not met because the government lodged three final administrative removal orders, however, have not even attempted to obtain the Petitioner’s travel documents from the Brazilian Consulate. Because the Petitioner’s apparent cannot be deported due to numerous issues mentioned above, his detention can no longer be said to be for purposes of effecting his removal. See, UNITED STATES EX RE. BLANKENSTEIN vs. SHAYGNESSY, 117 F. Supp. 699, 703-04 (S.D.N.Y. 1953) (‘courts have the power to release on habeas corpus an alien held for deportation on a showing ... that the detention cannot in truth be



said to be for deportation''); UNITED STATES EX REL. KUSMAN vs. IN, 117 F. Supp. 541, 544-45 (S.D.N.Y. 1953); RODRIGUEZ vs. MCELROY, 53 F. Supp. 2d 587, 591 n.6 (S.D.N.Y. 1999) (``[d]etention is intended for the sole purpose of effecting deportation''); FERNANDEZ vs. WILKINSON, 505 F. Supp. 787, 793 (D. Kan. 1980), aff'd, 654 F.2d 1382 (10<sup>th</sup> Cir. 1981); WILLIAMS vs. INS, No. 01-043 ML, 2001 WL 1136099, at \*4 (D.R.I. Aug. 7, 2001).

There is support in the cases for the general principle suggested by the INS to this extent; the detention of an alien, perhaps even during the 90-day removal period, likely must be related to enforcing the immigration laws and properly effecting the Petitioner's removal in accordance with the nation's immigration laws and policies. Thus, in the abstract, it might raise difficult constitutional questions if the Attorney General were expressly to delay the removal of Petitioner (and thereby prolong his detention) solely for a purpose that was, by hypothesis, entirely unrelated to any legitimate interest in the enforcement of the immigration laws.

The Petitioner has already endured more than eight years incarcerated. He has been now under ICE custody since February 27, 2020. His father is currently under the final stage of lung cancer and his U.S. citizen mother, who is 76 years old is ill and is legally blind, is now due for heart surgery. Both of the Petitioner's parents are in critical risk of been contaminated with the corona virus. If this occurred, consider both currently medical issues, they chances of survive is zero.

Therefore, the Petitioner respectfully request the Honorable Court to consider the expedition of both petition for judicial review, since he is subjected to this extreme hardship under the currently and indefinitely ICE detention. See § 1657. See also, VELEZ-LOTERO vs. ACHIM, 414 F.3d 776, 782 (7<sup>th</sup> Cir. 2005).

## **II. COVID-19 AT IRWIN COUNTY DETENTION CENTER**

The Respondent suggested under the opposition motion that as of today, there is only one confirmed case of COVID-19 at Irwin County Detention Center. And further COVID-19 evidence does not establish the Petitioner release but rather, a transfer to another facility. This is not accurate. And under the other two facilities nearby, COVID-19 has already infected couple detainees.

The Petitioner is currently in an enclosed small dorm jail environment (“**23 hours a day**”), with many detainees without any personal protective equipment, (PPE) where it is impossible to practice social distance. Several new detainees are brought into the dorm on a regular basis, with flu symptoms, without been tested for CORONA VIRUS, **NO QUARANTINE**. One already has been rushed to the hospital with the symptoms of the COVID-19. Other two detainees has been detected to have the virus as well. This information come from the jail staff themselves. This in part from the fact that I am older, and I have been under hunger strike since April 12, 2020 which ICE have been informed in writing under grievance note. (**See, exhibit 3**). This eight years plus incarcerate has substantially weakened my immune system, among other things.

Without the DHS resolution on my unresolved deportation issue, based on three final administrative removal orders issued. This double incarceration I have now been subjected could turn into a **DEATH SENTENCE**.

My liberty is being taken away for the exclusive needs for-profit private companies like Lasalla Corrections LLC, at the taxpayers’ expense. This detention has no legitimate purpose whatsoever. And is absolute inhumane and unlawful.

### **III. NOTICE TO THE COURT**

The Petitioner contends that he is denied meaningful opportunity to access the Courts by way of unreasonable frustrating his ability to perform proper research to locate the proper laws and case citations to support this motion; to obtain and inspect the necessary evidence; to obtain the assistance of an attorney and to confront the validity and accuracy of the underlying charges in the removal proceeding. As a direct result, not all jurisdictional and other legal citations etc., are provided in this motion and some of those provided are from memory or personal notes. The Petitioner respectfully asks that these circumstance not prejudice this petition. In fact, this continue incarceration has prevented the petition to proceed with his approved I-130 petition. (**See, exhibit 5**)

**Accordingly**, the Eleventh Circuit should GRANT the Appellant amended motion in total. Alternative, the Petitioner request the honorable Court to place him on a home confinement pending resolution of his judicial review, section 2255, petition for adjustment of status and his unresolved deportation.

Wherefore, in the interest of justice and fairness, the Petitioner prays for the reasons stated above, that the Honorable Court grant him his motions.

Respectfully Submitted,

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ROGERIO CHAVES SCOTTON  
ICDC#70926  
IRWIN COUNTY DETENTION CENTER  
132 COTTON DRIVE  
OCILLA, GA 31774

## **PROOF OF SERVICE**

I Rogerio Chaves Scotton, do certify that on this April 24, 2020, I have served the attached motion to reply to the government opposition response (which is under the Petitioner's constitutional rights) on the Eleventh Circuit in the above proceeding. I have served this motion via, United States Postal Service (USPS) priority mail through, Irwin County Detention Center legal mail.

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# **EXHIBIT 1**

1) Notice of intent to issue a final administrative removal order and final administrative removal order, dated November 13, 2019 and served on November 15, 2019; (final administrative removal order cancelled attached as well)

2) Notice of intent to issue a final administrative removal order, undated, unsigned served on January 29, 2020;

# EXHIBIT 2

- 1) ICE detainer lodge on May 3, 2012;
  - 2) Letter to Deportation Officer Coffee dated March 25, 2020 with certified receipt;
  - 3) Letter to AUSA Elizabeth Chapman, dated February 16, 2020 with USPS tracking delivered confirmation;
  - 4) Letter to SDDO Jeffrey Grant, dated January 30, 2020;
  - 5) Letter to Savannah Sub-Office, dated December 10, 2018;
  - 6) Letter to Savannah Sub-Office, dated September 5, 2018 with USPS certified receipt;
  - 7) Letter to Savannah Sub-Office, date September 5, 2018;
  - 8) Letter to Atlanta Field Office, date February 8, 2019.
- More upon Court request.

# **EXHIBIT 3**

- 1) Grievance submitted to ICE on April 13, 2020, hunger strike.
- 2) nine detainee request date March 12, 2020, March 22, 2020, March 16, 2020, March 03, 2020, March 5, 2020, April 2, 2020, March 20, 2020, March 22, 2020 requesting a copy of the final administrative removal order.

# **EXHIBIT 4**

1) Petitioner habeas corpus pursuant to 28 U.S.C. § 2241 application memorandum of law and motion to leave to amend with USPS track number.



# **EXHIBIT 5**

1) United States Department of State letter to Petitioner in regarding his I-130 approval date December 19, 2019 and October 3, 2019

# **EXHIBIT 6**

1) Petitioner motion to apply for adjustment of status concurrently with waiver under section 212(h) before the immigration Court which submitted within application I-485 and I-601 served on March 25, 2020 by USPS priority mail.

# EXHIBIT 7

1) government unverified and inaccurate spreadsheet introduce during trial.

As reference of inaccuracy, Count two of the indictment, the government suggested that the Petitioner ship a package to Brazil by FedEx account under company named Citrix, number 43811047 on "**August 8, 2008**". However, the spreadsheet outline that said account suggested to be opened on "**AUGUST 11, 2008**". The government suggested under said spreadsheet that the package referent of count two was shipped "**before the account was even opened**".

2) the Account alleged opened under company, named Rio motor sport suggested that the first package was ship on "**October 11, 2001**". However, the spreadsheet suggested that the account were closed on "**September 18, 2001**". The government suggested that this particular package was shipped one month after said account were closed. No loss amount was provided. For reference, the Petitioner online business began on the end of the year 2006. There is two accounts under the spreadsheet that the government falsely alleged that was opened by the Petitioner before he was even in business. The twenty-seven counts was no mentioned under any spreadsheets. No loss amount.

# **EXHIBIT 8**

1) Immigration order denying bond.

# **EXHIBIT 9**

- 1) form I-200, warrant for arrest of alien;
- 2) form I-294, warning to alien ordered removed or deported;
- 3) form I-205, warrant of removal/deportation

# **EXHIBIT 10**

- 1) Petitioner's indictment, with twenty-six counts of mail fraud received by DHS on January 17, 2020;
- 2) Petitioner's judgment of twenty-seven counts of mail fraud on the second superseding indictment, received by DHS on January 17, 2020.