

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

**Rafael Lopez-Arvelaiz,**

Petitioner,

v.

Case No.:

**Kristi Noem**, Secretary of the Department of Homeland Security; **Pamela Bondi**, Attorney General of the U.S.; **Todd M. Lyons**, Acting Director U.S. Immigration and Customs Enforcement; and, **Mary De Anda-Ybarra**, ICE Field Office Director for the El Paso Field Office,

Respondents,

/

**PETITION FOR WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. §2241**

To the Honorable Judge of Said Court:

**I. INTRODUCTION**

1. Petitioner, Rafael Lopez-Arvelaiz, seeks a writ of habeas corpus to remedy his unlawful detention by the Respondents. Although Mr. Lopez-Arvelaiz has lawful immigration status through March 22, 2026, and has not otherwise violated the terms of his status, Mr. Lopez-Arvelaiz is being unlawfully detained by Respondents without Respondents providing any legal justification for his ongoing detention.

2. Mr. Lopez-Arvelaiz, a 45-year-old Venezuelan engineer, legally entered the United States on March 3, 2024. He settled in Orlando, Florida, with his sister, obtained work authorization, and started working to support his wife and four children. Despite having no prior criminal history, he was arrested on March 6, 2025, for Failure to Register Vehicle—a minor second-degree misdemeanor under Florida law punishable by up to 60 days in jail. Although released on minimal state bond, he has remained in immigration detention for 67 days without a conviction.

3. Mr. Lopez-Arvelaiz was denied the right to due process under the Fifth Amendment to the United States Constitution. Respondent U.S. Immigration and Customs Enforcement (hereinafter, “ICE”) is unlawfully detaining Mr. Lopez-Arvelaiz without providing a legal justification for his ongoing detention.

4. Mr. Lopez-Arvelaiz respectfully requests that this Honorable Court order Respondents to show cause why the writ should not be granted within three (3) days and, if necessary, set a hearing on this Petition within five (5) days of the return, pursuant to 28 U.S.C. § 2243.

5. Mr. Lopez-Arvelaiz further respectfully requests that this honorable court grant him a writ of habeas corpus, ordering Respondents to release him.

## II. PARTIES

6. Petitioner, Rafael Lopez-Arvelaiz, is a 45-year-old native and citizen of Venezuela who entered the United States on March 23, 2024, pursuant to a grant of humanitarian parole. He is being detained without a bond by ICE at the Torrance County Detention Center in Estancia, New Mexico.

7. Respondent, Kristi Noem, is the Secretary of the Department of Homeland Security (hereinafter, “DHS” or “the Department”), which is responsible for the administration of ICE, a subunit of DHS, and the implementation and enforcement of the immigration laws. As such, Ms. Noem is the ultimate legal custodian of Mr. Lopez-Arvelaiz. This Respondent is being sued in her official capacity.

8. Respondent, Pamela Bondi, is the Attorney General of the United States and head of the Department of Justice, which encompasses the Board of Immigration Appeals (hereinafter, “BIA”) and the Immigration Courts. Ms. Bondi shares responsibility for implementation and enforcement of the immigration laws with Respondent Noem. Ms. Bondi is a legal custodian of Mr. Lopez-Arvelaiz. This Respondent is being sued in her official capacity.

9. Respondent, Todd M. Lyons, is the Acting Director of ICE. He is responsible for the administration of ICE and the implementation and enforcement of the immigration laws, including noncitizen detention. As such, he is a legal custodian of Mr. Lopez-Arvelaiz. This Respondent is being sued in his official capacity.

10. Respondent, Mary De Anda-Ybarra, is the ICE Field Office Director for the El Paso Field Office. The El Paso Field Office is responsible for the detention of noncitizens in New Mexico and at the Torrance County Detention Center where Mr. Lopez-Arvelaiz is being detained in Estancia, New Mexico. This Respondent also effects operational, legal, and factual control over the Torrance County Detention Center, and is a legal custodian of Mr. Lopez-Arvelaiz. This Respondent is being sued in her official capacity.

### **III. JURISDICTION AND VENUE**

11. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (declaratory relief), and art. I sec. 9, cl. 2 of the United States Constitution (Suspension Clause), as Mr. Lopez-Arvelaiz is presently in custody under or by color of the authority of the United States and challenges his custody as in violation of the Constitution, laws, or treaties of the United States.

12. The federal district courts have jurisdiction under Section 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Supreme Court upheld the federal courts' jurisdiction to review such claims in *Jennings v. Rodriguez*, 583 U.S. 281, 291-295 (2018).

13. Venue is proper in the District of New Mexico pursuant to 28 U.S.C. §§ 1391 and 2241(d) because Mr. Lopez-Arvelaiz is detained at the Torrance County Detention Center in Estancia, New Mexico.

#### **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

14. Mr. Lopez-Arvelaiz has no administrative remedies available to him, as the administrative agency has no jurisdiction, and his only remedy is by way of this judicial action.

15. Mr. Lopez-Arvelaiz is an arriving alien<sup>1</sup>, therefore, the immigration judge has no authority to redetermine the conditions of his custody and his only remedy is by way of judicial action. *See 8 C.F.R. § 1003.19(h)(2)(i).*

16. Further, no statutory exhaustion requirements apply to Mr. Lopez-Arvelaiz 's claim of unlawful detention. This petition raises a constitutional law issue, and the administrative agency will not address the constitutional issue. Likewise, the agency is unable to strike down its own regulation as in violation of the statute. *See Matter of G-K-*, 26 I&N Dec. 88 (BIA 2013)

#### **V. LEGAL FRAMEWORK**

17. Noncitizens who enter the United States are entitled to due process under the Fifth Amendment to the United States Constitution and cannot be deported without having an opportunity to be heard upon the questions involving their rights to be and remain in the United States. *Jean v. Nelson*, 727 F.2d 957, 967 (11th Cir. 1984) (*quoting Kaoru Yamataya v. Fisher (Japanese Immigrant Case)*, 189 U.S. 86, 101, 23 S. Ct. 611, 615, 47 L. Ed. 721, 726 (1903)).

18. Under the Immigration and Nationality Act (hereinafter, "INA"), on a case-by-case basis, individuals may be paroled into the United States temporarily for urgent humanitarian reasons. Once the purposes of the parole have been served, the individual may be returned to the custody from which he was paroled. 8 U.S.C. § 1182(d)(5). Under 8 C.F.R. § 212.5(e), parole can be terminated "at any time," but this does not mean without reason or based on any unsubstantiated

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<sup>1</sup> "Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked." 8 C.F.R. § 1.2.

allegation. *See Svitlana Doe, et al v. Noem*, No. 1:25-cv-10495 (D. Mass. April 14, 2025)(Pending); *Doe v. Noem*, No. 25-1384 (1st Cir. May 5, 2025)(unpublished order denying stay)(Pending).

## VI. FACTS AND PROCEDURAL HISTORY

19. On October 19, 2022, DHS announced a parole process for Venezuelans, and subsequently the program was extended for Cubans, Haitians, and Nicaraguans (hereinafter referred to as “the parole” or “CHNV”). 87 Fed. Reg. 63507 (Oct. 19, 2022). See Implementation of a Parole Process for Cubans, 88 Fed. Reg. 1266 (Jan. 9, 2023); Implementation of a Parole Process for Haitians, 88 Fed. Reg. 1243 (Jan. 9, 2023); Implementation of a Parole Process for Nicaraguans, 88 Fed. Reg. 1255 (Jan. 9, 2023). Under the program, Venezuelans who passed national security and public safety vetting and who had a supporter in the United States could receive advanced authorization to travel to the United States to seek, on a case-by-case basis, a discretionary grant of parole. The CHNV parole was for a temporary period of up to two (2) years.

20. Mr. Lopez-Arvelaiz, a 45-year-old Venezuelan engineer, legally entered the United States on March 3, 2024, under the CHNV parole program, arriving at or near Miami. Seeking refuge from political violence, he aspired to build a new life where he could work hard, live safely, and ultimately reunite with his dependent wife and four children, who remained in Venezuela. Upon arrival, Mr. Lopez-Arvelaiz settled in Orlando, Florida, with his sister. He promptly obtained work authorization and secured employment, striving to support his family despite the hardship of separation. See **Exhibit A-A, p. 2-4, 30-37, Table of Contents for Respondents Motion for Bond Redetermination.**

21. Until recently, Mr. Lopez-Arvelaiz had never experienced incarceration or criminal charges. However, on March 6, 2025—just over a year after his lawful entry—he was arrested under Florida Statute, Section 320.261 (Failure to Register Vehicle<sup>2</sup>). This statute classifies the offense as

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<sup>2</sup> The vehicle in question has since been registered and insured by his sister, Maria G. Lopez Arvelaiz. See composite

a second-degree misdemeanor, carrying a maximum penalty of 60 days in jail, marking it as the lowest level misdemeanor under Florida law.<sup>3</sup> Given the minor nature of the allegation and his lack of prior criminal history, Mr. Lopez-Arvelaiz was released by the state of Florida on a minimal bond.

22. After posting bond, on or about March 6, 2025, was transferred to ICE custody in Miami, Florida. He was issued a Notice to Appear (hereinafter, “NTA”). The NTA perplexingly alleged Mr. Lopez-Arvelaiz was a person present in the United States who had not been admitted *or paroled* and charged him with a violation of INA § 212(a)(7)(A)(i)(I) as an immigrant who at the time of application for admission was not in possession of a valid entry document. *See* copy of Notice to Appear attached hereto as **Exhibit B**.

23. On March 13, 2025, counsel filed a motion for bond re-determination before the Krome Immigration Court and served the same upon ICE Counsel. A hearing was scheduled for March 25, 2025. A day prior to the hearing, Mr. Lopez-Arvelaiz was transferred to the Torrance County Detention Center in Estancia, New Mexico without notice to counsel of record or justification.<sup>4</sup>

24. On March 25, 2025, DHS published a Federal Register Notice (hereinafter “FRN”) announcing the immediate termination of the CHNV parole program. The FRN further indicated that all CHNV paroles that had not already expired by April 24, 2025, would be terminated on that date. *Id.*

25. Before the March 25, 2025, Mr. Lopez-Arvelaiz was among the group of CHNV

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**Exhibit A, p..**

<sup>3</sup> During this same incident, Mr. Lopez-Arvelaiz received traffic citations for (1) running a stop sign and (2) proof of insurance required.

<sup>4</sup> Mr. Lopez-Arvelaiz has never lived and has no contacts in New Mexico. He resides, and has been residing since he entered the United States, in Orlando, Florida. His sister, the sole relative in the United States remains in Orlando, Florida also.

parolees whose parole was set to expire after April 24, 2025. He entered the United States, under a grant of CHNV parole, on March 23, 2024, and his parole was set to expire on February 22, 2026. *See* copy of Respondent's Parole, attached hereto as **Exhibit A-A, p.2.**

26. On March 28, 2025, counsel filed a motion for bond redetermination before the New Mexico Immigration Court and served the same upon ICE Counsel. A hearing was scheduled for April 2, 2025. The Immigration Court denied Mr. Lopez-Arvelaiz's bond request. It should be noted the court lacked jurisdiction to consider this request under 8 C.F.R. § 1003.19(h)(2)(i), as Mr. Lopez-Arvelaiz is an arriving alien. See 8 C.F.R. § 1.2.

27. On this same day, Mr. Lopez-Arvelaiz filed a Form I-589, Application for Asylum and for Withholding of Removal. *See Exhibit C.* He is prepared to proceed on the merits of his claim for asylum as scheduled before the Immigration Court on September 10, 2025.

28. On April 14, 2025, the U.S. District Court for the District of Massachusetts issued a preliminary injunction staying parts of the FRN insofar as it revoked, without case-by-case review, the previously granted parole and work authorization issued to noncitizens paroled into the United States pursuant to the CHNV parole program prior to the noncitizen's originally stated parole end date. *Id.*

29. Pursuant to the preliminary injunction in *Svetlana Doe*, Mr. Lopez-Arvelaiz's parole has been reinstated and does not expire until March 22, 2026, which means that he is in lawful immigration status and not subject to detention.

30. On May 2, 2025, the NTA was amended to allege that Mr. Lopez-Arvelaiz was an arriving alien who arrived in the United States on or about March 23, 2024, was paroled as a humanitarian parolee, and was an immigrant not in possession of valid entry documents. He continued to be charged with a violation of INA § 212(a)(7)(A)(i)(I) as an immigrant who at the time of application for admission was not in possession of a valid entry document. *See, copy of Form I-*

261, Additional Charges of Inadmissibility/Deportability attached hereto as **Exhibit D**.

31. Mr. Lopez-Arvelaiz does not challenge the validity of the removal proceedings against him in this action. He has a pending Form I-589, Application for Asylum and Withholding of Removal and is prepared to proceed on the merits of his claim for asylum as scheduled before the Immigration Court on September 10, 2025.

32. Mr. Lopez-Arvelaiz herein, first, challenges ICE's constitutional and statutory authority to detain him, with or without a bond, where ICE has presented no legal justification for his ongoing detention or evidence that he is not in status or has otherwise violated the terms of his immigration status. Second, to the extent ICE has terminated Mr. Lopez-Arvelaiz's parole, they have provided no meaningful procedures and deprived Mr. Lopez-Arvelaiz of procedural and substantive due process, and acted contrary to established law in an arbitrary and capricious manner. *See Jennings*, 583 U.S. 281, 291-298 (2018) (op. of Alito, J.); *Id.* at 355-356 (Breyer, J., dissenting); *Zadydas*, 533 U.S. at 688 (Explaining the court's authority to consider a habeas challenge to detention that is without statutory authority notwithstanding congress' attempt to limit judicial review in immigration matters).

## IX. CAUSES OF ACTION

### Count 1: Unlawful Restraint/Detention in Violation of the Immigration & Nationality Act.

33. Mr. Lopez-Arvelaiz re-alleges and incorporates paragraphs 1 through 31 above.
34. Mr. Lopez-Arvelaiz is in lawful immigration status through March 22, 2026.
35. Mr. Lopez-Arvelaiz has not violated the terms of his immigration status.
36. DHS has provided no legal justification for Mr. Lopez-Arvelaiz's ongoing detention.

In the NTA, DHS initially classified Mr. Lopez-Arvelaiz a non-citizen present in the United States who has not been admitted or *paroled*. Furthermore, the Form I-261, Additional Charges of Inadmissibility/Deportability, now alleges he is an arriving alien who was paroled but provides no

individualized rational or justification for the implicit termination of his parole under 8 C.F.R. § 212.5(e). The charging documents alleges he is in violation of INA § 212(a)(7)(A)(i)(I), although Mr. Lopez-Arvelaiz complied with all the requirements of the CHNV parole program at the time he applied for admission and he entered the United States pursuant to a grant of CHNV parole through March 22, 2026.

37. The circumstances of Mr. Lopez-Arvelaiz 's case overwhelmingly establish that he is in lawful immigration status and should not be subject to detention.

38. Mr. Lopez-Arvelaiz is entitled to immediate release.

**COUNT 2: Unlawful Restraint/Detention in Violation of Constitutional Due Process (PLEAD IN THE ALTERNATIVE).**

39. Mr. Lopez-Arvelaiz re-alleges and incorporates paragraphs 1 through 31 above.

40. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend.V.

41. Civil immigration detention violates due process if it is not reasonably related to its purpose. *See Zadvydas*, 533 U.S. at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)); *Demore*, 538 U.S. at 513. As categorical detention becomes increasingly prolonged, a sufficiently strong special justification is required to outweigh the significant deprivation of liberty. *Zadvydas*, 533 U.S. at 690-91

42. Civil detention also violates due process unless it is accompanied by strong procedural protections to guard against the erroneous deprivation of liberty. *Id.* at 690-91; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). To justify Mr. Lopez-Arvelaiz's ongoing detention, due process requires that the government provide a legal justification for his ongoing detention. *United States v. Salerno*, 481 U.S. 739, 750, 752 (1987); *Svitlana Doe, et al., v. Noem, et al.*, No. 25-cv-10495 (D. Mass. April 14, 2025).

43. Mr. Lopez-Arvelaiz has not been afforded the necessary procedural safeguards to

guarantee against the erroneous deprivation of his liberty. This is particularly true as Mr. Lopez-Arvelaiz's period of detention grows and where the government provides no legal justification for his ongoing detention.

44. Under these circumstances, Mr. Lopez-Arvelaiz 's detention violates both substantive and procedural due process.

#### **X. PRAYER FOR RELIEF**

**WHEREFORE**, Mr. Lopez-Arvelaiz prays that this Court grant the following relief:

1. Accept jurisdiction and maintain continuing jurisdiction of this action;
2. Order Respondents to show cause why the writ should not be granted within three (3) days, and, if necessary, set a hearing on this Petition within five (5) days of the return, pursuant to 28 U.S.C. § 2243;
3. Grant a writ of habeas corpus ordering Respondents to immediately release Mr. Lopez-Arvelaiz from their custody;
4. In the alternative, grant a writ of habeas corpus ordering Mr. Lopez-Arvelaiz's release within seven (7) days unless Respondents provide a valid legal justification for his ongoing detention;
5. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Mr. Lopez-Arvelaiz;
6. Declare that Mr. Lopez-Arvelaiz's detention violates the Immigration and Nationality Act;
7. Declare that Mr. Lopez-Arvelaiz's detention violates the Due Process Clause of the Fifth Amendment;
8. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice

Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

9. Grant such further relief as this Court deems just and proper.

Dated: May 13, 2025

Respectfully submitted,

s/ Francisco F. Symphorien-Saavedra s/

Francisco F. Symphorien-Saavedra, Esquire

Board Certified Specialist

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Attorney for Plaintiff

**Verification by Someone Acting on the Petitioner's Behalf Pursuant to 28USC § 2242**

I, Francisco F. Symphorien-Saavedra, hereby declare under penalty of perjury that the facts alleged in the foregoing Petition for Writ of Habeas Corpus are true and correct, to the best of my knowledge.

Dated: May 13, 2025

Respectfully submitted,

s/ Francisco F. Symphorien-Saavedra s/  
Francisco F. Symphorien-Saavedra, Esquire  
Board Certified Specialist  
Symphorien-Saavedra Law, P.A.  
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Attorney for Plaintiff

**CERTIFICATE OF INTERESTED PERSONS**  
**AND CORPORATE DISCLOSURE STATEMENT**

I HEREBY CERTIFY that the following persons may have an interest in the outcome of this case:

1. **Bondi, Pamela**, Attorney General of the United States, U.S. Department of Justice
2. **De Anda-Ybarra, Mary**, ICE Field Office Director for the El Paso Field Office, Department of Homeland Security
3. **Lopez-Arvelaiz, Rafael**, Petitioner
4. **Lyons, Todd. M**, Acting Director of ICE, U.S. Department of Homeland Security
5. **Mazzara, Joseph N.**, Acting General Counsel, Department of Homeland Security
6. **Noem, Kristi**, Secretary, Department of Homeland Security
7. **Symphorien-Saavedra, Francisco**, Esquire, Counsel for Plaintiff

Dated: May 13, 2025

s/ Francisco F. Symphorien-Saavedra s/  
Francisco F. Symphorien-Saavedra, Esquire  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I, Francisco "Frank" Symphorien-Saavedra, certify that on May 13, 2025, I caused a true and exact copy of the foregoing writ to be served by first class certified mail on the following:

**Kristi Noem**  
Secretary, U.S. Department of Homeland Security,  
C/O General Counsel  
2707 Martin Luther King Jr. Ave. SE  
Washington, D.C. 20528

**Pamela Bondi**  
U.S. Attorney General,  
United States Department of Justice,  
950 Pennsylvania Avenue Room B-103  
Washington DC 20530-0001

**Todd M. Lyons**  
Acting Director  
Immigration and Customs Enforcement  
Office of the Principal Legal Advisor  
500 12th Street SW  
Washington, DC 20536

**Mary De Anda-Ybarra**  
Field Office Director  
El Paso Field Office, ICE  
c/o Office of the Principal  
Legal Advisor  
500 12th Street SW  
Washington, DC 20536

**U.S. Attorney's Office,  
Civil Process Clerk**  
200 N Church St.  
Las Cruces, NM 88001

s/ Francisco F. Symphorien-Saavedra s/  
Francisco F. Symphorien-Saavedra, Esquire  
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Attorney for Plaintiff

**Documents in Support of Complaint**

*Rafael Lopez-Arvelaiz v. Kristi Noem, et al.*

Exhibit A: Respondent's Motion for Bond Redetermination

Exhibit B: Notice to Appear

Exhibit C: Form I-589, Application for Asylum and for Withholding of Removal

Exhibit D: Form I-261, Additional Charges of Inadmissibility/Deportability

**CERTIFICATE OF AUTHENTICITY**

I, Francisco "Frank" Symphorien-Saavedra, certify and declare under penalty of perjury that the above referenced exhibits are authentic and true and correct copies of the original documents contained in the administrative record of proceedings to the best of my knowledge.

Dated: May 13, 2025

s/ Francisco F. Symphorien-Saavedra s/  
Francisco F. Symphorien-Saavedra, Esquire  
Attorney for Plaintiff