UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

WILIAN ALEXANDER MEJIA ROMERO, A[redacted]

Petitioner

v.

PAMELA BONDI, U.S. Attorney General, KRISTI NOEM, U.S. Secretary of Homeland Security; TODD M. LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; JAMES A. MULLAN, in his official capacity as Assistant Field Officer in charge of ICE Washington Field Office; JEFFREY CRAWFORD, in his official capacity as warden of the Farmville Detention Center,

Respondents

Case No. 1:25-CV-993

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

INTRODUCTION

1. Petitioner Wilian Alexander Mejia Romero ("Mr. Mejia"), a native and citizen of El Salvador, challenges his detention in the custody of Immigration and Customs Enforcement ("ICE") to be an unconstitutional and unjustified deprivation of his physical liberty, and seeks immediate relief from this Court.

2. Mr. Mejia is a native and citizen of El Salvador who first entered the United States in 2000, but most recently entered in 2019. He is married to a U.S. citizen and they have two U.S. citizen children, one of whom was born with physical deformities and requires medical attention. He has worked and lived in Virginia with his family for many years.

3. The Department of Homeland Security ("DHS") placed Mr. Mejia in immigration custody in April 2025 after an arrest the prior month (the underlying charges were nolle prossed).

He was transferred to the Farmville Detention Center, in Farmville, Virginia, and has been held in ICE custody since that time. He is scheduled for an individual hearing in his removal proceedings on August 1, 2025.

4. Mr. Mejia has sought bond and release from custody both from the immigration judge and from DHS. However, the immigration judge denied the request for lack of jurisdiction and DHS has not responded to his request.

5. Mr. Mejia's detention, without any meaningful mechanism to challenge his confinement, violates the U.S. Constitution's Due Process Clause of the Fifth Amendment.

6. This Court should issue an order staying Mr. Mejia's removal from the Eastern District of Virginia and require that Mr. Mejia be provided due process in the form of a bond hearing before the immigration court at which DHS bears the burden of establishing that continued detention is necessary.

JURSIDICTION AND VENUE

7. The ICE Washington Field Office and Mr. Mejia are within the Eastern District of Virginia.

8. This action arises under the Suspension Clause, the Due Process Clause of the Fifth Amendment, and the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*

9. This Court has subject-matter jurisdiction under U.S. CONST. art. 1, § 9, cl. 2 (Suspension Clause), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 2241 (habeas corpus), as Mr. Mejia 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).

10. This Court has jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by U.S. immigration officials. *See, e.g.*, *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas*, 533 U.S. at 687.

11. Venue is proper because Mr. Mejia is currently detained within the District. At 5:58 p.m. Eastern Time on June 11, 2025, the ICE Detainee Locator indicated that he is detained in ICE custody in Farmville, Virginia.

PARTIES

12. Petitioner, Wilian Mejia Romero, is a native and citizen of El Salvador.

13. Respondent Pamela Bondi is the U.S. Attorney General, and in that capacity is responsible for the Executive Office for Immigration Review ("EOIR") which includes the Board of Immigration Appeals and immigration courts. She is sued in her official capacity.

14. 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.

15 Respondent Todd M. Lyons is the Acting Director of Immigration and Customs Enforcement, responsible for ICE's detention and removal operations among all its other functions. He is sued in his official capacity.

16 Respondent James A. Mullan is the Assistant Field Office Director of the ICE Washington Field Office, and is responsible for ICE's operations in Virginia. Upon information and belief, he is the immediate custodian of Mr. Mejia. He is sued in his official capacity.

17. Respondent Jeffrey Crawford is the Warden of Farmville Detention Facility and is directly responsible for Mr. Mejia's detention. He is sued in his official capacity.

RELEVANT FACTUAL ALLEGATIONS

18. Mr. Mejia first entered the United States in 2000, when he was nineteen years old.

19. Mr. Mejia received Temporary Protection Status in 2001 or 2002, and married his U.S. citizen wife in 2002.

20. He is the beneficiary of an approved family-based visa petition ("I-130 petition") filed by his wife. Because he had entered unlawfully in 2000, he also sought a waiver of inadmissibility ("I-601A waiver"). In 2018, he returned to El Salvador for a consular processing interview with the embassy in that country. Despite the pre-approved I-601A waiver, the consular officer denied his visa.

21. After police in El Salvador extorted, beat, and threatened to kill him, Mr. Mejia returned to the United States in 2019.

22. DHS encountered Mr. Mejia near the border in 2019 and, after Mr. Mejia demonstrated a credible fear of persecution or torture, DHS placed him in removal proceedings. An immigration judge granted bond in November 2019.

23. Between November 2019 and now, Mr. Mejia has been working and living in Virginia with his wife and his two U.S. citizen children.

24. Mr. Mejia's daughter was born with physical deformities and is under medical care for a thyroid condition.

25. Mr. Mejia has high blood pressure and requires medication and regular medical evaluations.

26. Mr. Mejia was arrested in March 2025 and charged with assault and battery against a family member under Virginia Code Ann. § 18.2-57.2. The case was dismissed nolle prosequi

on April 17, 2025. He was transferred to ICE custody on that day and remains detained in the Farmville Detention Center.

27. On May 20, 2025, Mr. Mejia sought bond before an immigration judge, which the immigration judge denied for lack of jurisdiction.

28. Mr. Mejia does not have a criminal record requiring mandatory detention under 8 U.S.C. § 1226(c).

29. On May 22, 2025, Mr. Mejia filed a request with DHS for his release on bond or parole. To date, DHS has not taken action on a subsequent request for his release.

EXHAUSTION

30. The decision to detain Mr. Mejia is subject to challenge through a petition for a writ of habeas corpus, and Mr. Mejia need not exhaust additional administrative remedies which might be available to him before seeking this Court's review. *See e.g. McCarthy v. Madigan*, 503 U.S. 140, 147-48 (1992) ("[A]n administrative remedy may be inadequate [because] . . . an agency, as a preliminary matter, may be unable to consider whether to grant relief because it lacks institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute" or "where the administrative body . . . has otherwise predetermined the issue before it."); *Janvier v. INS*, 174 F. Supp. 2d 430, 434 (E.D. Va. 2001) (noting that "§ 2241 is silent on exhaustion.").

31. Moreover, further exhaustion would be futile because Mr. Mejia has pursued a remedy to no avail. *See Janvier*, 174 F. Supp. 2d at 434 (recognizing that exhaustion is not necessary "where the pertinent administrative agency lacks the competence to reach a definitive resolution of the particular issue presented[,]" such as "where, as here, the administrative agency may consider constitutional claims, but lacks authority to rule dispositively on those claims,

because "the final say on constitutional matters rests with the courts."). In particular, under new BIA precedent, Mr. Mejia is no longer considered eligible to seek bond before the immigration judge and ICE has not responded to his request for bond or parole.

32. Finally, because his detention—years after he last entered the United States to support his U.S. citizen family—without ability to challenge is unconstitutional, administrative exhaustion is excused. *See Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when . . . a plaintiff has raised a 'substantial constitutional question.'").

RELEVANT LEGAL AUTHORITY

33. 8 U.S.C. § 1225(b)(1)(B)(ii) states, in relevant part:

> If the [asylum] officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.

34. 8 U.S.C. § 1226(a) states, in relevant part:

> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.
>
> Except as provided in subsection (c) and pending such decision, the Attorney General—
>
> (1) may continue to detain the arrested alien; and
>
> (2) may release the alien on—
>
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
>
> (B) conditional parole[.]

35. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Fifth Amendment's Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). To that end, due process demands

"adequate procedural protections" to ensure that the Government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (internal quotation marks omitted). The Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and prevent flight. *See Demore v. Kim*, 538 U.S. 510, 528 (2003); *see also Matter of Patel*, 15 I. & N. Dec. 666 (BIA 1976) ("An alien generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security, or that he is a poor bail risk[.]" (internal citation omitted)).

36. Civil detention—including immigration—must be carefully limited to avoid due process concerns. *See e g., Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action"); *Addington v. Texas*, 441 U.S. 418, 425 (1979) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection"); *see also United States v. Salerno*, 481 U.S. 739, 755 (1987) ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception").

37. Given the gravity of the liberty deprivation when the government preventively detains individuals, due process requires the jailers bear the burden of proof. *See e.g., Salerno*, 481 U.S. at 751 (affirming legality of pre-trial detention where burden of proof was on the government); see also *Foucha*, 504 U.S. at 81-82 (holding unconstitutional a state "statute that place[d] the burden on the detainee to prove that he is not dangerous"). The Court has held that it is improper to ask an "individual to share in equally with society the risk of error when the possible injury to the individual—deprivation of liberty—is so significant." *Addington*, 441 U.S. at 427.

38. Moreover, in other civil confinement contexts, the government must meet a heightened standard of proof and establish by clear and convincing evidence that its interest in civil or preventive detention outweighs an "individual's strong interest in liberty." *Salerno*, 481 U.S. at 751.

39. In *Addington*, the Court concluded that the state's use of civil detention to protect society from an allegedly dangerous individual with mental illness could not outweigh the individual's right to liberty unless the state showed by at least clear and convincing evidence that detention was necessary. *See Addington*, 441 U.S. at 433 (holding that on remand the state must meet a "precise burden equal to or greater than the clear and convincing evidence standard . . . to meet due process guarantees . . . ."); *see also Argueta Anariba v. Shanahan*, 16-cv-1928 (KBF) 2017 WL 3172765, at Slip op. *4 (S.D.N.Y. July 26, 2017) (it "is particularly important that the Government be held to the 'clear and convincing' burden of proof in the immigration detention context because civil removal proceedings, unlike criminal proceedings, 'are nonpunitive in purpose and effect.'") (quoting *Zadvydas*, 533 U.S. at 691)).

40. Where due process is demanded, corrective measures may be taken to ensure adequate process exists before deprivation of liberty interests. To that end, requiring a bond hearing to protect against unnecessary detention is appropriate under the balancing test used to weigh the constitutionality of administrative procedures, as articulated in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'").

41. *Mathews* requires review of three factors: (1) the private interest affected by government action; (2) the risk of "erroneous deprivation" of the private interest "through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;"

and (3) the government's interest and its "fiscal and administrative burdens that the additional or substitute procedural requirement[s] would entail." *Id.* at 335.

CLAIM FOR RELIEF

COUNT ONE

Mr. Mejia's Detention Violates His Right to Substantive Due Process under the Fifth Amendment

42. Petitioner re-alleges and incorporates by reference the paragraphs above.

43. As a "person" within the meaning of the Fifth Amendment, Mr. Mejia is entitled to due process of law while in the United States, and certainly while in immigration custody. U.S. Const.. amend. V; *see Reno v. Flores*, 507 U.S. 292, 306 (1993) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.").

44. Mr. Mejia cannot seek bond before an immigration judge and DHS has not addressed his request for parole, thus he has no avenue outside of habeas proceedings to challenge his continued detention, years after he entered the United States to live with and support his U.S. citizen family.

45. Each of the *Mathews* factors weighs heavily in favor of this Court requiring a bond hearing for Mr. Mejia. 424 U.S at 335.

46. First, the private interest outweighs the government action in this case. The "importance and fundamental nature" of an individual's liberty interest is well-established. *See Salerno*, 481 U.S. at 750; *compare Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment . . . lies at the heart of [] liberty") with *Hechavarria v. Sessions*, 15-CV-1058LJV, 2018 WL 5776421 at *8 (W.D N.Y. 2018) ("this Court finds little difference between Hechavarria's detention and other instances where the government seeks the civil detention of an individual to effectuate a regulatory purpose.").

47. In Mr. Mejia's case, the fundamental nature of freedom weighs in his favor, as he has lived in the United States for decades, and has been residing in Virginia lawfully (pursuant to a grant of bond) for nearly five years with his U.S. citizen wife and two U.S. citizen children. He has never been convicted of any crime—much less a crime which would subject him to detention.

48. Mr. Mejia is also in the process of preparing for his individual hearing in immigration court, which is scheduled for August 1, 2025. His continued detention only complicates that preparation.

49. Second, the risk that Mr Mejia's freedom will be erroneously deprived is significant. *Mathews*, 424 U.S. at 335. He has no avenue to challenge his continued detention or potential transfer within the immigration detention system to a location far from his family and legal counsel. *See, e.g.*, John Hudson and Alex Horton, *Trump to ramp up transfers to Guantanamo, including citizens of allies*, The Washington Post, June 11, 2025, available at: https://www.washingtonpost.com/national-security/2025/06/10/trump-guantanamo-deportations/.

50. Moreover, the immigration court's precedent—*Matter of M-S-* and *Matter of Q. Li*—effectively deprive Mr. Mejia of due process because they require his continued detention without an avenue to seek release, despite having lived in the United States for years with his family and without criminal conviction.

51. In *Matter of M-S-*, the Attorney General determined that a noncitizen who was initially placed in expedited removal proceedings but who was then transferred to full proceedings before an immigration judge after establishing a credible fear of persecution or torture should be treated as an arriving alien in expedited proceedings and not eligible for bond. 27 I. & N. Dec. 509, 515 (A.G. 2019). The Attorney General explained that the expedited removal statute requires detention "'for further consideration of the application for asylum.'" *Id.* (quoting 8 U.S.C.

§ 1225(b)(1)(B)(ii)). Because the noncitizens who are transferred from expedited removal proceedings to full removal proceedings are placed in full proceedings so they can seek asylum, the Attorney General reasoned they are still covered by § 1225(b)(1)(B)(ii) despite no longer being in expedited removal proceedings. 27 I. & N. Dec. at 516; *accord Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018) (recognizing that § 1225(b) detention continues until an immigration officer finishes considering the application for asylum or until removal proceedings have concluded).

52. In *Matter of Q. Li*, the Board expanded the holding in *Matter of M-S-* to rule that an individual who is paroled and then re-detained prior to the completion of removal proceedings is also not subject to bond. 29 I. & N. Dec. 66, 70-71 (BIA 2025).

53. The application of *Matter of M-S-* and *Matter of Q. Li* to Mr. Mejia, an individual who has been living lawfully in the United States for years, violates his due process rights. The individual in *Matter of M-S-* had never received parole and had never been released from DHS's custody, thus had not obtained the constitutional due process protections of individuals who have entered and resided in the United States. Applying these cases to Mr. Mejia leaves him without an avenue to challenge his continued detention despite his years-long residence and community connections within the United States.

54. Additionally, the existing procedure before ICE to seek release is without meaningful process. Any internal process to demonstrate to ICE that release is warranted is not subject to review or challenge, and indeed has no published procedural rules. All § 1225 detainees who seek release from custody must provide evidence to their individual ICE detention officer who reviews the evidence and makes a decision on custody. Whether that decision is subject to supervisor review is unknown, and possibly not universally enforced. And even if it were, ICE is

not a neutral arbiter of whether a noncitizens' detention is necessary—indeed, one cannot be both judge and jailer and still be called neutral.

55. Moreover, requiring detained noncitizens to obtain and submit evidence within a detention facility is extremely onerous. Barriers such as indigence, language and cultural separation, limited education, and mental health issues often associated with past persecution or abuse further complicate detainees' ability to successfully obtain such records and present them in support of release. The mere fact of detention—in what are often county jails or for-profit prisons[1] located miles from individuals' community—presents a significant obstacle to accessing the outside world and makes communication with family and counsel difficult and at times, prohibitively expensive. *See e.g. Moncrieffe v Holder*, 569 U.S. 184, 201 (2013) (noting that immigrant detainees "have little ability to collect evidence"). Thus, there is a significant risk of erroneous, unwarranted detention.

56. Third, the proposed procedures—namely requiring that DHS prove detention is necessary to serve a legitimate government interest—does not meaningfully prejudice the government's interest in detaining dangerous noncitizens during removal proceedings. *Mathews*, 424 U.S. at 335. There is not likely to be any dispute that Mr. Mejia is dangerous—he has no criminal convictions in the United States, previously received bond (in fact, that occurred after the Attorney Genera's decision in *Matter of M-S-*), and has otherwise complied with all orders by immigration authorities.

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[1] Farmville Detention Center is a private immigration detention facility materially indistinguishable from a jail or prison.

57. If ICE wishes to counter to prove Mr. Mejia is dangerous, it can easily obtain records from other federal agencies and local law enforcement. In fact, DHS already does so with frequency, as it carries several burdens in the merits proceedings.

58. This request is not overly burdensome. For the 28 months during which DHS bore the burden in bond hearings established pursuant to *Lora v Shanahan*,[2] the agency was not "thwarted from effectively enforcing U.S. immigration laws;" nor was "public safety [] put at risk." *Sajous v. Decker*, No. 18-CV-2447, 2018 WL 2357266, Slip op. at *13 (S.D.N.Y. May 23, 2018) (ordering bond hearing at which DHS bears the burden of proof by clear and convincing evidence or immediate release of petitioner detained for eight months); *see also Frantz C v. Shanahan*, No. 18-CV-2043, 2018 WL 3302998 (D.N.J. 2018) (habeas denied because bond was previously denied under *Lora* standard, so petitioner had already received a constitutionally adequate bond hearing). There is thus no evidence to suggest that placing the burden on DHS impacted the rate at which parolees returned to court, nor is there any evidence that the community was placed at any greater risk of harm. The Government cannot reasonably suggest today that the proposed procedure for Mr. Mejia—which exists for thousands of other immigration detainees—is too burdensome to implement.

59. Mr. Mejia is currently held in custody by ICE without any meaningful mechanism to challenge the lawfulness of his custody. He has submitted a request for his release to his deportation officer, but there are no procedural rules for the manner or timing of that review, it is discretionary and not subject to review, and ICE is not a neutral arbiter of his detention.

60. Thus, all three *Mathews* factors favor requiring the Government to bear the burden of proof during immigration custody hearings, as it does during every other civil detention context.

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[2] 804 F.3d 601 (2d Cir. 2015) cert. granted, judgment vacated, 138 S. Ct. 1260 (2018).

See e.g. Portillo v. Hott, 322 F.Supp.3d 698, 709 (E.D. Va. 2018) ("[I]n light of the ongoing infringement of the alien's liberty interest and the strong tradition that the burden of justifying civil detention falls on the government, the balance between individual and government interests requires that the burden of justifying petitioner's continued detention falls upon the government . . . to demonstrate by clear and convincing evidence that petitioner's ongoing detention is appropriate[.]").

61. Ultimately, the Constitution cannot abide a process by which the Government can detain someone without providing any justification. Therefore, to cure the due process violation that has occurred by detaining Mr. Mejia without any adequate procedural protections, the Court should order a hearing at which Respondents must justify any further detention. Mr. Mejia requests that this custody hearing be held before this Court, or otherwise ordered to occur the immigration court with a ruling that the agency precedent *Matter of M-S-* and *Mattter of Q. Li* cannot be applied in this case as they violate Mr. Mejia's due process rights.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over the matter;

b. Issue an emergency order staying Mr. Mejia's transfer outside the Eastern District of Virginia;

c. Declare that the continued immigration detention of Mr. Mejia violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

d. Issue a writ of *habeas corpus* ordering Respondents to immediately release Mr. Mejia from their custody or provide him a bond hearing at which the Government bears the burden of proof;

e. Award Mr. Mejia all costs incurred in maintaining this action; and

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

Respectfully submitted,

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