UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Jose Luis Alvarez Martinez Petitioner, Kristi Noem, Secretary of Homeland Security; Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Miguel Vergara San Antonio Field Office Director; Rose Thompson, Warden of Karnes County Immigration Processing Center Respondents.	**Civil Case No. 5:25-cv-01007**

PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. In May 2025, after having spent nearly 14 years attending immigration removal proceedings, and after having obtained a prima facie determination for benefits under the Violence Against Women's Act (VAWA) that place him on a path toward lawful permanent residence (LPR) status, Petitioner Jose Luis Alvarez Martinez was arrested by Immigration and Custody Enforcement (ICE) agents without a lawful basis. Indeed, the Petitioner had already been released on immigration bond twice in 2011 and 2017, and he had complied with the terms of those bonds. Since his release on bond in 2017, he had no new criminal arrests or other changed circumstances that justify his re-detention.

2. On July 15, 2025, Immigration Judge (IJ) Meredith Tyrakoski, recognizing that there was no significant change in circumstance, ordered that the Petitioner be released from immigration custody upon posting a $3,000 bond. *See Exh. A* (IJ order). Unhappy with the IJ's order, the ICE filed an automatic stay of the IJ's order under 8 C.F.R. § 1003.19(i)(2). *See Exh. B* (ICE's EOIR-

43, Notice of ICE Intent to Appeal Custody Redetermination). This unilateral filing prevents the Petitioner from posting bond, and from being released from custody.

3. The automatic stay violates the Petitioner's due process right to liberty because it provides the Petitioner with no opportunity to challenge the stay. *See, e.g., Uritsky v. Ridge*, 286 F.Supp.2d 842 (E.D. Mich. 2003). ICE's primary argument to justify the Petitioner's re-detention is based on a new and wholly untested interpretation of a provision of the Immigration and Nationality Act (INA) which has been in effect since 1996. That new and untested interpretation should not serve as the basis for Petitioner's continued detention while a decision is made on the underlying appeal.

4. The Petitioner accordingly files suit seeking a writ of habeas corpus ordering his release from custody as ordered by the IJ one month ago.

II. PARTIES

5. Petitioner Jose Luis Alvarez Martinez is a noncitizen who is currently detained in immigration detention at the Karnes County Immigration Processing Center in Karnes City, Texas.

6. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and is charged with implementing the immigration laws of the United States. Secretary Noem is being sued in her official capacity.

7. Respondent Todd M. Lyons is the Acting Director of ICE, as sub-agency of Homeland Security. It is under ICE's authority that the Petitioner is being held without bond. Acting Director Lyons is being sued in his official capacity.

8. Respondent Miguel Vergara is the San Antonio ICE Field Office Director. It is under Respondent Miguel Vergara's order that the Petitioner is in immigration custody. Respondent Vergara is being sued in his official capacity.

9. Respondent Rose Thompson is the Warden and/or immediate custodian at the Karnes County Immigration Processing Center in Karnes City, Texas. Respondent Rose Thompson is being sued in her official capacity.

III. JURISDICTION

10. This Court has subject matter jurisdiction over Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The Court also has jurisdiction pursuant to 28 U.S.C. § 1331 (Federal Question Jurisdiction) inasmuch as the case is a civil action arising under the laws of the United States.

11. Although only the Court of Appeals has jurisdiction to review removal orders directly through a petition for review, *see* 8 U.S.C. §§ 1252(a)(l), (a)(5), (b), District Courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001); *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-10676-BEM, 2025 U.S. Dist. LEXIS 74197, at *14–15 (D. Mass. April 18, 2025) (citing *J.D.F.M. v. Lynh*, 837 F.3d 1026 (9th Cir. 2016)).

12. Venue is proper in this district because the Petitioner is detained within this district, and a substantial amount of the events giving rise to this claim occurred within this district. 8 U.S.C. § 1391(e)(1).

IV. LEGAL FRAMEWORK GOVERNINGAPPEALS OF IMMIGRATION JUDGE BOND DECISIONS AND STAYS WHILE BOND APPEAL IS PENDING

13. Under 8 U.S.C. § 1226(a), the DHS has authority to arrest and detain certain noncitizens "pending a decision on whether the alien is to be removed from the United States . . ." However,

the DHS "may release the alien on bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General . . . ." 8 U.S.C. § 1226(a)(2)(A).

14. Upon arrest and detention pending a removal proceeding, DHS will make a determination on whether to allow the noncitizen to be released pending the posting of a bond. 8 C.F.R. § 1236.

15. "Custody and bond determinations made by the [DHS] pursuant to 8 C.F.R. § 1236 may be reviewed by an Immigration Judge pursuant to 8 C.F.R. § 1236." 8 C.F.R. § 1003.19(a).

16. Once a bond has been granted by the Immigration Judge, DHS is only authorized to revoke a bond upon a finding of materially changed circumstances meriting the noncitizen's return to custody. *See, e.g., Matter of Sugay*, 17 I&N at 640 (BIA found a change in circumstances, in part, when it was determined that the noncitizen was "wanted for murder in the Philippines....").

17. Once an Immigration Judge (IJ) has set a bond, either party can appeal the IJ's order on bond to the Board of Immigration Appeals (Board). 8 C.F.R. § 1003.19(f).

18. A DHS appeal from an IJ order releasing a noncitizen standing alone does not stay the IJ's order. Rather, DHS must apply for a stay of custody pending the appeal. 8 C.F.R. § 1003.19(i). The regulation provides two alternatives for DHS when seeking to stay an IJ bond order:

> (1) ***General discretionary stay authority.*** The Board of Immigration Appeals (Board) has the authority to stay the order of an immigration judge redetermining the conditions of custody of an alien when the Department of Homeland Security appeals the custody decision or on its own motion. DHS is entitled to seek a discretionary stay (whether or not on an emergency basis) from the Board in connection with such an appeal at any time.
>
> (2) ***Automatic stay in certain cases.*** In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, any order

> of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR-43 is subject to the discretion of the Secretary.

8 C.F.R. § 1003.19(i)(1) & (2). In this case, DHS elected to pursue an automatic stay under paragraph 2. *See Exh. B.*

19. The filing of an automatic stay provides the noncitizen with no process to contest the stay order before the IJ or the Board.

20. To maintain the automatic stay, 8 C.F.R. § 1003.19(i)(2) requires the DHS to file a notice to appeal with the BIA and include a "certification by a senior legal official that –

> (i) The official has approved the filing of the notice of appeal according to review procedures established by DHS; and
>
> (ii) The official is satisfied that the contentions justifying the continued detention of the alien have evidentiary support, and the legal arguments are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing precedent or the establishment of new precedent.

8 C.F.R. § 1003.6(c).

21. The filing of the notice of appeal with the above certification ensures that the automatic stay will remain in place while the DHS pursues its appeal. Noncitizens are not afforded any procedure to challenge the filing of the stay or the validity of the certification.

22. "If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal." 8 C.F.R. § 1003.6(c)(4). However, the DHS can seek a discretionary stay "at a reasonable time before the expiration of the period of the automatic stay . . . ." 8 C.F.R. § 1003.6(c)(5). Thus, the potential for prolonged custody may exceed far more than 90 days.

V. FACTS

23. The Petitioner, a citizen of Mexico, entered the United States approximately 30 years ago when he was about 15 years old. He is married to a U.S. citizen and has four U.S. citizen children, including one minor child who turns 15 years old later this month.

24. The Petitioner has a conviction from over 15 years ago for possession of a firearm. At a probation check-in in 2011, he was apprehended by ICE officials and placed into removal proceedings. He requested a custody redetermination from the IJ in 2011 and was granted a bond in the amount of $7,500 with no specific conditions added.

25. In 2017, he was apprehended a second time by ICE after having been stopped for driving without a license. He again requested bond from an IJ and was granted a bond in the amount of $15,000, again with no specific conditions; ICE again waived appeal. He attended all removal hearings as required, and his case has been administratively closed before the immigration court since May 2023. *See Exh. C* (IJ's order closing case).

26. On May 10, 2023, the Petitioner filed a petition for a special immigrant under the Violence Against Women Act (VAWA). *See Exh. D.* The petition is pending before United States and

Immigration Service (USCIS); however, USCIS issued a prima-facie determination, which is valid until October 15, 2025. *Id.* This determination demonstrates prima facie eligibility for the benefit sought.

27. Although the IJ administratively closed the Petitioner's case to await the final results on his VAWA petition, the DHS re-detained the Petitioner on May 21, 2025, and placed him in custody at the Karnes detention facility without a bond. In violation of Board precedent, ICE has not provided a material change in circumstances justifying the Pctitioner's re-detention. *Matter of Sugay*, 17 I&N Dec. at 640.

28. On July 9, 2025, the Petitioner, through counsel, filed an application for re-determination of his custody status with the IJ.

29. On July 15, 2025, the IJ held a hearing on the matter. At that hearing, the ICE attorney argued that the Petitioner was subject to mandatory detention under 8 U.S.C. § 1225(b) because he entered the U.S. without inspection nearly 30 years ago, despite the fact that he has been released twice on bond in the past without ICE making this argument, and 8 U.S.C. § 1225(b) has never been held to apply to non-citizens within the U.S. In the alternative, the ICE attorney argued that the Petitioner constituted a "danger to the community" based on his arrest for possession of a firearm from nearly 15 years ago. The IJ disagreed with ICE and entered an order granting the Petitioner's request for release on bond. The IJ entered an order for the Petitioner to be released upon the posting of a $3,000 bond. *See Exh. A.*

30. In her bond memorandum explaining her reasons for granting bond, the IJ rejected the DHS's argument that the Petitioner is subject to "mandatory detention" because it is "at odds with BIA precedent." *Id.* The IJ "after careful consideration of the evidence" found that the Petitioner's 2010 conviction for unlawful possession of a firearm and a 2017 arrest for driving without a license

did not make the Petitioner a danger to the community. Finally, the IJ found that since the Petitioner "has a clear pathway to relief from removal, that he has strong familial ties to the United States, and that he has a demonstrated record of appearing in court and submitting to the authority of DHS," he "is a relatively low flight risk." *Id.*

31. Unhappy with the IJ's decision, the DHS reserved appeal to the BIA and filed an automatic stay of the IJ's decision pursuant to 8 C.F.R. § 1003.19(i)(2). *See Exh. B.* The Petitioner is not afforded any process to challenge the stay of his removal.

32. On July 28, 2025, the DHS perfected its appeal to the Board by filing a notice of appeal. *Id.* DHS attempts to satisfy this regulation requiring a certification from a senior legal official by providing "Senior Legal Official Certification" from David D. Wallen, who purports to be a "Deputy Chief Counsel." *Id.* DHS provides no evidence or statement about how a "Deputy" is a "senior legal official" as required by the regulation.

33. Wallen certifies that he is "satisfied that the evidentiary record supports the contentions justifying the continued detention of the alien and the legal arguments are warranted by existing law . . . ." Yet, in the next sentence Wallen claims that the Petitioner is subject to mandatory detention under "236(c) of the Immigration and Nationality Act, 8 U.S.C. § 1226(c)." *Id.* Before the IJ, DHS argued that mandatory detention was under 8 U.S.C. § 1225, not § 1226(c), as Wallen certifies.

34. The Petitioner is afforded no process or opportunity to challenge the validity of the stay before the Board. He cannot even point out that the certification is inconsistent with the grounds of appeal. He is provided with no process whatsoever to challenge the automatic stay of the IJ's order.

35. The Board has issued a briefing schedule. The parties are ordered to submit briefs on or before August 26, 2025.

36. Based on practice, experience, and belief, the Board takes approximately 6 months to decide a bond appeal.

37. The Petitioner and his family are suffering as a result of his prolonged, unconstitutional detention.

VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES

38. The Petitioner has exhausted his administrative remedies to the extent required by law.

VII. CLAIMS FOR RELIEF

Count I. Fifth Amendment Procedural Due Process

(Habeas Corpus 28 U.S.C. § 2241)

39. The Petitioner alleges and incorporates by reference the paragraphs alleged above.

40. When the Government interferes with a liberty interest, "the procedures attendant upon that deprivation [must be] constitutionally sufficient." *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). The constitutional sufficiency of procedures is determined by weighing three factors: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through the available procedures; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

41. The Petitioner has a weighty liberty interest as his freedom "from government . . . detention . . . lies at the heart of the liberty that [the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

42. The risk of erroneous deprivation of the Petitioner's liberty is extremely high, given that the DHS used the automatic stay provision to unilaterally override the IJ's determination without any procedural protections at all. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner," *Mathews*, 424 U.S. at 333, yet the DHS' decision to seek an automatic stay is not subject to review by an impartial adjudicator. Indeed, the Petitioner is not even allowed a process where he can be heard at all.

43. The DHS's interest in preserving its unilateral authority to prevent the release of noncitizens who have already shown they are neither a flight risk nor a danger is minimal. Providing additional procedural protections here introduces no additional administrative burdens because the regulations already provide the DHS with the opportunity to seek a discretionary stay on an emergency basis. Unlike the automatic stay invoked in this case, the discretionary stay requires DHS to justify the stay to the BIA and affords the noncitizen an opportunity to respond. Permitting the BIA to determine whether a stay of release is in fact warranted reduces the risk of erroneous deprivation without any meaningful costs to the government.

44. The DHS is confining the Petitioner in violation of his Fifth Amendment rights. Therefore, the Court should issue a writ of habeas corpus ordering his release.

VIII. PRAYER FOR RELIEF

For the foregoing reasons, the Petitioner requests that the Respondents be cited to appear and that, upon due consideration, the Court enter an order:

a. Granting a writ of habeas corpus finding that the Petitioner's detention is in violation of the due process clause;

b. Providing declaratory relief that the Petitioner's detention is unlawful;

c. Ordering the Petitioner's release from custody;

d. Awarding Petitioner reasonable attorney's fees, expenses and costs; and

e. Granting Petitioner such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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