

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

**PEDRO HENRIQUE ROBERTO
FERREIRA DA SILVA**

Petitioner,

v.

ESKER L. TATUM, JR.,
Warden of FCI Berlin;
PATRICIA HYDE, Acting Field Office
Director, Boston, U.S Immigration and
Customs Enforcement;
TODD LYONS, Acting Director, U.S.
Immigration and Customs Enforcement;
KRISTI NOEM, Secretary, U.S.
Department of Homeland Security


Respondents.

Case No. 25-cv-329

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

ORAL ARGUMENT REQUESTED

INTRODUCTION

1. Pedro Henrique Roberto Ferreira da Silva (hereinafter referred to as “Pedro Henrique,” “Mr. Ferreira da Silva,” or “Petitioner”) is a Brazilian citizen who previously entered the U.S. without inspection. Prior to detention, Pedro Henrique was residing at 
2. On July 17, 2025, Mr. Ferreira da Silva was arrested by Immigration and Customs Enforcement (“ICE”) in Milford, Massachusetts. He is currently detained at FCI Berlin, located at 1 Success Loop Rd Berlin, New Hampshire 03570.
3. Petitioner previously filed a motion for custody redetermination – also known as a bond motion—with the Chelmsford (MA) Immigration Court. On July 31, 2025,

Immigration Judge Donald Ostrom granted Petitioner's bond motion and set a bond of \$6,500. Counsel for the Department of Homeland Security ("DHS") reserved the right to appeal.

4. As in *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004), Respondent's refusal to release Mr. Ferreira da Silva after bond was granted by an Immigration Judge constitutes an unconstitutional deprivation of liberty. In *Zavala*, the court found that DHS' use of an automatic stay to block release, without individualized findings, violated the Due Process Clause and exceeded the agency's statutory authority. *Id.* at 1079. Here, Petitioner faces the same harm: despite an explicit judicial finding that he is neither a danger to the community nor a flight risk, DHS' refusal to honor the bond order amounts to unlawful, indefinite detention.
5. Accordingly, to vindicate Petitioner's statutory and constitutional regulatory rights, this Court should grant the instant petition for a writ of *habeas corpus*. Mr. Ferreira da Silva requests that this Court immediately release him from detention, also enjoining Respondent from re-detaining him unless there are changes in the circumstances that would justify detention.
6. Furthermore, Petitioner also requests this Court to issue an order to prevent Petitioner from being transferred out of the state of New Hampshire for the duration of these proceedings.

JURISDICTION

7. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (*habeas corpus*), and 28 U.S.C. § 1331 (federal question).
9. This Court may grant relief under the *habeas corpus* statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

10. Venue is proper in this District because Respondent is an officer, employee, or agency of the United States. Additionally, Petitioner has been detained within this District. 28 U.S.C. § 2241.
11. “[A] district court entertaining a petition for habeas corpus has inherent power to release the petitioner pending determination of the merits.” *Gomes v. U.S. Dep’t of Homeland Sec.*, 460 F. Supp. 3d 132, 144 (D.N.H. 2020) (quoting *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972)).

PARTIES

12. Petitioner is a Brazilian citizen who is presently detained at FCI Berlin, in Berlin, New Hampshire. He is in custody and under the direct control of Respondent and their agents.
13. The first Respondent, the Warden of FCI Berlin, is named in his official capacity as the custodian of Mr. Ferreira da Silva. In this capacity, the Warden has physical custody over Petitioner because ICE contracts FCI Berlin to house immigration detainees, including Petitioner.

14. Additional Respondents are also named in their official capacities, as they are in charge of the agencies/departments/divisions which have made the decision(s) resulting in Petitioner's continued detention.

LEGAL FRAMEWORK

15. In *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975), the Supreme Court sought to determine what standard of proof, if any, an immigration officer must apply to stop and detain individuals to investigate their immigration status. *See* 422 U.S. at 880–82. The Court stated that, just as in the criminal context, an immigration officer “must have a reasonable suspicion” to justify briefly stopping individuals to question them “about their citizenship and immigration status...but any further detention...*must be based on ... probable cause.*” *Id.* at 881–82 (emphasis added) (citing *Terry v. Ohio*, 392 U.S. 1, at 29); *see also id.* at 884 (“[T]he Fourth Amendment...forbids stopping or detaining persons for questioning about their citizenship on less than a reasonable suspicion that they may be aliens.”).

16. The First Circuit requires immigration officers to have reasonable suspicion to briefly stop individuals for the purpose of questioning them about their immigration status, as well as probable cause to justify any further arrest and prolonged detention. *See, e.g., United States v. Mendez-de Jesus*, 85 F.3d 1, 3 (1st Cir.1996) (recognizing that *Brignoni-Ponce* stands for “the principle that an individual may not be [briefly] detained for questioning about citizenship absent reasonable suspicion that the person is an illegal alien”); *Lopez v. Garriga*, 917 F.2d 63, 69 (1st Cir.1990) (noting that detention to inquire about an individual's immigration status is “a seizure and implicate[s] the [F]ourth [A]mendment” (citing *Immigration*

& Naturalization Serv. v. Delgado, 466 U.S. 210, 216–17, 104 S.Ct. 1758, 80 L.Ed.2d 247 (1984); *Terry*, 392 U.S. at 21, 88 S.Ct. 1868)); *Navia–Duran v. Immigration & Naturalization Serv.*, 568 F.2d 803, 809 n. 7 (1st Cir.1977) (recognizing that an immigration arrest and detention needs to be “supported by probable cause or reasonable suspicion”).

17. Under 8 U.S.C. § 1357(a)(2), ICE officers may conduct warrantless arrests if there is “reason to believe that the alien [] [to be] arrested is [present] in the United States in violation of any [U.S. immigration] law and is likely to escape before a warrant can be obtained for [the] arrest.” The “reason to believe” standard requires ICE officers to have probable cause that an individual is in the United States in violation of U.S. immigration laws and probable cause that the individual is likely to escape before a warrant can be obtained for the arrest. *Nava v. Dep’t of Homeland Sec.*, 435 F.Supp.3d 880, 885 (N.D. Ill. 2020). Mere presence within the United States in violation of U.S. immigration law is not, by itself, sufficient to conclude that an alien is likely to escape before a warrant for arrest can be obtained. *Id.*
18. The Supreme Court held in *Zadvydas v. Davis* that civil incarceration is only acceptable “in certain special and narrow non-punitive circumstances, where a special justification . . . outweighs the individual’s constitutionally protected interest.” 533 U.S. 678, 690 (2001). The Supreme Court further established the principle that noncitizens in deportation or removal proceedings are just as entitled to due process protections as anyone else. *See Zadvydas*, 533 U.S. at 690 (2001) (“A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment’s Due Process Clause forbids the Government to

‘depriv[e]’ any “person . . . of . . . liberty . . . without due process of law.”). The First Circuit in *Hernandez-Lara v. Lyons* also relied on the Supreme Court’s civil detention cases in its due process analysis. Supported by the Supreme Court’s reliance on cases such as *Zadvydas*, the circuit confirmed that due process rights apply to noncitizens. 10 F.4th 19, 36-38 (1st Cir. 2021).

19. The government cannot override a lawful bond determination by an immigration judge without violating the Constitution and statutory law. In *Zavala v. Ridge*, 310 F. Supp. 2d 1071, the Northern District of California held that DHS’ invocation of an automatic stay provision to block a noncitizen’s release on bond—despite a judge’s finding that the individual was not a flight risk or danger—constituted a violation of substantive and procedural due process under the Fifth Amendment. The court found that the regulation authorizing such stays (8 C.F.R. § 1003.19(i)(2)) impermissibly stripped individuals of liberty in contradiction to judicial findings and was *ultra vires* to the INA’s statutory scheme. *See Zavala*, 310 F. Supp. 2d at 1077–79.
20. Mr. Ferreira da Silva’s continued detention by DHS violates his rights under the Due Process Clause of the Fifth Amendment to the United States Constitution.

CLAIM FOR RELIEF

Violation of Fifth Amendment Right to Due Process

21. The allegations in the above paragraphs are realleged and incorporated herein. Immigration detention violates due process if it is not reasonably related to the purpose of ensuring a noncitizen’s removal from the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92, 699-700 (2001); *Jackson v. Indiana*, 406 U.S. 715, 738

(1972). Where removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and is unlawful. *See id.* at 699-700.

22. Here, just as in *Zavala*, DHS used the automatic stay provision in 8 C.F.R. § 1003.19(i)(2) to prevent Petitioner's release, despite an Immigration Judge's determination that he was neither a flight risk nor a danger. DHS provided no individualized findings or evidence to justify continued detention, violating both procedural and substantive due process. The automatic stay has therefore stripped Petitioner of his liberty interest and rendered the judicial bond order meaningless—an outcome the *Zavala* court held was unconstitutional.
23. As in *Zavala*, Petitioner's continued detention—despite an IJ's bond grant—is not only arbitrary, but also exceeds DHS's statutory authority under 8 U.S.C. § 1226. The court in *Zavala* held that DHS cannot nullify a bond order through internal regulation or procedure, absent clear and convincing evidence justifying further detention. Respondent's refusal to allow Mr. Ferreira da Silva to post bond deprives him of liberty without due process and turns a discretionary release mechanism into de facto mandatory detention, a result the court in *Zavala* unequivocally rejected.
24. Petitioner cannot be expected to be reasonably removed from the country, and DHS has failed to demonstrate that he is a danger to the community or a flight risk.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondent to show cause why Petitioner should not be granted within three days;

- (3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, and exceeds Respondent's statutory authority under the Immigration and Nationality Act, consistent with *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004);
- (4) Issue an order preventing Petitioner from being transferred out of the state of New Hampshire for the duration of these proceedings;
- (5) Issue a Writ of Habeas Corpus ordering Respondent to immediately release Petitioner from custody, honoring the bond order set by the Immigration Judge, and prohibiting further detention unless supported by individualized findings of danger or flight risk, consistent with *Zavala*;
- (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (7) Grant any further relief this Court deems just and proper.

Respectfully submitted by Petitioner,

AYSLLAN MONTEIRO SOARES

Through his attorneys,

Dated: September 2, 2025

/s/Ronald L. Abramson

Ronald L. Abramson (NH Bar No. 9936)

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* *Motion for Pro Hac Vice Admission of Atty. Caron to follow.*

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner Pedro Henrique Roberto Ferreira da Silva, and I submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this day of **August 29, 2025**.

/s/ Timothy G. Caron
Timothy G. Caron

CERTIFICATE OF SERVICE

I, Ronald L. Abramson, hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF (NEF) and paper copies will be sent to those indicated as non-registered participants, with an immediate courtesy copy being sent via email to Assistant United States Attorney Raphael Katz.

Dated: September 2, 2025

/s/ Ronald L. Abramson
Ronald L. Abramson