

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

Hugo IXCOY-HERNANDEZ,

Petitioner,

v.

Christopher J. LAROSE, *in his official capacity
as Warden of Otay Mesa Detention Center;*
Patrick DIVVER, *in his official capacity as
San Diego Field Office Director, ICE Enforcement
Removal Operations;* Todd LYONS, *in his official
capacity as Acting Director of Immigration and
Customs Enforcement;* and Kristi NOEM, *in her
official capacity as Secretary of Homeland Security,*

Respondents.

Case No. **'25CV2309 AJB DDL**

**PETITION FOR WRIT
OF HABEAS CORPUS**
A# 209-980-874

I. INTRODUCTION

1. Petitioner Hugo Ixcoy-Hernandez ("Mr. Ixcoy") is a 24-year-old Guatemalan national who first entered the United States in 2016 at the age of fourteen. He has resided in southern California for almost 10 years. He has a long-time partner, and they share a three-year-old U.S. citizen daughter. Mr. Ixcoy's partner is pregnant with their second daughter and due later this month.

2. On August 25, 2025, an Immigration Judge ("IJ") ordered Mr. Ixcoy released on a \$9,500 bond with electronic monitoring, finding he does not pose a danger to the community and the bond amount would offset any potential flight risk. No additional conditions were imposed.

3. On August 26, 2025, Immigration and Customs Enforcement ("ICE") filed

a Notice of Intent to Appeal Custody Redetermination which automatically stayed the bond order under 8 C.F.R. § 1003.19(i)(2) preventing Mr. Ixcoy's release. Mr. Ixcoy remains confined at Otay Mesa Detention Center in San Diego, California.

5. The automatic-stay regulation exceeds any authority Congress conferred in the Immigration and Nationality Act ("INA") and violates the Fifth Amendment's Due Process Clause.

6. Mr. Ixcoy therefore seeks a writ of habeas corpus directing his immediate release.

II. VENUE AND JURISDICTION

7. This Court has jurisdiction under 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the Constitution (Suspension Clause).

8. Venue lies in this Division because Mr. Ixcoy is detained in Otay Mesa Detention Center, within the San Diego Division, and Respondent LaRose is his immediate custodian. See 28 U.S.C. §§ 2241(d), 1391(e).

III. PARTIES

9. Petitioner Hugo Ixcoy-Hernandez ("Mr. Ixcoy") is a 24-year-old Guatemalan national who resides in Riverside, California. He is currently detained at the Otay Mesa Detention Center in San Diego, California.

10. Respondent Christopher J. LaRose is the Warden of Otay Mesa Detention Center. As such, Respondent is responsible for the operation of the Detention Center where Mr. Ixcoy is detained. Because ICE contracts with private prisons such as Otay Mesa to house immigration detainees such as Mr. Ixcoy,

Respondent LaRose has immediate physical custody of the Petitioner.

11. Respondent Patrick Divver is the San Diego Field Office Director (“FOD”) for ICE Enforcement and Removal Operations (“ERO”). As such, Respondent Divver is responsible for the oversight of ICE operations at the Otay Mesa Detention Center. Respondent Divver is being sued in his official capacity.

12. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (“ICE”). As such, Respondent Lyons is responsible for the oversight of ICE operations. Respondent Lyons is being sued in his official capacity.

13. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (hereinafter “DHS”). As Secretary of DHS, Secretary Noem is responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Noem is being sued in her official capacity.

IV. EXHAUSTION OF REMEDIES

14. No statutory exhaustion requirement applies. Moreover, ICE’s refusal to honor the IJ’s bond order leaves no administrative avenue to secure release; additional agency steps would be futile.

15. Mr. Ixcoy has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

V. STATEMENT OF FACTS

16. Mr. Ixcoy is a Guatemalan national born on January 21, 2001. He

entered the United States as an unaccompanied minor in 2016, when he was fourteen years old, and has lived continuously in Southern California for the past almost ten years. He resides in Riverside, California.

17. Mr. Ixcoy supports his three-year-old United States Citizen Daughter, Genesis (born July 02, 2022), and is expecting his second daughter with his long-time partner later this month.

18. Mr. Ixcoy has been employed full-time in landscaping and is able to support his family with his income.

19. On June 05, 2019, Mr. Ixcoy filed a petition for Special Immigrant Juvenile Status ("SIJS") (**Exhibit A**, Form I-360 Approval Notice). On April 22, 2020, United States Citizenship and Immigration Services ("USCIS") approved Mr. Ixcoy's petition for SIJS. *Id.* SIJS is a victim-based relief available through USCIS for children who have been abused, abandoned, or neglected by both or one parent, and who can demonstrate that it is not in the child's best interest to return to their home country. Once a petition for SIJS is approved, the applicant is placed on a waitlist for a visa as there is currently a backlog for the visa category for SIJS. Once a visa is available for the applicant, they are eligible to apply to adjust their status to lawful permanent resident ("LPR"). However, a visa also needs to be immediately available at the time the application is adjudicated.

20. On October 24, 2024, Mr. Ixcoy filed Form I-485 Application to Adjust status to Lawful Permanent Resident as his priority date for his approved SIJS petition was current, indicating that there was a visa available for him. (**Exhibit**

B, Form I-485 Receipt Notice). However, since he filed his Form I-485, USCIS announced that there were no more visas available under the category for SIJS for the remaining fiscal year and therefore Mr. Ixcoy's application to adjust to LPR status could not be adjudicated. USCIS fiscal year runs from October 01 to September 30, therefore USCIS will be releasing new visa numbers on October 01, 2025.

21. On or about July 16, 2025, Mr. Ixcoy was arrested by U.S. Border Patrol for transportation of an alien under Title 8, United States Code Section 1324(a)(1)(A)(ii). Mr. Ixcoy was taken into Federal Criminal detention. His criminal case is still pending. The United States Attorney has offered Mr. Ixcoy a plea deal for a misdemeanor charge for Accessory After the Fact, Title 18 U.S.C. Section 3, to the offense of Improper Entry by an Alien under Title 8 U.S.C. Section 1325. Mr. Ixcoy has accepted this plea agreement.

22. On August 04, 2025, District Judge Todd W. Robinson ordered Mr. Ixcoy's release on bond. (**Exhibit C**, Pretrial Release Order). The bond was paid, however, ICE issued a detainer for Mr. Ixcoy, and he was transferred to ICE custody. ICE moved Mr. Ixcoy to the Core Civic-run Otay Mesa Detention Center in San Diego, California, where he remains confined under the supervision of Respondent LaRose.

23. Removal defense counsel filed a written motion for custody redetermination on August 19, 2025. Following a full evidentiary hearing on August 25, 2025, Immigration Judge Mark Sameit rejected ICE's argument

that every entrant without inspection (“EWI”) is an “Applicant for Admission” subject to mandatory detention and granted release on a \$9,500 bond with electronic monitoring (ATD). **(Exhibit D, Immigration Judge’s Bond Order).**

24. On August 26, 2025, ICE filed Form EOIR-43 (“Notice of DHS Intent to Appeal Custody Redetermination”), triggering a provisional automatic stay contained in 8 C.F.R. § 1003.19(i)(2). **(Exhibit E, Form EOIR-43).** The automatic stay prevented Mr. Ixcoy’s family from paying the bond. As of today’s date, ICE has not filed a formal notice of appeal with the Board of Immigration Appeals (“BIA”).

25. Mr. Ixcoy is pursuing adjustment to LPR status under 8 U.S.C. § 1255(g) based on his approved SIJS petition. His next master-calendar hearing is scheduled in person on October 9, 2025, at 1:00 p.m. before Immigration Judge Sameit at 7488 Calzada de la Fuente, San Diego, California. **(Exhibit F, EOIR Notice of Hearing).**

26. Mr. Ixcoy remains detained solely because the automatic-stay regulation blocks execution of Judge Sameit’s bond order, even though bond can be posted and no stay has been granted by the BIA or any court. He now seeks habeas relief because continued detention under 8 C.F.R. § 1003.19(i)(2) exceeds statutory authority and violates the Fifth Amendment.

VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT

27. Habeas corpus relief extends to a person “in custody under or by color of the authority of the United States” if the person can show he is “in custody in

violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241 (c)(1), (c)(3); see also *Antonelli v. Warden, U.S.P. Atlanta*, 542 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner’s claims are proper under 28 U.S.C. section 2241 if they concern the continuation or execution of confinement).

28. “[H]abeas corpus is, at its core, an equitable remedy,” *Schlup v. Delo*, 513 U.S. 298, 319 (1995), that “[t]he court shall ... dispose of [] as law and justice require,” 28 U.S.C. § 2243. “[T]he court’s role was most extensive in cases of pretrial and noncriminal detention.” *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008). “[W]hen the judicial power to issue habeas corpus properly is invoked the judicial officer must have adequate authority to make a determination in light of the relevant law and facts and to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner’s release.” *Id.* at 787.

VII. CAUSES OF ACTION

COUNT ONE THE REGULATION IS *ULTRA VIRES*

29. Petitioner incorporates paragraphs 1 through 28 as if fully set out herein.

30. The Immigration and Nationality Act, 8 U.S.C. § 1226(a), authorizes discretionary detention subject to an Immigration Judge’s bond decision; it does not authorize Immigration and Customs Enforcement to nullify that judicial decision by administrative fiat.

31. Regulation 8 C.F.R. § 1003.19(i)(2) purports to impose an automatic stay that takes effect the moment ICE files—or merely intends to file—a notice of

appeal, without any neutral review or individualized findings.

32. By turning discretionary custody into de facto mandatory detention for detainees not subject to 8 U.S.C. § 1226(c), § 1003.19(i)(2) exceeds the statutory power Congress delegated.

33. Detention premised solely on this ultra vires regulation is “not in accordance with law,” “in excess of statutory jurisdiction,” and “arbitrary [and] capricious” under 5 U.S.C. § 706(2), entitling Petitioner to immediate release.

COUNT TWO (PROCEDURAL DUE PROCESS)

34. Petitioner incorporates paragraphs 1 through 28 as if fully set out herein.

35. The Fifth Amendment forbids a deprivation of liberty without notice and a meaningful opportunity to be heard before a neutral decision-maker.

36. Subsection 1003.19(i)(2) strips Petitioner of that protection by allowing the prosecuting agency—after losing at the bond hearing—to veto the Immigration Judge’s order with a one-page notice that requires no showing of danger, flight risk, or likelihood of success on appeal.

37. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976), test, Petitioner’s liberty interest is paramount; the risk of erroneous deprivation is extreme considering the Immigration Judge’s determination that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c) and does not pose a danger to the community. Likewise, the risk of erroneous deprivation of liberty is great due to the lack of a non-independent adjudicator. *Marcello v. Bonds*, 39 U.S. 302, 305-

306 (1955). In filing Form EOIR-43, ICE is acting as both the prosecutor as well as the adjudicator. Lastly, the interest of the government in being able to invoke the challenged regulation is minimal, as there is a substitute administrative provision available. Under 8 C.F.R. §1003.19(i)(1), DHS may request an emergency stay from the BIA on the merits of the Immigration Judge's decision to release Petitioner on bond.

**COUNT THREE
(SUBSTANTIVE DUE PROCESS)**

38. Petitioner incorporates paragraphs 1 through 28 as if fully set out herein.

39. All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment.

40. The Due Process Clause of the Fifth Amendment provides that “[n]o person shall be ... deprived of life, liberty, or property, without due process of law.” U.S. CONST. amend. V. Freedom from bodily restraint is at the core of the liberty protected by the Due Process Clause. This vital liberty interest is at stake when an individual is subject to detention by the federal government.

41. Under the civil-detention framework set out in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and its progeny, the Government may deprive a non-citizen of physical liberty only when the confinement serves a legitimate purpose—such as ensuring appearance or protecting the community—and is reasonably related to, and not excessive in relation to, that purpose.

42. Once the Immigration Judge found Petitioner was not a dangerous and set a bond that Mr. Ixcoy's family intended to post, the Government's lawful objectives were satisfied; continued confinement therefore bears no reasonable, non-punitive relationship to any legitimate aim and is unconstitutionally arbitrary.

43. The regulation is also excessive because an alternative provision enables ICE to seek an emergency stay of the immigration judge's release order on the merits. The "emergency stay" provision at 8 C.F.R. § 1003.19(i)(1) permits ICE to file an emergency request for a stay of release with the BIA, just as in any other proceeding in which the losing party seeks appellate review of an adverse decision and a stay pending appeal.

44. The continued detention of Petitioner pursuant to the "automatic stay" regulation violates his due process rights. *See Mohammed H. v. Trump*, No. 25-1576 (JWB/DTS), 2025 U.S. Dist. LEXIS 117197, at *15 (D. Minn. June 17, 2025); *Günaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 U.S. Dist. LEXIS 99237 (D. Minn. May 21, 2025). But for intervention by this Court, Petitioner has no means of release pending ICE's appeal.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release him from custody, under reasonable conditions of supervision;
- 3) Order Respondents to refrain from transferring Petitioner out of the

jurisdiction of this court during the pendency of these proceedings and while the Petitioner remains in Respondents' custody;

- 4) Order Respondents to file a response within 3 business days of the filing of this petition;
- 5) Award attorneys' fees to Petitioner; and
- 6) Grant any other and further relief which this Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this 4th day of September, 2025.

/s/Nerea Sholl Woods

Law Office of Andrew K. Nietor

750 B St., Ste. 2330

San Diego, CA 92101

CA Bar # 208784

Attorney for Petitioner