

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

JONATHAN JOSUE DE LEON HERNANDEZ)
(A# ,)
Petitioner,)
v.)

PAMELA BONDI, U.S. Attorney General;)
KRISTI NOEM, Secretary of the U.S. Department)
of Homeland Security;)
TODD M. LYONS, in his official capacity as Acting)
Director of U.S. Immigration and Customs)
Enforcement;)
BRIAN ACUNA, in his official capacity as Assistant)
Field Office Director in charge of ICE New Orleans)
Field Office; and)
CHRISTOPHER GROH, in his official capacity as)
warden of the Concordia Parish Correctional Facility)
(*a/k/a* River Correctional Facility),)

Respondents.)
)

Case No.: _____

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Jonathan Josue De Leon Hernandez (“Mr. De Leon”), a native and citizen of Guatemala, challenges his continued custodial detention by the Department of Homeland Security Immigration and Customs Enforcement (“ICE”) since on or about August 28, 2025 as an unconstitutional and unjustified restraint and deprivation of his physical liberty, and seeks immediate relief from this Court.

2. Mr. De Leon is being unlawfully subjected to continued custodial detention by Respondents, despite pursuing administrative remedies with the Department of Justice Executive Office for Immigration Review (“EOIR”). The immigration judge granted bond of \$1,500 to Mr.

De Leon on September 11, 2025. ICE exercised its regulatory automatic stay authority under 8 C.F.R. 1003.19(i)(2) to appeal the immigration judge's order and to prevent Mr. De Leon's release from custody in violation of the Immigration and Nationality Act (the "INA").

3. Mr. De Leon's continued detention by ICE, without any further meaningful mechanism to challenge his confinement, violates the U.S. CONST. Due Process Clause of the Fifth Amendment (the "Fifth Amendment"), the INA and the Administrative Procedures Act, 5 U.S.C. § 702 (the "APA").

4. Mr. De Leon petitions for a writ of habeas corpus to remedy his unlawful detention, and prays this Court will 1) issue an order staying Mr. De Leon's transfer outside of the Western District of Louisiana and his removal or deportation from the United States; 2) issue an order granting Mr. De Leon his immediate release from the custody of the Respondents or allowing him to pay the bond granted by the immigration judge; and 3) issue an order preventing Respondents from once again taking Mr. De Leon into custody unless he is determined to be a flight risk and/or a danger to the community.

JURISDICTION AND VENUE

5. Mr. De Leon is detained in Ferriday, Louisiana at the Concordia Parish Correctional Facility (a/k/a River Correctional Facility), which is within the jurisdiction of the United States District Court for the Western District of Louisiana ("WDLA").

6. This action arises under the Due Process Clause of the Fifth Amendment, the INA and the APA.

7. This Court has subject-matter jurisdiction under 28 U.S.C. § 2241 ("Habeas Corpus"), 28 U.S.C. § 1346 (civil actions against the United States), 28 U.S.C. § 1651 ("All Writs Act"), and 28 U.S.C. §§ 2201-02 ("Declaratory Relief"), as Mr. De Leon 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 violation of the...laws ... of the United States.”

See Hensley v. Municipal Court, San Jose-Milpitas Jud. Dist., 411 U.S. 345, 351 (1973).

8. 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 v. Davis*, 533 U.S. 678, 687.

9. In addition to the habeas protections in the Constitution and INA, federal district courts have subject-matter jurisdiction under 28 U.S.C. § 1331 (“Federal Questions”) to hear claims by individuals challenging the lawfulness of agency action.

10. Venue is proper because Mr. De Leon is currently detained within the WDLA. At 3:22 p.m. Central Time on September 17, 2025, the ICE Detainee Locator indicated that he is detained ICE custody in Ferriday, Louisiana.

PARTIES

11. Petitioner Jonathan Josue De Leon Hernandez is a citizen and national of Guatemala. He is currently detained by the Respondents at the River Correctional Facility within the WDLA since on or about September 8, 2025.

12. Respondent Pamela Bondi is the U.S. Attorney General, and in that capacity is responsible for the EOIR which includes the Board of Immigration Appeals and immigration courts. She is sued in her official capacity.

13. Respondent Kristi Noem is the Secretary of Homeland Security, and in that capacity is responsible for the Department of Homeland Security (“DHS”) and all sub-cabinet agencies of DHS, including ICE and the United States Citizenship and Immigration Services (“USCIS”). She is sued in her official capacity.

14. Respondent Todd M. Lyons is the Acting Director of ICE, responsible for ICE's detention and removal operations of non-citizens such as Petitioner, among all its other functions. He is sued in his official capacity.

15. Respondent Brian Acuna is the Assistant Field Office Director of the ICE New Orleans Field Office, and is responsible for ICE's operations in the State of Louisiana. Upon information and belief, he is the immediate custodian of Mr. De Leon. He is sued in his official capacity.

16. Respondent Christopher Groh is the Warden of River Correctional Facility and is directly responsible for overseeing the daily aspects of Mr. De Leon's detention. He is sued in his official capacity.

STATEMENT OF FACTS

17. Mr. De Leon is a citizen of Guatemala born on [REDACTED] 2001. He entered the United States as a 17-year-old minor child on April 21, 2019 and was detained by DHS.

18. Mr. De Leon was processed by the DHS as an Unaccompanied Alien Child (“UAC”) in accordance with the Trafficking Victims Protection Reauthorization Act (“TVPRA”) and related INA provisions. Mr. De Leon was released to the custody of the Department of Health and Human Services Office of Refugee Resettlement (“ORR”) which is an office within the HHS. *See* 8 U.S.C. § 1232(b)(3), 6 U.S.C. § 279. On May 19, 2019, ORR released Mr. De Leon into the care and custody of his grandmother Juana Antonia Garza Barco, who lived in the State of Maryland pursuant to the *Flores* Settlement. 8 U.S.C. § 1232(b)(3) of the TVPRA and 6 U.S.C. § 279 (the “Sponsorship Agreement”). Such release was made under INA § 236 per the TVPRA.

19. As a UAC, DHS placed Mr. De Leon into INA § 240 proceedings through the issuance of a Notice to Appear (the “NTA”). Due to the COVID pandemic, Mr. De Leon’s case

before the EOIR was postponed until 2022. Pending the 2022 court hearing with EOIR, Mr. De Leon was found to be a Special Immigrant Juvenile in the Circuit Court for Prince George's County, Maryland through guardianship proceedings. *See* 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11. Consequently, a Form I-360 Petition for Special Immigrant status was filed with USCIS on June 16, 2022 and approved on January 20, 2023. Based on the approval by USCIS of the Form I-360, the Respondent and DHS came to an agreement for Petitioner to file an unopposed motion to dismiss removal proceedings on May 12, 2023. This motion was granted by EOIR on May 15, 2023.

20. Relevant to this Petition, the DHS has also granted deferred action to the Respondent on April 4, 2023 until January 12, 2027. *See* INA § 103, 8 U.S.C. § 1103(a). The federal courts, including the U.S. Supreme Court, have recognized the existence of deferred action and DHS's authority to grant it. *See, e.g., Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483–84 (1999) (describing deferred action as a “practice . . . of exercising . . . discretion for humanitarian reasons or simply for [DHS's] own convenience”); *Soon Bok Yoon v. INS*, 538 F.2d 1211, 1211 (5th Cir. 1976); *Vergel v. INS*, 536 F.2d 755 (8th Cir. 1976); *David v. INS*, 548 F.2d 219 (8th Cir. 1977); *Nicholas v. INS*, 590 F.2d 802 (9th Cir. 1979)).

21. Mr. De Leon has never been arrested, charged or convicted of any crimes either in his home country or in the United States. He has continuously lived in the State of Maryland after his entry in 2019.

22. Mr. De Leon was detained by ICE on or about August 28, 2025 in Washington D.C. as he was on his way to work. He was initially transferred to the ICE Washington Field Office in the State of Virginia where he was told that he would be detained without bond pending proceedings before an immigration judge. He was subsequently transferred to the

Caroline Detention Center in Bowling Green, Virginia. On or about September 8, 2025 he was transferred to the River Correctional Facility in the State of Louisiana.

23. Mr. De Leon filed a request for bond redetermination with the EOIR, which was granted by the immigration bond in the form of a \$1,500 bond (the “IJ Bond Order”) on September 11, 2025. The bond was granted by the immigration judge due to the extensive evidence demonstrating that Mr. De Leon was not a flight risk nor was he a danger to the community.

24. The IJ additionally found that she had jurisdiction under INA § 236 to consider bond due to Mr. De Leon’s entrance as a UAC and subsequent release to ORR custody and placement into § 240 proceedings. The immigration judge found that Mr. De Leon’s case was distinguishable from *Matter of Yajure Hurtado* based on the TVPRA provisions governing Mr. De Leon’s detention by DHS.

25. DHS reserved appeal of the IJ Bond Order because DHS argued that the immigration judge lacked jurisdiction to grant bond to Mr. De Leon under § 235 of the INA. DHS then filed a Form EOIR-43 Notice of Intent to Appeal on September 11, 2025, invoking an automatic stay of the IJ Bond Order and preventing Mr. De Leon from posting bond. *See* 8 C.F.R. § 1003.19(i)(2) (stating the stay is automatic and the bond “shall be stayed” upon filing of the form EOIR-43). As a result, Mr. De Leon continues to be detained by the Respondents.

EXHAUSTION

26. The decision to detain Mr. De Leon is subject to challenge through a petition for a writ of habeas corpus, and Mr. De Leon 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 pre-determined the issue before it.").

27. Moreover, further exhaustion would be futile because Mr. De Leon has pursued an administrative remedy to no avail. Mr. De Leon obtained the IJ Bond Order on September 11, 2025; however, the DHS invoked its regulatory power to automatically stay the IJ Bond Order so that Mr. De Leon would remain detained. By invoking the automatic stay, DHS is legally preventing Mr. De Leon for paying the bond and being released. DHS invoked its automatic stay authority by claiming that the IJ had no jurisdiction to grant the IJ Bond Order despite the IJ finding that it had jurisdiction.

28. The detention of Mr. De Leon by ICE, years after he last entered the United States and has been lawfully seeking relief from removal, without the ability to challenge his detention is unconstitutional, and 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.").

CLAIMS FOR RELIEF

COUNT ONE

Mr. De Leon's Detention Violates His Right to Substantive Due Process under the Fifth

Amendment

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

30. As a "person" within the meaning of the Fifth Amendment, Mr. De Leon 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.”).

31. The Substantive Due Process Clause protects a person’s freedom from arbitrary confinement. *See Zadvydas*, 533 U.S. at 693. The Supreme Court has recognized this protection applies regardless of a person’s immigration status. *See id.*; *see also Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

32. Civil detention, such as immigration detention, 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”).

33. 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*, 538 U.S. at 528; *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)). Additionally, a period of detention must “bear [a] reasonable relation to the purpose for which the individual was committed.” *See Demore*, 538 U.S. at 516–17.

34. Mr. De Leon was denied substantive due process after the IJ Bond Order was issued when DHS arbitrarily invoked its regulatory automatic stay authority to prevent Mr. De Leon from paying bond and being released.

35. The immigration judge, as a neutral fact-finder, considered the evidence submitted by Mr. De Leon and found that he was neither a flight risk nor a danger to the community. Mr. De Leon demonstrated that he has been seeking lawful status with USCIS, is employed legally and has ample ties to the community through his church and family. He also demonstrated that he was not a danger to the community. Thus, no justification exists to deprive Mr. De Leon of his liberty pending adjudication of his case.

36. The EOIR, through the BIA and subsequent to the IJ Bond Order, has also foreclosed the ability of Mr. De Leon to prevail in the appeal of the IJ Bond Order by DHS when it published *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) on September 5, 2025. The EOIR took the position that an individual such as Mr. De Leon, who was clearly detained under § 236 of the INA by DHS, was subject to the mandatory detention provisions of § 235 of the INA.

COUNT TWO

Mr. De Leon's Detention Violates His Right to Procedural Due Process Under the Fifth Amendment

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

38. "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. *See Zadvydas*, 533 U.S. at 690.

39. 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).

40. 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 equally with society the risk of error when the possible injury to the individual-deprivation of liberty-is so significant.” *See Addington*, 441 U.S. at 427.

41. In *Mathews v. Eldridge*, the Supreme Court set forth the factors to consider in determining if government action deprives an individual’s Fifth Amendment right to procedural due process or whether the government process is constitutionally adequate. 424 U.S. 319 (1976). The *Mathews* factors apply here to determine if Petitioner’s procedural due process rights as a civil detainee have been violated by the Government’s continued custodial detention by operation of the automatic stay.

42. Mr. De Leon demonstrated to the immigration judge that he had a substantial liberty interest both in his bodily freedom and in the form of his seeking relief before USCIS through his approved SIJ application for nearly three years. Mr. De Leon followed the prescribed procedures for seeking such relief and was awaiting an opportunity to present his application for adjustment of status to legal permanent resident before USCIS upon availability of a visa.

43. Mr. De Leon also followed all requirements of his initial release from ORR custody in 2019, had his removal proceedings dismissed with the consent of DHS in 2023 and was granted deferred action by DHS until January, 2027. Mr. De Leon justifiably expected that he would be allowed to present his application for adjustment of status to USCIS, which has been pending for over three years, during the period of validity of deferred action and until a visa became available to Mr. De Leon.

44. Yet Mr. De Leon was not provided any process at all in the course of his arrest, processing, and detention by ICE through notice and an opportunity to respond that would reduce the risk of an erroneous deprivation of his interests.

45. ICE deprived Mr. De Leon of adequate procedural protection in his substantial interest with respect to both his liberty and his application for relief before USCIS by taking him into custody with no regard to its own long-established practices, procedures and applicable statutes and regulations. Specifically, the statutory provisions of the TVPRA regarding the detention of UAC's who turn 18 were completely and arbitrarily ignored by DHS in contravention of the Sponsorship Agreement.

46. Finally, the Government has a substitute procedure for invoking a discretionary stay before the BIA in 8 C.F.R. § 1003.19(i)(2) that would have avoided the due process problems presented by 8 C.F.R. § 1003.19(i)(2) by providing for an individualized assessment of Mr. De Leon's case.

COUNT THREE

Mr. De Leon's Detention by ICE is in Violation of the INA

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

48. 8 U.S.C. § 1225 authorizes the mandatory detention of "arriving aliens" and those noncitizens who cannot demonstrate they have "been physically present in the United States continuously for the 2-year period immediately prior[.]" *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

49. As noted above, Mr. De Leon was detained under § 236 of the INA as a UAC upon his entry to the United States, has lived in the United States for more than five years after such entry, had his initial removal proceedings dismissed in 2023 and most recently put into proceedings before EOIR upon his detention on August 28, 2025.

50. However, Respondents are detaining Mr. De Leon as not eligible for bond by characterizing his detention under § 235 of the INA despite DHS initially detaining him under § 236 and the IJ Bond Order recognizing his detention under § 236. The EOIR itself has ruled that an individual detained under § 236 of the INA cannot by operation of law be considered to be detained under § 235 of the INA. *See Matter of Cabrera-Fernandez*, 28 I&N Dec. 747 (BIA 2023). As previously argued, Mr. De Leon's status as a UAC also puts his detention within the purview of the TVPRA and its protection for UACs.

51. DHS also invoked its authority to invoke the automatic stay under 8 C.F.R. § 1003.19(i)(1) of the IJ Bond Order in a manner that is *ultra vires* to the INA. The manner in which DHS invoked its authority effectively rewrites the INA and creates a new class of individuals subject to mandatory detention and unable to access the discretionary protection of § 236 of the INA.

COUNT FOUR

Mr. De Leon's Detention by ICE is in Violation of the APA 5 U.S.C. § 702

(Unconstitutional, unlawful, arbitrary, and capricious actions)

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

53. The decision to detain Mr. De Leon and hold him without any opportunity to challenge his custody is arbitrary, capricious, and not in accordance with the INA, and contrary to Mr. De Leon's right to due process under the Fifth Amendment.

54. This Court may set aside agency action which is arbitrary, capricious, unlawful, or contrary to constitutional right, power, privilege, or immunity. *See* 5 U.S.C. §§ 706(2)(A), (B).

55. Mr. De Leon was released by DHS under the TVPRA and has lived over five years seeking lawful status in the United States, after which he was arrested without any cause and has since been detained without further justification in immigration custody.

56. Additionally, the determination by ICE that Mr. De Leon is subject to mandatory detention under § 235 of the INA, despite having been detained under § 236 of the INA, was without any basis in law. Such actions are arbitrary and capricious, and should be held unlawful and set aside.

57. As a result of the arbitrary, capricious, unlawful, and unconstitutional actions by Respondents, Mr. De Leon has suffered prejudice, actual and substantial hardship, and irreparable injury in fact.

58. Mr. De Leon has no other adequate remedy at law.

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over the matter;
- b. Issue an emergency order staying Petitioner's transfer outside the District of Western District of Louisiana and his removal or deportation from the United States;
- c. Declare that the continued immigration detention of Mr. De Leon violates the Due Process Clause of the Fifth Amendment;
- d. Declare that the continued immigration detention of Mr. De Leon is in violation of the INA and the APA 5 U.S.C. § 702 as unconstitutional, unlawful, arbitrary, and capricious actions;
- e. Issue a writ of habeas corpus ordering Respondents to immediately release Mr. De Leon from their custody or allow him pay the bond granted by the immigration judge;

- f. Issue an order preventing Respondents from once again taking Mr. De Leon into custody unless he is determined to be a flight risk and/or a danger to the community in accordance with the U.S. Constitution;
- g. Award Mr. De Leon all costs incurred in maintaining this action; and
- h. Grant any other and further relief this Court deems just and proper.

Respectfully submitted,

September 17, 2025

Law Offices of Michael E. Rosado, P.C.
Michael E. Rosado, Esq. (*pro hac* forthcoming)
1425 University Blvd. E., Suite 261
Hyattsville, Maryland 20783
(240) 641-8615
michaelerosado@gmail.com

/s/ Sara A. Johnson
Sara A. Johnson
La. Bar No. 31207
700 Camp Street
New Orleans, Louisiana 70130
(504) 528-9500
sara@sarajohnsonlaw.com