

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WISTIN ABRAHAM GALVAN LOPEZ)	
)	
Petitioner,)	Case No. <u>1:25-cv-911</u>
)	
v.)	PETITION FOR WRIT OF
)	HABEAS CORPUS
)	
DONALD J. TRUMP, President of the United)	
States; PAMELA BONDI, Attorney)	
General of the United States; KRISTI NOEM,)	
United States Secretary of Homeland Security;)	
TODD M. LYONS, Acting Director, United States)	
Immigration and Customs Enforcement; MARY)	
DE ANDA YBARRA, El Paso Field Office)	
Director, Enforcement and Removal Operations,)	
United States Immigration and Customs)	
Enforcement; DORA CASTRO, Warden, Otero)	
County Processing Center; all named in their)	
official capacities,)	
)	
Respondents.)	

INTRODUCTION

1. Petitioner Wistin Abraham Galvan Lopez was detained by ICE agents in Rochester, New York on March 24, 2024. Petitioner has no criminal history and was arrested as “collateral” during an immigration enforcement operation targeting other individuals.
2. On August 12, 2025, an Immigration Judge (IJ) granted Galvan Lopez’s request for custody redetermination and ordered him to be released from custody after posting a bond of \$5,000.

3. Even though a neutral adjudicator has determined that Galvan Lopez should be released from detention, Respondents continue to detain him pursuant to the “automatic stay” regulation at 8 C.F.R. § 1003.19(i)(2).
4. Under the “automatic stay” regulation, 8 C.F.R. § 1003.19(i)(2), if DHS disagrees with an IJ’s custody determination, DHS can file a boilerplate notice of intent to appeal that automatically stays the IJ’s order. This means that the officials who failed to convince the IJ to keep Galvan Lopez detained can unilaterally block the IJ’s order and force continued detention.
5. Petitioner’s loved ones attempted multiple times to post Petitioner’s bond, but each request was denied.
6. As applied to this case, the government’s use of the automatic stay regulation is an unconstitutional deprivation of due process and is *ultra vires*.
7. Petitioner is filing this Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, which is the proper vehicle for challenging his unlawful detention.
8. Galvan Lopez respectfully requests that the Court find his detention unlawful and unconstitutional and issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 ordering Respondents to immediately release him from custody. In the alternative, he respectfully requests that the Court order Respondents to show cause why this petition should not be granted within three days.

CUSTODY

9. Galvan Lopez is currently in the custody of the Otero County Processing Center in Chaparral, New Mexico. He is in the physical custody of Respondents and under the direct control of Respondents and their agents.

JURISDICTION AND VENUE

10. This Court has jurisdiction under 28 U.S.C. § 2241 and 28 U.S.C. § 1331.
11. Venue is proper in this District under 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because Galvan Lopez is confined in this District, at least one Respondent is in this District, Galvan Lopez's immediate physical custodian is in this District, and a substantial part of the events giving rise to the claims in this action occurred in this district. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1005-006 (2025) (per curiam) ("For core habeas petitions, jurisdiction lies in only one district: the district of confinement" (internal quotation marks and citation omitted)).

HABEAS CORPUS

12. A petitioner is entitled to habeas relief if he demonstrates that his detention violates the United States Constitution or federal law. 28 U.S.C. § 2241.
13. Petitioner respectfully requests that the Court grant the petition for writ of habeas corpus or, in the alternative, order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243.
14. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*
15. Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice. Allowing Respondents additional time to respond is inappropriate in this case because Petitioner faces irreparable harm due to the ongoing unlawful deprivation of his physical liberty.

PARTIES

16. Petitioner is a 22-year-old native and citizen of Guatemala. He is detained at the Otero County Processing Center in Chaparral, New Mexico. Prior to being detained Petitioner was living and working in the Rochester, New York area. Petitioner is the subject of a Removal Proceeding based on based upon the charges of being present in the U.S. without being "admitted or paroled, or who arrived in the [U.S.] at any time or place other than as designated by the Attorney General" under INA § 212 (a)(6)(C)(ii), codified at 8 U.S.C. § 1182 (a)(6)(C)(ii). Petitioner has been in civil immigration detention since March 24, 2025.

17. Respondent Donald J. Trump is the President of the United States ("U.S.").

18. Respondent Pamela Bondi is the U.S. Attorney General.

19. Respondent Kristi Noem is the U.S. Secretary of Homeland Security.

20. Respondent Todd M. Lyons is the Acting Director for U.S. Immigration and Customs Enforcement.

21. Respondent Mary De Anda-Ybarra is the El Paso Field Office Director for U.S. Immigration and Customs Enforcement.

22. Respondent Dora Castro is the Warden of the Otero County Processing Center. They have immediate physical custody of Petitioner pursuant to an agreement with ICE to detain noncitizens and is a legal custodian of Petitioner.

23. All respondents are named in their official capacities.

FACTUAL ALLEGATIONS

24. Galvan Lopez was detained on March 24, 2025 in Rochester, New York during an immigration enforcement operation targeting another individual. Galvan Lopez was taken

into custody even though he has no criminal history and was not a target of the enforcement operation.

25. Galvan Lopez has lived in the United States since August 2019, primarily in the Rochester, New York area. Prior to being detained, Galvan Lopez attended high school and then worked primarily in construction. Galvan Lopez attended church and developed close ties to the Rochester community.
26. On August 12, 2025, an IJ granted Galvan Lopez's custody redetermination request. The IJ also found that he had jurisdiction to hear Galvan Lopez's bond request because Galvan Lopez was detained pursuant to 8 U.S.C. § 1226(a). The IJ then found that Galvan Lopez was not a danger to the community nor a serious flight risk and granted bond in the amount of \$5,000.
27. The same day, ICE filed a Form EOIR-43, unilaterally staying the IJ's order.
28. Congress has granted the Attorney General discretion to decide whether to detain or release certain noncitizens pending a removal decision. See 8 U.S.C. § 1226(a). The Attorney General has delegated that authority to IJs. 8 C.F.R. §§ 1003.19, 1236.1. The discretionary detention provision, 8 U.S.C. § 1226(a), applies only to noncitizens without serious criminal convictions. It contrasts with the mandatory detention provision, 8 U.S.C. § 1226(c), which applies to noncitizens convicted of certain criminal offenses or involved in terrorist activities and requires continued detention.
29. Because Galvan Lopez has no criminal record, he was arrested and detained under Section 1226(a).
30. When a noncitizen is detained under Section 1226(a), DHS makes the initial custody determination, but the detainee can request reconsideration by an IJ. In this case, DHS

initially detained Galvan Lopez without bond. Galvan Lopez then requested a bond redetermination hearing in front of an IJ.

31. At the bond redetermination hearing on August 12, 2025, the IJ heard evidence and argument from Galvan Lopez and the government. Galvan Lopez emphasized his strong ties to the community and submitted multiple letters of support from family and friends. DHS argued that Galvan Lopez is subject to mandatory detention under a different provision, 8 U.S.C. § 1225(b)(2)(A), which governs the inspection process for noncitizen “applicants for admission”—new arrivals to the country.
32. The IJ rejected DHS’s argument that Galvan Lopez is subject to mandatory detention. The IJ also made specific findings of fact that Galvan Lopez is not a danger or substantial flight risk and ordered Galvan Lopez be released on bond. Galvan Lopez posted a \$5,000 bond the next day.
33. Meanwhile, DHS filed a Form EOIR-43 “Notice of Intent to Appeal the Custody Redetermination,” unilaterally triggering the automatic stay provision of 8 C.F.R. § 1003.19(i)(2). Filing that form blocked the IJ’s order, at least for the pendency of the appeal to the Board of Immigration Appeals (BIA).
34. In other words, DHS—the prosecutor—is not bound by the IJ’s determination. The prosecutor disagreed with the IJ’s decision and unilaterally overrode the order by filing a simple Form EOIR-43.
35. Galvan Lopez now remains in custody in contravention of the IJ’s order.
36. DHS’s appeal to the BIA can take months. And as explained more fully below, even resolution of the appeal may not immediately end the automatic stay.

37. The relevant regulations provide two distinct mechanisms for staying an IJ's custody order while the government appeals the decision: (1) discretionary stays from the BIA, and (2) automatic stays like the one used here.
38. Under the first mechanism—discretionary stay—DHS files a motion and must persuade the BIA that a stay is warranted. 8 C.F.R. § 1003.19(i)(1). The BIA serves as a neutral adjudicator and weighs the merits of DHS's position. The BIA ultimately makes the decision about whether to grant the stay. DHS could have used that mechanism in this case but did not.
39. Instead, DHS used the second mechanism: the automatic stay. This mechanism involves no neutral adjudicator considering the merits. Rather, it allows the prosecutor—who lost before the IJ—to unilaterally stay the IJ's decision.
40. Regulations provide that DHS's automatic stay will lapse in 90 days absent a BIA decision on the appeal. 8 C.F.R. § 100.36(c)(4). But there are multiple avenues for extension. For example, if the BIA does not issue a decision in the 90-day window, DHS can then seek an additional discretionary stay from the BIA. 8 C.F.R. § 1003.6(c)(5). The automatic stay remains in effect for another 30 days while the BIA decides whether to grant a discretionary stay. *Id.*
41. Likewise, even if the BIA rules in favor of Galvan Lopez on appeal and authorizes his release on bond, that release is automatically stayed for five more business days to give DHS a chance to refer the case to the Attorney General. 8 C.F.R. § 1003.6(d). Then, if DHS refers the case to the Attorney General, the automatic stay is extended for another 15 days. *Id.* The Attorney General may then stay release for the pendency of the case. *Id.*

There is no prescribed time limit for final resolution of the custody determination, meaning an individual may remain in detention indefinitely.

42. Galvan Lopez has no way of knowing how long this automatic stay will last and has no opportunity to challenge the stay. In practice, the automatic stay regulation renders the IJ's custody decisions ineffectual: If DHS disagrees with a custody decision, it can keep Galvan Lopez detained for a minimum of 90 days, without a truly discernable end point.
43. Meanwhile, Galvan Lopez is in custody, and his conditions of confinement are indistinguishable from criminal incarceration. He has been in civil detention for almost six months.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Violation of Fifth Amendment – Substantive Due Process

44. Galvan Lopez realleges and incorporates herein the allegations contained in the preceding paragraphs of the petition as if fully set forth herein.
45. The U.S. Constitution establishes the right to due process for all persons within the United States, including noncitizens, whether their presence here is lawful or unlawful.
46. Substantive due process asks whether a person's life, liberty, or property is deprived without sufficient purpose. There is no question that Galvan Lopez has been deprived of his liberty.
47. The government's continued detention of Galvan Lopez is not supported by any special interest or compelling justification that outweighs his liberty interest. The application of the automatic stay violates Galvan Lopez's substantive due process rights.

SECOND CAUSE OF ACTION

Violation of Fifth Amendment – Procedural Due Process

48. Galvan Lopez realleges and incorporates herein the allegations contained in the preceding paragraphs of the petition as if fully set forth herein.
49. Due process requires the opportunity to be heard at meaningful time and in a meaningful manner. Galvan Lopez has not received that opportunity here.
50. Galvan Lopez's liberty interest and the risk of erroneous deprivation far outweigh the government's interest in continued detention. There is also an alternative process available that allows the government to request a stay from the BIA. The automatic stay violates Galvan Lopez's procedural due process rights.

THIRD CAUSE OF ACTION

Ultra Vires Regulation

51. Galvan Lopez realleges and incorporates herein the allegations contained in the preceding paragraphs of the petition as if fully set forth herein.
52. Congress gave the Attorney General authority to detain or release noncitizens, pending their removal proceedings. The Attorney General has delegated that authority to IJs.
53. The automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), purports to give DHS the authority to unilaterally override the IJ's decision. It is unlawful and ultra vires.

PRAYER FOR RELIEF

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

- 1) Assume jurisdiction over this matter;
- 2) Issue a Writ of Habeas Corpus ordering the immediate release of Petitioner pending these proceedings pursuant to the Court's inherent power;

- 3) In the alternative, issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- 4) If Petitioner is not immediately released, order Respondents not to transfer Petitioner out of this District during the pendency of these proceedings, to preserve jurisdiction;
- 5) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment and is *ultra vires*;
- 6) Award Petitioner Reasonable attorney's fees and costs;
- 7) Grant any further relief this Court deems just and proper.

Dated: September 19, 2025

/s/ Scott D. Weaver

Scott D. Weaver, Esq.

Texas Bar No. 24106556

Law Office of Scott D. Weaver

150 Washington Ave., Ste. 201

Santa Fe, NM 87501

505-218-7265

scott@weaverimmigration.com

Counsel for Petitioner

Verification Pursuant to 28 U.S.C. § 2242

The undersigned counsel submit this verification on behalf of the Petitioner. Undersigned counsel has discussed with Petitioner the events described in this Petition for Writ of Habeas Corpus and Complaint and, on the basis of those discussions, verify that the statements in the Petition are true and correct to the best of my knowledge.

Dated: September 19, 2025

/s/ Scott D. Weaver

Scott D. Weaver, Esq.

Attorney for Petitioner

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Galvan Lopez, Wistin Abraham

(b) County of Residence of First Listed Plaintiff Otero County, NM
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Scott D. Weaver, Law Office of Scott D. Weaver,
150 Washington Ave., Ste. 201, Santa Fe, NM 87501, 505-218-7265

DEFENDANTS

(See attachment)

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS <input checked="" type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 2241Brief description of cause:
Petition for a Writ of Habeas Corpus

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

9/19/2025

SIGNATURE OF ATTORNEY OF RECORD

/s/ Scott D. Weaver

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Attachment to Form JS-44

I. Defendants:

All Defendants named in their official capacities.

DORA CASTRO, Warden, Otero County Processing Center;
MARY DE ANDA YBARRA, El Paso Field Office Director, Enforcement and Removal
Operations, United States Immigration and Customs Enforcement;
TODD M. LYONS, Acting Director, United States Immigrations and Customs Enforcement;
KRISTI NOEM, United States Secretary of Homeland Security;
PAMELA BONDI, Attorney General of the United States;
DONALD J. TRUMP, President of the United States.