

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

ANDRES ALONSO
CERVANTES-MARTINEZ,
A [REDACTED]
Petitioner,

Case No. 1:25-cv-236

v.

WARDEN FOR THE PORT ISABEL
DETENTION CENTER; TODD M.
LYONS, Acting Director, U.S.
Immigration and Customs Enforcement;
IMMIGRATION AND CUSTOMS
ENFORCEMENT; PAMELA JO BONDI,
U.S. Attorney General,
Respondents.

AMENDED PETITION FOR A WRIT OF
HABEAS CORPUS

On October 19, 2025, Petitioner Andres Alonso Cervantes-Martinez filed a petition for a writ of habeas corpus, seeking his release from custody because Respondents have unlawfully detained and sought to remove him while he sought fear-based screening. *See* ECF Doc. 1. On October 21, 2025, Mr. Cervantes-Martinez filed a motion for a Temporary Restraining Order and Preliminary Injunction, seeking an order precluding Respondents from removing him to Peru under an invalid expedited removal order. Mr. Cervantes-Martinez now amends his habeas petition. Fed. R. Civ. P. 15(a)(1).

INTRODUCTION

1. Mr. Cervantes-Martinez is a native and citizen of Peru who first entered the United States in 2022 without inspection. He received a notice that he would be processed for expedited

removal but, after articulating a fear of returning to Peru and receiving a credible fear interview before an asylum officer, the Department of Homeland Security (DHS) paroled him into the United States where he has lived since that time.

2. Mr. Cervantes-Martinez never finished his credible fear process. He never received a signed expedited removal order.
3. On August 18, 2025, Immigration and Customs Enforcement (ICE) detained Mr. Cervantes-Martinez as he was attending an interview for his application for adjustment of status, based on his marriage to a United States citizen.
4. He was recently transferred to Port Isabel Service Processing Center for staging for removal. However, he does not have a valid removal order. Thus, his continued detention is unlawful and this Court should order his release.

JURISDICTION AND VENUE

5. Mr. Cervantes-Martinez is detained at the Port Isabel Service Processing Center in Los Fresnos, Texas, and is in the physical custody of Respondents. See ECF No. 5-9, ICE Detainee Locator.
6. This action arises under the Due Process Clause of the Fifth Amendment and the INA, 8 U.S.C. § 1101 et seq.
7. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. §§ 2201-02 (declaratory relief). Mr. Cervantes-Martinez's detention by Respondents is a "severe restraint" on his individual liberty "in custody 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 may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

9. Venue lies in the United States District Court for the Southern District of Texas, the judicial district in which Mr. Cervantes-Martinez was detained when the petition was filed. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 434, 447 (2004); see ECF No. 5-9.

REQUIREMENTS OF 28 U.S.C. § 2243

10. Under 28 U.S.C. § 2243, a court “entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant . . . is not entitled thereto.” 28 U.S.C. § 2243. If the Court issues an order to show cause, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
11. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).
12. Allowing Respondents to continue detaining Mr. Cervantes-Martinez and seek his removal based on an unlawful order and without finalizing the credible fear process only compounds the due process concerns in this case.
13. Mr. Cervantes-Martinez requests the Court issue an Order to Show Cause, and direct Respondents to file a response within three days, or, alternatively, within no more than seven days, given the significant and unlawful restraint on his liberty.

PARTIES

14. Mr. Cervantes-Martinez is a native and citizen of Peru who is currently in immigration detention at the Port Isabel Service Processing Center in Los Fresnos, Texas.
15. Respondent Warden for the Port Isabel Detention Center is the immediate custodian of Mr. Cervantes-Martinez and is sued in his/her official capacity.
16. Respondent Todd M. Lyons is the Acting Director of the U.S. Immigration and Customs Enforcement. He is responsible for the implementation and enforcement of the INA, and oversees ICE, the agency responsible for Mr. Cervantes-Martinez's detention. He is sued in his official capacity.
17. Respondent Immigration and Customs Enforcement is the federal agency responsible for Mr. Cervantes-Martinez's detention.
18. Respondent Pamela Jo Bondi is the United States Attorney General. She has supervisory authority over the Executive Office of Immigration Review, which oversees the immigration courts and the Board of Immigration Appeals. She is sued in her official capacity.

EXHAUSTION

19. The failure to exhaust administrative remedies does not bar Mr. Cervantes-Martinez's claims unless "Congress specifically mandates" exhaustion. *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022) (1993) (quoting *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992)).
20. Because Mr. Cervantes-Martinez's continued detention is unlawful and violates his constitutional right to due process, 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.'").

21. Indeed, exhaustion would be futile as the agency who could grant his release from custody is the agency responsible for placing him in custody without reason. Moreover, because Respondents are operating on the belief that Mr. Cervantes-Martinez has an expedited order of removal, the immigration court does not have jurisdiction to grant bond should he request a custody re-determination before an immigration judge. Thus, although the Court may impose exhaustion requirements as a prudential matter, it should not do so in this case because seeking administrative relief in this case would be futile.

STATEMENT OF FACTS

22. Mr. Cervantes-Martinez entered the United States on May 2, 2022, without inspection. *See* ECF No. 5-1 at 12.¹
23. He was encountered by United States Border Patrol, and he expressed a fear of returning to Peru. *Id.*
24. On May 4, 2022, Border Patrol Agent found him inadmissible to the United States under Immigration and Nationality Act (INA) § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* at 9. No officer ever signed the order of removal accompanying the charge of inadmissibility. *Id.*
25. On May 31, 2022, an asylum officer conducted a credible fear interview. *Id.* at 14-31. The asylum officer found Mr. Cervantes-Martinez credible, but concluded that he did not establish a credible fear of persecution or torture. *Id.* at 17-18. That decision was approved by a Supervisory Asylum Officer on June 1, 2022. *Id.* at 18.
26. Mr. Cervantes-Martinez requested an immigration judge's review of the asylum officer's

¹ The page numbers refer to the Adobe Acrobat pagination, which should correspond to the pagination of the ECF filing system.

determination. While that review was pending, Immigration and Customs Enforcement paroled Mr. Cervantes-Martinez from custody pursuant to 8 U.S.C. § 1182(d)(5)(A), and he traveled to live with his uncle in Chicago, who was his sponsor. *See id.* at 28 (stating that his sponsor purchased a plane ticket for him and he was supposed to be released the following day); *see also* Ex. A (parole notice). The immigration court in Chicago, Illinois scheduled the review proceeding for June 13, 2022. ECF No. 5-2 at 1. For unknown reasons, the hearing was subsequently rescheduled for July 28, 2022. ECF No. 5-3 at 1; *see* ECF No. 5-4. The notice of that hearing was returned as undeliverable, but the address on the envelope is illegible and it is unknown what address the notice was sent to. ECF No. 5-3.

27. Mr. Cervantes-Martinez contracted COVID-19 at the time of the July 2022 hearing. *See* ECF No. 5-5. Mr. Cervantes-Martinez did not appear at the immigration court for the review proceedings and the immigration judge returned the case to DHS without conducting a review. In August 2022, he reached out to Immigration and Customs Enforcement (ICE) officers to see the status of his case. Ex. ECF No. 5-6. Upon information and belief, ICE did not respond to the message or provide any additional process.

28. Mr. Cervantes-Martinez subsequently married a United States citizen, who has filed a visa petition on his behalf. The petition remains pending. *See* ECF No. 5-7 (printout from egov.uscis.gov for receipt number IOE0930834782). In August 2025, the Department of Homeland Security (DHS) filed a motion with the immigration court for an order under 8 C.F.R. § 1240.12. ECF No. 5-4. On October 2, 2025, an immigration judge issued an order in the case. ECF No. 5-8. The order referenced a June 13, 2022 DHS negative credible fear determination—which never occurred—and provided no findings, only a conclusion and

signature. *Id.* The order also did not indicate whether or how it was served on Mr. Cervantes-Martinez. *Id.*

29. Subsequently, Mr. Cervantes-Martinez was apprehended and placed in ICE custody. He has since been transferred to Port Isabel Service Processing Center. *See* ECF No. 5-9. To date, he has not received a copy of a complete, enforceable removal order (expedited or otherwise), and no immigration judge has reviewed his June 2, 2022 credible fear determination.

LEGAL BACKGROUND

30. DHS has the statutory authority to issue an expedited removal order without further hearing before an immigration judge if, upon inspection of a noncitizen attempting to enter the United States, DHS determines that the noncitizen either seeks to procure admission to the United States by fraud or willful misrepresentation or does not have a valid visa or entry documents.

8 U.S.C. § 1125(b)(1)(A)(i); 8 C.F.R. § 235.3(b)(2)(i).

31. “In every case in which the expedited removal provisions will be applied and before removing an alien from the United States pursuant to [8 U.S.C. § 1225(b)(1)], the examining immigration officer shall create a record of the facts of the case and statements made by the alien.” 8 C.F.R. § 235.3(b)(2)(i). “This shall be accomplished by means of a sworn statement using Form I-867AB, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act.” *Id.*

32. If, during that process, the noncitizen indicates a fear of persecution or intent to apply for asylum, DHS is required to conduct a credible fear interview by an asylum officer. 8 U.S.C. § 1225(b)(1)(A)(ii).

33. If the asylum officer finds that the noncitizen has a credible fear of persecution, the noncitizen is referred for removal proceedings before an immigration judge. 8 U.S.C. §§ 1225(b)(1)(B)(ii).

34. If the asylum officer finds no credible fear, noncitizen is entitled to a “prompt review by an immigration judge” of the negative credible fear determination. 8 U.S.C. § 1225(b)(1)(B)(iii)(III). “Such review shall include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by telephonic or video connection.” *Id.* Critical to this case, “[r]eview shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after” the asylum officer’s credible fear determination. *Id.*
35. An expedited removal order does not become final until it is “reviewed and approved by the appropriate supervisor.” 8 C.F.R. § 235.3(b)(7). “The supervisory review shall include a review of the sworn statement and any answers and statements made by the alien regarding a fear of removal or return.” *Id.*
36. There is very limited judicial review available of expedited removal orders. Specifically, a noncitizen may only seek review, in a habeas corpus proceeding, of three determinations:
- (A) Whether the petitioner is an alien,
 - (B) Whether the petitioner was ordered removed under such section, and
 - (C) Whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refuge . . . or has been granted asylum. . . .
- 8 U.S.C. § 1252(e)(2). Regarding 8 U.S.C. § 1252(e)(2)(B), the Court’s review is “limited to whether [the expedited removal] order in fact was issued and whether it relates to the petitioner.” 8 U.S.C. § 1252(e)(5).
37. An expedited removal is not lawfully issued to a petitioner if there is a procedural defect. *Dugdale v. U.S. Customs and Border Protection*, 88 F. Supp. 3d 1, 6 (D.D.C. 2015); *see also Agarwal v. Lynch*, 610 F. Supp. 3d 990, 999 (E.D. Mich. 2022).

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Immigration and Nationality Act

38. Mr. Cervantes-Martinez realleges and incorporates by reference the paragraphs above.
39. When Mr. Cervantes-Martinez initially entered the United States in 2022, DHS began the purportedly fast and streamlined expedited removal process. However, it never completed that process.
40. DHS did not complete the expedited removal order or the required screening process under 8 U.S.C. § 1225(b)(2)(B)(iii).
41. Moreover, DHS has not signed or even filled out the removal portion of the actual removal order. Accordingly, there is no expedited removal order and thus Mr. Cervantes-Martinez is not subject to any provisions—regarding removal or detention—found in 8 U.S.C. § 1225(b)(1).
42. Because DHS has not complied with the statute, Mr. Cervantes-Martinez is not subject to an expedited removal order. *Dugdale*, 88 F. Supp. 3d at 6; *Agarwal*, 610 F. Supp. 3d at 999, 1001.
43. Thus, DHS's continued detention of Mr. Cervantes-Martinez is unlawful and the Court should order him released.

COUNT TWO

Violation of Procedural Due Process

(Accardi Claim – Violation of 8 C.F.R. §§ 235.3(b)(2)(i), (7))

44. Mr. Cervantes-Martinez realleges and incorporates by reference the paragraphs above.
45. The Supreme Court's decision in *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), established the well-settled principle that agency actions in violation of its own regulations and procedures offends due process. 347 U.S. 260, 267-68 (1954) (finding that the agency must exercise its judgment in a habeas case because the agency committed itself by regulation).

46. The *Accardi* doctrine applies with particular force “[w]here the rights of individuals are affected.” *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). The doctrine’s purpose is “to prevent the arbitrariness which is inherently characteristic of an agency’s violation of its own procedures.” *United States v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969).
47. 8 C.F.R. §§ 235.3(b)(2)(i) and (b)(7) outline the process that DHS must undertake in order to complete the credible fear process and issue a removal order. Such process has not been completed in this case.
48. An immigration judge has not completed proper review of the credible fear decision; such review was required to be completed within seven days. The asylum officer issued the negative credible fear determination on June 1, 2022. *See* ECF No. 5-1 at 18. The immigration judge scheduled hearings in June and July 2022, but Mr. Cervantes-Martinez had COVID at the time of the July hearing and it was not rescheduled. While DHS has recently moved for immigration judge review, such review is far outside the scope of the expedited removal process outlined in the statute and implementing regulations.
49. Accordingly, DHS’s actions in this case are arbitrary and capricious and violate Mr. Cervantes-Martinez’s due process rights.

COUNT THREE
Violation of Substantive Due Process
Challenge to Mandatory Detention

50. Mr. Cervantes-Martinez realleges and incorporates by reference the paragraphs above.
51. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

52. The “Fifth and Fourteenth Amendments’ guarantee of ‘due process of law’ [] include[s] a substantive component, which forbids the government to infringe certain ‘fundamental’ liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.” *Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (emphasis omitted). Substantive due process “prevents the government from engaging in conduct that shocks the conscience, or interferes with rights implicit in the concept of ordered liberty.” *United States v. Salerno*, 481 U.S. 739, 746 (1987).
53. Indeed, the liberty interest in freedom from detention “is the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).
54. Because Mr. Cervantes-Martinez is not subject to an expedited removal order under 8 U.S.C. § 1225(b)(1), he should not be subject to mandatory detention under that provision.
55. He also should not be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See Buenrostro-Menez v. Bondi*, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D. La. Sept. 11, 2025).
56. Because Mr. Cervantes-Martinez is not subject to mandatory detention, and is not otherwise in removal proceedings, there is no lawful basis to detain him and should order his release from custody.

PRAYER FOR RELIEF

Based on the foregoing, Petitioners request that this Court:

- (1) Assume jurisdiction over this matter;
- (2) Issue an order requiring Respondents to show cause why this Petition should not be granted within three days;

- (3) Declare that Mr. Cervantes-Martinez is not subject to an expedited removal order;
- (4) Declare that Respondents' detention and attempt to remove Mr. Cervantes-Martinez prior to the completion of his fear-based proceedings and the issuance of a order of removal violates the INA and his due process rights;
- (5) Order that Mr. Cervantes-Martinez be released from immigration custody with all of the personal belongings;
- (6) Grant any other and further relief this Court deems just and proper.

October 21, 2025

Respectfully submitted,

/s/ Jessica A. Dawgert

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**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with Petitioner's family and counsel for immigration proceedings the events described in this Petition. Based on those discussions and documents Petitioner's family and counsel have provided to me, I hereby verify that the statements made in this Petition for a Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: October 21, 2025

Respectfully submitted,

/s/ Jessica A. Dawgert
JESSICA A. DAWGERT