

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

JOSE RAFAEL LUNA SANCHEZ

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;
JAMES A. MULLAN, in his official capacity
as Assistant Field Office Director in charge of
ICE Washington Field Office; and
PAUL PERRY, in his official capacity
as warden of the Caroline County Detention Center

Respondents.

Case No. _____

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Jose Rafael Luna-Sanchez ("Mr. Luna-Sanchez"), a native and citizen of El Salvador, challenges his continued custodial detention by the Department of Homeland Security Immigration and Customs Enforcement ("ICE") since on or about October 2, 2025 as an unconstitutional and unjustified restraint and deprivation of his physical liberty, and seeks immediate relief from this Court.

2. Mr. Luna-Sanchez is being unlawfully subjected to continued custodial detention by Respondents without the ability to pursue substantive administrative remedies with the Department of Justice Executive Office for Immigration Review ("EOIR").

3. Mr. Luna-Sanchez'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. Luna-Sanchez petitions for a writ of habeas corpus to remedy his unlawful detention, and prays this Court will issue an order 1) staying Mr. Luna-Sanchez's transfer outside of the Eastern District of Virginia pending resolution of this Petition; 2) declaring that the continued immigration detention of Mr. Luna-Sanchez violates the Due Process Clause of the Fifth Amendment, the INA and the APA; 3) granting his immediate release from the custody of Respondents; and 4) preventing Respondents from once again taking Mr. Luna-Sanchez into custody unless he is determined to be a flight risk and/or a danger to the community.

JURISDICTION AND VENUE

5. Mr. Luna-Sanchez is detained in Bowling Green, Virginia at the Caroline Detention Facility, which is within the jurisdiction of the United States District Court for the Eastern District of Virginia ("EDVA").

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. Luna-Sanchez is presently held in custody by 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. Luna-Sanchez is currently detained within the EDVA. At 12:56 p.m. Eastern Time on October 27, 2025, the ICE Detainee Locator indicated that he is detained ICE custody in Bowling Green, Virginia. See Ex. A hereto.

PARTIES

11. Petitioner Jose Rafael Luna-Sanchez is a citizen and national of El Salvador. He is currently detained by the Respondents at the Caroline County Detention Center within the EDVA since October 2, 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 James A. Mullan is the Assistant Field Office Director of the ICE Washington Field Office, and is responsible for ICE's operations in the State of Virginia. Upon information and belief, he is the immediate custodian of Mr. Luna-Sanchez. He is sued in his official capacity.

16. Respondent Paul Perry is the Warden of Caroline County Detention Facility and is directly responsible for overseeing the daily aspects of Mr. Luna-Sanchez's detention. He is sued in his official capacity.

STATEMENT OF FACTS

17. Mr. Luna-Sanchez, born in El Salvador on April 4, 1989, first entered the United States on June 7, 2014 and was detained by DHS after entry. Mr. Luna-Sanchez was initially detained under Section 235 of the INA for expedited removal but was afforded the opportunity for a credible fear interview after expressing a fear of return to El Salvador. Mr. Luna-Sanchez was found to have a credible fear of persecution. See Ex. B hereto.

18. Under previous applicable precedent, DHS exercised its discretion to detain Mr. Luna-Sanchez under Section 236 of the INA after he was found to have a credible fear of persecution.¹ Mr. Luna-Sanchez was then placed into INA Section 240 proceedings through the issuance of a Notice to Appear (the "NTA") and was then released under Section 236 of the INA after paying a bond of \$7,500.

¹ See Matter of X-K-, 23 I. & N. Dec. 731 (BIA 2005), which held that some foreign nationals transferred from expedited removal proceedings after establishing a credible fear of persecution were eligible for bond under Section 236 of the INA. Matter of X-K- was subsequently overruled by Matter of M-S-, 27 I. & N. Dec. 509 (A.G. 2019). All individuals placed in expedited removal proceedings after 2019 are considered to be detained under Section 235 of the INA even if found to have a credible fear. This Court has recognized prior law and how it applies to Petitioner's case in Chaudhari v. Crawford, No. 1:25-cv-01772 (LMB/IDD) (E.D. Va. Oct. 23, 2025).

19. Mr. Luna-Sanchez subsequently sought relief from removal from the United States in the form of an application for Asylum (the "Asylum Application") under Section 208 of the INA before the Executive Office for Immigration Review ("EOIR"). The removal proceedings before EOIR were pending in the State of Maryland when Mr. Luna-Sanchez was detained by Respondents.

20. Mr. Luna-Sanchez 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 2014 with his partner and children, one of whom is a United States citizen. See Ex. C hereto. Mr. Luna-Sanchez is the sole economic provider for his family.

21. Mr. Luna-Sanchez has been gainfully employed in the construction industry as partner of his own company, L&R Remodeling Services LLC. Mr. Luna-Sanchez has had this company since 2019. See Ex. D hereto. He has diligently managed his construction business and filed and paid all necessary taxes in the time he has been employed.

22. Mr. Luna-Sanchez was detained by ICE on or about October 2, 2025 in Washington D.C. as he was on his way to a work project. Mr. Luna-Sanchez 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 County Detention Center.

23. Mr. Luna-Sanchez is unable to file a bond redetermination with the EOIR to challenge his custody that will be meaningfully considered as a result of the BIA publishing Matter of Yajure-Hurtado, 29 I&N Dec. 216 (BIA 2025) on September 5, 2025. Matter of Yajure-Hurtado deemed individuals such as Mr. Luna-Sanchez as subject to mandatory detention under Section 235 of the INA.

24. The BIA's decision in Matter of Yajure-Hurtado has been found by dozens of Federal courts across the country as an unlawful interpretation of the INA. Mr. Luna-Sanchez is unable to meaningfully submit any evidence demonstrating that he is neither a flight risk nor a danger to the community to secure his release from custody by an immigration judge under the INA.

EXHAUSTION

25. The decision to detain Mr. Luna-Sanchez is subject to challenge through a petition for a writ of habeas corpus, and Mr. Luna-Sanchez 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."); Janvier v. INS, 174 F. Supp. 2d 430, 434 (E.D. Va. 2001) (noting that "§ 2241 is silent on exhaustion.").

26. Moreover, further exhaustion would be futile because Mr. Luna-Sanchez has pursued a remedy to no avail. See Janvier, 174 F. Supp. 2d at 434 (recognizing that exhaustion is not necessary "where the pertinent administrative agency lacks the competence to reach a definitive resolution of the particular issue presented[,] such as "where, as here, the administrative agency may consider constitutional claims, but lacks authority to rule dispositively on those claims, because "the final say on constitutional matters rests with the courts.""). In particular, under new BIA precedent, Mr. Luna-Sanchez is no longer considered eligible for the bond granted by immigration judge on September 2, 2025 and ICE has exercised its legal authority to prevent the

paying of said bond which was ordered by the immigration judge.

27. The detention of Mr. Luna-Sanchez by ICE, years after he last entered the United States, was granted bond under Section 236 of the INA and 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. Luna-Sanchez's Detention Violates His Right to Substantive Due Process Under the Fifth Amendment

28. Petitioner re-alleges and incorporates by reference the paragraphs 1-27 above.

29. As a "person" within the meaning of the Fifth Amendment, Mr. Luna-Sanchez 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.").

30. 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).

31. 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").

32. 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.

33. Mr. Luna-Sanchez is being denied substantive due process as the Respondents continue to exercise their authority contrary to law in order to prevent Mr. Luna-Sanchez from seeking release under the INA before an immigration judge. The EOIR, through the BIA, took the position in Matter of Yajure Hurtado that an individual such as Mr. Luna-Sanchez, who was previously detained and released under Section 236 of the INA by DHS, is subject to the mandatory detention provisions of Section 235 of the INA.

34. Under Section 236 of the INA, an immigration judge would be able to consider any evidence submitted by Mr. Luna-Sanchez. The immigration judge would determine, as a neutral fact-finder, whether Mr. Luna-Sanchez was a flight risk or a danger to the community. The Respondents have made applications for bond by Mr. Luna-Sanchez under Section 236 of the INA

futile by applying Matter of Yajure-Hurtado to cases with the same facts and circumstances as Mr. Luna-Sanchez.

35. But for Matter of Yajure-Hurtado, Mr. Luna-Sanchez would have the ability to demonstrate to a neutral fact-finder that he is not a flight risk as he has ample ties to the community through his family and employment. He would also have been able to demonstrate that he was not a danger to the community. No justification exists to deprive Mr. Luna-Sanchez without the ability to present such evidence.

COUNT TWO

Mr. Luna-Sanchez's Detention Violates His Right to Procedural Due Process Under the Fifth Amendment

36. Petitioner re-alleges and incorporates by reference the paragraphs 1-27 above.

37. "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.

38. 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).

39. 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.

40. 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.

41. Mr. Luna-Sanchez has a substantial liberty interest both in his bodily freedom and in the ability to exercise his parental responsibilities with respect to his US citizen child. Mr. Luna-Sanchez is the primary economic provider for his family. The unlawful detention by Respondents is preventing Mr. Luna-Sanchez his right to bodily freedom and his parental rights.

42. Mr. Luna-Sanchez also has had proceedings pending before EOIR for many years to determine whether he is eligible for relief from removal. During this time, he has submitted the necessary applications for relief and has never been considered a flight risk or a danger to the community. Mr. Luna-Sanchez has a justifiable liberty interest given that he was initially released under Section 236 of the INA in 2014 and has pending proceedings before EOIR.

43. Yet Mr. Luna-Sanchez 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. ICE deprived Mr. Luna-Sanchez of adequate procedural protection in his substantial interest with respect to both his liberty and his application for relief before EOIR by taking him into custody with no regard to its own long-established practices, procedures and applicable regulations.

COUNT THREE

Mr. Luna-Sanchez's Detention by ICE is in Violation of the INA

44. Petitioner re-alleges and incorporates by reference the paragraphs 1-27 above.

45. Section 235 of the INA 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[.]” 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

46. As noted above, Mr. Luna-Sanchez was detained under Section 236 of the INA after being found to have a credible fear of return to his native country of El Salvador, was released from custody shortly thereafter under Section 236 of the INA, has lived in the United States for nearly twelve years and was in pending proceedings before EOIR prior to being detained. Nothing has occurred in Mr. Luna-Sanchez's case that changes the law applicable to his custody by immigration authorities.

47. However, Respondents claim that Mr. Luna-Sanchez is not eligible for bond by characterizing his detention under Section 235 of the INA despite DHS detaining and releasing him under Section 236 of the INA in 2014. Dozens of Federal courts, including this Court, have found this legal interpretation by DHS in cases similar to Petitioner's case erroneous. The BIA has also previously ruled that an individual initially detained under Section 236 of the INA cannot by operation of law be considered to be detained under Section 235 of the INA, demonstrating the tenuous legal reasoning of Respondents in this case. See Matter of Cabrera-Fernandez, 28 I&N Dec. 747 (BIA 2023).

COUNT FOUR

**Mr. Luna-Sanchez's Detention by ICE is in Violation of the APA 5 U.S.C. § 702
(Unconstitutional, unlawful, arbitrary, and capricious actions)**

48. Petitioner re-alleges and incorporates by reference the paragraphs 1-27 above.

49. The decision to detain Mr. Luna-Sanchez and hold him without any opportunity to challenge his custody is arbitrary, capricious, and not in accordance with the Immigration and Nationality Act, and contrary to Mr. Luna-Sanchez's right to due process under the Fifth Amendment.

50. 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).

51. Mr. Luna-Sanchez was released on bond by DHS under Section 236 of the INA in 2014 and has lived nearly twelve years in the United States, after which he was arrested without any cause and has since been detained in immigration custody without further justification.

52. Additionally, the determination by ICE and EOIR that Mr. Luna-Sanchez is subject to mandatory detention under Section 235 of the INA, despite having been detained and released under Section 236 of the INA in 2014, was without any basis in law.

53. Such actions are arbitrary and capricious, and should be held unlawful and set aside.

54. As a result of the arbitrary, capricious, unlawful, and unconstitutional actions by Respondents, Mr. Luna-Sanchez has suffered prejudice, actual and substantial hardship, and irreparable injury in fact.

55. Mr. Luna-Sanchez has no other adequate remedy at law.

PRAYER FOR RELIEF

Based on the foregoing, Mr. Luna-Sanchez requests that this Court:

- a. Assume jurisdiction over the matter
- b. Issue an order staying Petitioner's transfer outside the Eastern District of Virginia pending a final order in these proceedings;

- c. Declare that the continued immigration detention of Mr. Luna-Sanchez violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution, the INA and the APA;
- d. Issue a writ of habeas corpus ordering Respondents to immediately release Mr. Luna-Sanchez from their custody;
- e. Issue an order preventing Respondents from once again taking Mr. Luna-Sanchez 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 and applicable law;
- f. Award Mr. Luna-Sanchez all costs incurred in maintaining this action; and
- g. Grant any other and further relief this Court deems just and proper.

Respectfully submitted,

October 28, 2025

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Certificate of Service

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. I furthermore will send a copy by certified U.S. mail, return receipt requested, to:

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Respectfully submitted,

Date: October 28, 2025

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