UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

NABOR DE SANTAMARIA DE JESUS, [redacted]	§	
Petitioner,	§	
v.	§	Case No. 4:25-cv--1200
COOKE COUNTY SHERIFF/WARDEN COOKE COUNTY JAIL,	§	
ACTING DALLAS FIELD OFFICE DIRECTOR, U.S. Immigration & Customs Enforcement (ICE ERO); **KRISTI NOEM,** Secretary of the U.S. Department of Homeland Security (DHS); and **PAMELA J. BONDI,** Attorney General of the United States, In their official capacities,	§	**EMERGENCY PETITION FOR HABEAS CORPUS**
Respondents.	§	

REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

I. Introduction and Context

1. Petitioner Nabor de Santamaria de Jesus has three US Citizen children, was brought to Texas as a child himself, and his I-130 was approved 22 years ago. He has never been convicted of any crime. Yet he now faces detention and removal — an extraordinary deprivation of liberty — stemming from the actions of his parents when he was a child.

2. The Government's response misstates the facts and law. It treats arrests as convictions, an ICE Detainer as a matter of choice, and claims, along with this Court in its denial of the Emergency Temporary Restraining Order, that incarceration is not deprivation of Liberty.

3. Habeas corpus exists precisely to prevent liberty from being lost to bureaucracy. Mr. De Jesus is not the architect of this broken system. Decades of inaction by 435 elected members of the US Legislative Branch, in their terms in office, are to blame. ICE should not be permitted to play a shell game with its authority, and this Court should acknowledge its jurisdiction is already ripe in this matter.

4. Further, Petitioner pleads with this Court, as well as Respondents, to acknowledge the crisis created by removal. Three children will be separated from their father, and unless compassion and humanity prevail, a man will remain jailed and unable to visit his children for the foreseeable future, if not the rest of his life.

II. Petitioner Is "In Custody" Under Color of Federal Authority

5. ICE's detainer, lodged with a reinstated removal order, ensures that Petitioner will be taken into federal custody immediately upon release from state confinement. ICE's declaration confirms that "an immigration detainer was lodged with the Cooke County Sheriff on [date]" and that ICE "intends to assume custody immediately upon his release." (Brooks Decl. ¶¶ 9-11.)

6. Respondents therefore admit that transfer to ICE is a certainty, not speculation. This constitutes constructive federal custody under 28 U.S.C. § 2241(c)(1). See *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); *Jones v. Cunningham*, 371 U.S. 236 (1963). Unlike the speculative detainer in *Zolicoffer v. DOJ*, 315 F.3d 538 (5th Cir. 2003), the Government's own declaration confirms that ICE has already assumed control over his fate.

7. If future ICE custody is at the discretion of the Cooke County Sheriff, as Respondents argue, then the Sheriff should come forth and be sworn to say that he regards the ICE Detainer as a matter of choice. children is Court should retain jurisdiction in this matter and. Respondents' own declaration acknowledges multiple "encounters" or "arrests," yet nowhere identifies a conviction for any offense. (Resp. Br. at 71-72 ; Brooks Decl. ¶¶ 5-11.) The Government thus concedes that Petitioner "has been arrested" but does not claim he has been convicted.

8. Respondents apply 8 U.S.C. § 1231(a)(5), whereby a person is removable if they have entered illegally before, a civil statute, where it has not been applied. Respondents' entire argument that Petitioner is not in custody relies on an three cases in which felons convicted for drug trafficking are deemed not "in custody" until their felony sentences are complete (quotation marks are Respondents'):

> "Filing a detainer is an informal procedure in which [ICE] informs prison officials that a person is subject to deportation and requests that officials give [ICE] notice of the person's death, impending release, or transfer to another institution." *Giddings v.*

> *Chandler*, 979 F.2d 1104, 1105 n.3 (5th Cir. 1992); *see* 8 C.F.R. § 287.7 (detainer is request to another law enforcement agency "that such agency advise [ICE] prior to release of the alien". Notably, "prisoners are not "in custody" for purposes of 28 U.S.C. § 2241 simply because [ICE] has lodged a detainer against them." *Zolicoffer v. U.S. Dep't of Justice*, 315 F.3d 538, 541 (5th Cir. 2003); *Santana v. Chandler*, 961 F.2d 514, 516 (5th Cir. 1992). Accordingly, no habeas relief can be granted.

9. On a statutory basis, *Giddings* is based on Immigration and Nationality Act INA § 701(i), 8 U.S.C. § 1252(i):

> **Expeditious deportation of convicted aliens.** In the case of an alien who is convicted [counsel's underline] of an offense which makes the alien subject to deportation, the Attorney General shall begin any deportation proceeding as expeditiously as possible after the date of the conviction.

10. All three aliens tried to use habeas to speed up their deportation. The Courts ruled against them because deportation would have the effect of commuting their felony sentences by getting them out of jail to go free in their original country.

> Thus, we hold that Giddings, as a criminal alien, does not possess a right under § 1252(i) sufficient to bring him within the statute's zone of interest. Moreover, we conclude that allowing a criminal alien to bring suit to compel his deportation does not further the purposes of the statute, but if anything hinders the Attorney General's ability to carry out his statutory duty "as expeditiously as possible." Because Giddings does not fall within the "zone of interest" protected by § 1252(i), he has no standing to invoke the Mandamus Act.

11. Mr. De Jesus is not a convicted criminal, and as such, he is not subject to automatic deportation on that basis. Using an arrest to declare him a criminal is patently unconstitutional. Calling him a criminal does not make him one; therefore, rulings based explicitly on the qualifier of felony convictions do not apply.

III. Arrests Without Convictions Cannot Justify Federal Restraint

12. Respondents rely on arrest records to imply criminality, yet cite no convictions establishing removability or dangerousness. Not only are arrests not independent grounds for removal under the INA, unadjudicated arrests carry no probative value. *Gerstein v. Pugh*, 420 U.S. 103 (1975). The presumption of innocence applies to all persons, citizen and non-citizen alike. To predicate continued

detention on bare allegations violates due process and the Immigration and Nationality Act itself, which distinguishes between criminal and civil detention authorities. Respondents recite a "history of arrests" (Resp. Brooks Decl. ¶¶ 5-9) yet omit any conviction record. The Government's own exhibit list confirms by omission that no conviction documents were located. This reliance on unproven arrests violates the presumption of innocence. *Gerstein v. Pugh*, 420 U.S. 103, 113 (1975). Respondents' own declaration acknowledges multiple "encounters" or "arrests," yet nowhere identifies a conviction for any offense. (Resp. Br. at 71-72 ; Brooks Decl. ¶¶ 5-11.) The Government thus concedes that Petitioner "has been arrested" but does not claim he has been convicted, nor does it cite any disposition at all in any of the arrests, and there has by no means been an admission of a criminal offense.

13. The 45th and 47th President of the United States was arrested once and indicted four times. Do Respondents assert that those facts make him a criminal? The level of offense that could be taken by anyone reading this heightened example underscores the true nature of the US Constitution and makes Petitioner's prior statement worth repeating: the presumption of innocence applies to all persons, citizen and non-citizen alike.

IV. The Petition Is Ripe and Necessary to Preserve Jurisdiction

14. ICE's active detainer and reinstated order guarantee transfer to federal custody; the only uncertainty is when. The Supreme Court has long recognized that "custody" under § 2241 includes restraints on liberty short of physical confinement. A petitioner need not wait to be physically taken into ICE custody when such custody is inevitable. Where transfer is "certain to occur," the habeas petition is ripe. *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); *Jones v. Cunningham*, 371 U.S. 236, 243 (1963). The Fifth Circuit likewise holds that district courts may issue orders preserving jurisdiction and preventing removal or transfer that would defeat review. *Leiva v. INS*, 72 F.3d 135, 138 (5th Cir. 1995). Thus, an active detainer coupled with a reinstated order of removal establishes constructive federal custody.

15. Without this Court's intervention, that custody will soon become physical, and jurisdiction will vanish once ICE executes removal. Removal before adjudication would not only moot the petition but also frustrate the Suspension Clause by depriving Petitioner of any meaningful judicial review. *See Ex parte Endo*, 323 U.S. 283, 307 (1944) (courts may enjoin transfers that defeat habeas jurisdiction); *Nken v. Holder*, 556 U.S. 418, 435 (2009) (removal may effectively deprive the court of jurisdiction); *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) ("The writ of habeas corpus must be effective, not merely formal.").

16. Here, the Government has not represented that it will delay removal pending this Court's review. To the contrary, Respondents have declined to commit to forbearance, despite the Court's order requesting clarification. That refusal eliminates any remaining uncertainty: the challenged action—detention and removal—is certain to occur and will directly affect the parties. Such a concrete and immediate threat satisfies ripeness under *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967), and *Chacon v. Granata*, 515 F.2d 922, 925 (5th Cir. 1975).

17. Accordingly, this Court's jurisdiction is both proper and necessary. Intervention under § 2241 and the All Writs Act, 28 U.S.C. § 1651, is warranted to preserve the Court's power to decide the habeas petition on the merits before ICE's execution of removal renders that power meaningless.

V. The Fifth Amendment Protects a Substantive Liberty Interest Beyond Access to Courts

18. The prior order discussed procedural access but not the substantive liberty safeguarded by the Fifth Amendment. The Supreme Court has long held that non-citizens possess the same core protection against arbitrary physical restraint as citizens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The "essence of habeas corpus" is to test the legality of custody itself. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Continued detention or transfer without individualized justification inflicts an irreparable deprivation of liberty—precisely the harm the writ prevents. The Court's order denying temporary relief recognized Petitioner's right of access to judicial review but did not address his liberty interest in remaining free from arbitrary detention or transfer. (Order at 2 "Petitioner will not be denied access to

the courts…".) That omission underscores the need for continued habeas jurisdiction to safeguard the core substantive right protected by the Fifth Amendment. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

19. Unlawful/unduly prolonged custody & failure to consider least-restrictive alternatives under 8 U.S.C. § 1226(a) and the Fifth Amendment. ICE must consider non-punitive, less-restrictive conditions based on individualized factors, but it did not do so. In fact, ICE filed a Notice of Additional Charges that contained no additional charge. Respondents have started, as though it were fact, that in like cases, any such Petitioner should be jailed for the full period of the proceedings. Respondents fail to consider, or even acknowledge, that recognizance, bond or Alternatives to Detention exist. The 5th Circuit has explicitly recognized Alternatives to Detention exist when they have merit. *United States v. Esquivel-Bataz*, No. 25-20198 (5th Cir. Sept. 16 2025) In that case, the 5th Circuit acknowledged consideration of bail in a case where it had been granted by a US Magistrate. If the 5th Circuit wanted to state that no bail could be considered, we can reasonably presume they would have reached the issue up front in its opinion. In that case, Appellant was a convicted felon who had previously been deported, re-entered, and was accused of operating an illegal gambling parlor. In the case of Ubaldo Hernandez-Hererra, our Petitioner, he could not be more of a polar opposite. He is squeaky clean and firmly tied to his community.

20. For this consideration alone, continued incarceration of a man with three US Citizen children, a homeowner with ongoing employment, no criminal convictions, and extensive community ties, is arbitrary and excessive relative to the government's goals.

21. Further, the Fourteenth Amendment Due Process Clause requires procedures commensurate with the liberty at stake. When the Government seeks to curtail a liberty interest, even in a civil case, it should bear a heightened burden—clear and convincing evidence—because the risk of erroneous deprivation is grave. *Addington v. Texas*, 441 U.S. 418 (1979). Therein the Supreme Court stated "This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." The Court held that "clear and convincing

evidence" is the minimum standard of proof required to justify involuntary civil confinement, rejecting the lesser "preponderance" standard. *Addington*, 441 U.S., 425-427. The decision underscores that even in *civil* proceedings, when the consequence is a severe deprivation of liberty, heightened procedural protections are constitutionally required.

22. The same is true in parental rights cases, which this undoubtedly is. Removing Petitioner from the US, is a family separation. The Due Process Clause protects the fundamental liberty interest of parents. *Santosky v. Kramer*, 455 U.S. 745 (1982). The Court emphasized the "commanding" nature of family-integrity interests and the need for heightened procedural safeguards when state action threatens to destroy that relationship. "The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents," as ICE claims. *Santosky*, 455 U.S. at 753.

23. The Fourteenth Amendment does not tolerate civil incarceration by default; the Government must justify detention with specific, individualized proof that no lesser conditions will suffice, and the decisionmaker must consider ability to pay and alternatives. To jail a person without a conviction is uncalled for, excessive and an assault on Petitioner's Fifth and Fourteenth Amendment rights. He has lived in the US for over 20 years and deserves the same protections the Fifth Amendment gives to US Citizens.

VI. Equities

1. Presumption Against Family Separation

24. Petitioner's arrival as a minor cannot lawfully be deemed a voluntary "entry" in violation of law. *See Matter of M-D-C-V-*, 28 I&N Dec. 18, 22 (BIA 2020)* (holding that a minor child lacks the capacity to form the requisite intent to make an unlawful entry).* Holding him now to account for a decision made by his parents offends equity and ignores common sense. He has lived nearly his entire life under U.S. jurisdiction within a family whose matriarch is a naturalized citizen who sought to regularize his status. This context weighs heavily in the balance of equities for both habeas relief and temporary restraint.

2. **Petitioner's Childhood Entry Negates Culpability.**

25. The Court acknowledged that "Petitioner came to the United States as a child" (Order at 1) but characterized that as an "unlawful entry." Petitioner respectfully clarifies that he did not bring himself; his parents made that decision when he was a minor, and immigration law does not impute intent to a child. *Matter of M-D-C-V-*, 28 I&N Dec. 18, 22 (BIA 2020). His mother's naturalization and I-130 sponsorship are undisputed. (Brooks Decl. ¶ 7 [noting approved petition].)

VII. Conclusion

26. Mr. Santamaria de Jesus stands before this Court, not as a criminal, but as a man who was brought to the US as a child, and has lived his life within our US borders. He seeks only the protection that the Constitution and the Great Writ guarantee to all persons—freedom from unlawful restraint and the chance to be heard before that freedom is lost. The petition remains properly before this Court and should proceed to adjudication on the merits.

VIII. Requested Relief

For these reasons, Petitioner respectfully asks the Court to:

1. Deny Respondents' request to deny or dismiss the petition;
2. Retain jurisdiction over the matter until ICE assumes or disclaims custody;
3. Order Respondents to give at least 48 hours' written notice before any transfer or removal; and
4. Grant such further relief as justice requires.

Dated: November 12, 2025.

Respectfully submitted,

/s/ Sean P. Cordobés
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