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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

Cesar Gomez Roman)
)
Petitioner,)
)
v.)
)
J. Doe #1, Warden, Camp East Montana; Mary de)
Anda Ybarra, Acting Director El Paso Field Office)
Enforcement and Removal Operations United)
States Immigration and Customs Enforcement)
(ICE); USICE; Kristi NOEM, Secretary, United)
States Department of Homeland)
Security, Pamela BONDI Attorney General of the)
United States, Daren K MARGOLIN, Director of)
Executive Office for Immigration Review)
)
Respondents.)

PETITION FOR WRIT OF
HABEAS CORPUS

Case No. 3:25-CV-00524

Agency Case Number:

A 

INTRODUCTION

1. Utah Counsel are licensed to practice in and reside in Utah. Both Utah counsel will be seeking pro hac vice admission in this matter.
2. Petitioner Cesar Gomez Ramon is a citizen of Mexico, who was brought to the U.S. by his mother in 1997 when he was approximately four years of age. (Exhibit 1, Affidavit of Petitioner's father).
3. Petitioner has resided in the United States since 1997. *Id.*
4. He is married to a U.S. Citizen; they have four children, all citizens of the United States. (Exhibit 2, Affidavit of Petitioner's wife).
5. Petitioner applied for the deferred action status for childhood arrivals program in 2018. He was granted DACA and has maintained his status since 2018. (Exhibit 3, Approval Notices).
6. In March 2025 Petitioner got into a fight with his step brother at the local bowling and games center. As a result, he was charged with domestic violence. Due to legally incorrect advice and what has now been stipulated to as a lack of knowledge and ineffective assistance of counsel pursuant the 6th Amendment, Petitioner pled guilty to domestic violence.
7. That plea and the subsequent conviction have been withdrawn and currently the Utah District Court is reconsidering the entire case. It is important to note that when the case is transferred/appealed to the District Court in Utah, it is an appeal de novo.
8. Ultimately, the charge has been completely dismissed and is not being pursued by the City of West Valley.
9. Petitioner has applied anew for DACA status, based on his lack of a conviction.
10. Nevertheless, because of that charge and ultimate plea in abeyance, Petitioner was arrested by ICE officials on August 20, 2025. (Exhibit 4, I-213).
11. Between August 22, 2025 and August 25, 2025 Respondents transferred Petitioner to Camp East Montana, formerly Fort Bliss military base, near El Paso, Texas.
12. Petitioner has been detained by Respondents and is in removal proceedings without the opportunity to apply for a bond hearing since that date. (Exhibit 5 Notice to Appear).

13. Petitioner's first hearing in the Immigration Court in El Paso, Texas went very quickly. The Immigration Judge explained that he did not have the authority to even offer the Petitioner a bond hearing because of the September 5, 2025 Board of Immigration Appeals (BIA), the appellate branch of Respondent Executive Office for Immigration Review (EOIR) precedent decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
14. As applied to Petitioner, the agency's ruling in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) is an unconstitutional violation of his right to due process of law.
15. The agency's conclusion in *Yajure*—holding that all foreign nationals present in the United States without being admitted are subject to mandatory detention without bond, regardless of the length of their presence in the U.S. or their ties to the U.S.—contradicts the statutory language, the expressed Congressional intent, the agency's own prior precedents, as well as U.S. Supreme Court and Federal Court precedent.
16. Furthermore, the novel agency precedent decision of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) effectively overrules *via* a three-judge panel, an explicit agency decision made during the formal notice and comment rulemaking process in 1997. *Compare* 62 F.R. 10312, 10361 [236.1(c)(5)(i)] with 62 F.R. 444, 483 [236.1(c)(5)(i)]; *see also*, 62 F.R. 10312, 10323 (March 6, 1997): ("The supplementary information stated the Department's intended approach, and clause (i) of the proposed regulation was in error. Accordingly, the interim rule removes paragraph (c)(5)(i) of § 236.1 and renumbers the remaining paragraphs (c)(5)(ii), (iii), and (iv). The effect of this change is that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not.")
17. Even more concerning is that this alleged agency precedent decision issued by the BIA was by all accounts moot at the time it was issued. (Exhibit 6, Motion to Reconsider).
18. Petitioner submits this Petition for Writ of Habeas Corpus against the above-named Respondents because he is being unlawfully detained—held without bond—in contravention of the laws and constitution of the United States.
19. Petitioner's continued detention is an unlawful violation of due process, an unconstitutional and legally incorrect interpretation of immigration law, and violates the agency's own governing regulations.

JURISDICTION

20. Petitioner is in the physical custody of Respondents, detained at the Camp East Montana,

formerly Fort Bliss military base, near El Paso, Texas.

21. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause).
22. 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.

VENUE

23. Pursuant to *Burden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court of Western Texas, the judicial district in which Petitioner is currently detained. Thus, a resident of Utah and attorneys who reside in Utah are forced to file this action in the Western District of Texas solely because ICE moved the Petitioner from Utah to Texas.
24. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in Texas.

REQUIREMENTS OF 28 U.S.C. § 2243

25. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
26. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative relief in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

27. Petitioner Cesar Gomez Ramon is a citizen of Mexico, who was brought to the U.S. by his mother in 1997. In approximately 1998 Petitioner’s father brought him to Utah; he has resided in Utah ever since.
28. In 2014 Petitioner married U.S. Citizen Jasmine Alejandra Gomez. Together the couple have four United State born, living children, and a stillborn child who was born in 2022. In 2018 Petitioner applied for—and was granted—deferred action for childhood arrivals.

29. John Doe #1 is the Warden or Governor or GEO-Group assigned chief manager of Camp East Montana, an ICE detention facility located on Montana Avenue in El Paso, Texas. He is named in his official capacity.
30. Respondent Mary de Anda Ybarra is the Acting Director of the El Paso Field Office of ICE's Enforcement and Removal Operations Division. As such, Ms. de Anda Ybarra is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is named in her official capacity.
31. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA) and oversees ICE, which is responsible for Petitioners' detention. Ms. Noem has ultimate custodial authority over Petitioners and is sued in her official capacity.
32. Respondent Department of Homeland Security (DHS) is the principal federal department responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.
33. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department Justice, of which the Executive Office for Immigration Review (EOIR) (the immigration courts) is a component agency. She is sued in her official capacity.
34. Respondent Daren K. Margolin is the Acting Director of the Executive Office for Immigration Review (EOIR), the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redetermination in bond hearings and appellate review of Immigration Judge decisions.

I. SUMMARY OF PRIOR PROCEEDINGS

35. Petitioner was initially encountered by ICE/ERO officers in Utah on August 22, 2025, at which time Petitioner was still in valid Deferred Action status, under the Deferred Action for Childhood Arrivals program.
36. Petitioner was detained without bond and transferred to the Camp East Montana Detention Center.

37. On September 5, 2025, the Board of Immigration Appeals (BIA), the appellate branch of Respondent Executive Office for Immigration Review (EOIR) issued a precedent decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). (Exhibit 7 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)).
38. In *Yajure* the BIA ignored the U.S. constitution, the statutory language, the record of Congressional intent, the regulations implementing IIRIRA, and more than two decades of BIA precedent, including a precedent decision issued June 30, 2025, (*Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025)), to hold that EOIR employee Immigration Judges do not have statutory authority to consider bond requests or to grant bonds to any foreign national who entered without inspection, regardless of length of residence or ties to the U.S.
39. Since the *Yajure Hurtado* decision, immigration judges across the U.S. are instructing immigration counsel not to “waste the IJ’s time” requesting a bond hearing where the foreign national entered without inspection, regardless of the length of the foreign national’s presence in the United States, or the foreign national’s ties to the United States.
40. Because of *Matter of Yajure Hurtado*, Petitioner was told at his first Master Calendar Hearing that the Immigration Judge did not have the authority to issue a bond and that petitioner would have to move forward on his Immigration case in custody.
41. As applied to this Petitioner, the agency’s ruling in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) is an unconstitutional violation of his right to due process of law.
42. The agency’s conclusion in *Yajure*, holding that all foreign nationals present in the United States without being admitted are subject to mandatory detention without bond, contradicts the statutory language, the expressed Congressional intent, the agency’s own prior precedents, as well as U.S. Supreme Court and Federal Court precedent.

II. LEGAL FRAMEWORK

A. CIVIL DETENTION PROVISIONS OF THE INA¹

43. “In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).

¹ Petitioner is indebted in this section to the legal analysis of Judge Kathleen Cardone in her recent Orders in *Lopez-Arevalo v. Ripa*, EP-25-cv-337, (W.D. Tex. Sep 17, 2025); *Santiago-Santiago v. Noem*, EP-25-cv-361-KC, (W.D. Tex. Oct. 1, 2025); and *Gonzalez-Martinez v. Noem*, EP-25-cv-430-KC, (W.D. Tex. Oct. 21, 2025).

44. This fundamental principle of our free society is enshrined in the Fifth Amendment’s Due Process Clause, which specifically forbids the Government to “deprive[]” any “person . . . of . . . liberty . . . without due process of law.” U.S. Const. amend. V.
45. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law”).
46. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 678.
47. The Supreme Court, thus, “has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection,” including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); see also *Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).
48. This case concerns the detention provisions at §§ 1225 and 1226.
49. The detention provisions at § 1225 and § 1226 were enacted in 1996 as part of IIRIRA.
50. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).
51. The Congressional record of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. No. 104-208, Div. C. §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585 shows that Congress was very aware during the drafting of IIRIRA of the constitutional parameters within which they were working. See, e.g., Report of the Committee on the Judiciary on H.R. 2202, Report No. 104-469, Part I (March 4, 1996) and in the Report of the Conference Committee, Report No. 104-828 (September 24, 1996).

52. That awareness includes the robust Supreme Court precedent establishing that persons present in the U.S., regardless of their manner of entry, are constitutionally entitled to due process of law, including when they are subject to civil detention. See, e.g., *Yick Wo v. Hopkins*, 118 U.S. 356, (1886); *Yamataya v. Fisher*, 189 U.S. 86 (1903); *Plyler v. Doe*, 102 S. Ct. 2382 (1982); *Reno v. Flores*, 507 U.S.292 (1993).
53. In IIRIRA, Congress deliberately acted within the recognized constraints of constitutional due process to rebalance and codify three explicit detention regimes for noncitizens.
54. First, as found in 8 U.S.C. § 1225, the statute provides for detention without bond of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other arriving aliens and/or aliens “seeking admission.”
55. Second, 8 U.S.C. § 1226 authorizes the issuance of administrative warrants for the detention of noncitizens for standard removal proceedings before an Immigration Judge. See 8 U.S.C. § 1229a.
56. Finally, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)-(b).
57. Following enactment of IIRIRA, EOIR drafted new regulations establishing that, in general, people who entered the country without inspection were not subject to the border detention regime of § 1225 and that they were instead subject to the detention provisions of § 1226. See *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 63 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
58. The regulations published at 63 Fed. Reg. 10312, 10323 (Mar. 6, 1997) were consistent with the constitutionally reviewed procedures of decades of prior practice, in which noncitizens present in the U.S.—noncitizens who were not “arriving aliens” as defined at 8 C.F.R. § 1001.1(q)—were entitled to a custody hearing before an Immigration Judge or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1251(a)).
59. The regulations published at 63 Fed. Reg. 10312, 10323 (Mar. 6, 1997) also *explicitly* removed a provision in the proposed regulations that would have codified by regulation *precisely* the jurisdictional bar that Respondents are currently arguing precludes any

Immigration Judge from considering or granting a bond to Petitioner. *Compare* 62 F.R. 10312, 10361 [236.1(c)(5)(i)] with 62 F.R. 444, 483 [236.1(c)(5)(i)].

60. The regulations are consistent with the record of Congressional intent, as documented in the Report of the Committee on the Judiciary on H.R. 2202, Report No. 104-469, Part I (March 4, 1996) and in the Report of the Conference Committee, Report No. 104-828 (September 24, 1996).
61. Individuals arrested and detained in the interior of the United States after months, years or decades of physical presence in the U.S. are presumed to be entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), unless they have been arrested, charged with, or convicted of certain crimes, in which case they are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).
62. In the decades that followed implementation of IIRIRA, the common understanding of the law was that 8 U.S.C. § 1226 applied to nearly everyone who entered the United States without inspection. “[I]n its briefing before this Court, the Government acknowledges that “until recently,” it considered § 1226(a) to be an available detention authority for noncitizens who might also be subject to § 1225. *Cordero Pelico, et. al. v. Kaiser*, 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025) at 6; *Martinez v. Hyde*, 1:25-cv-11613, 2025 WL 2084238 (D. Mass. July 24, 2025), at 9, fnt 9.
63. As a result, individuals like the Petitioner, detained after years of physical presence in the United States, were routinely placed in standard removal proceedings, detained pursuant to a warrant for arrest under 8 U.S.C. § 1226(a), and received bond hearings, unless their criminal history rendered them ineligible.
64. That practice was consistent with many more decades of prior practice, in which noncitizens who were not “arriving aliens” as defined at 8 C.F.R. § 1001.1(q) were entitled to a custody hearing before an Immigration Judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1251(a)).
65. In direct contravention of the explicit regulatory choices made in 1997, DHS, on July 8, 2025, published a notice titled “Interim Guidance Regarding Detention Authority for Applicants for Admission.” The notice was disseminated internally, to all ICE employees. (Exhibit 8 July 8 Memo “Interim Guidance Regarding Detention Authority for Applicants for Admission”).
66. As noted in *Maldonado-Vasquez v. Feeley*, 2:25-cv-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025) p. 9, fnt 2: “The memo was leaked to the American Immigration Lawyers Association (“AILA”). *See ICE Memo: Interim Guidance Regarding Detention*

Authority for Applications for Admission, AILA Doc. No. 25071607 (July 8, 2025), <https://www.aila.org/library/ice-memo-interim-guidance-regardingdetention-authority-for-applications-for-admission> [<https://perma.cc/5GKM-JYGX>].

67. Nevada Federal District Court Judge Boulware describes the contents of this notice as follows:

The Notice indicated that DHS, in coordination with the DOJ, ‘revisited its legal Position’ on the INA and determined that § 1225(b)(2), rather than § 1226, is the applicable immigration authority for any alien present in the U.S. ‘who has not been admitted. . . whether or not at a designated port of arrival.’ Accordingly, ‘it is the position of DHS that such aliens are subject to [mandatory] detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.’ The Notice further provides ‘[t]hese aliens are also ineligible for a custody redetermination hearing (bond hearing) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that ‘arriving aliens’ have historically been treated.’

Vasquez v. Feeley, *supra* note 1, pp 8-9; Exhibit V: A.

68. As Judge Boulware also noted in *Vasquez*, on September 5, 2025, the Board of Immigration Appeals (BIA) issued a precedent decision, *Matter of Yajure Hurtado* 29 I&N Dec. 216 (BIA 2025). In that precedent decision, the Board of Immigration Appeals formally agreed with the statutory interpretation as laid out in the July 8, 2025, ICE memo.
69. In other words, as of September 5, 2025, despite the deliberately choice made during the agency’s public regulatory rulemaking in 1997 to grant immigration judges jurisdiction to consider bond requests of inadmissible aliens present in the United States, despite the express Congressional intent and constitutional requirements of due process, it is now the explicit legal position of the U.S. Department of Justice, Executive Office for Immigration Review (EOIR) that all non-citizens present within the United States who have not been lawfully admitted are subject to mandatory detention without bond, regardless of the length of their physical presence or their ties to the United States.
70. The Petitioner is presently detained without bond, based on this new government policy and legal interpretation of 8 U.S.C. § 1225(b)(2)(A) mandating that all non-citizens present within the United States without lawful admission be detained without bond.
71. Judges of this court have found that failure to grant a bond hearing to long-term residents within the United States, regardless of their manner of entry, violates the requirements of

constitutional due process. *Lopez-Arevelo v. Ripa*, EP-25-cv-337, (W.D. Tex. Sep 17, 2025); *Santiago-Santiago v. Noem*, EP-25-cv-361-KC, (W.D. Tex. Oct. 1, 2025); and *Gonzalez-Martinez v. Noem*, EP-25-cv-430-KC, (W.D. Tex. Oct. 21, 2025).

72. During his first Immigration Court hearing, Petitioner was advised not to “waste the Court’s time” with a bond request. He has therefore not sought a bond redetermination hearing from the Immigration Judge handling his case, because it has become clear that the Immigration Judges, following the BIA decision in *Yajure Hurtado*, are no longer authorized by their superiors within EOIR to grant bonds to individuals in Petitioner’s factual circumstances.

C. CONSTITUTIONAL DUE PROCESS

73. In determining whether due process has been violated, the Court should weigh: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government’s interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
74. As to the first *Mathews* factor, the private interest affected by the government action, “Petitioner’s liberty interest in remaining free from governmental restraint is of the highest constitutional import.” *Zavala*, 310 F.Supp.2d at 1076; *see also Ashley*, 288 F.Supp.2d at 670-71 (same) (quoting *St. John v. McElroy*, 917 F.Supp. 243, 250 (S.D.N.Y. 1996)).
75. The Petitioner, a long-term resident of the United States—with U.S. Citizen children, a US citizen spouse--has been detained without bond.
76. At the time he was initially detained, Petitioner had one conviction for immigration purposes--a Plea in Abeyance to simple assault. But that case has since been reopened, the plea vacated and the case dismissed based on substantive and procedural constitutional infirmities which could not be remediated. Petitioner currently has no criminal convictions.
77. As to the second *Mathews* factor, this Court must look to the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards. As explained above, the current procedures cause an erroneous deprivation of the interest of this Petitioner in remaining at liberty, free from detention.

78. DHS is relying upon a Plea in Abeyance Agreement, which is no longer even a legally binding contract upon the Petitioner, as grounds to keep him detained. Beyond this, Petitioner was a DACA recipient, had no additional criminal history and was a contributing member of society with the right to work, support his family, and reside with them lawfully in the United States.
79. As to the third *Mathews* factor, the government's interest in maintaining the "current" procedure is minimal. The sole interest of the government is in spending all the resources Congress has granted it to detain all immigrants, regardless of lack of danger, regardless of ties to the U.S., regardless of length of stay, regardless of the requirements of constitutional due process.
80. In order to prevail on a claim asserting the deprivation of due process, a petitioner must also show prejudice. "To show prejudice, [a Petitioner] must present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided." *Tamayo-Tamayo v. Holder*, 486 F.3d 484, 495 (9th Cir. 2007) (citation omitted) (internal quotations omitted).
81. Until September 5, 2025, the Petitioner would have been eligible for a bond hearing before an Immigration Judge, even if the Petitioner's plea in abeyance had been fully in effect and binding.
82. Respondents' novel legal theory, reinterpreting statutory language after nearly thirty years in violation of the implementing regulations, the express intent of the Congressional Record and the fundamental principles of constitutional due process, is a completely new and unnecessary termination of a prior procedure that protected the constitutional due process rights of the Petitioner and other similarly situated non-citizens.
83. Similarly, if the Respondents had permitted the Immigration Judges to exercise the same authority they have exercised on these facts for over sixty years, the Petitioner, more likely than not, would have been granted bond, posted it, and been home with his family by now.
84. The continued detention of the Petitioner based on the BIA's unconstitutional decision in *Yajure-Hurtado*, constitutes actual prejudice.
85. Petitioner has no other forum in which to seek judicial review of the constitutional and legal issues raised by his continued detention on the basis of Respondents' actions, memos, and decisions.

86. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas* at 690.
87. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be allowed to apply for and present his case for an immigration bond in front of his currently assigned immigration Judge to pay the bond, if granted and be released.

III. CLAIMS FOR RELIEF

COUNT I

Violation of the INA and Governing Regulations

88. Petitioner incorporates by reference the facts and law set forth in the preceding paragraphs.
89. Petitioner entered the United States without inspection. He has been present within the United States for nearly thirty years; he has U.S. Citizen children and a U.S. citizen spouse, he is eligible to renew his Deferred Action for Childhood Arrivals.
90. Petitioner was issued a Notice to Appear in removal proceedings pursuant to 8 U.S.C. § 1229a.
91. Respondents' novel interpretation of 8 U.S.C. § 1225(b)(2)(A) as authority for detaining Petitioner without bond overrules the regulations promulgated and passed in formal rulemaking, and is an unconstitutional interpretation of the statutory language, without basis in prior precedent or the record of Congressional intent.

COUNT II

Violation of Fifth Amendment Right to Due Process of Law

92. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
93. 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, 121 S.Ct. 2491, 150 L.Ed.2d. 653 (2001).

94. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).
95. The Ninth Circuit has also held that “[r]emaining confined in jail when one should otherwise be free is an Article III injury plain and simple[.]” *Gonzalez v United States Immigr. & Custome Enf’t*, 975 F.3d 788, 804 (9th Cir. 2020) (quoting *Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014)).
96. Petitioner has a fundamental interest in liberty and being free from official restraint.
97. The Government’s continued detention of Petitioner, without bond, is a clear violation of his constitutional right to due process under the law.
98. The Due Process Clause asks whether the government’s deprivation of a person’s life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty.
99. Respondents’ continued detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen’s appearance during removal proceedings and (2) preventing danger to the community).
100. There is no credible argument that the Petitioner—who now has no criminal records despite years and even decades residing in the United States—cannot be safely released back to his community and family.
101. For these reasons, continued detention of this Petitioner violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner pray that this Court grant the following relief:

- a. Assume jurisdiction over this matter.
- b. Issue a writ of habeas corpus requiring that Respondents immediately provide Petitioner with bond a hearing, and that Petitioner be allowed to post the bond and be released.
- c. Declare that the Petitioner’s continued detention without bond or any individualized determination of danger or flight risk violates the Due Process Clause of the Fifth Amendment;

- d. Issue an immediate Temporary Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval, pending the Court's review and decision on the Petition.

and

- e. Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED this 5th day of November, 2025.

/s/ Mark Kinzler
Local Counsel for Petitioner

STOWELL CRAYK PLLC

/s/ Adam L Crayk
Attorney for Petitioner, Pro hac vice

/s/ Marti L. Jones
Attorney for Petitioner, Pro hac vice

CERTIFICATE OF SERVICE
Gomez Roman v. De Anda Ybarra et al
3:25-cv-00524

I hereby certify that on November 5, 2025, I have mailed by United States Postal Service the Petition for Writ of Habeas Corpus and Exhibits by certified mail to the following:

Stephanie Rico
Civil Process Clerk Office of the United States Attorney for the
Western District of Texas
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San Antonio, Texas 78216-5597

J. Doe #1, Warden at Camp Montana
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Mary de Anda Ybarra, Acting Director El Paso Field Office Enforcement and
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Kristi Noem, Secretary of Homeland Security
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Pamela Bondi, U.S. Attorney General
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Daren K. Margolin, Director of Executive Office for Immigration Review
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The above respondents were also named in the CM/ECF habeas corpus filing with the Western District of Texas court.

/s/ Mark Kinzler