

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

LOPEZ-CAPIR, Ever Alexander



HERNANDEZ-HUZ, Cristofer Omar



Petitioners,

v.

Pamela BONDI, in her official capacity as
U.S. Attorney General;

Marcos CHARLES, in his official capacity as
Acting Executive Associate Director,
Enforcement and Removal Operations;

Todd M. LYONS, in his official capacity as
Acting Director, Immigration and Customs
Enforcement;

Kristi NOEM, in her official capacity as
Secretary of the U.S. Department of
Homeland Security

John TSOUKARIS, in his official capacity as
Colonel of the Corrections Division at the
Delaney Hall Detention Facility;




Respondents.

Docket No:

**PETITION FOR
WRIT OF HABEAS
CORPUS AND
EMERGENCY
MOTION FOR
IMMEDIATE
RELEASE**

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PRELIMINARY STATEMENT

1. Petitioners Ever Lopez-Capir ("Mr. Lopez") and Cristofer Omar Hernandez-Huz ("Mr. Hernandez"), cousins who were unlawfully arrested together on November 2, 2025, hereby petition this Court under 28 U.S.C. § 2241, et seq., for immediate release from the unlawful custody of the Department of Homeland Security, United States Immigration and Customs Enforcement ("ICE").
2. This case presents egregious violations of due process, statutory authority, and humanitarian principles. Critically, neither Petitioner is subject to a final order of removal—both have pending removal proceedings with scheduled future hearings. Their detention thus falls under INA § 236(a), which requires individualized bond hearings that have been unlawfully denied.
3. Mr. Lopez is the court-appointed legal guardian of a minor child who has been granted Special Immigrant Juvenile Status, and his detention threatens the safety and welfare of this vulnerable child.
4. Mr. Hernandez suffers from 


5. Both men were arrested without warning despite having pending immigration proceedings with scheduled hearings, no criminal history, and full compliance with all immigration requirements. Under the established statutory scheme, they are entitled to bond hearings before an Immigration Judge to determine whether their detention is necessary. However, under the newly established precedent of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), both petitioners would not be eligible

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for bond hearings before an Immigration Judge. The Board held that Immigration Judges lack authority to hear bond requests or grant bond to aliens who are present in the United States without admission, which is in direct violation of statute and the Constitution.

JURISDICTION

6. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), the Administrative Procedure Act, 5 U.S.C. § 701 et seq., and Article I, Section 9, Clause 2 of the U.S. Constitution.
7. While 8 U.S.C. § 1226(e) provides that "no court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien," this provision does not bar habeas review of the lawfulness of detention itself. The Supreme Court has consistently held that statutory provisions purporting to eliminate habeas corpus must speak in the clearest terms, and § 1226(e) does not eliminate habeas jurisdiction over constitutional and statutory challenges to detention. See *INS v. St. Cyr*, 533 U.S. 289, 308 (2001); *Demore v. Kim*, 538 U.S. 510, 517 (2003) (exercising habeas jurisdiction despite § 1226(e)).
8. This Court has jurisdiction to determine whether Petitioners' detention without bond hearings violates the Constitution and whether ICE has statutory authority for their continued detention. See *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (noting federal courts' jurisdiction to review habeas petitions challenging the lawfulness of detention).

VENUE

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9. Venue is proper in that Petitioners are currently being detained at Delaney Hall ICE Detention Center, located within this judicial district. Additionally, Petitioners maintain their permanent residence in New Jersey, and counsel maintains offices in Clifton, New Jersey.

PARTIES

10. Petitioner Ever Lopez-Capir is a native and citizen of Guatemala currently in ICE custody at Delaney Hall ICE Detention Center. He is the court-appointed legal guardian of minor Dany Osbely Lopez Capir.

11. Petitioner Cristofer Omar Hernandez-Huz is a native and citizen of Guatemala currently in ICE custody at Delaney Hall ICE Detention Center. He suffers from



12. Respondents are sued in their official capacities as set forth in the caption above.

STATEMENT OF FACTS

Facts Pertaining to Ever Lopez-Capir

13. On January 15, 2019, Mr. Lopez was issued a Notice to Appear ("NTA") that failed to include the date or time of his initial removal hearing, rendering it defective under *Pereira v. Sessions*, 138 S. Ct. 2105 (2018). (See Exhibit A, Notice to Appear).

14. On February 22, 2023, prior to the taking of pleadings, Mr. Lopez through counsel orally objected to the defective NTA based on the missing date and time. DHS opposed termination.

15. On April 11, 2023, an Immigration Judge found that Mr. Lopez timely objected to DHS's violation of a claim-processing rule under *Matter of Fernandes*, 28 I&N Dec. 605 (BIA 2022), and terminated proceedings without prejudice as the appropriate

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- remedy. The IJ specifically held that "the Fernandes objections are impossible to cure in this proceeding" because the regulations do not permit DHS to amend the time and place requirements of an NTA after filing with the Court. (See Exhibit B, Decision of the Immigration Judge).
16. DHS appealed this termination. In their brief, DHS acknowledged the NTA defect and sought to remedy it through either: (1) issuance of a Form I-261, or (2) oral or pen-and-ink amendment to the NTA. Notably, DHS suggested but failed to provide any pen-and-ink amendment within the filing deadline.
17. On October 1, 2025, the Board of Immigration Appeals ("BIA") issued a decision authored by Chief Appellate Immigration Judge Malphrus. (See Exhibit C, Decision of the Board of Immigration Appeals).
18. On October 16, 2025, counsel received a hearing notice scheduling Mr. Lopez for a master hearing on March 12, 2026, at 9:30 AM before the Harlingen Immigration Court. (See Exhibit D, Hearing Notice).
19. On April 28, 2024, Mr. Lopez was named as the legal custodian of the minor child, Dany Osbely Lopez Capir, by order of the Superior Court of New Jersey, Hudson County, Family Part Division. (See Exhibit E, Order of Order for Special Findings, Superior Court of New Jersey Chancery Division – Hudson County).
20. On July 2, 2024, the minor child Dany was granted I-360 Special Immigrant Juvenile Status ("SIJS") based on these state court findings. (See Exhibit F, Form I-797 Notice of Action, Approval Notice for Form I-360, Special Immigrant Juvenile Status).
21. Mr. Lopez's role as guardian is critical, as the minor was previously subjected to severe abuse. The state court specifically found that the minor's father "has cruelled to



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- him by willfully failing sufficient food and committed human trafficking and child labor abused to the child."
22. Despite having a scheduled hearing, established community ties, and custodial responsibilities for a vulnerable minor with SIJS status, ICE arrested Mr. Lopez on Sunday, November 2, 2025.
23. Mr. Lopez has never been convicted of any crime and has complied with all immigration requirements.
24. Mr. Lopez's detention is causing severe harm to the minor child Dany, who depends on Mr. Lopez for care, stability, and support.
25. Mr. Lopez has not been provided a bond hearing despite his detention.
26. Mr. Lopez's master hearing has not been reset, and he has not been issued a subsequent NTA since being detained ten (10) days ago.


Facts Pertaining to Cristofer Omar Hernandez-Huz

27. Mr. Hernandez is a native and citizen of Guatemala (See Exhibit G, Passport Photo Page) who entered the U.S. at the age of seventeen (17) as an unaccompanied minor. Mr. Hernandez was issued an NTA on May 24, 2019, which instructed him to appear before Immigration Court on a date and time to be set by the court. (See Exhibit H, Notice to Appear).
28. On May 24, 2019, Mr. Hernandez was released from ICE custody on his own recognizance after entry, demonstrating ICE's own determination that he posed neither a flight risk nor danger to the community. Importantly, he was not placed under expedited removal proceedings under INA § 235(b), but rather was processed

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- for regular removal proceedings under INA § 240. (See Exhibit I, Order of Release on Recognizance).
29. For over six years, from May 2019 to November 2025, Mr. Hernandez complied with all immigration requirements while on release, establishing deep community ties and accessing critical medical care for his life-threatening condition. Mr. Hernandez has maintained compliance with U.S. tax requirements and achieved completion of English as a Second Language coursework at Zoni Language Center. (See Exhibit J, Individual Taxpayer Identification Number (ITIN) Assignment).
30. (See also Exhibit K, Zoni Language Centers Enrollment Agreement).
31. Mr. Hernandez has a master hearing scheduled for December 15, 2026, before the Newark Immigration Court.
32. Mr. Hernandez was arrested alongside his cousin on the morning of November 2, 2025, despite having pending proceedings and no changed circumstances since his initial release determination.
33. Mr. Hernandez has never been convicted of any crime and has been fully compliant with all immigration requirements.
34. Critically, Mr. Hernandez suffers from 
 This condition requires ongoing medical treatment and monitoring.
35. Mr. Hernandez's medical history demonstrates continuous treatment needs, as evidenced by:
- a) An appointment card from Hospital General San Juan de Dios in Guatemala, Exhibit L, demonstrating history of treatment.

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- b) Newark Beth Israel Medical Center Emergency Department Notice, citing reason for visit as  for Mr. Hernandez-Huz, December 2, 2021, Exhibit M.
 - c) Record Authorization to Disclose Form from Newark Beth Israel Medical Center, Exhibit N.
 - d) Newark Beth Isreal Medical Center CHTC Consultation Notice (Department: CHTC (Comp Hemophilia Treatment), Exhibit O.
 - e) Newark Beth Israel Medical Center Service Bill, Exhibit P.
 - f) Newark Beth Isreal Medical Center New Jersey Hospital Care Assistance Program Application, Exhibit Q.
36. Continued detention poses a serious risk to Mr. Hernandez's life, as inadequate medical care or delayed treatment for bleeding episodes could result in death.

LEGAL ARGUMENT

COUNT I: ICE LACKS STATUTORY AUTHORITY FOR DETENTION

37. Congress has created a comprehensive statutory framework governing immigration detention, with specific provisions applicable to different categories of aliens at different stages of proceedings. ICE's detention of Petitioners violates this carefully structured scheme.
38. The statutory framework distinguishes between four categories of detention:
- 1. **INA § 236(a)** (8 U.S.C. § 1226(a)): Discretionary detention pending removal proceedings with bond hearings required;
 - 2. **INA § 236(c)** (8 U.S.C. § 1226(c)): Mandatory detention for criminal aliens and those with terrorism connections;

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3. **INA § 235(b)** (8 U.S.C. § 1225(b)): Detention of arriving aliens and inadmissible applicants;
 4. **INA § 241(a)** (8 U.S.C. § 1231(a)): Post-removal order detention during the 90-day removal period.
39. Critically, neither Petitioner is subject to a final order of removal. Both have pending removal proceedings with scheduled hearings. This distinguishes their cases from post-removal order detention under § 241(a) and the constitutional concerns addressed in *Zadvydas v. Davis*, 533 U.S. 678 (2001), where the Supreme Court held that indefinite detention of aliens subject to final removal orders would raise significant constitutional concerns.
40. Both Petitioners fall squarely within § 236(a)'s discretionary detention provision as they are non-criminal aliens with pending removal proceedings. The statutory text provides that such aliens "may" be detained but must be afforded bond hearings unless they fall within § 236(c)'s mandatory detention categories.
41. Under the statutory scheme, if an alien detained under § 236(a) remains in custody, "he or she may request review of DHS's custody decision at a bond hearing before an immigration judge (IJ) within the Department of Justice's Executive Office for Immigration Review (EOIR)." The IJ has authority to determine whether DHS may retain physical custody or release the alien and to set appropriate bond amounts. The IJ's custody determination may be appealed to the Board of Immigration Appeals (BIA). See 8 C.F.R. § 1003.19.
42. Despite this clear statutory and regulatory framework requiring individualized bond hearings, the Board's recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216

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- (BIA 2025), has been interpreted to preclude bond hearings for aliens present without admission. The Board held that Immigration Judges lack statutory authority to conduct bond hearings for individuals who entered without inspection, as they are subject to mandatory detention under Section 235(b)(2)(A) of the INA.
43. Accordingly, both Petitioners—having entered without admission—fall outside the scope of Immigration Judge authority for bond determinations, which violates § 236(a) and implementing regulations.
44. As the Supreme Court clarified in *Nielsen v. Preap*, 139 S. Ct. 954, 959 (2019), federal immigration law gives the Secretary of Homeland Security the discretion to either detain the alien or release him on bond or parole. See 8 U.S. § 1126(a). Furthermore, § 1126(c) provides that detention may be appropriate for deportable criminal aliens who are not non-detained but continue to “engage in crime and fail to appear for their removal hearings,” *Demore v. Kim*, 538 U.S. 510 513. Neither Petitioner has any criminal history or has previously failed to appear for removal hearings.
45. The Third Circuit has consistently held that detention under § 236(a) without a bond hearing violates the statute. *Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 278 (3d Cir. 2018) (“Section 1226(a) entitles aliens detained thereunder to a bond hearing.”).

COUNT II: VIOLATION OF DUE PROCESS - ARBITRARY DETENTION

46. Beyond the statutory violations, Petitioners' detention violates the Due Process Clause of the Fifth Amendment, which prohibits arbitrary governmental action depriving individuals of liberty.

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47. The Supreme Court has long recognized that "freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Demore*, 538 U.S. at 532 (citing *Zadvydas v. Davis*, 533 U.S. 678, 684-86, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001)).
48. ICE's arrest and detention of individuals who were previously released on recognizance, have pending proceedings with scheduled hearings, and have demonstrated full compliance with immigration requirements constitutes arbitrary governmental action lacking any legitimate purpose.
49. In *Demore v. Kim*, 538 U.S. 510, 531 (2003), the Supreme Court upheld mandatory detention under § 236(c) based on Congress's findings regarding criminal aliens. But the Court emphasized that such detention served the specific purposes of preventing flight and protecting the community from those who had committed crimes. Neither rationale applies here.
50. As Mr. Hernandez's prior release on recognizance demonstrates, ICE itself previously determined he posed neither flight risk nor danger. Nothing has changed except the political climate. Such arbitrary reversal of detention determinations based on no changed circumstances violates due process. Furthermore, procedural due process standards impose constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

COUNT III: PROLONGED DETENTION WITHOUT INDIVIDUALIZED HEARINGS

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51. Even if initial detention were authorized, prolonged detention without individualized bond hearings violates due process. While the Supreme Court in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), declined to impose bright-line time limits, it acknowledged that constitutional concerns arise with prolonged detention.
52. Importantly, *Jennings* addressed only the statutory construction question, not the constitutional limits on detention. The Court explicitly noted: "We reaffirm that '[f]ederal statutes [should] be construed to avoid serious constitutional doubts.'" *Id.* at 842. Post-*Jennings*, courts continue to find constitutional violations in prolonged detention without hearings.
53. Circuit courts have recognized that while federal statute generally bars judicial review of discretionary detention decisions under 8 U.S.C. § 1226(e), courts retain jurisdiction to consider habeas corpus claims alleging that an alien's detention is unlawful. The United States Court of Appeals for the Third Circuit has explained that *Jennings* did not call into question their constitutional holding in *Diop v. ICE/Homeland Security*, 656 F.3d 221 (3d Cir. 2011), which established that detention under § 1226(c) may violate due process if unreasonably long. Therefore, even after *Jennings*, an alien lawfully present but detained under § 1226(c) can still challenge his detention under the Due Process Clause by seeking an individualized bond hearing. In such as-applied challenges, when detention becomes unreasonable, the Due Process Clause demands a hearing. This Court has jurisdiction to review whether the detention itself violates statutory or constitutional requirements.
54. The distinction between Petitioners' cases and *Zadvydas* is critical: *Zadvydas* addressed post-final-order detention where removal was the only remaining issue.

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Here, Petitioners have not been ordered removed—they have pending proceedings where they may establish relief from removal. Their detention pending these proceedings requires different analysis but raises equally serious constitutional concerns.

55. As the Third Circuit explained in *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 232 (3d Cir. 2011), pre-removal-order detention under § 236(a) still implicates due process when unreasonably prolonged: "At a certain point, continued detention becomes unreasonable and the Executive Branch's implementation of § 1226(c) becomes unconstitutional unless the Government has justified its actions at a hearing inquiring into whether continued detention is consistent with the law's purposes of preventing flight and dangers to the community."

56. Here, both Petitioners face prolonged detention pending hearings scheduled many months in the future—March 2026 for Mr. Lopez and December 2026 for Mr. Hernandez. Detention for such extended periods without any individualized determination of flight risk or dangerousness through the bond hearing process mandated by § 236(a) violates both the statute and due process.

**COUNT II: VIOLATION OF INA § 236(a) - DISCRETIONARY DETENTION
WITHOUT BOND HEARING**

57. The Immigration and Nationality Act creates a carefully delineated statutory scheme governing immigration detention: a) INA § 236(a), 8 U.S.C. § 1226(a), authorizes discretionary detention of aliens pending removal proceedings and requires that those not subject to mandatory detention be afforded bond hearings or release on recognizance; b) INA § 236(c), 8 U.S.C. § 1226(c), mandates detention only for

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- aliens removable due to specified criminal activity or terrorism-related grounds; c) INA § 235(b), 8 U.S.C. § 1225(b), governs detention of arriving aliens and applicants for admission; d) INA § 241(a), 8 U.S.C. § 1231(a), applies to aliens subject to final removal orders.
58. Under the Board's recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), aliens who entered without inspection are classified as "applicants for admission" under INA § 235(a)(1) and are subject to mandatory detention under § 235(b)(2)(A), not discretionary detention under § 236(a).
59. The Board held that Immigration Judges lack statutory authority to conduct bond hearings for aliens present in the United States without admission, regardless of:
- a) Length of residence in the United States
 - b) Compliance with immigration proceedings
 - c) Absence of criminal history
 - d) Issuance of arrest warrants by DHS
60. In *Yajure Hurtado*, the Board explicitly stated that the "catchall" provision of § 235(b)(2)(A) mandates detention for all applicants for admission who are "not clearly and beyond a doubt entitled to be admitted," and that such aliens "shall be detained for a proceeding under section 240."
61. Accordingly, under current Board precedent, both Petitioners—having entered without inspection—are deemed applicants for admission subject to mandatory detention under § 235(b)(2)(A), placing them outside the discretionary detention and bond hearing provisions of § 236(a).

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62. This interpretation and application of the statute violates the Due Process Clause of the Fifth Amendment to the United States Constitution. Mandatory detention without any individualized hearing or opportunity to challenge the necessity of confinement violates fundamental principles of due process, particularly for individuals who have established ties to the community, pose no flight risk or danger, and have been complying with all immigration requirements.
63. This constitutional violation provides an independent basis for habeas relief, as both Petitioners are being held without any bond hearing, in direct violation of § 236(a).. While the Board has interpreted the INA to preclude bond hearings for this class of detainees, such an interpretation cannot override constitutional requirements. The writ of habeas corpus serves as the essential safeguard against unlawful detention, and federal courts retain jurisdiction to review constitutional challenges to immigration detention even where administrative remedies have been foreclosed.

COUNT IV: HUMANITARIAN VIOLATIONS AND IRREPARABLE HARM


As to Mr. Lopez:

64. Mr. Lopez's detention violates fundamental principles of child welfare and the best interests of the minor child Dany. Federal law recognizes the paramount importance of maintaining stable custodial relationships for vulnerable children, particularly those who have experienced trauma.
65. The state court made specific findings essential to the SIJS determination, including that:
1. The minor was subjected to cruelty, neglect, and abandonment by his parents;
 2. Reunification with one or both parents is not viable due to this abuse;

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3. Return to Guatemala would endanger the child due to his father's involvement in human trafficking and child labor abuse;
 4. It is not in the minor's best interest to return to Guatemala.
66. These findings, affirmed through the grant of SIJS status, demonstrate that Dany is an especially vulnerable child who has already experienced severe trauma. The New Jersey Superior Court Order specifically placed Dany in Mr. Lopez's sole legal and physical custody to protect him from further harm.
67. Courts have recognized that unnecessary separation of children from their caregivers constitutes irreparable harm. *Ms. L. v. ICE*, 310 F. Supp. 3d 1133, 1144 (S.D. Cal. 2018) (finding that family separation "arbitrarily tears at the sacred bond between parent and child").
68. The Third Circuit has emphasized that "the best interests of the child" must be considered in immigration proceedings affecting minors. *Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 172 (3d Cir. 2018). Mr. Lopez's detention directly harms these interests.

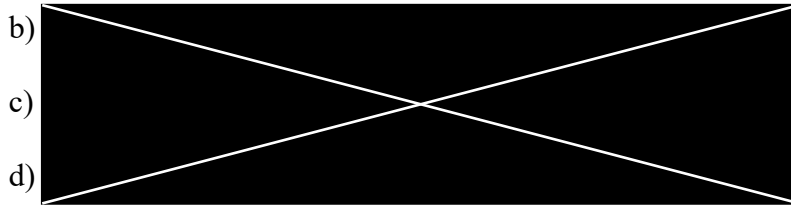
As to Mr. Hernandez:


69. Mr. Hernandez's detention with  constitutes deliberate indifference to serious medical needs in violation of the Fifth Amendment. Federal District Courts have consistently held that deliberate indifference to serious medical needs violates the constitutional rights of detainees. *Coreas v. Bounds*, No. TDC-20-0780, 2020 WL 1663133 (D. Md. May 7, 2020).

70. 

a) 

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71. Immigration detention facilities are categorically inadequate to manage 

Under the Constitution, the government has a duty to provide for the “basic human needs” of people in custody. See *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239 (1983). The Ninth Circuit recognized in *Fraihat v. U.S. Immigration & Customs Enforcement*, 16 F.4th 613 (9th Cir. 2021), that detention facilities often cannot provide specialized medical care, creating constitutional violations.

72. Courts have consistently held that detention of individuals with serious medical conditions that cannot be adequately treated in custody violates due process under the Fourteenth Amendment. *Charles v. Orange County*, 925 F.3d 73, 85 (2d Cir. 2019); *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (finding that inadequate medical care in detention can violate due process).

73. The documented medical history from both Guatemala and U.S. providers demonstrates Mr. Hernandez's ongoing need for specialized care unavailable in detention.

COUNT V: ARBITRARY AND CAPRICIOUS ACTION UNDER THE APA

74. ICE's detention of both Petitioners constitutes arbitrary and capricious agency action in violation of the Administrative Procedure Act, 5 U.S.C. and 5 U.S.C. § 706(2)(A).

75. Under the APA, agency action is arbitrary and capricious if the agency "relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs

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counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

76. ICE's detention decisions here satisfy every element of arbitrary agency action:

1. **Failed to consider important aspects:** ICE ignored Mr. Lopez's custodial responsibilities for a vulnerable SIJS minor and Mr. Hernandez's life-threatening medical condition;
2. **Contradicted prior determinations:** ICE reversed its own finding that Mr. Hernandez posed no flight risk or danger without any changed circumstances;
3. **Lacks rational basis:** Detaining individuals with scheduled hearings who have demonstrated years of compliance serves no legitimate enforcement purpose;
4. **Violates agency's own guidance:** ICE's enforcement priorities purportedly focus on public safety threats and recent border crossers, neither of which applies here.

77. The Third Circuit has recognized that immigration detention decisions lacking individualized consideration violate the APA. *Guerrero-Sanchez v. Warden York Cnty. Prison*, 905 F.3d 208, 224 (3d Cir. 2018).


COUNT VI: IMPROPER VENUE AND REQUEST FOR CHANGE OF VENUE

78. As to Mr. Lopez, venue in Harlingen, Texas is improper and violates due process where his permanent residence, legal guardian responsibilities, and counsel are all located in New Jersey.

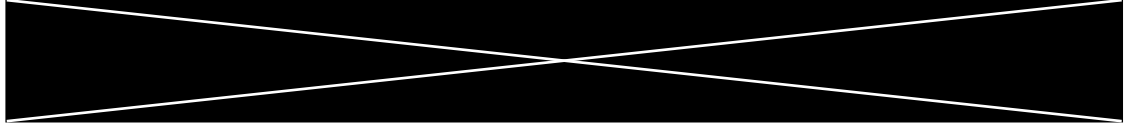
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79. The Supreme Court has recognized that the right to counsel in immigration proceedings includes meaningful access to counsel. *Pino-Porras v. Att'y Gen. of the U.S.*, No. 22-3419 (3d Cir. 2025). Forcing Mr. Lopez to proceed in Harlingen while detained in New Jersey effectively denies this right.
80. Moreover, requiring proceedings in Texas while the minor child Dany resides in New Jersey under Mr. Lopez's legal guardianship creates an impossible situation that harms the child's interests and undermines the state court's custody determination.
81. 8 C.F.R. § 1003.20(b) permits venue changes when warranted by the circumstances. Here, the circumstances overwhelmingly support transfer to Newark Immigration Court.

IRREPARABLE HARM AND NEED FOR EMERGENCY RELIEF

82. Every day of unlawful detention constitutes irreparable injury to both Petitioners' fundamental liberty interests that cannot be adequately compensated through monetary damages. *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects").
83. The harm is particularly acute given Mr. Lopez's role as sole legal guardian to minor Dany (who has already suffered abuse/neglect/abandonment), and Mr. Hernandez's life-threatening  requiring constant medical management unavailable in detention.
84. Mr. Lopez faces the permanent destruction of the parent-child bond and psychological trauma to his ward; Mr. Hernandez faces spontaneous internal

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85. The balance of hardships overwhelmingly favors Petitioners, as Respondents suffer no cognizable harm from releasing individuals who pose no flight risk or danger, have demonstrated compliance with prior conditions, and have scheduled immigration proceedings.

86. The public interest strongly favors protecting vulnerable SIJS children, preventing medical emergencies in detention, and preserving family unity. Permitting ICE to detain a child's guardian and a person with life-threatening medical conditions undermines fundamental humanitarian principles and constitutional protections.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

- A. Issue a Writ of Habeas Corpus ordering Respondents to immediately release both Petitioners from custody;
- B. In the alternative, order immediate bond hearings at which the government bears the burden of proving by clear and convincing evidence that detention is necessary;
- C. Order that Petitioners not be transferred from the District of New Jersey, as counsel maintains offices in Clifton, New Jersey;
- D. As to Mr. Lopez, order a change of venue from Harlingen, Texas to Newark, New Jersey;
- E. Declare that Petitioners' detention violates:
 - The Due Process Clause of the Fifth Amendment
 - 8 U.S.C. § 1226(a) and its implementing regulations requiring bond hearings

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- The Administrative Procedure Act
- Fundamental principles prohibiting arbitrary detention

F. Order immediate bond hearings before an Immigration Judge where the government bears the burden of proving by clear and convincing evidence that detention is necessary to prevent flight risk or danger to the community;

G. Enter a permanent injunction prohibiting Respondents from re-detaining Petitioners absent:

- Material changed circumstances warranting detention; or
- A final order of removal subject to the different statutory scheme under INA § 241;

H. Award Petitioners their costs and reasonable attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412;

I. Retain jurisdiction to ensure compliance with this Court's orders;

J. Grant such other and further relief as this Court deems just and proper.

Dated: November 12, 2025

Respectfully submitted,

s/ Franklin S. Montero
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CERTIFICATION

I, Franklin S. Montero, Esq., counsel for the Petitioner, hereby verify under penalty of perjury pursuant to 28 U.S.C. § 1746 that the factual allegations in this petition are true and correct to the best of my knowledge, information, and belief, based upon the records available and information provided by Petitioner.

Dated: November 12, 2025

Respectfully submitted,

s/ Franklin S. Montero
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CERTIFICATE OF SERVICE

I, Franklin S. Montero, Esq., hereby certify that on this 12th day of November, 2025, I electronically filed the foregoing **PETITION FOR WRIT OF HABEAS CORPUS AND EMERGENCY MOTION FOR IMMEDIATE RELEASE** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered counsel of record.

Dated: November 12, 2025

Respectfully submitted,

s/ Franklin S. Montero
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