UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

SEAMUS THOMAS CULLETON, PETITIONER, v. **MARY DE ANDA-YBARRA,** Field Office Director ERO of U.S. Immigration and Customs Enforcement **TODD LYONS**, Acting Director, U.S Immigration and Customs Enforcement **KRISTI NOEM**; Secretary of the U.S. Department Homeland Security; **PAMELA BONDI**, Attorney General of the United States, and **ANGEL GARITE**, in his official capacity as Assistant Field Office Director of the El Paso Field Office of U.S. Immigration and Customs Enforcementand Enforcement Removal Operations, RESPONDENTS.	Docket No. 3:25-cv-554 **PETITION FOR WRIT OF HABEAS CORPUS** **ORAL ARGUMENT REQUESTED**

BACKGROUND

1. As of the date of this filing, the Petitioner has been served with an Order of Removal based on an alleged violation of the Visa Waiver Program (VWP), notwithstanding the fact that he has a marriage-based adjustment of status interview scheduled with the U.S. Citizenship and Immigration Services (USCIS). The issuance of the removal order at this juncture is premature and undermines the orderly adjudication of his marriage-based adjustment of status application.

2. The Immigration and Nationality Act provides for the Visa Waiver Program under § 217. *INA § 217 (a)(1).* Under the Visa Waiver Program, an alien who has been admitted to the United States under the provisions of § 217 of the Act, who is determined by an immigration officer to be deportable from the United States under one or more of the grounds of deportability listed in § 237 of the Act shall be removed from the United States to his or her country of nationality or last residence. Such removal shall be determined by the District Director who has jurisdiction over the place where the alien is found, and shall be effected without referral of the alien to an immigration judge for a determination of deportability, *except that an alien who was admitted as a Visa Waiver Program visitor who applies for asylum in the United States must be issued a Form I-863 for a proceeding in accordance with 8 CFR 208.2(c)(1) and (c)(2).*
3. An alien admitted as a nonimmigrant without a visa under a Visa Waiver Program is barred from adjustment of status. This bar does not apply however to those seeking to adjust status as an immediate relative of a U.S. citizen. *INA 245 (c)(4).* Individuals in the U.S. based only on the Visa Waiver Program, can file for a green card based on marriage to a U.S. citizen, or being the child of a U.S. citizen (under 21 years old and unmarried), or being the parent of a U.S. citizen. Petitioner is not barred from seeking adjustment of status as he falls under the exception of individuals seeking adjustment of status as an immediate relative of his U.S. citizen spouse, Tiffany Smith Culleton.
4. Petitioner, Seamus Thomas Culleton, is a 42-year-old native and citizen of Ireland who lawfully entered the United States(U.S.) on March 1, 2009, as a WT Waiver Tourist under the Visa Waiver Program (VWP). Petitioner is not eligible for asylum and has not filed for

an asylum application, hence the absence of an issuance of a Form I-863 for a proceeding in the case at bar.

5. The Administrative Procedure Act provides that courts "shall hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or is "unsupported by substantial evidence." 5 U.S.C. § 706(2)(A), (E). Following this, the petitioner requests that DHS release him from custody in accordance with his due process rights. Petitioner requests his release from custody in light of his scheduled marriage-based adjustment of status interview.
6. An alien admitted to the United States pursuant to the Visa Waiver Program who has not been served with a Notice to Appear pursuant to 8 C.F.R. Part 1240 is not entitled to a custody hearing before an Immigration Judge under 8 C.F.R. § 1236.1(d). *Matter of Gallardo, 21 I&N Dec. 210 (BIA 1996).* Petitioner has not been served with an NTA, and is not entitled to a custody hearing before an Immigration Judge. It is well established that immigration judges only have the authority to consider matters that are delegated to them by the Attorney General and the Immigration Nationality Act. See 8 C.F.R. §1003.10(b) (2009). § 1236.1(d) relates solely to aliens in removal proceedings under 8 C.F.R. Part 1240.
7. According to 8 C.F.R. § 1208.2(c)(1)(iv), Immigration Judges have exclusive jurisdiction over asylum applications filed by aliens who have been admitted pursuant to the Visa Waiver Program. However, 8 C.F.R. § 1208.2(c)(3)(i) provides that the Immigration Judge's scope of review under that section is "limited to a determination of whether the alien is eligible for asylum . . . and whether asylum shall be granted in the exercise of discretion. Immigration Judges have only been granted authority to redetermine the

conditions of custody of aliens who have been issued and served with a Notice to Appear in relation to removal proceedings pursuant to 8 C.F.R Part 1240.

8. The Petitioner is not in removal proceedings under 8 C.F.R. Part 1240 and, as a matter of law, may not be put in removal proceedings pursuant to those regulations. *Matter of Kanagasundram, 22 I&N Dec. 963 (BIA 1999).* Thus, the Immigration Judge has not been granted authority to redetermine the conditions of the petitioner's custody under 8 C.F.R. § 1236.1(d).
9. The statutory authority for the petitioner's detention is contained in § 217(c)(2)(E) of the Act, 8 U.S.C.A. § 1187(c)(2)(E) (West Supp. 2008), not § 236 of the Act, 8 U.S.C. § 1226 (2006). The authority to detain the petitioner has been transferred to the Secretary of Homeland Security pursuant to the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135, which created the Department of Homeland Security and assigned or transferred to the Secretary of Homeland Security many of the functions previously exercised by the Attorney General. It is important to note that references to the Attorney General in § 217 of the Act now refer to the Secretary of Homeland Security. Due to the fact that the Attorney General no longer has authority over bond proceedings relating to aliens, like the petitioner, who have been admitted pursuant to the Visa Waiver Program, he cannot delegate any such authority to the Immigration Judge.
10. In *Matter of A-W-, 25 I&N Dec. 45 (BIA 2009),* the case relied on by DHS, the Immigration Judge denied the applicant's request for a change in custody status, finding that he lacked jurisdiction to set bond. The appellant appealed that decision which was dismissed. The applicant was admitted pursuant to the Visa Waiver Program and was in asylum-only proceedings. Here, in the case at bar, petitioner is not eligible and is

currently not in asylum proceedings. Petitioner was admitted as a WT Waiver Tourist under the Visa Waiver Program (VWP).

11. Petitioner has remained continuously in the U.S. and has never departed. The Petitioner is being held by Immigration and Customs Enforcement (ICE) at the Camp East Montana Detention Facility in El Paso, Texas.

12. Before his detention, the Petitioner resided with his U.S. citizen wife, Tiffany Smith Culleton, in Wakefield, Massachusetts, where the couple had maintained a shared household for nearly four years. Their relationship is genuine, longstanding, and supported by substantial documentary evidence, including a pending Form I-130 Petition for Alien Relative, which was filed by Mrs. Culleton in March 2025. The Petitioner and his wife are both scheduled for their marriage based green card interview which was originally scheduled for November 5, 2025. Due to Petitioner's current and continued detention, the interview date has been moved to December 8, 2025.

13. On or about September 2025, the Respondent was stopped by local police outside a Home Depot in Massachusetts for a routine license plate check. Although he was cooperative and presented a valid identification, he was detained and transferred to ICE custody in Buffalo, New York. The Petitioner was subsequently transferred to the detention facility in ERO EL Paso Camp East, Montana.

14. The Petitioner has no criminal history whatsoever – no arrests, convictions, or pending charges of any kind. He has resided in the United States continuously since 2009, has deep community ties in Massachusetts, and is self-employed as a plasterer, operating independently and contributing to numerous residential and municipal projects across the state.

15. On October 6, 2025, Petitioner filed a request for a bond redetermination hearing pursuant to 8 U.S.C. § 1236. On October 16, 2025, the immigration judge granted his bond request and ordered him released from custody with a bond in the amount of $4,000.00.
16. In reliance on the order of the Immigration Judge granting bond in the amount of $4,000.00, Petitioner's U.S. Citizen spouse posted bond, which was accepted and approved by ICE. The Petitioner and his U.S. citizen spouse had already been scheduled for their marriage-based adjustment interview for Wednesday, November 5, 2025.
17. The Department of Homeland Security (DHS) filed a Motion to reconsider the custody determination rendered by the Immigration judge, granting the $4,000 bond because the Petitioner had been admitted under the Visa Waiver Program (VWP) and would not be placed in removal proceedings under 8 CFR § 1240, arguing that the judge had no authority to review the Petitioner's conditions of detention pursuant to the Board of Immigration Appeals (BIA) decision in *Matter of A-W-,25* I&N Dec. 45 (BIA 2009). On November 3, 2025, the immigration judge agreed with DHS that the Court lacked jurisdiction to grant bond in that case and revoked the earlier order granting bond.
18. Petitioner's November 5, 2025, marriage-based adjustment interview before the USCIS office in Boston which would lead to a grant of his lawful permanent resident status (green card) could not be conducted given the location of the Petitioner's detention. Petitioner's immigration attorney sought a short continuance of the green card interview so that the Petitioner can seek relief from this Court.
19. Accordingly, to vindicate Petitioner's statutory, constitutional, and regulatory rights, this Court should grant the instant petition for a writ of habeas corpus.
20. Petitioner asks this Court to find that the actions of the Respondents in indefinitely

detaining him without charge violates his statutory, regulatory, and due process rights. Petitioner requests this Honorable Court to order DHS to release him from custody in accordance with Petitioner's due process rights. Petitioner requests in the alternative that this court order Petitioner's scheduled marriage-based adjustment of status interview be held within the next seven (7) days and accommodations made for Petitioner to attend this hearing in person or through remote technology in order to adjudicate his green card application and effect his release from custody.

JURISDICTION

1. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article 1, § 9, cl. 2 of the U.S. Constitution (Suspension Clause).
2. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All-Writs Act, 28 U.S.C. § 1651.
3. This Court may retain jurisdiction over challenges to the legality of detention in the context of immigration. Non-citizens can raise "constitutional challenges regarding the availability of bail" in court. Id. (*citing Demore v. Kim,* 538 U.S. 510, 516 (2003)).

VENUE

1. Venue is proper because Petitioner is detained by Immigration and Customs Enforcement (ICE) at the Camp East Montana Detention Facility in El Paso, Texas, which is within the jurisdiction of the Western District of Texas.
2. Venue is proper in this District because Petitioner is now detained in Texas. Venue is proper under 28 U.S.C. §§ 1391(b)(2). Petitioner is detained within this District, and a

substantial part of the event giving rise to the claim occurred within this District.

REQUIREMENTS OF 28 U.S.C. § 2243

1. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).
2. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

1. Petitioner is a native and citizen of Ireland who lawfully entered the United States on March 1, 2009, with WT. Before his detention by ICE, the Petitioner resided with his U.S. citizen wife, Tiffany Smith Culleton, in Wakefield, Massachusetts, where the couple had maintained a shared household for nearly four years.
2. The Petitioner is being held by Immigration and Customs Enforcement (ICE) at the Camp East Montana Detention Facility in El Paso, Texas. He is in custody and under the direct control of Respondents and their agents.
3. Respondents are officers, employees, or agencies of the United States.
4. Respondent, Mary De Anda-Ybarra, is the Field Office Director at Immigration and Customs Enforcement.

5. Respondent Todd Lyons is sued in his official capacity as the Acting Director for the U.S. Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and has the authority to release Petitioner.
6. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she administers the Department of Justice, including EOIR, the BIA, and the Immigration Courts, having the authority to adjudicate removal cases and to oversee the EOIR which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.
7. Respondent Kristi Noem is sued in her official capacity as the U.S. Secretary of Homeland Security and administers the Department of Homeland Security (DHS). Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees the U.S. Immigration and Customs Enforcement/U.S. Customs and Border Protection, the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.
8. Respondent Angel Garite is sued in his official capacity as Assistant Field Office Director of the El Paso Field Office of U.S. Immigration and Customs Enforcement, and Enforcement Removal Operations.
9. All Respondents are named in their official capacities. One or more of the respondents is Petitioner's immediate custodian.

STATEMENT OF FACTS

1. Petitioner, Seamus Thomas Culleton, is a 42-year-old native and citizen of Ireland who lawfully entered the United States on March 1, 2009, with WT. Since his arrival, he has

remained continuously in the United States and has never departed. The Petitioner is being held by Immigration and Customs Enforcement (ICE) at the Camp East Montana Detention Facility in El Paso, Texas.

2. Before his detention, the Petitioner resided with his U.S. citizen wife, Tiffany Smith Culleton, in Wakefield, Massachusetts, where the couple had maintained a shared household for nearly four years. Their relationship is genuine, longstanding, and supported by substantial documentary evidence, including a pending Form I-130 Petition for Alien Relative, which was filed by Mrs. Culleton in March 2025 and remains under active review by U.S Citizenship and Immigration Services (USCIS).
3. On or about September 2025, the Respondent was stopped by local police outside a Home Depot in Massachusetts for a routine license plate check. Although he was cooperative and presented a valid identification, the encounter led to notification to Immigration and Customs Enforcement (ICE). He was detained and transferred to ICE custody in Buffalo, New York. The Petitioner was subsequently transferred to the detention facility in ERO EL Paso Camp East, Montana.
4. The Petitioner has no criminal history whatsoever – no arrests, convictions, or pending charges of any kind. He has resided in the United States continuously since 2009, has deep community ties in Massachusetts, and is self-employed as a plasterer, operating independently and contributing to numerous residential and municipal projects across the state.
5. On October 6, 2025, Petitioner filed a request for a bond redetermination hearing pursuant to 8 U.S.C. § 1236. On October 16, 2025, the Immigration Judge granted his bond request and released him from custody with a bond set at 4,000.00.

6. In reliance on the order of the Immigration Judge granting bond for $4,000.00, Respondent's U.S. Citizen spouse posted bond, which was accepted and approved by ICE. The Respondent and his U.S. citizen spouse had already been scheduled for their marriage-based adjustment interview for Wednesday, November 5, 2025.
7. The DHS filed a Motion to reconsider the custody determination rendered by the Immigration judge, granting the $4,000.00 bond on the basis that the judge had no authority to review the Petitioner's conditions of custody. On November 3, 2025, the immigration judge agreed with DHS that the Court lacked jurisdiction to grant bond in that case. He therefore revoked the earlier order granting the bond.
8. Petitioner and his U.S. citizen spouse's marriage-based adjustment interview was impossible to conduct, given the location of the Petitioner's detention and accommodations requested by Petitioner's immigration attorney for USCIS officer to conduct the interview in Texas or allow Petitioner to attend remotely were denied by Respondent. Immigration attorney thereafter sought a short continuance for the adjustment interview so that the Petitioner can seek relief from this Court by securing his release from custody.
9. The actions of the government in detaining Petitioner under the provisions of 8 U.S.C. § 1187 (c)(2)(E), while the Petitioner's marriage-based adjustment of status interview has been scheduled with a viable relief in sight, is unconstitutional. Pursuant to *Matter of A-W-, 25 I & N Dec. 45*, the Immigration Judge does not have jurisdiction over the Petitioner's bond hearing. However, DHS has jurisdiction to release Petitioner from custody in light of his viable immigration relief in sight. In *Zadvydas v. Davis, 533 U.S. 678 (2001)*, the Court held that when the government cannot show that removal is

reasonably foreseeable, the person must be released into the community under supervision. In the case at bar, the government cannot show that removal of the Petitioner from the U.S. is reasonably foreseeable as Petitioner was admitted into the U.S. and has a scheduled marriage-based adjustment of status interview. The scheduled interview provides a viable relief for the issuance of Petitioner's green card. The DHS also has jurisdiction to release Petitioner from custody as this court is not bound by the decision of the Board of Immigration Appeals as held in *Matter of A-W-, 25 I & N Dec. 45.*

10. Pursuant to § 217.4(b), Petitioner is not deportable as he does not fall under any of the grounds of deportability listed in § 237. 8 U.S.C. 1103, 1187; 8 CFR part 2. Following this, DHS is constitutionally required to follow due process and is prohibited from the arbitrary denial of life and liberty of the Petitioner as provided in the Fifth Amendment of the U.S. Constitution.
11. Accordingly, to vindicate Petitioner's statutory, constitutional, and regulatory rights, this Court should grant the instant petition for a writ of habeas corpus.
12. Petitioner asks this Court to find that the actions of the Respondents in indefinitely detaining him without charge or initiating removal proceedings violate his statutory, regulatory, and due process rights.
13. Petitioner requests that this Honorable Court find that the actions of the Respondents in misclassifying Petitioner's detention status as being subject to 8. U.S.C. § 1225 violates his statutory, regulatory, and due process rights under the U.S. Constitution.

LEGAL FRAMEWORK

1. "In our society, liberty is the norm, and detention before trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).
2. This fundamental principle of our free society is enshrined in the Fifth Amendment Due Process Clause, which forbids the Government to. "deprive" any "person. . . of... . liberty. . . without due process of the law." U.S. Constitution. Amend V.
3. "The Due Process Clause applies to all 'persons' within the United States, including noncitizens, 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) ("Aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to the traditional standards of fairness encompassed in due process of law").
4. "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.
5. The INA gives the government discretion to detain some noncitizens pending a decision on whether to remove them from the country but requires the Government to detain others under two relevant statutory provisions: 8 U.S.C. §§1225 and 1226.
6. 8 U.S.C. § 1225 governs the detention and removal of noncitizens who have not been "admitted" under the INA. An "applicant for admission" is defined by statute as "a [noncitizen] present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including a[] [noncitizen]

who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1)

7. In the case of a [noncitizen] who is an applicant for admission, if the examining officer determines that a [] [noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a proceeding under § 1229(a). 8 U.S.C. § 1225(b)(2)(A).
8. Other than for a limited exception, detention under § 1225(b)(2) is mandatory and the noncitizen is not entitled to a bond hearing. *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). Neither section provides for a bond hearing.
9. However, pursuant to 8 U.S.C. § 1226, a noncitizen who is arrested and detained faces three(3) potential outcomes during the pendency of their removal proceedings; the Attorney General "may continue to detain the arrested noncitizen'; the Attorney General "may release the noncitizen on bond of at least $1,500.00"; or the Attorney General "may release the noncitizen on conditional parole. *Id.*
10. § 1226(a) therefore "establishes a discretionary detention framework for noncitizens." The only exception to § 1226(a)'s discretionary detention is the Attorney General's authority "to take into custody" any citizen involved in certain enumerated criminal activities. 8 U.S.C. § 1226(c)(1). In this case, Petitioner has no criminal record.
11. The Supreme Court distinguished the two statutes as follows, " U.S. immigration law authorizes the Government to detain certain noncitizens seeking *admission* into the country under §§ 1225(b)(1) and (b)(2)," "[i]t also authorizes the Government to detain certain noncitizens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)," *Jennings v. Rodriguez*, 583 U.S. 281, 288-89. ". . .once inside

the United States. . . . a noncitizen present in the country may still be removed" under § 1226." *Id.* at 288.

12. Pursuant to § 1226(a), an immigration officer shall make an initial individualized custody determination, and the officer may release a noncitizen if they determine, "that such release would not pose a danger to property or person, and that the noncitizen is likely to appear for any future proceedings. 8 C.F.R. § 236.1(c)(8) (2025). If the noncitizen disagrees with the custody determination, then § 1226(a) enables them to request a bond hearing before an immigration judge, at which time the government bears the burden of proof that continued detention is justified. If the government fails to meet their burden, bond must be granted.
13. Individuals "seeking admission" at the border who are placed in removal proceedings are subject to detention without a bond hearing under 8 U.S.C. § 1225(b)(2). See Jennings at 287. (Describing § 1225 as relating to "borders and port of entry"). Humanitarian parole may facilitate these individuals release from custody. 8 U.S.C. § 1182(d)(5)(A).
14. Individuals arrested inside the United States are generally placed into removal proceedings under 8 U.S.C. § 1229(a) during which an immigration judge and may be later on the Board of Immigration Appeal and a U.S. Court of Appeal will decide whether or not the noncitizen remains in the United States or gets deported in the event the relief they sought is denied.
15. While proceedings under § 1229(a) is ongoing, many of the noncitizens are eligible for release on bond pursuant to § 1226(a) following a custody redetermination hearing before an immigration judge to determine whether they should be detained or released. See 8 C.F.R. §§ 1003.19(a), 1234.1(d).

16. A bond hearing with strong procedural protection is not a mere regulatory grace; it is the baseline Due Process requirement for § 1226 detainees.

17. The Supreme Court have recognized only one exception to this constitutional requirement for a bond hearing for § 1226 detainee: in *Denmore v. Kim*, the Court held that under 8 U.S.C. § 1226(c), there is a narrow category of people who can be held in mandatory detention for a brief period of time, if the person has conceded removability and has been convicted of certain crimes following all of the due process afforded by a criminal adjudication. See 538 U.S. 510, 513 (2003).

18. This system in which people arrested inside the United States are generally eligible for bond hearing and released during immigration proceedings, has existed essentially in its current form since Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, DIV. C, § 3003, 110 Stat. 3009-546, 3009-585 to 3009-587 (codified as 8 U.S.C. § 1226). According to IIRIRA's legislative history, § 122(a) was intended to "restate[] the [then-}current provisions in § 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." See *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting H.R. Rep No. 104-469, at 229 (1996)). It also reflected nearly a century of law in the United States of allowing people inside the country to seek release while the government decided whether or not to deport them. See 34 Stat. 904-05, § 20 (1907) (providing for release on bond for noncitizens alleged to have entered the United States unlawfully); 39 Stat. 874, 890-91, §§ 19, 20 (1917) (similar); 66 Stat. 163, §§ 241(a)(2), 242(a) (1952) last codified at 8 U.S.C. § 1252(a)(1)

(1944)) (providing for release on bond, including for noncitizens alleged to have entered the United State without inspection).

19. This eligibility for a bond hearing and potential release has applied to people arrested in the United States, regardless of whether they initially entered the country with permission. Indeed shortly after IIRIRA's enactment, the former Immigration and Naturalization Services and the Executive Office for Immigration Review ("EOIR which houses the Immigration Courts and BIA) issued an interim rule to implement the statute that expressly stated: "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bon redetermination." 62 Fed Reg. 10312, 10323 (Mar. 6, 1997).

20. It was in late 2022 that this misclassification started at the Tacoma Washington Immigration Court, detaining respondents who entered the United States without inspection as mandatory detainees under § 1225(b)(2). See Rodriguea, 779 F. Supp. 3d at 1244. However, the U.S. District Court for the Western District of Washington ruled that the practice was "likely illegal" in April 2025 and ordered a bond hearing for the detainee. *See Id.* at 1246.

21. In July of 2025, the DOJ adopted the Tacoma, Washington Court's unlawful practice nationwide, with DHS requesting that immigration judges misclassify bond-eligible detainees under § 1226 as mandatory § 1225(b)(2 detainees and refusing to conduct hearings on that basis. See Interim Guidance Regarding Detention Authority for Applicants for Admission, https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

22. On September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 21 (B.I.A 2025) ("*Matter of Hurtado*"), the BIA issued a precedential decision that purports to require all Immigration Judges to misclassify people in this manner. Following the Matter of Hurtado, multiple federal courts have already ruled that the BIA's decision is not entitled to any deference under *Loper Bright Enters. V. Raimondo*, 603 U.S. 369, 412-13 (2024), rejecting the BIA's decision as contrary to the law. ("[T]he Court disagrees with the BIA for the reason

23. Consequently, people like Petitioner were denied bond and held as mandatory detainees under § 1225(b)(2).

24. As a person arrested inside the United States and held in civil immigration detention for pending removal proceedings. Petitioner is subject to detention pursuant to 8 U.S.C. § 1226. See, e.g., Romero, 2025 WL 2403827, at *1, 8-13. Petitioner has no criminal record that could subject him to the mandatory detention provision under 8 U.S.C. § 1226(c) and therefore is subject to detention, if at all, pursuant to 8 U.S.C. § 1226(a).

25. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his request, receive a bond hearing with strong procedural protections. See Hernandez-Lara, 10 F. 4th at 41; Doe, 11 F. 4th at 2; Brito, 22 F. 4th at 256-57 (affirming class-wide declaratory judgment); 8 C.F.R. §§ 236.1(d), 1003.19(a)-(f).

26. Petitioner requests release from custody pursuant to § 217.4(b), § 237. 8 U.S.C. 1103, 1187; 8 CFR part 2, Fifth Amendment. U.S. Const.

27. Petitioner is held as a mandatory detainee under the unlawful authority of 8 U.S.C. § 1225(b)(2).

ARGUMENT

1. The Department of Homeland Security (DHS) admitted in their filing of their Motion to reconsider the custody determination that because the Petitioner had been admitted under the Visa Waiver Program (VWP), they would not be placed in removal proceedings under 8 CFR § 1240, and on the basis that the judge had no authority to review the Petitioner's conditions of detention.
2. Fifth Amendment Due Process Clause forbids the Government from depriving any person of Liberty without due process of the law. The Due Process Clause applies to all 'persons' within the United States, including noncitizens, 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) ("Aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to the traditional standards of fairness encompassed in due process of law").
3. The Respondents have already admitted that they don't intend to accord the Petitioner an opportunity before an Immigration Judge, have opposed their bond, and have not charged the Petitioner with anything. 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. (See *Zadvydas*, 533 U.S. at 678.)

CLAIMS FOR RELIEF

COUNT ONE
VIOLATION OF 8 U.S.C. § 217.4 & ASSOCIATED REGULATIONS

1. The allegations in the above paragraphs are realleged and incorporated herein.
2. Petitioner may be detained if at all, pursuant to 8 U.S.C. § 217.4.
3. Under § 217.4 and its associated regulations, Petitioner is entitled to be released from custody. See § 217.4(b), § 237. 8 U.S.C. 1103, 1187; 8 CFR part 2.
4. Petitioner is scheduled for marriage-based adjustment of status interview and has a viable relief.
5. For these reasons, Petitioner's continued detention is unlawful.

COUNT TWO
VIOLATION OF THE SUBSTANTIVE DUE PROCESS PROTECTIONS OF THE FIFTH AMENDMENT RIGHT OF THE CONSTITUTION
(Failure to Release Petitioner Pursuant to § 217.4(b))

1. The allegations in the above paragraphs are realleged and incorporated herein.
2. Because Petitioner is subject to the statutory provisions of § 217.4(b), § 237. 8 U.S.C. 1103, 1187; 8 CFR part 2, his Due Process rights under the Fifth Amendment was violated.
3. Petitioner's continued detention is therefore unlawful.

COUNT THREE
VIOLATION OF THE SUBSTANTIVE DUE PROCESS PROTECTIONS OF THE FIFTH AMENDMENT RIGHT OF THE CONSTITUTION

1. The allegations in the above paragraph are realleged and incorporated herein.
2. The Fifth Amendment's Due Process Clause specifically forbids the Government
3. to "deprive[" any person. . . of. . . liberty. . .without. . ..due process of law." U.S. Const. amend.
4. "[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*,

533 U.S. at 693; cf. *Dep't of Homeland Sec.* v. *Thuraissigiam*, 591 U.S. 103, 139-40 (2020) (holding noncitizen's due process rights were limited where the person was not residing in the United States but rather had been arrested 25 yards into the U.S. territory, apparently moments after he crossed the border while he was still "on the threshold").

5. "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. 678 at (2001).
6. The Supreme Court "has repeatedly recognized that civil commitment or any purpose constitutes a significant deprivation of liberty that requires due process protection," including individualized detention hearings. *Addington*, 441 U.S. at 425; see also *Salerno*, 481 U.S. at 755; *Foucha,* 504 U.S. at 81-83; *Hendricks*, 521 U.S. at 357.
7. Petitioner's continued detention is therefore unlawful regardless of what statute might apply to purportedly authorize such detention.

COUNT FOUR
VIOLATION OF PROCEDURAL DUE PROCESS PROTECTIONS OF THE FIFTH AMENDMENT OF THE CONSTITUTION

1. The allegations in the above paragraphs are realleged and incorporated herein.
2. The procedural due process guarantee of the Fifth Amendment requires that individuals be provided notice and an opportunity to be heard before being deprived of liberty or property interests. *Mathews v. Eldridge, 424 U.S. 319, 332 (1976).*
3. One of the first inquiries in any case of violation of procedural due process is whether the plaintiff has a protected property or liberty interest and, if so, the extent or scope of that interest. *Bd of Regents of State Colls. V. Roth, 408 U.S. 564, 569-70(1972).* Reliance on

government policies and assurances may give rise to protected expectations under the Due Process Clause. *Perry v. Sindermann, 408 U.S. 593, 601-03 (1972).*

4. Under the familiar *Eldridge* Due Process test, the government's decision to arrest and detain the petitioner without any notice or opportunity to respond clearly violates his procedural due process rights. Petitioner's continued detention in light of the pending marriage-based adjustment of status interview deprives him of his protectable liberty interests.
5. First, Petitioner has a substantial, legally protectable liberty interest, created as he was admitted into the U.S. under the Visa Waiver Program (VWP). This protectable liberty interest prevents the government from depriving him of liberty without fair procedures and due process. Second, the consequences of erroneously depriving the Petitioner of that interest is severe, as he has a scheduled marriage-based adjustment of status interview which would provide him a viable relief for his green card. Third, the government's interest in detaining the Petitioner is minimal. The Petitioner cannot be deported as he is not in removal proceedings and does not present any flight risk or danger. Petitioner has been a continuous resident since 2009; he is married to his U.S. Citizen Spouse which accounts for his strong ties to the U.S. Petitioner also came into the country legally through the Visa Waiver Program. His detention is not rationally related to any purpose.
6. Petitioner's continued detention without an opportunity to be heard violates his procedural due process rights under the Fifth Amendment of the Constitution.

COUNT FIVE
VIOLATION of ADMINISTRATIVE PROCEDURE ACT (5 U.S.C. § 706)

1. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

2. The Administrative Procedure Act provides that courts "shall....hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or is "unsupported by substantial evidence." 5 U.S.C. § 706(2)(A), (E).
3. The BIA's decision in Matter of Hurtado is unlawful because it violates the Administrative Procedure Act, and because that decision is arbitrary, capricious, and contrary to law. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).
4. Petitioner being held in detention, while the Petitioner's marriage-based adjustment of status interview has been scheduled with a viable relief in sight, is unconstitutional. It is an abuse of discretion and based on the provisions of the Administrative Procedure Act, Petitioner should be released from custody.
5. Petitioner's detention is therefore unlawful.

COUNT SIX
VIOLATION OF THE FOURTH AMENDMENT OF THE CONSTITUTION AND 8 U.S.C. § 1357(A)(2)

1. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth therein.
2. The Fourth Amendment protects "[t]he right of the people to be secure in their persons...against unreasonable searches and seizures." U.S. Const. amend. IV. The Supreme Court has consistently recognized that immigration arrests and detentions are "seizures" within the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza, 468 U.S. 1032, 1044 (1984)* (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the "seizure" of the person).

3. The Fourth Amendment requires that all arrests entail a neutral, judicial determination of probable cause. See *Gerstein v. Pugh, U.S. 103, 114 (1975).* The neutral judicial determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in the form of a prompt judicial probable cause determination. *See id.* Arrest and detention of a person, including of a non-citizen, absent a neutral, judicial determination of probable cause violates the Fourth Amendment of the Constitution. *Id.;* see also *Cnty. Of Riversisde v. McLaughlin, 500 U.S. 44, 57 (1991).* This determination must occur within 48 hours of detention, which includes weekends, unless there is a bona fide emergency or other extraordinary circumstance. See *Cnty. Of Riverside v. McLaughlin, 500 U.S. 44, 57 (1991).*

4. Congress enacted a strong preference that immigration arrests be based on warrants. See *Arizona v. U.S., 567 U.S. 387, 407-08(2012).* The Immigration and Nationality Act thus provides immigration agents with only limited authority to conduct warrantless arrest. 8 U.S.C. § 1357 (a) (2). Specifically, an officer must have "reason to believe" the person is violating the immigration laws and that the person "is likely to escape before a warrant can be obtained." *Id.* Federal regulations track the limitations on warrantless arrests. See 8 C.F.R. § 287.8(c)(2)(ii).

5. Here, at the moment of seizure, Petitioner had a scheduled marriage-based adjustment of status interview, and he lawfully entered into the U.S. under the Visa Waiver Program.

6. Therefore, there is no reasonable belief that he was likely to escape before a warrant could be obtained. See U.S.C. § 1357 (a) (2).

7. Without a statutory basis to arrest, the Government is required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding

the Petitioner. *Gerstein, 420 U.S. at 114; McLaughlin, 500 U.S. at 56-57.* Petitioner received no judicial determination, and his detention continued well beyond 48 hours, rendering it presumptively unconstitutional.

8. The Government cannot salvage this seizure by invoking generalized immigration enforcement interests. The Fourth Amendment's reasonableness inquiry is fact-specific and demands individualized justification for both the arrest and the extended detention. See *United States v. Brignoni-Ponce, 422 U.S. 873, 882-84 (1975); Gerstein, 420 U.S. at 114.*
9. The Petitioner warrantless arrest occurred in violation of the clear, narrow circumstances permitted by statute. There has been no finding of probable cause or other determination by a neutral magistrate that would cure this infirmity; his arrest lacked any legal basis and there continues to be no legal basis for his detention. Therefore, his arrest and ensuing detention constitutes an unreasonable and unlawful seizure in violation of the Fourth Amendment.

PRAYER FOR RELIEF

1. Wherefore, Petitioner respectfully requests this Court to grant the following:
2. Assume jurisdiction over this matter;
3. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
4. Order that Petitioner shall not be transferred outside the Western District of Texas.
5. Declare Petitioner's detention unlawful as violative of the Due Process Clause of the Fifth Amendment, Fourth Amendment and § 217.4(b), § 237. 8 U.S.C. 1103, 1187; 8 CFR part 2.

6. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately or in the alternative, order Respondents to release Petitioner if he is nor provided a bond hearing within seven (7) days after the Court's order;
7. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
8. Grant any further relief this Court deems just and proper.

Dated: November 17th, 2025

Respectfully submitted,

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Seamus Thomas Culleton, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 17th day of November, 2025.

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