

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

**JOSE MELVIN ROMERO CASTRO,** )

*Petitioner,* )

v. )

**KRISTI NOEM**, in her official capacity as )  
Secretary of the Department of Homeland )  
Security; **PAMELA BONDI**, in her official )  
capacity as Attorney General of the United )  
States; **TODD LYONS**, in his official )  
capacity as Acting Director and Senior )  
Official Performing the Duties of the )  
Director of U.S. Immigration and Customs )  
Enforcement; **MARY DE ANDA-YBARRA**, )  
in her official capacity as Field Office Director )  
of the El Paso Field Office of U.S. Immigration )  
and Customs Enforcement, Enforcement and )  
Removal Operations; **JOHN DOE**, in his official )  
capacity as Warden of the ERO El Paso Camp East )  
Montana Facility, )

*Respondents.* )

Case No. 3:25-cv-00611 ROMERO CASTRO v. Noem et al

**PETITION FOR WRIT OF  
HABEAS CORPUS**

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

Petitioner, Jose Melvin Romero-Castro, by and through undersigned counsel Luis Angeles, Esq., respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to challenge his unlawful and prolonged civil immigration detention by the United States Department of Homeland Security (“DHS”) and Immigration and Customs Enforcement (“ICE”). Petitioner is a 23-year-old citizen of El Salvador currently detained at the East Montana Detention Center in El Paso, Texas, within the jurisdiction of the Western District of Texas. He has remained in continuous DHS custody since October 30, 2025, when ICE took custody of him following a state arrest that resulted in no formal criminal charges being filed.

Petitioner entered the United States as a minor in December 13, 2016, at age seventeen, and has now resided in this country for nearly a decade. In March 31, 2021, he filed an application for asylum, withholding of removal, and protection under the Convention Against Torture, which remains pending and has accrued more than 1,600 days on the asylum clock. Petitioner has longstanding family and community ties in the United States, including a brother who has provided supporting documentation and who maintains his own pending asylum application. Petitioner has also maintained consistent employment and engage in artistic and professional work in the music industry. He has no disqualifying criminal convictions, no history of violence, and no evidence indicates that he poses a danger or a flight risk.

Despite these substantial equities, DHS has continued to detain Petitioner without ever providing a constitutionally adequate custody hearing before a neutral decisionmaker. Petitioner’s attempts to secure custody review have been foreclosed by shifting jurisdictional interpretations within the immigration court system. On November 12, 2025, Immigration Judge (“IJ”) concluded that he lacked jurisdiction to consider bond altogether, relying on *Matter of Yajure-Hurtado*, 29 I.

& N. Dec. 216 (BIA 2025). As a result, Petitioner has been left with no administrative mechanism to obtain custody review of any kind.

Petitioner's ongoing detention violates the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment, *Accardi* Doctrine, and fundamental constitutional safeguards governing civil detention. Petitioner has never received an individualized bond hearing, has never been adjudicated a danger or a flight risk, and continues to be confined for a prolonged and unreasonable period while his removal proceedings remain pending despite previously grant bond on February 28, 2024. His detention no longer bears a reasonable relation to any legitimate governmental purpose and has become arbitrary, excessive, and unlawful.

Because Petitioner has been denied any meaningful opportunity to seek release, and because his continued detention is unreasonable and contrary to constitutional and statutory limits, habeas corpus relief is warranted.

### **JURISDICTION AND VENUE**

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.* This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner challenges the legality of his ongoing civil immigration detention and seeks relief that is within the traditional scope of habeas corpus. Jurisdiction also lies under 28 U.S.C. § 1331, as this petition raises federal questions arising under the Constitution, laws, and treaties of the United States. The Suspension Clause of the United States Constitution further guarantees Petitioner's right to seek habeas corpus review where no other adequate remedy exists.
2. The 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. Congress has preserved judicial review of challenges to mandatory immigration

detention. *See, e.g., Nielsen v. Preap*, 139 S. Ct. 954, 961-62 (2019); *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (distinguishing reviewable statutory claims from unreviewable discretion under 8 U.S.C. § 1226(e)).

3. Although 8 U.S.C. § 1226(e) bars review of the Attorney General's discretionary judgments in releasing or detaining aliens, it does not preclude judicial review of questions of law or constitutional claims arising from immigration detention. Petitioner is not asking this Court to second-guess an immigration judge's discretionary bond determination; rather, he challenges the Department of Homeland Security's legal authority to subject him to mandatory detention in the first place, and the constitutionality of his prolonged detention without bond. Such claims are squarely within the scope of habeas review. Indeed, the Supreme Court and Tenth Circuit have long recognized that federal courts retain habeas jurisdiction to review the statutory and constitutional bases of immigration detention despite jurisdiction-stripping provisions, as such review is a core Great Writ function. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).
4. Venue is proper in the United States District Court for the Western District of Texas, El Paso Division, pursuant to 28 U.S.C. § 1391(e), because Petitioner is detained within this District at the East Montana Detention Center in El Paso, Texas.

#### PARTIES

5. Petitioner Jose Melvin Romero-Castro is a citizen and national of El Salvador who is currently detained at the East Montana Detention Center in El Paso, Texas. He is held in the civil immigration custody of the United States Department of Homeland Security. Petitioner brings this habeas action to challenge the legality of his prolonged and unconstitutional immigration detention.

6. Respondent Kristi Noem is the U.S. Secretary of Homeland Security and is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103 and overseeing Immigration and Customs Enforcement and the Office of Refugee Resettlement.
7. Respondent Pamela Bondi is the United States Attorney General. She oversees immigration judges and the Board of Immigration Appeals.
8. Respondent Todd Lyons is the Acting Director for ICE and is responsible for ICE's policies, practices, and procedures, including those relating to the detention of noncitizens during their removal procedures.
9. Respondent Mary De Anda-Ybarra, the Field Office Director of the ICE El Paso Field Office oversees immigration functions and supervisory responsibilities relevant to Petitioner's detention and is included as a respondent in her official capacity.
10. Respondent, Warden of the ERO El Paso Camp East Montana, is Petitioner's immediate custodian. The Warden exercises direct physical control over Petitioner's confinement and is a proper respondent under the immediate-custodian rule governing habeas corpus petitions.

#### **FACTUAL BACKGROUND**

11. Petitioner Jose Melvin Romero-Castro is a 23-year-old citizen and national of El Salvador. He entered the United States as a minor in December 13, 2016 at approximately seventeen years old after fleeing persecution and unsafe conditions in his home country.
12. After crossing the Rio Grande near the southwest border, Petitioner was encountered by U.S. Border Patrol agents several hours later. According to the government's Form I-213, he was transported to the McAllen Border Patrol Station and processed under § 240 of the Immigration and Nationality Act and detained under § 236 of the INA. Petitioner expressed

fear of returning to El Salvador and was issued a Notice to Appear (I-862), Arrest Warrant (I-200), and Notice of Custody Determination (I-286).

13. Petitioner has no criminal convictions, no history of violence, and has consistently complied with immigration authorities. He has resided in the United States for nearly a decade, has deep family ties—including a brother with a pending asylum application—and has maintained steady employment and artistic work in the music industry.
14. In March 2021, Petitioner filed an application for asylum, withholding of removal, and Convention Against Torture protection. This application remains pending and has accrued over 1,000 days on the asylum clock. Petitioner continue to pursue his claims in good faith.
15. On December 19, 2023, Petitioner was arrested by the Texas Department of Public Safety for Smuggling of Persons—Pecuniary Benefit, a charge for which no formal case has ever been filed. He was booked into the El Paso County Detention Facility, and on December

28, 2023, ICE assumed custody and transferred him to the East Montana Detention Center in El Paso, Texas.

16. Petitioner first sought custody redetermination on February 15, 2024. The Immigration Judge did not rule on the request, stating only that counsel required additional time to supplement the record. No individualized bond assessment was conducted.
17. On February 28, 2024, a different Immigration Judge granted Petitioner's request for release, ordering that he be released on his own recognizance or under a \$5,000 bond, with ATD supervision at DHS's discretion.
18. On October 30, 2025, Petitioner's criminal charges for Smuggling of Persons were dismissed.
19. On October 30, 2025, Petitioner was redetained by DHS after he left the El Paso District Court house for the dismissed criminal charges.
20. On November 12, 2025, Petitioner again sought custody review. The Immigration Judge denied jurisdiction entirely, relying on *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and concluding that the immigration court lacked authority to consider any bond request. As a result, Petitioner was left with no mechanism for administrative custody review.
21. Petitioner has no criminal history, no disciplinary infractions during detention, and no evidence suggesting that he poses a danger or a flight risk. His longstanding residence in the United States, stable family support, and pending asylum claim all weigh heavily in favor of release.
22. Because the Immigration Judge concluded that he lacked jurisdiction to provide a bond hearing, Petitioner now faces prolonged and potentially indefinite civil detention. He

remains confined in restrictive, penal-like conditions despite having no criminal background, no risk profile, and a viable claim for humanitarian protection.

23. Petitioner's continued detention—based solely on a jurisdictional classification and without any opportunity for individualized custody review—violates the Immigration and Nationality Act, the Fifth Amendment's Due Process Clause, *Accardi* Doctrine, and longstanding constitutional protections that prohibit arbitrary, excessive, and indefinite civil detention.

24. As Petitioner has no administrative avenue for custody review, he now seeks habeas corpus relief to secure his immediate release or, in the alternative, to obtain a constitutionally adequate bond hearing before a neutral adjudicator with authority to consider all relevant factors.

#### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

25. Petitioner has no administrative remedies to exhaust.

26. Petitioner's request for custody redetermination was denied due to a lack of jurisdiction.

27. As such, Petitioner's continued detention in ICE custody cannot be challenged by way of bond proceedings before the Immigration Judge.

28. Therefore, a writ of habeas corpus is the sole avenue to vindicate his constitutional, statutory, and regulatory rights and restore his liberty

#### **LEGAL FRAMEWORK**

29. The INA prescribes three basic forms of detention for noncitizens in removal proceedings. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. *See* 8 § 1226(a); 8 U.S.C. § 1229a. Individuals in section 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been

arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

30. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under 8 U.S.C. § 1225(b)(2).
31. Finally, the Act also provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).
32. The detention provisions at section 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(c) was most recently amended earlier this year by the LRA, Pub. L. No. 119–1, 139 Stat. 3 (2025).
33. Following enactment of the IIRIRA, the Executive Office of Immigration Review drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under section 1225 and that they were instead detained under section 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). In the decades that followed, most noncitizens who entered without inspection—unless they were subject to some other detention authority—received bond hearings. This practice was also consistent with the practice prior the enactment of the IIRIRA, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ 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 section 1226(a) simply “restates” the detention authority previously found at section 1252(a)).

34. On July 8, 2025, DHS issued a memo to all employees of Immigration and Customs Enforcement (“ICE”) stating that “[t]his message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA) [8 U.S.C. § 1225], rather than section 236 [8 U.S.C. § 1226], is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department’s legal interpretation while additional operational guidance is developed.” The memo further stated DHS’ new position with regard to custody determinations as follows:

An “applicant for admission” is an alien 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. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.** These 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. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**

Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. See <https://www.aila.org/ice-memo-interim-guidance-regarding-detention->

authority-for-applications-for-admission (last accessed August 4, 2025) (emphasis original).

35. As a result, DHS now considers *all* noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, are now considered to be subject to mandatory detention under section § 1225(b) and ineligible for release on bond. Conversely, according to DHS “[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)].” *Id.*

36. On September 5, 2025, the BIA issued a precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) holding that, based on the plain language of 8 U.S.C. § 1225(b)(2)(A), IJs lack authority to hear bond requests or to grant bond to noncitizens who are present in the United States without admission.

#### **COUNT I:**

#### **UNLAWFUL DETENTION IN VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT (INA) AND IMPLEMENTING REGULATIONS**

37. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

38. The Immigration and Nationality Act authorize civil immigration detention only when it serves a legitimate statutory purpose—namely, to ensure appearance at future proceedings or to protect public safety. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Clark v. Martinez*,

543 U.S. 371, 381 (2005). Detention that is unnecessary, arbitrary, or prolonged beyond what is reasonably required to serve these statutory objectives exceeds the government's lawful authority.

39. Petitioner is a citizen and national of El Salvador who entered the United States as a minor in 2016 and was placed in removal proceedings under § 240 of the INA. His asylum, withholding of removal, and Convention Against Torture application remains pending and has accrued more than 1,000 days on the asylum clock.
40. Petitioner has no criminal convictions, no record of violence, and no history suggesting that he poses a danger to the community or a risk of flight. Nothing in his immigration file indicates that he would fail to appear for immigration proceedings if released.
41. Petitioner has been detained continuously since December 28, 2023, when he was transferred into ICE custody and confined at the East Montana Detention Center in El Paso, Texas.
42. Petitioner sought custody redetermination on multiple occasions. On February 28, 2024, an Immigration Judge granted Petitioner's request for release on his own recognizance or under a \$5,000 bond, with alternatives to detention at DHS's discretion. Despite this grant, Petitioner remained in ICE custody.
43. On November 12, 2025, Petitioner again sought custody review. The Immigration Judge denied jurisdiction entirely, relying on *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and concluded that he lacked authority to consider bond, thereby precluding any individualized custody determination.
44. Thus, the Immigration Judge did not evaluate danger, flight risk, viability of alternatives to detention, Petitioner's strong family and community ties, or his decade-long residence in the United States. No individualized custody assessment has ever occurred.

45. Because the Immigration Judge determined that he lacked jurisdiction, Petitioner now has no administrative mechanism for custody review, effectively subjecting him to prolonged and potentially indefinite detention without statutory authority or procedural safeguards.
46. The INA does not authorize the indefinite detention of a noncitizen in pending § 240 proceedings who poses no danger or flight risk and who has never received a custody hearing before a neutral decisionmaker. See *Zadvydas*, 533 U.S. at 690–91; *Clark*, 543 U.S. at 380–81.
47. Petitioner’s continued confinement serves no legitimate statutory purpose. His detention bears no reasonable relation to ensuring his appearance or protecting public safety, and it is not tied to any imminent removal, particularly while his asylum and protection claims remain pending.
48. Petitioner’s ongoing detention—without individualized assessment, without lawful statutory justification, and without any ability to seek review—exceeds the narrow detention authority granted by Congress and violates controlling Supreme Court precedent.
49. Accordingly, Petitioner’s continued detention is unlawful under the Immigration and Nationality Act, its implementing regulations, and governing constitutional principles. Petitioner respectfully requests that this Court order his immediate release, or, in the alternative, require the government to provide a constitutionally adequate custody hearing before an Immigration Judge with authority to order release on bond.

**COUNT II:**

**VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT  
TO THE U.S. CONSTITUTION**

50. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.
51. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. Noncitizens physically present in the United States—including those who entered without inspection—are entitled to full procedural due process protections. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).
52. Petitioner is a citizen and national of El Salvador, entered the United States as a minor in 2016, and has been placed in § 240 removal proceedings. His asylum, withholding, and CAT application remains pending with more than 1,000 days on the asylum clock.
53. Petitioner has no criminal convictions, no history of violence, and has consistently cooperated with immigration authorities. Nothing in the record indicates he is a danger or a flight risk.
54. Petitioner has been detained continuously since December 28, 2023, when ICE took custody of him following a state arrest that resulted in no formal criminal charges. He is currently confined at the East Montana Detention Center in El Paso, Texas.
55. Petitioner sought custody redetermination on several occasions. On February 28, 2024, an Immigration Judge granted Petitioner release on his own recognizance or under a \$5,000 bond. Despite this grant, ICE continued to detain him.
56. Petitioner again requested custody review on November 12, 2025. The Immigration Judge denied jurisdiction entirely, relying on *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and concluding that he lacked authority to conduct any individualized custody assessment.

57. As a result, Petitioner has been deprived of any opportunity to present evidence regarding his lack of danger, his strong community ties, his decade-long residence in the United States, or the feasibility of alternatives to detention.
58. Petitioner has never received a constitutionally adequate bond hearing before a neutral decisionmaker. He has never been permitted to contest the government's assertions concerning custody classification or eligibility for release.
59. Petitioner's detention has now become prolonged. There is no statutory or administrative process available for him to obtain individualized custody review. His confinement continues without meaningful procedural safeguards despite his non-dangerousness and ongoing pursuit of protection.
60. Immigration detention implicates a fundamental liberty interest. Prolonged civil detention without an opportunity to be heard, without notice, and without adjudication by a neutral decisionmaker violates the Due Process Clause. See *Zadvydas*, 533 U.S. at 690–91.
61. The government's reliance on a categorical jurisdictional bar—rather than an individualized assessment—renders Petitioner's detention arbitrary, punitive in effect, and constitutionally infirm.
62. Petitioner's continued incarceration without an individualized custody determination violates the Fifth Amendment's Due Process Clause. Habeas relief is warranted to remedy these constitutional violations.
63. Petitioner respectfully requests that this Court order his immediate release, or, in the alternative, require a prompt and constitutionally adequate custody hearing before a neutral adjudicator with authority to consider all relevant factors and grant his release on bond.

**COUNT III:**

**VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT – ARBITRARY AND  
CAPRICIOUS AGENCY ACTION**

64. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.
65. The Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2), requires courts to “hold unlawful and set aside” agency action that is arbitrary, capricious, an abuse of discretion, or not in accordance with law. An agency must articulate a rational connection between the facts found and the decision made and must act consistently with statutory authority. *Judulang v. Holder*, 565 U.S. 42, 55 (2011).
66. DHS has acted arbitrarily and capriciously in continuing to detain Petitioner without individualized justification. Petitioner has no criminal convictions, no history of violence, no disciplinary infractions, and has consistently cooperated with immigration authorities.
67. Nothing in Petitioner’s record establishes that he poses a danger to the community or a flight risk. DHS has nevertheless maintained his detention for an extended period, and has provided no reasoned explanation as to why continued confinement is necessary to serve the narrow purposes permitted by the INA.
68. DHS failed to acknowledge that an Immigration Judge granted Petitioner’s release on February 28, 2024—ordering release on his own recognizance or under a \$5,000 bond with ATD conditions at DHS’s discretion. Despite this order, DHS continued to hold Petitioner in custody without explanation, without reconsideration, and without any review.
69. DHS then relied on the later jurisdictional ruling in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), to justify refusing Petitioner any further custody review. However,

*Yajure-Hurtado* governs the authority of Immigration Judges, not the authority of DHS to release individuals on parole, recognizance, supervision, or its own discretionary bond authority under 8 U.S.C. § 1182(d)(5)(A) and related regulations.

70. DHS's treatment of *Yajure-Hurtado* as an absolute bar to any form of custody review constitutes an unlawful, categorical detention policy that substitutes blanket rules for the individualized custody determinations the INA requires. Nothing in the INA mandates indefinite detention merely because an IJ perceives a jurisdictional limitation.
71. DHS has not conducted any meaningful custody assessment of Petitioner since his transfer to ICE custody on December 28, 2023. It has not explained why less restrictive alternatives to detention would not suffice, despite Petitioner's strong family ties, decade-long U.S. residence, pending asylum claim, and lack of criminal history.
72. DHS's failure to consider individualized factors—combined with its refusal to exercise its own discretionary release authority—constitutes arbitrary and capricious decision-making in violation of 5 U.S.C. § 706(2)(A).
73. DHS's continued detention of Petitioner is also inconsistent with the statutory purpose of civil immigration detention, which is limited to ensuring appearance at future proceedings and protecting public safety. Petitioner's confinement does not further either purpose.
74. Because DHS's actions are not grounded in reasoned decision-making, exceed the boundaries of statutory authority, and rest on an unlawful categorical approach to detention, they must be set aside under the APA.
75. Accordingly, habeas relief is warranted. Petitioner respectfully requests that this Court order his immediate release or, in the alternative, direct DHS to conduct a prompt,

individualized, and reasoned custody determination consistent with the APA and the Immigration and Nationality Act.

**COUNT IV:**

**VIOLATION OF THE EQUAL PROTECTION GUARANTEE OF THE FIFTH**

**AMENDMENT**

76. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

77. The Due Process Clause of the Fifth Amendment contains an implicit guarantee of equal protection that prohibits the federal government from treating similarly situated individuals differently without a rational and legitimate governmental purpose. *Reno v. Flores*, 507 U.S. 292, 302 (1993); *Plyler v. Doe*, 457 U.S. 202, 210 (1982); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

78. Petitioner is a citizen and national of El Salvador who entered the United States as a minor in 2016 and is currently in § 240 removal proceedings. As a respondent in § 240 proceedings, Petitioner is similarly situated to other noncitizens who ordinarily receive individualized custody determinations under INA § 236(a).

79. Petitioner has no criminal convictions, no history of violence, and has consistently cooperated with immigration authorities. Nothing in his record indicates that he is a danger to the community or a flight risk.

80. Despite being similarly situated to other § 240 respondents, Petitioner has been categorically denied access to any individualized bond hearing. DHS has asserted—based on disputed factual allegations in the Form I-213—that Petitioner’s manner of entry renders

him subject to a different custody classification. This assertion has never been evaluated by any neutral adjudicator.

81. On November 12, 2025, the Immigration Judge denied jurisdiction over Petitioner's custody redetermination request solely because of *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). As applied, this jurisdictional conclusion deprived Petitioner of the procedural protections routinely available to other § 240 detainees.
82. DHS's and EOIR's treatment of Petitioner creates a disparity between him and similarly situated noncitizens who receive individualized custody review. The Equal Protection Clause prohibits the government from treating similarly situated individuals differently without a rational basis. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).
83. There is no rational basis for treating Petitioner differently from other § 240 respondents. DHS's conclusory assertion regarding manner of entry—never tested in an evidentiary hearing—does not justify denying Petitioner the opportunity for individualized review.
84. DHS's reliance on *Yajure-Hurtado* as an absolute bar to custody review improperly transforms a jurisdictional rule into a categorical detention classification. Disparate treatment based solely on disputed allegations in a Form I-213 is arbitrary and not rationally related to any legitimate governmental purpose—particularly where Petitioner poses no danger, has no criminal record, and has deep ties to the United States.
85. Civil immigration detention must be reasonably related to its permissible purposes. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Denying Petitioner custody review while affording it to others in the same statutory posture bears no reasonable or articulable relation to ensuring appearance or protecting public safety.
86. DHS has provided no individualized explanation for why Petitioner is excluded from the custody review process available to similarly situated individuals. This unequal and

arbitrary treatment violates the equal protection guarantee embedded in the Fifth Amendment.

87. Petitioner's continued detention under an irrational and discriminatory custody classification further underscores the constitutional infirmity of his confinement.

88. Habeas relief is warranted to remedy this disparate and unconstitutional treatment. Petitioner respectfully requests that this Court order his immediate release or, in the alternative, direct DHS to provide him with the same individualized custody review afforded to similarly situated § 240 respondents.

**COUNT V:**

**VIOLATION OF THE SUSPENSION CLAUSE OF THE UNITED STATES**

**CONSTITUTION**

89. Petitioner re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

90. The Suspension Clause of the United States Constitution provides that “[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.” U.S. Const. art. I, § 9, cl. 2. The Clause guarantees the availability of judicial review to challenge the legality of executive detention. *Boumediene v. Bush*, 553 U.S. 723, 745–46 (2008); *INS v. St. Cyr*, 533 U.S. 289, 300–05 (2001).

91. Habeas corpus remains available to all individuals detained by executive authority within the United States, including noncitizens held in civil immigration custody. The Supreme

Court has expressly held that Congress may not eliminate all avenues of meaningful judicial review of the legality of detention. *St. Cyr*, 533 U.S. at 305–06.

92. Petitioner is detained solely under civil immigration authority and is currently confined at the East Montana Detention Center in El Paso, Texas. He has no criminal convictions, no history of violence, and is pursuing his asylum, withholding of removal, and Convention Against Torture claims in good faith.
93. Petitioner sought custody review on several occasions. On November 12, 2025, the Immigration Judge categorically denied jurisdiction to consider bond or conduct any individualized custody determination, relying exclusively on *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). This classification—based on disputed allegations in the Form I-213 regarding Petitioner’s manner of entry—foreclosed access to the custody redetermination process available to other § 240 respondents.
94. Because the Immigration Judge concluded he lacked jurisdiction, Petitioner has no administrative pathway to challenge the legality, length, or necessity of his detention. ICE has likewise provided no discretionary parole review or individualized custody assessment of any kind.
95. As a result, no alternative remedy exists outside of habeas corpus through which Petitioner may obtain judicial review of the legality of his confinement. Neither the Immigration Courts nor the Board of Immigration Appeals possess jurisdiction to review custody challenges arising from DHS’s classification decisions.
96. The Suspension Clause forbids the government from implementing a detention scheme that eliminates all meaningful opportunity for detainees to test the legality of their confinement. *Boumediene*, 553 U.S. at 779 (“The writ must be effective.”). When no adequate and

effective substitute exists, habeas review is constitutionally required. *St. Cyr*, 533 U.S. at 305.

97. Petitioner’s detention—prolonged, indefinite, and wholly insulated from individualized review—implicates the core protections of the Suspension Clause. Without habeas corpus, Petitioner would have no mechanism, judicial or administrative, to contest the legality of his civil confinement.
98. The government’s reliance on *Yajure-Hurtado* to categorically bar all access to custody review violates the Suspension Clause by depriving Petitioner of an effective and constitutionally required means to challenge unlawful detention.
99. Accordingly, habeas corpus relief is required. Petitioner respectfully requests that this Court order his immediate release or, in the alternative, direct Respondents to provide him with a prompt, meaningful, and individualized custody hearing before a neutral adjudicator with authority to grant release.

## COUNT VI

### VIOLATION OF THE ACCARDI DOCTRINE WITH RESPECT TO 8 C.F.R. §

#### 287.8(C)(2)(I) AND (II)

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

100. The United States has also failed to follow immigration-specific arrest and processing regulations. Regulations governing immigration enforcement require that warrantless arrests conform to the standards in 8 C.F.R. § 287.8(c). Specifically, for any arrest, immigration officers must have reason to believe that an individual committed an offense against the United States or was present illegally. 8 C.F.R. § 287.8(c)(2)(i). And,

for a warrantless arrest, officers must also have reason to believe that an individual is “likely to escape before a warrant can be obtained.” 8 C.F.R. § 287.8(c)(2)(ii).

101. At the time of the arrest and at all times since, Petitioner had a valid pending I-589 with EOIR; he fled no authority; and he posed no danger to any person or to the community at large. Therefore, Petitioner’s arrest and continued detention contravene regulations governing immigration arrests in violation of the *Accardi* doctrine.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Pursuant to 28 U.S.C. § 2243, issue an order to show cause directing Respondents to file a return within three (3) days, absent good cause for a short extension not exceeding ten days, and set the matter for a prompt hearing;
- (3) Enjoin Respondents from transferring Petitioner during the pendency of the instant action;
- (4) Declare that Petitioner’s continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1226(a); the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- (5) Grant the writ of habeas corpus and order Petitioner’s immediate release from ICE custody;
- (6) In the alternative order, a constitutionally adequate bond hearing at which DHS bears the burden of proving that Petitioner is a danger to the community or risk of flight, or other reasonable conditions of supervision;
- (7) Award Petitioner his costs and reasonable attorneys’ fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and

(8) Grant any other further relief this Court deems just and proper.

Dated: December 2, 2025

Respectfully Submitted,

**/S/ Halimatou Bah** \_\_\_\_\_

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Attorney for Petitioner

**EXHIBIT**

<b>EXHIBIT A</b>	<b>NOTICE TO APPEAR</b>	<b>02-03</b>
<b>EXHIBIT B</b>	<b>IJ BOND ORDER - 02/28/2024</b>	<b>05 - 06</b>
<b>EXHIBIT C</b>	<b>IJ BOND ORDER - 11/12/2025</b>	<b>08 - 09</b>
<b>EXHIBIT D</b>	<b>I-213</b>	<b>11 - 14</b>
<b>EXHIBIT E</b>	<b>COPY OF CERTIFICATE OF DISPOSITION REFLECTING ALL CHARGES, AGAINST RESPONDENT WERE DISMISSED</b>	<b>16 - 19</b>

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

I represent Petitioner, JOSE MELVIN ROMERO CASTRO, 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: December 2, 2025

/S/ Halimatou Bah  
Halimatou Bah

**CERTIFICATE OF SERVICE**

I hereby certify that on December 2, 2025, I filed the foregoing petition for Writ of Habeas Corpus electronically through the CM/ECF system, which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/S/ Halimatou Bah  
Halimatou Bah

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS ROMERO CASTRO (b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorneys (Firm Name, Address, and Telephone Number) SEE ATTACHED DEFENDANTS Noem et al. (SEE ATTACHED) County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 4 Diversity (Indicate Citizenship of Parties in Item III) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) PTF DEF Citizen of This State 1 1 Incorporated or Principal Place of Business In This State 4 4 Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5 Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions. CONTRACT 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise TORTS PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury - Medical Malpractice PERSONAL INJURY 365 Personal Injury - Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability FORFEITURE/PENALTY 625 Drug Related Seizure of Property 21 USC 881 690 Other LABOR 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act IMMIGRATION 462 Naturalization Application 465 Other Immigration Actions BANKRUPTCY 422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS 820 Copyrights 830 Patent 835 Patent - Abbreviated New Drug Application 840 Trademark 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS-Third Party 26 USC 7609 OTHER STATUTES 375 False Claims Act 376 Qui Tam (31 USC 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit (15 USC 1681 or 1692) 485 Telephone Consumer Protection Act 490 Cable/Sat TV 850 Securities/Commodities/Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 2241 Brief description of cause: NON-CITIZEN WITH PENDING I-589 UNLAWFULLY DETAINED

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 12/02/2025 SIGNATURE OF ATTORNEY OF RECORD /s/ Halimatou Bah

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**ATTACHMENT TO CIVIL COVER SHEET**

*JOSE MELVIN ROMERO CASTRO v. Noem et al.*

**I(c) – Attorneys for Plaintiffs:**

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Attorney for Petitioner

**I – Defendants:** Kristi Noem, Secretary of the Department of Homeland Security; Pamela Bondi, Attorney General of the United States; Todd Lyons, Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; MARY DE ANDA-YBARRA, in his official capacity as Field Office Director for U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; John Doe, in his official capacity as Warden of the ERO El Paso Camp East Montana Facility.