

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

**TEMPORARY RESTRAINING
ORDER**

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INTRODUCTION

Petitioner, Jose Melvin Romero-Castro, is a 23-year-old citizen of El Salvador who entered the United States as a minor in 2016 seeking protection from the violence and instability that endangered his safety in his home country. He has pursued his application for asylum, withholding of removal, and protection under the Convention Against Torture diligently and in good faith. Petitioner has no criminal convictions, no history of violence, and has complied with every requirement imposed by the Department of Homeland Security (“DHS”) and the immigration court for nearly a decade.

In December 19 2023, Petitioner was arrested by Texas Department of Public Safety officers on a smuggling allegation for which no formal criminal charges were ever filed. On December 28, 2023, DHS took custody of Petitioner and transferred him to the East Montana Detention Center in El Paso, Texas, where he remains detained under the supervision of the ICE El Paso Field Office. Through counsel, Petitioner sought a custody redetermination under § 236(a) of the Immigration and Nationality Act (“INA”). On February 28, 2024, an Immigration Judge granted Petitioner’s release on his own recognizance or a \$5,000 bond with alternatives-to-detention at DHS’s discretion.

On October 30, 2025, Petitioner’s criminal charges for Smuggling of Persons were dismissed. On that same day, Petitioner was redetained by DHS after he left the El Paso District Court house for the dismissed criminal charges.

On November 12, 2025, Petitioner again sought review of his custody. The Immigration Judge, relying solely on *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), concluded that he lacked jurisdiction to consider bond and refused to conduct any individualized custody assessment. Petitioner contested DHS’s classification and the underlying disputed facts in the I-213, but the Immigration Judge’s jurisdictional ruling foreclosed all access to custody review.

Notwithstanding the absence of any statutory, constitutional, or regulatory basis for continued confinement—and despite Petitioner’s clean record, cooperation, and deep family ties—DHS continues to detain Petitioner indefinitely without an individualized showing that his confinement serves any permissible purpose. His merits hearing on his asylum and protection claims remains pending. His detention, civil in label yet punitive in effect, has become arbitrary, prolonged, and unsupported by any individualized determination of danger or flight risk.

Petitioner suffers irreparable harm each day he remains detained without lawful justification or access to custody review. The government’s refusal to provide a constitutionally sufficient custody determination violates the INA, the Due Process Clause of the Fifth Amendment, and fundamental constitutional protections governing civil detention. Immediate judicial intervention is required to prevent further constitutional injury.

For these reasons, Petitioner respectfully requests that this Court: (1) enjoin Respondents from transferring him outside this District while this action is pending; (2) order his immediate release from custody, or in the alternative, direct Respondents to provide him with a constitutionally adequate bond hearing before a neutral Immigration Judge within three days at which DHS bears the burden of proof; and (3) grant such other and further relief as justice requires.

STATEMENT OF FACTS

Petitioner repeats and incorporates by reference each Statement of Facts contained in the Petition for Writ of Habeas Corpus as if fully set forth herein.

I. HABEAS RELIEF

To obtain habeas corpus relief, a petitioner must demonstrate that he is "in custody in violation of the Constitution or laws or treaties of the United States." See 28 U.S.C. § 2241(c)(3). This Court has habeas corpus jurisdiction to consider the statutory and constitutional grounds for

immigration detention that are unrelated to a final order of removal. See *Demore v. Kim*, 538 U.S. 510, 517-18 (2003).

II. DETENTION AUTHORITY UNDER THE INA

The Immigration and Nationality Act (“INA”) establishes several statutory frameworks governing the detention of noncitizens in removal proceedings. First, 8 U.S.C. § 1226(a) authorizes the discretionary detention of noncitizens placed in standard removal proceedings under 8 U.S.C. § 1229a (§ 240). Individuals detained under § 1226(a) are entitled to an individualized custody determination before an Immigration Judge and may seek release on bond or conditional parole. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). By contrast, certain noncitizens with enumerated criminal convictions are subject to mandatory detention under 8 U.S.C. § 1226(c).

Second, the INA authorizes mandatory detention of certain recent entrants and applicants for admission under 8 U.S.C. § 1225(b). Individuals encountered “at or near” the border are classified as “applicants for admission,” *id.* § 1225(a)(1), and—unless temporarily paroled under 8 U.S.C. § 1182(d)(5)(A)—must be detained while their admissibility is resolved.

Third, detention of individuals with a final order of removal is governed by 8 U.S.C. § 1231(a)–(b), which authorizes detention only for a period reasonably necessary to effectuate removal, subject to the limitations set forth in *Zadydas v. Davis*, 533 U.S. 678 (2001).

Under this statutory structure, Petitioner’s detention clearly arises under § 1226(a). Petitioner is in standard § 240 removal proceedings, has no criminal convictions, and is not subject to any final order of removal. DHS issued Petitioner a Form I-200 Warrant for Arrest, which places him within the discretionary custody framework of § 1226(a). Nothing in § 1226(a) authorizes prolonged or indefinite detention of a noncitizen who poses no danger or flight risk. Civil detention under the INA must remain reasonably related to its limited purposes of ensuring appearance and

protecting public safety. See *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018); *Demore v. Kim*, 538 U.S. 510, 528–31 (2003).

Despite this statutory scheme, DHS has invoked the Board of Immigration Appeals’ decision in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), to argue that Immigration Judges lack jurisdiction to conduct bond hearings for individuals DHS asserts were apprehended “shortly after entry.” Relying exclusively on that interpretation, the Immigration Judge on November 12, 2025, declined to hear Petitioner’s bond request—even though Petitioner is in § 240 proceedings, was served a Form I-200 warrant, and is expressly eligible for custody redetermination under 8 C.F.R. §§ 1003.19(a), 1236.1(d). This occurred despite the fact that an Immigration Judge previously granted Petitioner bond on February 28, 2024, ordering release on his own recognizance or under a \$5,000 bond.

This position improperly deprives Petitioner—and similarly situated noncitizens—of the statutory and regulatory protections that Congress has provided for individuals in § 240 proceedings. It results in prolonged, indefinite, and unreviewable detention with no individualized assessment of necessity, contrary to the INA’s structure and purpose and inconsistency with constitutional limits governing civil confinement.

Accordingly, Petitioner’s continued detention falls outside the narrow detention authority authorized by the INA, which requires individualized custody review and prohibits arbitrary or indefinite detention—protections that Petitioner has been categorically denied.

STANDARD OF REVIEW

Temporary restraining orders and preliminary injunctions are evaluated under the same standard in the Ninth Circuit. Under the framework established by the Supreme Court in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008), a movant must demonstrate a likelihood of success on the merits, a likelihood of suffering irreparable harm in the absence of

preliminary relief, that the balance of equities tips in the movant's favor, and that an injunction is in the public interest. The Ninth Circuit also recognizes a complementary "sliding scale" approach under which a movant may obtain relief by raising serious questions going to the merits and demonstrating that the balance of hardships tips sharply in her favor, so long as the remaining *Winter* factors are met. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011). A TRO is warranted where, as here, the petitioner faces ongoing constitutional violations and unlawful detention that threaten immediate, irreparable injury for which no adequate remedy exists at law.

ARGUMENTS

I. PETITIONER HAS ESTABLISHED A LIKELIHOOD OF SUCCESS ON THE STATUTORY DETENTION

A. Petitioner's Prolonged Detention Without a Bond Hearing Is Unlawful Under the INA

The Immigration and Nationality Act ("INA") authorizes civil immigration detention only when it serves a legitimate statutory purpose: ensuring appearance at future proceedings or protecting public safety. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Clark v. Martinez*, 543 U.S. 371, 381 (2005). When detention ceases to advance those purposes or becomes arbitrary, excessive, or indefinite, it exceeds the government's statutory authority.

Petitioner has now been detained for a few months, despite never having received a constitutionally adequate custody hearing. He was served with a Form I-200 Warrant of Arrest and placed in standard § 240 removal proceedings, placing his detention under the discretionary framework of 8 U.S.C. § 1226(a). Petitioner has no criminal convictions, no history of violence,

and has consistently complied with DHS requirements and immigration court obligations throughout his time in the United States.

On February 28, 2024, an Immigration Judge granted Petitioner release on his own recognizance or under a \$5,000 bond with alternatives to detention. Petitioner was then released and without cause was re-detained by DHS. When Petitioner sought review again on November 12, 2025, the Immigration Judge declined jurisdiction entirely, relying on *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and refusing to consider any individualized custody factors.

Since that date, Petitioner has been categorically denied access to the individualized custody review that INA § 1226(a) and its implementing regulations guarantee. He remains confined at the East Montana Detention Center in El Paso, Texas, without any lawful basis to conclude that detention is necessary to prevent flight or protect public safety.

Federal courts—including within the Fifth Circuit—have long held that civil detention must bear a reasonable relation to its purposes and cannot be prolonged without individualized review. *See Zadvydas*, 533 U.S. at 690 (civil detention must be reasonably related to its purposes); *Demore v. Kim*, 538 U.S. 510, 530 (2003) (upholding brief detention but emphasizing the limits of civil confinement). Where detention becomes prolonged and unreviewable, it becomes unlawful.

Here, DHS has offered no evidence that Petitioner poses any danger and no explanation why alternatives to detention are insufficient. His detention no longer serves any legitimate statutory purpose and has devolved into arbitrary and indefinite confinement—precisely what the

INA forbids. As such, Petitioner's continued detention is unlawful under the INA and warrants immediate judicial relief.

B. DHS's Reliance on a Jurisdictional Technicality Has Deprived Petitioner of a Custody Review Mechanism

DHS now asserts that Petitioner is not entitled to a bond hearing because the immigration court lacks jurisdiction under *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), based on disputed allegations that Petitioner was apprehended "shortly after entry." That assertion is contradicted by DHS's own actions. Petitioner was served with a Form I-200 Warrant for Arrest and placed squarely into § 240 removal proceedings, which are governed by the discretionary detention framework of 8 U.S.C. § 1226(a). Under the governing regulations, individuals placed in § 240 proceedings are entitled to a custody redetermination before an Immigration Judge. See 8 C.F.R. §§ 1003.19(a), 1236.1(d).

Despite this, on November 12, 2025, the Immigration Judge declined jurisdiction based solely on *Yajure-Hurtado*, accepting DHS's characterization of Petitioner's arrest without any evidentiary hearing, factual development, or individualized analysis. This categorical application has deprived Petitioner of any mechanism whatsoever to seek release from custody. He cannot obtain a bond hearing, and DHS has refused to consider release on parole, recognizance, or any other discretionary custody tool.

This bureaucratic maneuver has left Petitioner in administrative limbo. For removal purposes, DHS treats Petitioner as a standard § 240 respondent. For detention purposes, however, DHS claims that Petitioner falls under a different statutory scheme, thereby stripping him of rights guaranteed under § 1226(a). The INA does not authorize DHS to deny a custody review process

by manipulating jurisdictional labels or by relying on a disputed factual allegation that has never been examined by a neutral adjudicator.

This misclassification is contrary to the INA, its implementing regulations, and fundamental principles requiring individualized assessments of custody. DHS cannot avoid the statutory obligations of § 1226(a) by recharacterizing Petitioner’s arrest in a manner that eliminates access to custody review. By improperly invoking *Yajure-Hurtado* to bar Petitioner from any form of release mechanism, DHS has effectively subjected him to prolonged, unreviewable detention that the INA does not permit.

C. Continued Detention Violates Petitioner’s Fifth Amendment Right to Due Process

The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law, a protection that extends to all individuals within the United States regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Petitioner’s prolonged detention—without a constitutionally adequate bond hearing, without any individualized assessment, and based solely on a disputed and unreviewed jurisdictional classification—violates these core constitutional protections.

The Supreme Court has emphasized that “[f]reedom 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.” *Zadvydas*, 533 U.S. at 690 (quoting *Foucha v. Louisiana*,

504 U.S. 71, 80 (1992)). Applying the three-part balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), Petitioner’s due-process claim readily prevails:

First, the private interest at stake—freedom from physical confinement—is one of the most fundamental liberties recognized in constitutional law.

Second, the risk of erroneous deprivation is extraordinarily high in this case. DHS unilaterally asserted that Petitioner was apprehended “shortly after entry,” a disputed characterization that has never been tested in any evidentiary hearing. The Immigration Judge then declined jurisdiction solely on the basis of *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), without evaluating Petitioner’s actual danger, flight risk, or suitability for release. This combination of unilateral executive classification and categorical judicial abstention creates an unacceptably high risk of arbitrary detention.

Third, the governmental interest in continued detention is minimal here. Petitioner has lived in the United States for nearly a decade, has substantial family support, and is pursuing his protection claims in good faith. He has no criminal history, no record of violence, and no evidence suggests that he poses a danger or a flight risk. DHS has offered no individualized explanation for why less restrictive alternatives to detention would not suffice.

Because the government has provided no constitutionally adequate procedure to review the lawfulness or necessity of Petitioner’s confinement, his continued detention violates the Due Process Clause. At a minimum, due process requires that Petitioner receive a prompt bond hearing before a neutral adjudicator at which DHS bears the burden of establishing, by clear and

convincing evidence, that continued detention is necessary to serve a compelling governmental interest.

II. PETITIONER WILL SUFFER IRREPARABLE HARM UNLESS THE COURT ISSUES A TEMPORARY RESTRAINING ORDER

Under *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008), Petitioner must demonstrate that he will suffer irreparable harm in the absence of immediate injunctive relief. In the context of immigration detention, courts have repeatedly recognized that the ongoing, unlawful deprivation of physical liberty constitutes irreparable harm as a matter of law. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (noting that freedom from bodily restraint lies at the core of the liberty protected by the Due Process Clause); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Every additional day of unlawful detention inflicts an injury that cannot be remedied after the fact.

Petitioner has now been detained for several months, confined since October, 2023, at the East Montana Detention Center in El Paso, Texas—a secure civil detention facility whose conditions closely resemble those of a penal institution. He is deprived of freedom of movement, separated from his family support network, and subjected to constant institutional control. These are the exact forms of liberty deprivation that the irreparable-harm standard is designed to guard against.

Petitioner has never received a constitutionally adequate custody determination. Though an Immigration Judge granted him release on February 28, 2024, DHS has now continued to detain him without explanation and incorrectly classifying him as an applicant for admission under section 235. When Petitioner sought review again on November 12, 2025, the Immigration Judge declined jurisdiction entirely, leaving Petitioner with no lawful mechanism to challenge the

necessity of his continued confinement. Each day of detention following this denial deepens the constitutional injury, exacerbates the harm, and compounds the unlawful nature of his confinement.

Federal courts—including those within the Fifth Circuit—recognize that unlawful detention itself constitutes irreparable harm. See, e.g., *ODonnell v. Harris County*, 892 F.3d 147, 155 (5th Cir. 2018) (“The injury from prolonged detention is irreparable.”); *Doe v. Kelly*, 878 F.3d 710, 714 (9th Cir. 2017) (cited in W.D. Tex. cases addressing detention-related harms). Where a detainee is deprived of an individualized determination of necessity, the resulting injury is immediate, continuing, and impossible to remedy through damages.

Petitioner’s prolonged incarceration has also caused serious emotional and psychological harm, including anxiety, insomnia, and depression arising from uncertainty, confinement, and separation from family. Such mental and emotional injuries are by definition irreparable, as they cannot be undone by later court action or compensated monetarily.

The public interest further supports emergency relief. Preventing constitutional violations is always in the public interest. The government has no legitimate interest in detaining an individual indefinitely without lawful authority or individualized review. Continued detention in

the absence of any constitutionally adequate custody process undermines both the integrity of the immigration system and public confidence in the rule of law.

For these reasons, Petitioner has demonstrated irreparable harm of the highest order. Only immediate judicial intervention can prevent further unlawful deprivation of liberty and ensure compliance with the statutory and constitutional safeguards governing civil immigration detention.

III. THE BALANCE OF HARMS WEIGHS IN FAVOR OF PETITIONER

The final two *Winter* factors—the balance of equities and the public interest—strongly favor granting injunctive relief. When the government is a party, these factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). In assessing them, the Court evaluates whether the harm to Petitioner from continued detention outweighs any harm to the government from his release or from providing him a prompt and constitutionally adequate bond hearing.

Here, the equities weigh overwhelmingly in Petitioner’s favor. Petitioner has now been detained for several months at the East Montana Detention Center under conditions akin to penal confinement. Each additional day of confinement inflicts a significant deprivation of liberty and intensifies the psychological and emotional harm caused by prolonged incarceration. Petitioner has no criminal convictions, no history of violence, and has complied with all requirements imposed by DHS and the immigration court. His continued detention serves no legitimate purpose under the Immigration and Nationality Act (“INA”), which authorizes civil detention only to ensure appearance or protect public safety.

By contrast, the government faces minimal—if any—harm if the requested relief is granted. Ordering Petitioner’s release under reasonable supervision or directing DHS to provide him a constitutionally adequate bond hearing does not impede any lawful enforcement objective.

As the Fifth Circuit has recognized, “the government suffers no harm when it is required to adhere to the Constitution.” *ODonnell v. Harris County*, 892 F.3d 147, 155 (5th Cir. 2018). Administrative convenience cannot justify the ongoing deprivation of liberty, particularly where DHS previously failed to implement an Immigration Judge’s February 28, 2024 bond grant and thereafter invoked a categorical jurisdictional bar on November 12, 2025 to avoid individualized review.

The public interest also strongly supports Petitioner. The public has a compelling interest in ensuring that civil immigration detention is lawful, constitutional, and consistent with the INA’s narrow purposes. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (warning that indefinite civil detention raises “serious constitutional concerns”). Upholding due process in the immigration system strengthens public confidence in the rule of law and reinforces that the government must operate within statutory and constitutional limits.

Balancing all factors, both the equities and the public interest weigh decisively in favor of granting relief. Immediate intervention will prevent further irreparable harm to Petitioner and serve the public’s interest in ensuring lawful, justified, and constitutionally compliant immigration detention. At minimum, Petitioner is entitled to a prompt bond hearing before a neutral adjudicator at which DHS bears the burden of establishing, by clear and convincing evidence, that continued detention is necessary.

CONCLUSION

For the reasons set forth above, Petitioner Jose Melvin Romero-Castro has demonstrated a clear likelihood of success on the merits of his claims, will suffer irreparable harm in the absence of immediate relief, and has shown that the balance of equities and the public interest overwhelmingly favor the issuance of a temporary restraining order. His continued detention—

without a constitutionally adequate bond hearing, without an individualized custody determination, and without any meaningful avenue for judicial or administrative review—violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

Accordingly, Petitioner respectfully requests that this Honorable Court:

1. Enjoin Respondents and their agents from transferring Petitioner outside the jurisdiction of this Court while this matter is pending;
2. Order Petitioner’s immediate release from custody or, in the alternative, direct Respondents to provide him with a constitutionally adequate bond hearing before a neutral Immigration Judge within three (3) days, at which the government bears the burden of proving, by clear and convincing evidence, that continued detention is convincing evidence, that continued detention is necessary; and
3. Grant such other and further relief as the Court deems just and proper.

Dated: December 2, 2025

Respectfully Submitted,

/S/ Halimatou Bah

Halimatou Bah, Esq. Bar N.
24130178
Angeles Law LLC
2112 Broadway St NE STE 225 #53
Minneapolis, MN 55413
T: (321) 795-0568
halimatou@abogadoangeles.com
Attorney for Petitioner

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 Temporary Restraining Order 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 Temporary Restraining Order 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