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SOUTHERN DISTRICT OF TEXAS FEDERAL ID No. 3944414

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

BROWNSVILLE DIVISION

NICOLAS JACOB OSORIO TORO,

Petitioner,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY (DHS);
KRISTI NOEM, Secretary, DHS (in her official capacity);
PAMELA BONDI, Attorney General of the United States (in her official capacities);
TODD M. LYONS, Director, U.S. Immigration and Customs Enforcement (ICE) (in his official capacity);
MIGUEL VERGARA, Director, Harlingen Field Office, ICE Enforcement and Removal Operations (ICE ERO) (in his official capacity);
WARDEN, PORT ISABEL DETENTION CENTER (in their official capacity);

Respondents.

Civil Action Case No. 1:25-cv-00313

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

(Non-mandatory civil immigration detention; INA § 236(a); Constitutional Due Process)

Introduction

1. Petitioner **NICOLAS OSORIO TORO** ("Petitioner" or "Mr. Osorio Toro") is a Chilean national and non-mandatory civil detainee denied a custody determination whose repeated requests for a hearing after the dismissal of his removal proceedings have been ignored by Respondent DHS or denied by the Port Isabel Immigration Court, this when Petitioner presents no history of non-compliance, no security risk, and no risk of flight, and presents no grounds of inadmissibility, and where the only charging document alleging his removability was withdrawn and his removal proceedings terminated. Furthermore, he and his family have received written assurance from the U.S. government (specifically USCIS, a constituent agency of Respondent DHS) that they have the right to remain during the pendency of their family's asylum application, which application remains pending adjudication. Yet he remains detained, with no process to require the government justify its continued deprivation of his liberty when he has no process to determine his removability, nor charge alleging his removability, and without having ever unlawfully entered the United States nor failed to comply with the Laws of the United States. Petitioner remains detained, deprived of his liberty, access to his family, his prior lawful employment (now lost), and his ability to work and support his family with and through it, without process - a gross violations of his fundamental rights and liberty interests which neither the Laws of the United States nor the U.S. Constitution abide, and for which Petitioner now seeks a Writ of Habeas Corpus from this Honorable Court pursuant to **8 U.S.C. §§ 2241 et seq.** as well as appropriate relief to remedy violations of Petitioner's rights under the Fifth Amendment Due Process clause and Suspension Clause of the U.S. Constitution and relevant INA statutes and regulations ***Immigration and Nationality Act*** [8 U.S.C. §§ 1101 *et seq.*; 8 C.F.R. Ch.1, Ch.5].

2. Petitioner entered lawfully under the Visa Waiver Program ("VWP") after having been inspected and lawfully admitted to the by Respondent U.S. Department of Homeland Security ("DHS") at a designated port of entry, on November 10th, 2018.
3. Within five months of their arrival, Petitioner's wife, a Venezuelan national, filed an Application for Asylum, Withholding of Removal Form I-589 with the USCIS, as Lead Asylum Applicant, which asylum application was filed in March of 2019 and included her husband (Petitioner) as a necessary claimant in those same proceedings. Their asylum application remains pending before USCIS.
4. Following its receipt and acknowledgment of their asylum application, USCIS, a constituent agency of Respondent DHS, stated in writing that Petitioner and his family had the right to remain in the United States pending the adjudication of their asylum claim. This allowance and the protections pertaining to persons with pending asylum claims necessarily extend to Petitioner, just as the consequences of the asylum application's denial necessarily extend to him as a co-claimant as well [Exhibit 1]
5. Despite his prior compliance, lawful entry, and significant family and community ties established during the pendency of his application, Petitioner was nonetheless arbitrarily arrested at a checkpoint and detained by Respondent DHS on October 10, 2025, then issued a Notice to Appear ("NTA") subsequent to his arrest for allegedly violation the terms of his VWP, thereby initiating removal proceedings.
6. At the first and only hearing of those removal proceedings, the NTA was withdrawn by Counsel to Respondent DHS and the proceedings accordingly terminated by order of the Port of Isabel Immigration Court ("PIIC") without any custody redetermination from either Respondents or the PIIC via the hearing he had also requested that was also to have been heard that day, October 28th, 2025 [Exhibit 2].

7. Despite the withdrawal of his NTA and the termination of his removal proceedings without any bond hearing, and despite the non-issuance of any subsequent NTA or other charging document alleging the he is a removable alien within the definition of the INA, Petitioner remains detained at Port Isabel with his multiple requests for a custody determination disregarded by Respondents DHS, DHS SECRETARY NOEM, and DHS ICE ERO HARLINGEN FIELD OFFICE, and denied by the administrative agency with jurisdiction over administratively detained persons, as stipulated in the ***Immigration and Nationality Act*** [8 U.S.C. §§ 1107 *et seq*.], namely, the Port Isabel Immigration Court ("PIIC") hearing motions for bond and custody redeterminations with respect to persons administratively detained at the Port Isabel Detention Center ("PIDC").
8. The PIIC rejected Petitioner's first bond motion because there were no active removal proceedings, following the withdrawal of the NTA and the termination of the only then-extant proceedings to determine whether Petitioner is, in fact, a "removable alien" within the applicable definitions as they pertain to the INA and its regulations [Exhibit 3]. The EOIR acknowledged receipt [Exhibit 4] of the evidence submitted in support of Petitioner's Pre-NTA Bond Motion in advance of the hearing [Exhibit 1].
9. The PIIC subsequently asserted it lacked jurisdiction to make any such determination despite the non-existence of any removal proceedings at the time of its ruling on November 25th, 2025, citing *Matter of A-W-* [Exhibit 5]. However, "due process requires that a noncitizen be detained for no longer than the time reasonably necessary to secure removal…" and "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statutes;" ***Zadvydas v. Davis***, 533 U.S. 678, 697, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001),

(cited in ***Herrera v. Tate***, 2025 U.S. Dist. LEXIS 189999, 2025 WL 2774610 (S.D.Tex. Sept. 26, 2025)).

10. At the time of the ruling, Petitioner had no order of removal after the termination of his removal proceedings (final or otherwise), nor any other removal proceedings pending, nor any other charging documents issued to him after the NTA was withdrawn, yet he remained detained, his requests for release disregarded by the agents of Respondent ICE ERO Harlingen Field Office, except to persist in requesting cooperation from Counsel to Petitioner to assist in effectuating Petitioner's removal.
11. Respondents DHS, DHS SECRETARY NOEM, and ICE ERO HARLINGEN FIELD OFFICE provided no notice to Petitioner of any basis for his detention prior to arbitrarily stopping and detaining him, nor of any change in his circumstances regarding prior determinations made concerning his negligible risk of flight or to the public safety made in conjunction with screening through the VWP, per INA § 217(a)(7) [8 U.S.C. § 1187(a)(7)]. Nor did he have notice of any change in circumstances concerning the prior representation from the United States Government of his right to remain in the United States during the pendency of his asylum adjudication, nor any notice of the revocation of the same assurance [Exhibit 1.b, 1.c] nor any reasonably foreseeable end-date to his family's asylum application.
12. Denying Petitioner any process to challenge his continued detention under these circumstances is a particularly egregious Due Process rights violation. Petitioner seeks relief challenging the legality and constitutionality of his continued detention by Respondents under these circumstances via the established mechanism for such challenges: a Writ of Habeas Corpus pursuant to **8 U.S.C. § 2241**, and the Suspension Clause and Fifth Amendment Due Process guarantees of the U.S. Constitution.

Jurisdiction & Venue

7. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) because Petitioner is in custody within this District and challenges the legality of that custody; *Soberanes*, 388 F.3d at 1310 (habeas proper to challenge detention); *Jennings v. Rodriguez*, U.S. , 138 S.Ct. 830, 841, 200 L.Ed.2d 122 (2018); *Demore v. Kim*, 538 U.S. 510; *Oyelude v. Chertoff*, 125 F. App'x 543 (5th Cir. 2005) at 546 ("Section 1226(e) may strip us of jurisdiction to review judgments designated as discretionary under the pertinent language of the statute, but it does not deprive us of all authority to review statutory and constitutional challenges. We retain jurisdiction to review [Petitioner's] detention insofar as that detention presents constitutional issues, such as those raised in a *habeas* petition;" applying *Demore v. Kim*, 538 U.S. 510 at 516-17 cited in *Diallo v. Pitts*, 2020 U.S. Dist. LEXIS 25508, 2020 WL 714274 (S.D. Texas, 2020); Kambo v. Poppell, 2007 U.S. Dist. LEXIS 77857, Case No. SA-07-CV-800-XR (W.D. Tex. Oct. 18, 2007) (*habeas* jurisdiction for Petitioners detained without a charging document, applying *Demore*); *Maldonado v. Macias*, 150 F. Supp. 3d 788, 794 (W.D. Tex. 2015) ("[E]ven after the passage of the REAL ID Act, district courts retain the power to hear statutory and constitutional challenges to civil immigration detention under § 2241 when those claims do not challenge a final order of removal, but instead challenge the detention itself.")
8. The venue lies in this Division because Petitioner is detained at the **Port Isabel Detention Center** (in Los Fresnos, **Cameron County, Texas**) and his **immediate custodian** is located here, within the jurisdiction of this Honorable Court..
9. This petition does **not** seek review of a final order of removal; it challenges only detention, which is cognizable in habeas and not barred by 8 U.S.C. § 1252(b)(9) or (g); see *Demore*, *supra*; *Baez v. Bureau of Immigration & Customs Enforcement,* 150

Fed. Appx. 311 (5th Cir. 2005) ["*Baez*"]; *Orellana v. Kyle*, 65 F.3d 29, 31 (5th Cir. 1995) (per curiam); *Herrera v. Tate*, 2025 U.S. Dist. LEXIS 189999 (S.D. Tex. September 25, 2025) at 11-12 (citing same); *Amm v. Thompson*, 2025 U.S. Dist. LEXIS 232341 at 6 (W.D. Tex. Nov. 26, 2025) (recognizing jurisdiction to grant habeas relief from detention under § 2241 during asylum-only proceedings for alleged overstay in the Visa Waiver Program ("VWP") and citing related cases).

10. Removal proceedings under 8 U.S.C. § 1226 provide jurisdiction to immigration courts generally, and the PIIC specifically here, to hold a hearing to determine whether circumstances have changed that would deny Petitioner's eligibility for release and/or conditions of detention and/or determinations as to his risk of flight or danger to public safety, especially when his prior VWP participation indicated he presented no such risks (per INA § 217(a)(7) [8 U.S.C. § 1187(a)(7)]).

11. 8 U.S.C. § 1226 governs detentions both before and during removal proceedings which proceedings clearly grant jurisdiction to immigration courts to exercise discretion to determine and set bond; see e.g. *Kim v. Obama*, 2012 U.S. Dist. LEXIS 190165 (W.D. Tex., 12th Jul. 2011) at 2 ("The Court is authorized to adjudicate Kim's § 2241 challenge to the constitutionality of his pre-removal detention") and related note 3 ("The Real ID Act divests district courts of jurisdiction to hear petitions under 2241 that attack final orders of removal…The *Real ID Act* 'does not, however, preclude *habeas* review of challenges to detention that are independent of challenges to removal orders,' such as is the case here" [applying ***Baez***; internal citation omitted]).

12. Respondents have denied Petitioner any meaningful opportunity to present evidence of his eligibility for release before any forum, administrative or judicial, while still

insisting on his removability despite withdrawing the only documents alleging the same before the Port Isabel Immigration Court..

Parties

10. PETITIONER **NICOLAS JACOB OSORIO TORO** is a Chilean national detained by the Harlingen Field Office of ICE Enforcement and Removal Operations at the Port Isabel Detention Center, located at 27991 Buena Vista Drive, Los Fresnos, Cameron County, Texas. Petitioner Mr. Osorio Toro has meaningful and significant family and community ties in San Antonio, Texas, and is included as a co-claimant-for-asylum in his wife's pending Application for Asylum and Withholding of Removal Petition whose application DHS Form I-589 was properly and timely submitted, and still pending adjudication before the U.S. Citizenship and Immigration Services ("USCIS"), a constituent federal administrative agency of Respondent U.S. Department of Homeland Security ("DHS"). The asylum claim to which Petitioner is subject was filed by his wife, the principal applicant, Liseth Antonieta Villanueva, a Venezuelan national seeking asylum from Venezuela, who included Petitioner as a necessary party to her asylum petition, as they are married [Exhibit 1, Pre-NTA Bond Motion Exhibits 1.a and 1.b].
11. Respondent U.S. DEPARTMENT OF HOMELAND SECURITY ("DHS"), its agents, and its sub-agencies are erstwhile legal custodians of Petitioner, purportedly operating under color of law while physically holding Petitioner in administrative detention.
12. Respondent DHS SECRETARY KRISTI NOEM ("DHS SECRETARY NOEM") is the chief executive of Respondent DHS which exercises administrative and legal authority over DHS's sub-agencies, including U.S. Immigration and Customs Enforcement ("ICE"). Respondent Secretary Noem is sued in her official capacity.

13. RESPONDENT DIRECTOR OF ICE TODD M. LYONS, is the chief executive responsible for enforcement and removal operations of ICE in the United States including overseeing the operations of, and promulgating policies for, the respective regional Field Offices of ICE directing ICE's Enforcement and Removal operations ("ICE ERO"). Respondent ICE DIRECTOR LYONS is sued in his official capacity.

14. The deportation agents and supervisory detention and deportation officers of the Harlingen Field Office of ICE ERO assigned Petitioner report to RESPONDENT ICE ERO HARLINGEN FIELD OFFICE DIRECTOR MIGUEL VERGARA and operate under his authority, supervision, and direction, subject to the instruction and policy directives of Respondents DHS, DHS SECRETARY NOEM, and ICE DIRECTOR LYONS, all of whom are responsible for exercising legal custody over Petitioner under law and constitutional authority. Respondent FIELD OFFICE DIRECTOR VERGARA is sued in his official capacity.

15. Respondent U.S. ATTORNEY GENERAL PAMELA BONDI ("A.G. BONDI") is the nation's highest law enforcement officer and the chief executive of the U.S. Department of Justice ("DOJ") and is responsible for promulgating and enforcing duly-enacted immigration regulations under the statutory authority delegated to her by the U.S. Congress and the duly-enacted Laws of the United States, the ***Immigration and Nationality Act*** [8 U.S.C. §§ 1101 *et seq.*] ("INA") in particular. The INA and related federal regulations and operational policies and practices provide procedures for determining the appropriateness of maintaining custody of persons such as Petitioner. These procedures include specific and individualized determinations to weigh Petitioner's risk of flight or risk to public safety (if any) before being deprived of their liberty. Respondent A.G. BONDI is sued in her official capacity.

16. Respondent U.S. ATTORNEY GENERAL BONDI, as Attorney General of the United States and the chief executive of the Department of Justice, and the federal government's highest law enforcement officer who also oversees the administration of the Executive Office of Immigration Review ("EOIR") an administrative agency within the U.S. Department of Justice that exercises oversight of those administrative law courts designated as Immigration Courts having jurisdiction over Petitioner's detention in the circumstances specified by statute and regulation, in accordance with the laws and treaties of the United States and with the U.S. Constitution. Respondent A.G. BONDI exercises ministerial control over the EOIR (subject to the INA statute and duly-enacted regulations) and its respective administrative agencies, including the immigration courts administering immigration detention centers in the United States. Respondent A.G. BONDI has the duty to administer, in a lawful, fair, and impartial manner, the provisions of the INA, in furtherance of an orderly, lawful system of migration in the United States, with due regard for the rights of persons set forth in the laws and treaties of the United States and, most importantly, the U.S. Constitution.

17. The EOIR In the instant case, that Immigration Court is the Port Isabel Immigration Court ("PIIC") located in or adjacent to the Port Isabel Detention Center, both being located at 27991 Buena Vista Blvd. in Los Fresnos, a municipality located in Cameron County, Texas. The PIIC exercises delegated administrative authority over determining conditions of custody within the scope of its jurisdiction as delegated under the authority of the U.S. Congress as stipulated in the INA subject to the U.S. Constitution and the laws and treaties of the United States, operating under the aegis of Respondent U.S. ATTORNEY GENERAL BONDI, whose authority vests in those immigration courts having jurisdiction over the place of Petitioner's detention.

18. Respondent WARDEN OF THE PORT ISABEL DETENTION CENTER (or equivalent office or officer) holds Petitioner, and is sued in their official capacity.

19. Respondents collectively have responsibility for, and administrative control over, the facts and circumstances of the physical custody under which they hold Petitioner, which remains without legal justification, under the aegis of Respondents DHS, DHS SECRETARY NOEM, ICE DIRECTOR LYONS, and HARLINGEN FIELD OFFICE DIRECTOR VERGARA, and the agents under him collectively responsible for administering Petitioner's case and cases in equivalent circumstances to Petitioner's.

Jurisdiction and Venue

20. Under **28 U.S.C. § 2241**, the Writ of Habeas Corpus is the proper vehicle to challenge unlawful civil immigration detention; ***Zadvydas v. Davis***, 533 U.S. 678, 687–88 (2001) ("***Zadvydas***"); ***Demore v. Kim***, 538 U.S. 510 at 517, 123 S.Ct. 1708; see also e.g. ***Diallo v. Pitts***, 2020 U.S. Dist. LEXIS 25508 (S.D. Tex. 2020) ("***Diallo***") (applying ***Zadvydas***); ***Kambo v. Poppell***, 2007 U.S. Dist. LEXIS 77857, 28 (W.D. Texas, 2007) ("***Kambo***") applying ***Zadvydas*** at 28 ("The Court agrees with these district court decisions that, even after passage of the REAL-ID Act, detained aliens may bring *habeas corpus* challenges to the constitutionality of the statutory framework that permits their detention and to the extent of the Attorney General's authority under the detention statute"); ***Soberanes v. Comfort***, 388 F.3d 1305, 1310 (10th Cir. 2004) ("***Soberanes***") (detention challenges proceed via *habeas*); ***Emila N. v. Ahrendt*** ("*Emilia N.*"), 2019 U.S. Dist. LEXIS 39356 (D.N.J., 2019) at 6-7 ("§1226(a) detention [triggered by] a notice to appear…is the only [statute] which appears would otherwise be applicable to those such as Petitioner who remain [detained] in asylum proceedings and have not committed an applicable crime.")

21. Venue is proper as Petitioner is held within the jurisdiction of the Brownsville Division of the Southern District of Texas. Petitioner's place of detention is the Port Isabel Detention Center ("PIDC") and both the PIDC and the PIIC administering PIDC detainees' bond proceedings (when necessary and appropriate) are located in Los Fresnos, Cameron County, Texas, within the jurisdiction of this Honorable Court.
22. This petition does **not** seek review of a final order of removal; it challenges only detention, cognizable in habeas and not barred by 8 U.S.C. § 1252(b)(9) or (g).

Relevant Factual Background

23. Petitioner, a native and national of Chile, was lawfully admitted to the United States under the Visa Waiver Program ("VWP") after arriving by an air carrier at a designated port of entry and duly admitted under the same VWP after being subjected to inspection, on November 10th, 2018. Petitioner therefore entered the United States legally. It was his first and only entry into the United States.
24. In March of 2019, Petitioner's wife, Liseth Antonieta Villanueva, a Venezuelan national seeking asylum, filed an application for asylum in March 2019, less than five months after their lawful entry, with USCIS (a component agency of Respondent DHS) as the Lead Applicant. The asylum claim included Petitioner as her husband, who stands as an equal beneficiary of the procedural protections accorded to asylum-seekers by law, practice, and regulation, and in particular, subject to the written assurances issued in conjunction with those asylum processing procedures.
25. In conjunction with this asylum application, Petitioner and his wife and family reasonably relied on the written assurance of the Government of the United States subsequent to their asylum claim filing, that they could remain pending the adjudication of their asylum application [Exhibit 1.a] which remains pending.
26. During the lengthy pendency of his wife's asylum application before USCIS, Petitioner duly applied for and obtained legal authorization for employment valid

through 2030. Prior to his arrest he was employed supporting his wife and family, filing and paying his taxes, and fully complying with the laws of the United States and integrating himself into his local community in San Antonio, Texas [Exhibit 1.d].

27. Despite Petitioner having lawfully entered the United States, and despite Petitioner and his wife and family complying with all their pending asylum and other immigration proceedings, and despite written assurance that they could remain during the pendency of their asylum claims [Exhibits 1.b, 1.c] Petitioner was nevertheless detained following a highway checkpoint stop on October 10th, 2025 and transferred to the Port Isabel Detention Center ("PIDC") and remanded to the legal custody of Respondent DHS, ICE ERO, Harlingen Field Office, and to the physical custody of Respondent WARDEN (or equivalent office or officer) of the Port Isabel Detention Center, 27991 Buena Vista Blvd, Los Fresnos, TX 78566, in Cameron County, Texas.
28. Petitioner received no notice of any change in circumstances or demands that he appear before an immigration judge or submit himself to the custody of DHS during the pendency of his family's asylum application. To the best of Petitioner's knowledge and awareness, no new determinations have been made with respect to Petitioner's removability, flight risk, family and community ties, or risk to public safety, by either Respondent DHS ICE ERO Harlingen Field Office, or by the PIIC, or by any other agent or agency of Respondents DHS, DHS SECRETARY NOEM, or A.G. BONDI.
29. Petitioner's prior lawful admission was predicated on the verified absence of such risks of non-compliance, of flight, and of possible risk or danger to public safety by Respondents, and without any determination of his removability; see 8 C.F.R. § 217 ("An alien who has been admitted to the United States under the provisions of section 217 of the Act and of this part 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 section 237 of the Act shall be removed from the United States...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);" 8 C.F.R. § 217. 8 CFR 208.2(c)(3) (specifying procedures applicable to §§ 208.2(c)(1) and (c)(2)) clearly establishes a basis for the Immigration Court's jurisdiction here; 8 C.F.R. § 208.2(c)(3)(iv).

30. Petitioner was married at the time of these determinations of his benign presence and risk profile that were predicates to his participation in the VWP and his lawful entry into the United States under the VWP in November of 2018. Petitioner was married at the time of entry and remains married to his wife whose asylum application on their behalf remains pending [Ex. 1.a]. Petitioner's subsequent reliance on the written assurance of the United States of his right to remain [Ex.1.b, 1.c] coupled with no demonstrable change in his or his family's circumstances justifying detention or any notice of an adverse determination with respect to those circumstances, should have been sufficient to shield Petitioner against arbitrary detention by Respondents; see Exhibit 1, "Pre-NTA Bond Motion Exhibit 1.b" (USCIS Notices of Action Forms I-797C to Petitioner and Petitioner's wife).
31. Respondent agents of ICE ERO Harlingen Field Office issued a Notice to Appear ("NTA") to Petitioner only following his arrest on October 10th, 2025, for allegedly violating the terms of the VWP, thereby initiating his only removal proceedings.
32. At the first and only hearing of his now-dismissed removal proceedings before the PIIC, on October 28th, 2025, the NTA that initiated his removal proceedings was withdrawn by Counsel to Respondent DHS, and the removal proceedings were

terminated by order of the PIIC the same day, without any determination about his custody redetermination or eligibility for release having been made [Exhibit 2].

33. Despite this withdrawal of the NTA and dismissal of his removal proceedings, Respondents continued to hold Petitioner, while Petitioner was repeatedly denied a custody redetermination hearing by the PIIC [Exhibit 3, Exhibit 6] as well as requests for Petitioner's release or re-determination submitted to agents of Respondent DHS and it agents at the DHS ICE ERO HARLINGEN FIELD OFFICE [Exhibit 5].

34. The PIIC had also terminated the only extant process to determine the removability of Petitioner, an asylum applicant lawfully admitted to the U.S. under the VWP whose allegations of overstay and removability were withdrawn, and whose asylum application remains pending. These removal proceedings were terminated without adjudication of his then-pending request for a custody redetermination.

35. Petitioner received no reply to his subsequent repeated requests for a custody redetermination to the Harlingen Field Office of Respondent DHS, responsible for his custody at the Port Isabel Detention Center [Exhibit 5].

36. Petitioner turns to this Court for relief for which he is eligible under the Writ of Habeas Corpus to remedy his continued unlawful detention [8 U.S.C. § 2241]; see e.g. *Amm v. Thompson*, 2025 U.S. Dist. LEXIS 232689 (W.D. Tex. Nov. 18, 2025) seeking a declaration that his continued detention is unlawful and requiring his immediate release from the custody of Respondent DHS and its constituent agencies. These include the department of U.S. Immigration and Customs Enforcement ("ICE"), led by Respondent TODD M. LYONS (ICE DIRECTOR), and the Harlingen Field Office of ICE Enforcement and Removal Operations ("DHS ICE ERO HARLINGEN FIELD OFFICE") led by Respondent Director MIGUEL VERGARA ("HARLINGEN

FIELD OFFICE DIRECTOR") with ultimate authority for enforcement and removal vesting in Respondent DHS SECRETARY KRISTI NOEM (" NOEM").

37. In the alternative, Petitioner seeks a meaningful opportunity to present evidence to demonstrate his community ties and good moral character (or, put in negative terms, his lack of a flight risk, and his negligible risk to public safety) and require the government to demonstrate why his continued detention is lawful and necessary, particularly when Petitioner was gainfully and lawfully employed at the time of his detention, committed no violations, and has been unable to support his family since.

38. When Petitioner's last request for a bond proceeding was rejected by the PIIC, Petitioner was detained without being subject to removal proceedings, without being subject to any order of removal, nor to any charges alleging removability, nor any determination as to any actual or alleged violations of the Immigration and Nationality Act, nor to any determination as to his flight risk or danger to the community, nor any notice modifying the predicate determinations of the same (flight risk and dangerousness) necessary for his participation in the VWP. Needless to say, given his significant family and community ties, and his good moral character for which he proffered evidence, he presents no risk of flight, nor any risk to the public safety. He is a married man with significant community ties to San Antonio who fervently desires to return to his family and support them via his lawful employment.

39. Respondent DHS issued no new NTA following the withdrawal of the first NTA and the dismissal of his removal proceedings before the PIIC on October 28th, 2025. From October 28th, 2025 onward, Petitioner was therefore detained without any process or due regard for his freedom and liberty interests, and without regard for the well-being of his other family members seeking asylum, or for the prior assurances of the United States Government that they had the right to remain in the United States.

40. Without any NTA or document charging removability, without any active removal proceedings, and without any removal order (administrative, final, or otherwise), nor any notice of any actual or alleged violation of any immigration laws or regulations, nor any history of immigration violations or unlawful entry, nor any determination of his eligibility for release or his risk of flight or to public safety, Petitioner's continued detention is clearly unlawful and unconstitutional, arguably a gross violation of Petitioner's constitutionally-protected liberty interest and due process interests.
41. The only document alleging removability (i.e. alleging that Petitioner is, in fact, a removable alien - that is to say, the NTA) was withdrawn by Respondent DHS's Office of the Principal Legal Adviser ("OPLA") during the only hearing concerning a charge of removability before the PIIC, being the only hearing of his only removal proceedings, which were terminated following the OPLA's withdrawal of the removability allegation for alleged violations of the terms of the VWP. The only then-existing removal proceedings were dismissed by the PIIC as a result, in October.
42. Petitioner received no response from Respondents DHS and the Harlingen Field Office to his subsequent requests for release and/or redetermination of his custody status after the termination of his removal proceedings by the PIIC [Exhibit 5].
43. At the time of filing this Petition, the asylum application of Petitioner and Petitioner's family remains pending.
44. Petitioner's last request for a bond hearing was rejected by the PIIC on Wednesday, November 25th, 2025 [Exhibit 6].

Exhaustion / Futility

45. Petitioner continued to be detained by Respondent DHS to the Port Isabel Detention Center located at 27991 Buena Parkway, City of Los Fresnos, Cameron County,

Texas, subject to the administrative control and physical custody of Respondents DHS, DHS SECRETARY NOEM, DHS ICE DIRECTOR LYONS, and DHS ICE ERO HARLINGEN FIELD OFFICE DIRECTOR VERGARA and their sub-agents.

46. Petitioner sought custody redetermination in the Port Isabel Immigration Court multiple times. This relief was denied, and there are no proceedings to appeal without further prolonging the very abuse the relief denied by the PIIC is intended to remedy. Further administrative relief is both futile (IJ disclaimed jurisdiction) and inadequate to prevent ongoing constitutional injury occasioned by his prolonged detention without legal justification, process, or meaningful opportunity to request release when he has not even been formally alleged to be a removable alien by the same government holding him.

47. It is unlawful and unconstitutional for Respondents to continue to hold Petitioner in detention under these circumstances, and imposing any further requirements for additional administrative action would be futile and only compound the harm already suffered by Petitioner as a result of his continued unlawful detention, and it is an abuse of process for Respondent A.G. BONDI's and the EOIR/PIIC to deny Petitioner a hearing because there are no proceedings, but also fail to see that such proceedings are initiated when Petitioner is being held against his will with written assurances of his right to remain, and forcibly depriving him of his ability to work when was employed under a still-valid employment authorization authorization [Exhibit 1.d].

Claims for Relief

COUNT I

Unlawful Detention Under the INA: Petitioner Is Detained, if at All, Under INA § 236(a); Agency Misclassification and the IJ's "No Jurisdiction" Ruling Are Contrary to Law

48. Petitioner is eligible for relief under the Writ of Habeas Corpus to remedy his continued unlawful detention by a successful showing by Petitioner on the preponderance of the evidence standard for civil proceedings [8 U.S.C. §§ 2241-2243]; see ***Zadvydas***, *supra*; ***Demore*** *v. Kim*, 538 U.S. 510, 516-17, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003); *Kambo v. Poppell*, 2007 U.S. Dist. LEXIS 77857 (W.D.Tex, 2007) (applying *Demore* and *Zadvydas* to habeas challenge to detention and the scope of the Attorney General's detention authority) at 28-29 ("…even after passage of the REAL-ID Act, detained aliens may bring habeas corpus challenges to the constitutionality of the statutory framework that permits their detention and to the extent of the Attorney General's authority under the detention statute…The [Zadvydas] Court noted that '[t]he aliens here, however, do not seek review of the Attorney General's exercise of discretion; rather, they challenge the extent of the Attorney General's authority under the post-removal-period detention statute. And the extent of that authority is not a matter of discretion.' [*Zadvydas*] at 688"); *Herrera v. Tate*, 2025 U.S. Dist. LEXIS 189999; 2025 LX 402669; 2025 WL 2774610 (S.D. Tex, Sep. 26, 2025) at 11 ("A court considering a habeas petition must 'determine the facts, and dispose of the matter as law and justice require' [citing 28 U.S.C. § 2243]. When the Court finds that a petitioner's constitutional rights have been violated, the petitioner is entitled to the issuance of the requested writ" [citing *Bruce v. Estelle*, 536 F.2d 1051, 1058 (5th Cir. 1976)]); *Diallo v. Pitts* (S.D. Tex, 2020) *supra* (applying *Zadvydas*); *Amm v. Thompson*, 2025 U.S. Dist. LEXIS 232689 (W.D. Tex. Nov. 18, 2025) at 12-15 (granting Writ of Habeas Corpus for persons detained without adequate notice or process for alleged VWP violations for which a pending asylum application "fits the bill" as an exception to the VWP waiver otherwise-applicable to VWP entrants' removal proceedings, rejecting the applicability of *Matter of A-W-*).

49. As a Chilean national, Petitioner lawfully and legally entered the United States under the Visa Waiver Program. Conditions precedent to Petitioner's lawful admission via the Visa Waiver Program ("VWP") include determinations that "the alien must not have failed to comply with the conditions of any previous admission…"; INA § 217(a)(7) [8 U.S.C. § 1187(a)(7)]; that his identity, travel documents, and biographical information were scrutinized via the "Automated system check…to uncover any grounds on which the alien may be inadmissible to the United States, and no such ground has been found;" INA § 217(a)(9) [8 U.S.C. § 1187(a)(9)]; and that he presents no "law enforcement or security risk" after the prior submission of his biographical and other information; INA § 217(a)(11) [8 U.S.C. § 1187(a)(11)].
50. Petitioner's pre-removal detention is governed by INA § 1226 [8 U.S.C. §]; see *Baez*, *Obama* at 3 (applying *Baez*)("The Court is authorized to adjudicate [Petitioner's] § 2241 challenge to the constitutionality of his pre-removal detention. Specifically, [§ 1226] governs detentions both before and during removal proceedings.")
51. Petitioner's authorized entry arriving with prior authorization via the VWP on a carrier at a designated port of entry, and his subsequent lawful admission to the United States following inspection and without incident under the VWP, do not indicate any risk of flight or non-compliance with the immigration laws of the United States. On the contrary, they necessarily indicate previous formal determinations Respondent DHS made when properly subjected Petitioner to inspection upon arrival at a designated port of entry and granting admission after determining he had never failed to comply with the INA or the laws of the United States (indeed his entry being his first into the United States);
52. At the time of his lawful entry, Respondent DHS determined Petitioner presented NO grounds of inadmissibility (or he would have been refused admission) nor any prior

failure to comply with the INA or conditions of the Visa Waiver Program when he was admitted - and therefore presents no law enforcement or security risk in permitting [Petitioner] to travel to the United States; Respondents have shown no change in Petitioner's circumstances to indicate a change to these determinations as to his benign security posture (no risk of flight or to public safety nor any history of non-compliance with immigration enforcement such that detention may be necessary).

53. Prior to being detained, then, Petitioner affirmatively demonstrated his compliance with the INA, the VWP, and the laws of the United States at the time of his admission, his non-risk of flight or of any public danger, and he has remained in compliance with the laws of the United States since his initial lawful entry until the present time, his ongoing detention notwithstanding. Absent a change in Petitioner's circumstances (i.e. some new facts establishing novel grounds for his alleged removability) Respondent DHS should be estopped from continuing to detain Petitioner on the same alleged basis pending their attempt to re-introduce modified charges and/or re-initiate new removal proceedings before the EOIR, and required to show why continued detention is justified in a manner specific to Petitioner's individual circumstances.

54. As a matter of law, the PIIC has jurisdiction to decide Petitioner's custody. Petitioner has not been ordered removed, and Petitioner has asylum claims that remain pending adjudication before USCIS, yet remains detained at the Port Isabel Detention Center. The PIIC then bears an affirmative obligation to identify and articulate individualized and specific facts for persons detained at Port Isabel Detention Center without removal charges or removal proceedings as predicate fact-finding necessary to support its decisions on its own subject-matter jurisdiction (or lack thereof) rather than rely exclusively on designations of Respondent DHS that are not subject to any of the fact-finding the INA and the U.S. Constitution require. Neither the Attorney

General, nor its constituent agency the EOIR and its respective Immigration Courts, have the authority to treat Petitioner as a category of person designated solely by executive fiat without being subject to the independent scrutiny and fact-finding that the Constitution and § 2241 proceedings require; 8 U.S.C. § 2243.

55. The ongoing absence of Petitioner's presence, comfort, and income as a result of his detention is causing himself and his family extreme hardship and contributing to the unjust impoverishment of Petitioner and his family from the loss of his income. Petitioner's Due Process rights are also detrimentally impacted by Respondent's callous disregard for his liberty interest, and his ability to freely access and confer with his legal counsel, to review document confidentially, or to prepare and present further evidence in support of his and his family's joint *bona fide* asylum application. And persons alleged to have violated the VWP are not removable until their asylum claims have been exhausted; Amm v. Thompson at 6-8 (reviewing Circuit precedents of removal and detention authority in the VWP context and concluding that "a FARO [administrative order of removal] in a VWP case is not final until the alien's asylum application, if any, has been denied…As one appellate court explained, courts must distinguish between "the 'removal order' (i.e., DHS's determination that a VWP entrant is removable)" and "the action that makes the removal order 'final'" the immigrant judge's denial of asylum (or any other form of available relief).")

56. Petitioner's asylum proceedings and his family unit have both been forcibly separated for no other apparent reason than an arbitrary, warrantless arrest at a highway checkpoint, without notice or explanation as to what factual basis or determination underlie Respondents DHS, A.G. Bondi, and ICE ERO Harlingen Field Office, to conclude Petitioner now was removable or presented a risk of flight or to public safety when all prior determinations to the contrary had previously been made with respect

to Petitioner prior to the time when his and his family's asylum application remained pending adjudication.

57. The practice of arbitrarily depriving Petitioner of his liberty without justification or prior notice as to the change in circumstances or an adjustment to any prior determinations of his flight risk or danger to public safety is part of a pattern and practice of illegal stops, arrests, and detentions for which Respondent DHS and its respective agencies have already been sanctioned by other federal district courts, including its policy of issuing blank I-200 "warrants" to collateral agents in the field without the concurrent or prior issuance of an NTA as part of systemic coercion that our Constitution does not abide (*Nava v. Dep't of Homeland Sec.*, 2025 U.S. Dist. LEXIS 198295 at 53-54, 69) or deploying coercive and unlawful measures of arbitrary detention that violate Petitioner's constitutional right to due process and non-punitive treatment while detained (*Mercado v. Noem*, 2025 U.S. Dist. LEXIS 182904 (S.D.N.Y., Sep. 17, 2025)); *Sequen v. Albarran*, 2025 U.S. Dist. LEXIS 232133, 2025 WL 3283283 (N.D. Cal. Nov. 28, 2025) (certifying a class of arbitrarily detained civil immigration detainees detained without basic necessary infrastructure or notice or adequate access to legal counsel as violative of Fifth Amendment Due Process Clause prohibitions on punitive conditions for civil immigration detainees).

58. Consistent with their illegal and unconstitutional practices elsewhere, as documented in these and other cases pending litigation of which judicial notice may be taken by this Honorable Court (including cases previously cited) Respondent DHS, DHS SECRETARY NOEM, and A.G. BONDI, and their respective agents and agencies, routinely eschew their legal obligations to affirmatively justify the continued denial of liberty to Petitioner (and persons similarly-situated to Petitioner) and the deprivation of his right to remain with his family, and they with him, when he has entered the

country lawfully, and when they received assurances to remain during the pendency of their asylum adjudication before USCIS. Respondents should not be allowed to continue to detain and ignore Petitioner without legal justification under the statute authorizes the deprivation of his liberty, or an adequate evidentiary showing of reasonable determinations made requiring his detention under the circumstances that are based on facts specific to Petitioner and the totality of his circumstances.

59. The PIIC's reliance on *Matter of A-W-,* 25 I&N Dec. 45 (BIA 2009) to find it lacks jurisdiction is wrong in fact and law. The present case is distinguishable by the fact that Petitioner has no grounds for inadmissibility, has asylum proceedings pending, and has all charges alleging removability due to his overstay having been withdrawn. Additionally, it is wrong in law because as an asylum applicant, Petitioner falls under the sole statutory exception to any overstay under the terms of the VWP. As a matter of law and procedure, Respondent DHS should be estopped from reintroducing charges of removability, and Respondent A.G. BONDI from initiating removal proceedings on the basis of the same facts in the NTA that was withdrawn prior to the removal proceedings being terminated, absent an affirmative showing of material change in Petitioner's circumstances or a final denial of his asylum claims or other claims for eligibility for relief from removal, neither of which are the case here; see *Emilia N*., *supra*; *Amm v. Thompson*, *supra* at 16-18.

60. It is not Petitioner, but Respondents who bear the legal burden in these circumstances to demonstrate a reasonable legal basis for depriving persons of their liberty and due process interests in furtherance of an administrative process and an orderly system of migration, including their obligation to independently assess an individual's risk of flight and/or danger to the community prior to indefinitely depriving that person of their freedom, especially when Respondents have made prior determinations to the

contrary and provided no notice of any change in Petitioner's circumstances following those prior determinations, when all relevant facts point to the opposite.

61. Petitioner has committed no crime, no prior unlawful entries or non-compliance with immigration laws of the United States, is of good moral character, presents no danger to the public, and who had been employed supporting himself and his family, and has significant community ties in Texas during the years his asylum petition has remained pending adjudication. There is no public interest served in continuing to detain Petitioner, nor does his treatment advance an orderly system of migration, when he is being held without explanation or justification. Such treatment is unlawful and violative of the laws and treaties of the United States and of the Fifth Amendment Due Process guarantees and the Suspension Clause of the United States Constitution.

62. Petitioner has been deprived of his income from his employment, deprived of the comfort and safety of his family, and they of his, and deprived of any opportunity to affirmatively demonstrate his community ties, community integration, his gainful employment, and his support for the coffers of the United States through his filing and payment of taxes. Petitioner should have been released upon the withdrawal of his NTA by Respondent DHS, and the termination of his removal proceedings by the PIIC. Instead, Petitioner finds himself in the kafka-esque circumstance of remaining detained without proceedings, and without a bond hearing or custody determination - precisely the type of arbitrary detention the Great Writ was established to remedy.

63. These deprivations constitute hardship that must be justified under law for Respondents to affirmatively demonstrate the legality and constitutionality of Petitioner's continued detention.

64. The state's interest in denying Petitioner's freedom must be based on facts specific to the Petitioner, by a neutral fact-finder, and not due to Respondents unchallenged

designating Petitioner to a category of person without his having the benefit of a hearing to present evidence to the contrary before a judge. Such arbitrary detention without access to a hearing, process, or even basic determination as to his flight risk or dangerousness violates the Due Process requirements of the Fifth Amendment of the U.S. Constitution which prohibit the arbitrary deprivation of anyone's liberty without due process of law. Adequate process is far overdue here.

65. Petitioner therefor seeks (a) a declaration that his detention is governed by **INA § 236(a)** and continued detention is unlawful absent a valid, individualized, fact-based custody determination; and (b) **immediate release** or, in the alternative, a **prompt bond hearing** at which the Government bears the **clear-and-convincing** burden of proof to show why Petitioner's individual circumstances justify the need for continued detention, as opposed to less-restrictive Alternatives To Detention ("ATDs") more-narrowly tailored to achieve the government's objectives without depriving law-abiding asylum-seekers of their due process rights, or the liberties and freedoms provided for by the Laws, Treaties, and Constitution of the United States.

66. The **IJ's denial "for lack of jurisdiction"** contradicts the statutory framework and binding federal court and Supreme Court precedent without any predicate findings of fact in support of its conclusion. It is therefore **arbitrary** and **contrary to law**.

67. The PIIC's denial of Petitioner's Pre-NTA Motion for Bond was not lawful, as it relied on no factual findings, nor any legal authority but the BIA decision *Matter of A-W-* from which Petitioner's facts are distinguishable, and to which this Court owes no deference; see ***Loper Bright***, 603 U.S. 410 at 413; *Emilia N.*, *supra*, at 5-6 ("Because [8 U.S.C.] § 1187(c)(2)(E) [governing the VWP] is silent as to detention authority, and as Congress explicitly provided for pre-final order detention in 8 U.S.C. § 1226(a), this Court concluded that the BIA's determination in *A-W-* was not entitled

to *Chevron* deference. In sum, this Court determined…that the VWP does not have its own detention provision, and the detention of an alien in asylum proceedings must instead arise from one of the other statutory provisions expressly covering aliens subject to detention during their removal proceedings — 8 U.S.C. § 1225 or 1226." [internal citations omitted]).

68. Post-***Loper Bright***, courts owe **no deference** to an agency's view of the statute it applies when that statute's provisions are ambiguous, and must exercise **independent judgment** to identify the statute's **best reading**; see ***Loper Bright Enterprises v. Raimondo***, 603 U.S. 369 (2024) at 413; see esp. ***Perez-Perez v. Bondi***, 2025 U.S. App. LEXIS 30552, 2025 FED App. 0315P (6th Cir.) (Nov. 21, 2025) applying ***Loper Bright*** to overrule BIA reading of an ambiguous INA statutory provision, and comparing other Circuits jurisprudence rejecting BIA interpretations of same) at 9-10.

69. Here, upon withdrawal of the NTA issued following his arrest, and upon termination of Petitioner's removal proceedings, Petitioner should have been returned to the *status quo ante*, namely the return of Petitioner to his freedom and his family pending the adjudication of their asylum proceedings, unless Respondents show an affirmative legal basis for his continued detention. The Constitution does not allow Respondents to continue to hold petitioner against his will when he had no order of removal, administrative, final, or otherwise, in order to manufacture or produce alternative theories justifying detention, or endless processes under which to test those theories as to his alleged removability, all while keeping him indefinitely detained after his actual removal proceedings were terminated and his allegations of removability withdrawn.

70. Petitioner is a victim of Respondent DHS and ICE's arguably-illegal pattern and practice of conducting warrantless traffic stops, arrests, and detentions in violation of the INA and the protections of the 4th Amendment wherein they arrested and detained

him without probable cause, when he has no unlawful entry, no grounds for or findings of inadmissibility, and no prior determination that he is a flight risk of a danger to the community, and affirmative prior determinations to the contrary at the time of his lawful entry to the United States.

71. The Immigration Court abdicated its role as a fact-finder by declaring itself without jurisdiction to make findings the applicable laws and regulations require it to make. It unjustifiably absolved itself of any obligation to decide Petitioner's eligibility for release on bond on the merits of the evidence before it, much less consider the fact that Petitioner was being held without an NTA nor any active removal proceedings.

72. Immediate release is the appropriate remedy under these circumstances; see e.g. *Amm v. Thompson*, *supra* at 16-18 ("Under the circumstances, it appears that this is another case in which ordering a hearing would require 'the immigration judge to do that which, in light of BIA precedent, the judge would not believe he had any authority to do.' See *Becerra Vargas*, Report and Recommendation at 10; cf. 8 C.F.R. § 1003.1 (Aug. 28, 2025) ('[D]ecisions of the Board . . . are binding on all . . . immigration judges in the administration of the immigration laws of the United States.'). Accordingly, immediate release is the proper remedy in this case, for the same reasons it was in *Becerra Vargas*." [citing *Becerra Vargas v. Bondi*, No. SA:25-CV-1023-FB, Report and Recommendation at 9-10 (W.D.Tex. Nov. 12, 2025)].

COUNT II

Fifth Amendment Constitutional Due Process: Civil Detention Without Process or Any Meaningful Opportunity to Challenge the Basis of Ongoing Detention

73. The Due Process Clause protects against unlawful or arbitrary detention; *Zadvydas*, 533 U.S. at 690; *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L. Ed. 2d 18 (1976); *Rodriguez-Acurio v. Almodovar*, 2025 U.S. Dist. LEXIS 233224; 2025 LX

577196 (E.D.N.Y., Nov. 28, 2025) (applying *Mathews*) ("Respondentsfailed to afford [Petitioner] notice and an opportunity to be heard before she was arrested and detained by ICE…Balancing the three *Mathews v. Eldridge* factors considered in evaluating procedural due process claims - the private interest at stake, the risk of erroneous deprivation, and the government's interests - *Rodriguez-Acurio*'s detention violates [Petitioner's] Fifth Amendment right to procedural due process.") [internal citation omitted];

74. Petitioner has been detained for months despite having no unlawful entry, no charging document, no removal proceedings or order of removal, and no history of non-compliance with the immigration laws of the United States absent the allegation of the overstay of his visa, which allegation was withdrawn when the NTA was withdrawn. The refusal of agencies subordinate to Respondents to provide any justification for his continued detention violates due process, as "the Government may not detain persons for reasons unrelated to the actual charge that brought about the detention absent a compelling justification and narrow tailoring;" *Kambo v. Poppell*, 2007 U.S. Dist. LEXIS 77857 (W.D. Tex., 2007) (applying *Zadvydas* at 57-58)("[T]he [Supreme Court in *Zadvydas*] concluded that '[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem" under the Due Process Clause of the Fifth Amendment. Recognizing that '[f]reedom from imprisonment -- from government custody, detention, or other forms of physical restraint -- lies at the heart of the liberty that Clause protects,' 'government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and 'narrow' nonpunitive 'circumstances,' where a special justification, such as harm -- threatening mental illness, outweighs the 'individual's constitutionally protected interest in avoiding

physical restraint.' *Id*. The Court then noted that the proceedings were civil, not criminal, and assumed they were nonpunitive in purpose and effect, but concluded that there was 'no sufficiently strong special justification here for indefinite civil detention -- at least as administered under this statute.' The two regulatory goals asserted by the Government -- ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community - were insufficient to justify indefinite detention.")

75. While the INA does give broad discretion to detain persons, it does so only in the context of their pending removal proceedings, as Section 1226(a) provides that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." Here, there were no such removal decisions pending, as the charging document alleging removability was withdrawn by Respondent DHS on October 28th, 2025, and the appertaining removal proceedings were dismissed as a result that same day, on October 28th, 2025, after the government conceded that Petitioner had no unlawful entry and no grounds of inadmissibility. Yet no subsequent determinations as to Petitioner's eligibility for release pending the final adjudication of his asylum claim by USCIS were ever made by Respondents.

76. The agency position of the PIIC under Respondent A.G. BONDI that the Immigration Court "lacks jurisdiction" to conduct a § 236(a) redetermination, coupled with continued detention, is constitutionally inadequate and inconsistent with the individualized determination the Fifth Amendment requires, and an abuse of process.

COUNT III

Suspension Clause (Alternative Canon of Constitutional Avoidance and Backstop)

77. The **Suspension Clause** guarantees a **meaningful opportunity** to challenge unlawful detention; any construction of the INA that would foreclose habeas review or

meaningful bond process for prolonged civil detention would raise serious constitutional concerns; see *Boumediene v. Bush*, 553 U.S. 723, 739–71 (2008); *INS v. St. Cyr*, 533 U.S. 289, 300–14 (2001); *Amm v. Thompson*, 2025 U.S. Dist. LEXIS 232689 (W.D. Tex. November 18, 2025)

78. Consistent with ***Boumediene*** and ***St. Cyr***, this Court should construe the INA to preserve **§ 2241** review and to require procedures adequate to test the necessity - and thus the legality and constitutionality - of continued confinement, particularly where the PIIC has denied relief solely for "no jurisdiction" without any extant NTA or charging document or underlying removal proceedings, and without any predicate fact-finding to establish a foundation for its purported lack of jurisdiction.

Requested Relief

Petitioner respectfully asks this Court to:

A. **Declare** that Petitioner's detention is governed by **INA § 236(a)** and that continued detention absent an individualized determination consistent with due process is unlawful;

B. **Grant the writ** and **order immediate release** under appropriate conditions (including ATD/reporting), or, in the alternative, order a prompt bond hearing by a date certain in which:

1. The **Government bears the burden** to prove Petitioner presents a danger to the community or a flight risk, by **clear and convincing evidence** based on an individualized factual assessment on the basis of evidence;
2. The IJ must consider whether less-restrictive alternatives and the Petitioner's ability to pay any bond could not meet the same purposes without compromising the integrity of Petitioner's family, their ability to continue to jointly pursue their asylum claims together, or Petitioner's other liberties, fundamental freedoms, and due process rights

under the U.S. Constitution, the INA, and the Laws and Treaties of the United States, particularly in light of Respondents' unlawful deprivation of Petitioner's income; and

3. The IJ must make **individualized findings** addressing Petitioner's evidence on the record, with fact-finding specific to his individual circumstances and specific to any basis for finding a lack of subject-matter jurisdiction on custody determinations, and, failing that, apply the appropriate legal standard for such determinations (the **Guerra** factors) to that evidence presented in the custody redetermination hearing.

C. **Enjoin Respondents from transferring Petitioner** outside this District or attempt to remove Petitioner pending the hearing and final disposition of this petition and of his asylum proceedings, except to release him into the care of his family and sponsor, subject to whatever reasonable conditions the Court deems appropriate security for Petitioner's continued compliance with the INA.

D. **Award fees and costs** where authorized by law (per the *Equal Access to Justice Act* 28 U.S.C. § 2412 or other recovery justified in law and equity under these circumstances; and

E. Grant such other relief as the Court deems just, proper, or necessary to dissuade Respondents against future violations of Petitioner's rights under law.

Respectfully submitted by Petitioner's undersigned Counsel on this, the 8th day of December, 2025,

/s/ William Shipley

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ATTORNEY FOR PETITIONER **NICOLAS JACOB OSORIO TORO**

List of Exhibits in Support of Habeas Petition, Case No. 1:25-cv-00313
OSORIO TORO v. U.S. Department of Homeland Security (DHS)

Exhibit 1 - Evidence in Support of Petitioner's Rejected Pre-NTA Motion for Bond Hearing
1.a: Petitioner's asylum application ["Pre-NTA Bond Motion Exhibit 1.a"];
1.b: USCIS Notice of Action Forms I-797C to Petitioner's wife ["Pre-NTA Bond Motion Exhibit 1.b"];
1.c: USCIS Notice of Action Form I-797C to Petitioner and his [VPW] Applicant Information Worksheet (submitted in conjunction with his lawful admission under the VWP) ["Pre-NTA Bond Motion Exhibit 1.c"]; and
1.d: Petitioner's Employment Authorization Document valid through 05/18/2030 ["Pre-NTA Bond Motion Exhibit 1.d"]
[25 pp. total]

Exhibit 2 - Order of the Port Isabel Immigration Court Order terminating Petitioner's removal proceedings (October 28th, 2025) [2 pp.]

Exhibit 3 - Notice of rejection of Petitioner's request for a custody redetermination for lack of proceedings (November 18, 2018) [2 pp.]

Exhibit 4 - EOIR Electronic Notice of e-Filing of Petitioner's "Pre-NTA" request for a bond hearing (November 21, 2025) [1 p.]

Exhibit 5 - Emails to Harlingen ICE ERO Field Office agents requesting release (October - November 2025) [6 pp.]

Exhibit 6 - Port Isabel Immigration Court Order denying Petitioner's Pre-NTA Motion for Bond (November 25th, 2025) [2 pp.]

Exhibit 7 - Attorney Appearance forms DHS G-28 and EOIR Form E-28 (electronically filed October 20th, 2025 and October 22nd, 2025, respectively) [7 pp. total]