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

Daniel Montes-Graciano, Petitioner, v. WARDEN, *in their official capacity* as Warden of the ERO Camp East Montana Detention Facility; MARY DE ANDA-YBARRA, *in her official capacity* as Field Office Director of the ICE El Paso Field Office of Enforcement and Removal Operations, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security; TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security; KRISTI NOEM, *in her official capacity* as Secretary, U.S. Department of Homeland Security; and PAMELA JO BONDI, *in her official capacity* as Attorney General of the United States; Respondents.	)	Case No. 25-643 PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Petitioner-Plaintiff ("Petitioner") is a citizen of Mexico, who has resided in the U.S. for more than seventeen (17) years. Petitioner last entered the United States approximately in 2007/2008 using his B1/B2 nonimmigrant visa. On information and belief, U.S. Immigration Customs Enforcement ("ICE") agents apprehended him in Albuquerque, New

Mexico on September 26, 2025. Petitioner came into ICE custody after a traffic stop conducted by a Bureau of Indian Affairs officer, who subsequently contacted ICE to report and refer Petitioner. *See* Exhibit A, Form I-213, Record of Deportable/Inadmissible Alien.

2. Petitioner is currently detained at the ERO Camp East Montana Detention Facility at 6920 Digital Road, El Paso, Texas 79936.

3. This is a habeas petition challenging Petitioner's ongoing immigration detention despite an Immigration Judge's bond order setting bond at $20,000 on October 29, 2025. *See* Exhibit B, Immigration Judge's Order Granting Bond. The Department of Homeland Security ("DHS") did not timely trigger an automatic stay, did not timely appeal to the Board of Immigration Appeals ("BIA"), and did not seek a discretionary stay from the BIA.

4. Instead, DHS filed a Motion for Reconsideration of the Bond Order dated October 29, 2025. *See* Exhibit C, DHS' Motion to Reconsider. In that motion, DHS asserts that Petitioner was served with a Notice to Appear ("NTA") alleging that he entered the United States without inspection at or near El Paso, Texas, on or about an unknown date, in violation of INA § 212(a)(6)(A)(i). At the bond hearing, however, Petitioner testified under oath that he entered the United States using a B-1/B-2 nonimmigrant visa. Petitioner also submitted a copy of his nonimmigrant visa as part of the bond evidence and testified that he has never entered without inspection. DHS presented no evidence at the bond hearing to rebut Petitioner's testimony or documentary evidence, notwithstanding that such evidence was available to DHS at the time of the hearing.

5. To support its motion to reconsider, DHS submitted Petitioner's Form I-213, dated September 26, 2025, and advanced the conclusory assertion that Petitioner's most recent entry was without inspection. *See* Exhibit A, Form I-213, Record of

Deportable/Inadmissible Alien. The Form I-213 further claims that Petitioner told arresting officers that he last entered without inspection in 2009. Petitioner did not make that statement; rather, he informed the officers that his last entry was on his B-1/B-2 visa. The officers nevertheless recorded their own conclusion that Petitioner entered without inspection, purportedly based on database records reflecting that Petitioner entered on October 24, 2008, as a B-2 at the Ysleta Port of Entry in El Paso, Texas, with authorization to remain until April 23, 2009, and that an I-94 departure record reflects Petitioner's departure from the United States by land on October 25, 2008. The officers included this information as an addendum to the Form I-213 to dispute Petitioner's account of lawful entry. Based on these allegations, the NTA charges that Petitioner is a noncitizen present in the United States without admission or parole. DHS urged the Immigration Judge to reconsider her decision and to conclude that she lacked jurisdiction pursuant to *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). On December 2, 2025, the Immigration Judge denied DHS' motion to reconsider on the basis that it does not specify errors of law or fact in the previous order or is not supported by pertinent authority. *See* INA § 240(c)(6)(C); 8 C.F.R. § 1003.23(b)(2). *See* Exhibit D, Immigration Judge's Order Denying Motion to Reconsider.

6. After DHS did not seek an automatic stay within 24 hours of the bond order, Petitioner's family attempted to post the bond at the ICE facility in El Paso, Texas. Personnel at the bond acceptance window refused to accept the bond, asserting that DHS had "reserved appeal." After DHS likewise failed to request a discretionary stay from the BIA within ten (10) days of the order, Petitioner's family again attempted to post the bond, but ICE again refused acceptance for the same stated reason—DHS had "reserved appeal." Petitioner's

counsel, David Haro, Esq., personally inquired with ICE as to why the bond was not being accepted; he received no substantive explanation or resolution, only the same response: that DHS had "reserved appeal."

7. After the thirty (30)–day appeal period expired, Petitioner's family again attempted to post the bond. ICE again refused acceptance, this time stating that DHS had filed a motion to reconsider the bond decision. After the Immigration Judge denied DHS's motion to reconsider, Petitioner's family again attempted to post the bond. ICE again refused, asserting that Petitioner is a noncitizen who entered without inspection.
8. As of December 9, 2025, DHS/ICE continues to detain Petitioner in violation of the Immigration Judge's order, the Immigration and Nationality Act, applicable regulations, and the Due Process Clause.

CUSTODY

1. Petitioner is currently in the custody of Immigration and Customs Enforcement ("ICE") at ERO Camp East Montana Detention Facility in El Paso, Texas. He is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

2. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*
3. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

4. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

5. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*
6. Petitioner is "in custody" for the purpose of § 2241 because Petitioner was arrested and detained by Respondents.

VENUE

7. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because Petitioner is currently detained in El Paso, Texas, at the Camp East Montana Detention Center.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

8. Administrative exhaustion is unnecessary as it would be futile. *See, e.g., Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999).
9. Petitioner has no adequate administrative remedy to secure timely release where DHS has failed to invoke available stay/appeal mechanisms and continue detention contrary to a bond order.

10. To the extent exhaustion is argued, it should be excused because (a) further administrative steps would be futile, (b) Petitioner suffers ongoing irreparable harm from unlawful detention, and (c) the claim is legal in nature: continued custody contrary to a final, executable bond order.

11. Additionally, the agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

PARTIES

12. Petitioner is from Mexico and has resided in the U.S. for over seventeen years. He is currently detained in the Camp East Montana Detention Facility in El Paso, Texas.

13. Respondent Warden is sued in his official capacity as Warden of the Camp East Montana Detention Center. In his official capacity, Respondent Warden is Petitioner's immediate custodian.

14. Respondent Mary De Anda-Ybarra is sued in her official capacity as Field Office Director, El Paso Field Office, Enforcement and Removal Operations, ICE. In her official capacity, Respondent De Anda-Ybarra is the legal custodian of Petitioner.

15. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

16. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

17. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

LEGAL BACKGROUND AND ARGUMENT

18. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.

19. First, individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

20. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).

21. Third, the INA authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

22. The detention provisions at § 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, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). In 2025, Congress added new mandatory detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted. *See* The Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (8 U.S.C. § 1226(c)(1)(E)).

23. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision that unlawfully reinterpreted the Immigration and Nationality Act ("INA"). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Prior to this decision, noncitizens like Petitioner who had lived in the U.S. for many years and were apprehended by ICE in the interior of the country were detained pursuant to 8 U.S.C. § 1226(a) and eligible to seek bond hearings before Immigration Judges ("IJs"). Instead, in conflict with nearly thirty years of legal precedent, Petitioner is now considered subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and has no opportunity for release on bond while his removal proceedings are pending.

24. An Immigration Judge has the authority to review the custody of noncitizens who are detained under INA §236(a). *See* 8 CFR §§ 1003.19(a), 236.1(d). Under *Matter of Yajure-Hurtado,* the Executive Office for Immigration Review ("EOR") has taken the position that Immigration Judges only have jurisdiction over bond hearings for noncitizens who entered the United States after being admitted and inspected. 29 I&N Dec. 216 (BIA 2025). During bond proceedings, the noncitizen has the burden to prove eligibility for bond. See, e.g., *Matter of R-A-V-P-,* 27 I&N Dec. 803 (BIA 2020); *Matter of Siniauskas,* 27 I&N Dec. 207 (BIA 2018); *Matter of Guerra,* 24 I&N Dec. 37, 40 (BIA 2006); *Matter of Drysdale*, 20 I&N Dec. 815, 817 (BIA 1994). To be released on bond, noncitizens must establish that they are not a danger to the community nor a flight risk. *Matter of Patel,* 15 I&N Dec. 666, 666 (BIA 1976).

25. Either party can appeal an Immigration Judge's decision to the BIA. 8 CFR §§ 1003.19(f), 236.1(d)(3)(i). The Notice of Appeal must be filed with the BIA within 30 calendar days of the Immigration Judge's decision. *Matter of Valles*, 21 I&N Dec. 769 (BIA 1997). A

noncitizen cannot appeal the BIA decision to a federal appeals court via a petition for review. INA § 236(e) (stating that "[t]he Attorney General's discretionary judgment regarding the application of this section shall not be subject to review" and that "[n]o court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any [noncitizen] or the grant, revocation, or denial of bond or parole"). However, federal district courts do have jurisdiction to consider habeas actions challenging the legality of a noncitizen's detention in immigration custody. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 686–88 (2001).

26. The regulations allow DHS to seek a stay of the Immigration Judge's custody determination pending a BIA appeal. A stay prevents the individual from being released pursuant to the Immigration Judge's bond decision during the pendency of the BIA appeal of the Immigration Judge's bond decision. If DHS does not seek a stay, the filing of a bond appeal "shall not operate to delay compliance with the [IJ's bond] order . . . nor stay the administrative proceedings or removal." § 236.1(d)(4). The regulations also allow DHS to seek an automatic stay and allow for a discretionary stay upon DHS motion in connection with a DHS appeal of a bond decision. § 1003.19(i)(1).

27. The automatic stay provision is triggered "[i]n any case in which DHS has determined that [a noncitizen] should not be released or has set a bond of $10,000 or more." § 1003.19(i)(2). In automatic stay cases, the Immigration Judge's custody order "shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order." *Id.* The bond decision will not be stayed if DHS does not trigger a stay by filing Form EOIR-43 within one day of the Immigration Judge's decision. § 1003.19(i)(2). DHS is also allowed to file a

discretionary stay with the BIA to keep a noncitizen detained. *Id.*

28. Petitioner's continued detention contravenes the plain language of the INA and its implementing regulations. At the bond hearing, Petitioner met his burden of establishing that he was inspected and admitted by submitting documentary evidence of the entry document he used to enter the United States and by providing sworn testimony. Petitioner also established that he is not a danger to the community, as he has no criminal history in the United States. Finally, to the extent the Immigration Judge had any concerns regarding flight risk, the Court addressed and mitigated that risk by setting a substantial bond in the amount of $20,000.

29. DHS's continued detention of Petitioner is plainly unlawful. First, DHS did not seek an automatic stay pursuant to 8 C.F.R. § 1003.19(i)(2). Second, DHS did not petition the BIA for a discretionary stay. *Id.* Third, DHS did not file a timely appeal of the bond order with the BIA—including any challenge to the Immigration Judge's jurisdiction under *Matter of Yajure-Hurtado*—within the time permitted under 8 C.F.R. §§ 1003.19(f) and 236.1(d)(3)(i). Fourth, DHS repeatedly refused to accept the posted bond on the asserted ground that DHS had filed a motion to reconsider, even though a motion to reconsider does not stay an Immigration Judge's bond order. Finally, DHS continues to refuse to accept the bond based on its assertion that Petitioner entered without inspection, in direct contravention of the Immigration Judge's order and factual finding that Petitioner last entered with a B-1/B-2 visa. Respondents are bound by the INA and its implementing regulations. Nevertheless, Respondents continue to openly disregard these legal requirements and to subject Petitioner to unlawful detention, despite Petitioner's clear entitlement to release pursuant to the Immigration Judge's bond order. DHS cannot

disregard the Immigration Judge's order and jurisdictional determination and then unilaterally refuse to accept the bond based on an asserted entry without inspection, where the Immigration Judge expressly found that Petitioner effected a lawful entry.

30. Respondents' continued detention of Petitioner is not a close question—it is unlawful. An Immigration Judge granted bond and ordered release upon posting a $20,000 bond, and DHS failed to timely invoke the legal mechanisms that could have stayed or preserved review of that order. Rather than comply, DHS has effectively nullified the Immigration Judge's decision through administrative inaction and unilateral refusal to accept the bond. The INA and its implementing regulations do not permit DHS to ignore an operative custody order, substitute its own view of the facts, or impose continued detention without lawful authority. Each day Petitioner remains confined under these circumstances constitutes an ongoing deprivation of liberty without due process of law. This Court should grant relief and order Respondents to immediately honor the bond order and release Petitioner upon posting the bond.

STATEMENT OF FACTS

31. Petitioner is a citizen of Mexico.

32. Upon information and belief, Petitioner has resided in the U.S. since 2008.

33. Upon information and belief, Petitioner has never been arrested or charged with any crime.

34. He is unlawfully detained at the Camp East Montana Detention Facility.[1]

[1] Human rights groups have sent a letter to U.S. Immigration and Customs Enforcement (ICE) documenting accounts of horrific conditions, including beatings and sexual abuse by officers against detained immigrations, beatings and coercive threats to compel deportations to third countries, medical neglect, hunger and insufficient food, and denial of meaningful access to counsel, among other rights violations. *Letter to U.S. Immigration and Customs Enforcement Regarding Coercive Third Country Deportations and Abusive Conditions of Confinement in Immigration Detention at Fort Bliss, TX (Camp East Montana),* December 8, 2025. https://www.aclu.org/documents/ice-letter-re-fort-bliss.

35. An Immigration Judge found that she had jurisdiction to grant bond under *Matter of Yajure Hurtado* and granted the Petitioner's bond request.
36. The bond order authorized Petitioner's release upon posting bond, subject to any lawful stay triggered by timely government action.
37. The government did not submit an automatic stay within the period required by applicable regulations/policies.
38. The government did not file an appeal to the BIA within 10 days of the bond order.
39. The government did not file a discretionary stay from the BIA.
40. The government also did not file an appeal within 30 days.
41. Despite the absence of any timely appeal or stay, ICE has refused to release Petitioner on the Immigration Judge's bond order. Without relief from this Court, he faces continued detention without the ability to post bond.

COUNT I
Violation of the INA
Unlawful Denial of Release on Bond

42. Petitioner restates and realleges all paragraphs as if fully set forth here.
43. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).
44. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).
45. Petitioner received the bond hearing required by law, and the Immigration Judge granted bond. 8 U.S.C. § 1226(a). Nevertheless, Respondents continue to defy the INA, its implementing regulations, and the Immigration Judge's order by refusing to permit Petitioner to post bond and secure his release pursuant to § 1226(a).

46. Petitioner is being detained under color of federal authority despite a valid Immigration Judge bond order authorizing release on payment of bond.

47. Petitioner's continued detention under these circumstances exceeds statutory and regulatory authority and is unlawful.

COUNT II
Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, 1003.19, and 236.1(d)(4). Unlawful Denial of Release on Bond

48. Petitioner restates and realleges all paragraphs as if fully set forth here.

49. The bond regulations—8 C.F.R. §§ 236.1, 1236.1, and 1003.19, including 8 C.F.R. § 236.1(d)(4)—set forth the mechanisms available to DHS to seek an automatic stay, file an appeal of the bond order, and request a discretionary stay from the BIA. DHS did none of these. Under 8 C.F.R. § 236.1(d)(4), where DHS fails to timely invoke these regulatory mechanisms, there is no lawful basis to delay compliance with the Immigration Judge's bond order.

50. Petitioner's continued detention violates 8 C.F.R. §§ 236.1, 1236.1, 1003.19, and 236.1(d)(4).

COUNT III
Violation of Fifth Amendment Right to Due Process

51. Petitioner restates and realleges all paragraphs as if fully set forth here.

52. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

53. Detaining Petitioner after an Immigration Judge has ordered release on bond- without a timely stay or appeal and without any new custody determination- constitutes arbitrary detention and violates due process.

54. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

55. Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors Petitioner's release.

56. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

57. The risk of unlawful deprivation is exceptionally high. Petitioner has never been arrested and has deep ties to the community.

58. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690.

59. Furthermore, the "fiscal and administrative burdens" of allowing Petitioner to post his bond are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.

60. Considering these factors, Petitioner respectfully requests that this Court order his immediate release from custody upon payment of the $20,000 bond set by the Immigration Judge.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner not be transferred outside of this District;

(3) Issue an Order to Show Cause ordering Respondents to show cause why his Petition should not be granted within three days;

(4) Declare that Petitioner's detention is unlawful;

(5) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner upon posting the $20,000 bond set by Immigration Judge Jessica K. Miles on October 29, 2025;

(6) Enjoin Respondents from continuing to detain Petitioner contrary to the Bond Order absent a lawful basis supported by a timely stay/appeal; and

(7) Grant him any further relief this Court deems just and proper.

Dated this 10th day of December of 2025.

Respectfully Submitted,

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

I represent the Petitioner, Daniel Montes-Graciano, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this 10th day of December of 2025.

Respectfully Submitted,

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