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U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

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DANIEL J. MCCOY, CLERK
BY: _____ MB

6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF LOUISIANA
8 ALEXANDRIA DIVISION

9 GUILHERME CAVALCANTE MOL,

Case No.: 1:25-cv-2023

10 A 

11 Petitioner,

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

12 vs.

13 ELEAZAR GARCIA, IN HIS OFFICIAL
14 CAPACITY AS THE ADMINISTRATOR OF
15 WINN CORRECTIONAL CENTER

16 KRISTI NOEM,
17 IN HER OFFICIAL CAPACITY AS
18 ACTING SECRETARY, U.S. DEPARTMENT
19 OF HOMELAND SECURITY; AND

20 Respondents

21 I. INTRODUCTION

22 Petitioner, Guilherme Cavalcante Mol, by and through undersigned counsel, hereby
23 petitions this Honorable Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, filed
24 concurrently with a *Complaint* and in support thereof respectfully states as follows:

25 II. JURISDICTION AND VENUE

26 This Court has jurisdiction over this habeas corpus petition under 28 U.S.C. § 1331, as it
27 presents a federal question. The face of this Petition clearly raises questions of federal law.
28

1 Petitioner alleges violations of his rights under the Fourth and Fourteenth Amendments to the
2 United States Constitution, as well as violations of federal statutes, including the Immigration
3 and Nationality Act. Petitioner's cause of action is created by federal law. The right to file a
4 habeas corpus petition is enshrined in Article I, Section 9, Clause 2 of the U.S. Constitution and
5 further codified in 28 U.S.C. § 2241. The resolution of this petition necessarily turns on
6 substantial questions of federal law, including the interpretation and application of federal
7 constitutional and statutory provisions governing arrests, detention, and immigration
8 enforcement.
9

10
11 Venue is proper because Petitioner is detained at the Winn Correctional Center,
12 Winnfield, Louisiana. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) (generally,
13 “[w]henver a § 2241 habeas petitioner seeks to challenge his present physical custody within
14 the United States,” he must file the petition in the district of confinement and name his
15 immediate custodian as the respondent).
16

17 18 III. PARTIES

19 Petitioner Guilherme Cavalcante Mol is a national and citizen of Brazil. He is currently
20 detained under ICE custody located at the Winn Correctional Center in Winnfield, Louisiana.

21 Respondent Eleazar Garcia is the Facility Administrator at the Winn Correctional
22 Facility. He is sued in his official capacity. Administrator Garcia is the immediate
23 custodian of Mr. Cavalcante Mol.
24

25 Respondent Kristi Noem is the Secretary of Homeland Security. Secretary Noem
26 has the responsibility to faithfully preserve and protect the constitutional rights of all those
27 present in the United States. Secretary Noem is sued in her official capacity.
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IV. LEGAL BACKGROUND

Section 2241 of 28 United States Code provides in relevant part that “[w]rits of habeas corpus may be granted by . . . the district courts within their respective jurisdictions” when a petitioner “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(a), (c)(3); *see also I.N.S. v. St. Cyr*, 533 U.S. 289, 305, 121 S. Ct. 2271 (2001).

District courts grant writs of habeas corpus to those who demonstrate their custody violates the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3).

Habeas corpus “entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to ‘the erroneous application or interpretation’ of relevant law.” *Boumediene v. Bush*, 553 U.S. 723, 779, 128 S. Ct. 2229 (2008) (*quoting, St. Cyr*, 533 U.S. at 302).

The Fifth Amendment’s Due Process Clause protects the right of all persons to be free from “depriv[ation] of life, liberty, or property, without due process of law.” U.S. Const. amend. V.

“It is well established that the Fifth Amendment entitles aliens to due process of law[.]” *Trump v. J. G. G.*, 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (*quoting Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)).

“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.” *Zadvydas*, 533 U.S. at 690.

1 The Immigration and Nationality Act provides the statutory framework governing the
2 civil detention of noncitizens. Section 236 of the INA, 8 U.S.C. § 1226, authorizes the arrest,
3 detention, and release of individuals pending completion of removal proceedings.
4

5 Section 236(a) governs the detention of all noncitizens pending removal proceedings who
6 are not subject to mandatory detention. Under this subsection, the Attorney General may detain
7 the individual, may release the individual on conditional parole, and may release the individual
8 on bond. 8 U.S.C. § 1226(a)(1)–(2).
9

10 Thus, § 236(a) creates a default rule of discretionary detention: the noncitizen is eligible
11 for release on bond unless the government establishes that detention is justified.
12

13 The regulations implementing this statutory authority provide that individuals detained
14 under § 236(a) are entitled to custody redetermination hearings before an Immigration Judge. 8
15 C.F.R. § 1236.1(d)(1).
16

17 At such hearings, the IJ has the authority to set bond, deny bond, or grant release on
18 recognizance.
19

20 Individuals charged solely under INA § 237(a)(1)(B)—remaining in the United States
21 longer than permitted—are subject to general civil detention under § 236(a). A visa overstay is a
22 non-criminal, discretionary ground of removability, and does not trigger the mandatory detention
23 categories described in § 236(c).
24

25 Therefore, a noncitizen charged only as a visa overstay retains the statutory right to:
26

- 27
- 28 1. A custody redetermination hearing,
 2. Before a neutral Immigration Judge,

3. In which DHS bears the burden of establishing danger or flight risk,
4. And the IJ has jurisdiction to set or deny bond.

Nothing in the INA or its implementing regulations divests IJs of jurisdiction over bond hearings for individuals detained under § 236(a).

Section 236(c) mandates detention only for a narrow class of noncitizens who have committed specified criminal offenses or engaged in certain terrorism-related activity. The Supreme Court has emphasized that § 236(c) applies only when the government demonstrates that the statutory criteria for mandatory detention are satisfied.

See *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

A visa overstay—charged under § 237(a)(1)(B)—does not fall within any category of § 236(c). Accordingly, such individuals remain within the discretionary detention scheme of § 236(a) and are entitled to a bond hearing.

Under DHS regulations:

- The initial custody decision is made by DHS (ICE).
- A detained noncitizen may request redetermination by an IJ.
8 C.F.R. § 1236.1(d).
- Immigration Judges have exclusive jurisdiction to conduct custody redeterminations under § 236(a), except for narrow exceptions not applicable to visa overstays.
8 C.F.R. § 1003.19(h).

The regulations identify only three circumstances in which an IJ lacks jurisdiction over bond:

- (1) arriving aliens;
- (2) individuals in mandatory detention under § 236(c); and
- (3) individuals already ordered removed.

None of these categories include noncitizens charged under § 237(a)(1)(B) as visa overstays.

1 Thus, by regulation, Immigration Judges must exercise jurisdiction over custody
2 redetermination requests filed by visa overstays detained under § 236(a).

3
4 Because immigration detention is civil, not criminal, it must be justified by the government's
5 interests in ensuring appearance and protecting the community. The Due Process Clause limits
6 detention to that which is reasonably related to its purposes and prohibits arbitrary, punitive, or
7 prolonged confinement without adequate procedural safeguards. *Zadvydas v. Davis*, 533 U.S.
8 678, 690 (2001).

9
10 Due process therefore requires:

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- 13 • A meaningful opportunity to be heard,
 - 14 • Before a neutral adjudicator,
 - 15 • With the ability to challenge the government's justification for detention,
 - 16 • And to seek release on bond.

17 A noncitizen detained under § 236(a) is constitutionally entitled to such a hearing. A refusal
18 by an IJ to exercise jurisdiction over a bond request deprives the detainee of both the procedural
19 and substantive protections guaranteed by the Fifth Amendment.

20 V. STATEMENT OF FACTS

21 On August 30, 2025, Petitioner—who has lived in Massachusetts for seven years—was
22 taken into ICE custody while traveling through Pittsburgh, PA without a warrant following a
23 stop for driving without a valid driver's license. Petitioner is a citizen of Brazil who lawfully
24 entered the United States on March 8, 2018, with a valid B-2 visitor visa. *See* Exhibit A,
25 Petitioner's passport and I-94. He has since developed deep and longstanding ties to the United
26 States. Petitioner is married to a United States citizen, with whom he has maintained a
27 committed relationship for nearly five years. His U.S. citizen spouse has filed a Form I-130,
28

1 Petition for Alien Relative, which remains pending with U.S. Citizenship and Immigration
2 Services (“USCIS”), and Petitioner has a concurrently pending Form I-485, Application to
3 Adjust Status. *See* Exhibit B, Petitioner’s I-797 Receipt Notice. These applications place
4 Petitioner squarely within the statutory framework for adjustment of status before USCIS, further
5 demonstrating that his physical detention is not reasonably related to facilitating removal.
6

7 On the day of his arrest, DHS issued a Notice to Appear charging Petitioner under INA §
8 237(a)(1)(B) as a visa overstay—a charge that places him in standard INA § 236(a) discretionary
9 custody, not mandatory detention. Nothing in the charging document or the record supports
10 classification under § 236(c), nor any restriction on the Immigration Judge’s authority to conduct
11 custody redetermination proceedings. *See* Exhibit C, Notice to Appear.
12

13 Despite this, on October 23, 2025, the Immigration Judge erroneously denied Petitioner’s
14 custody redetermination request, stating the court lacked jurisdiction to consider a bond hearing.
15 The IJ simultaneously made an unsupported finding that Petitioner posed a danger to the
16 community—an internally inconsistent and legally impermissible determination. The Court
17 cannot disclaim jurisdiction and, in the same order, make a substantive custody finding regarding
18 danger or flight risk. Such action demonstrates a fundamental misunderstanding of the IJ’s
19 statutory authority under 8 C.F.R. § 1236.1(d) and INA § 236(a). *See* Exhibit D, First Order from
20 the Immigration Judge.
21

22 On November 21, 2025, after counsel submitted a renewed request for custody
23 redetermination, a second Immigration Judge once again refused to consider Petitioner’s
24 eligibility for bond, stating—again incorrectly—that the Court lacked jurisdiction to adjudicate
25 custody. *See* Exhibit E, Second Order from Immigration Judge.
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1 These repeated refusals to exercise jurisdiction constitute legal error and have resulted in
2 Petitioner being detained for months without any constitutionally adequate custody hearing. As a
3 visa overstay detained under § 236(a), Petitioner is legally entitled to a custody redetermination
4 hearing where DHS bears the burden of proving, by clear and convincing evidence, that
5 detention is necessary. Instead, Petitioner has been deprived of any meaningful process, in
6 violation of the Fifth Amendment's Due Process Clause.
7

8 Petitioner's removal case has been set for an expedited individual hearing on December
9 19, 2025, leaving insufficient time for USCIS to adjudicate the pending I-130 petition—an
10 application over which USCIS has exclusive jurisdiction. By insisting on proceeding at this
11 accelerated pace, the Immigration Judge has effectively deprived Petitioner of a meaningful
12 opportunity to obtain adjudication of the I-130 and pursue the only statutory pathway to relief
13 available to him.
14

15 Petitioner has deep ties to Massachusetts and no criminal convictions that would render
16 him inadmissible for adjustment of status. He has lived in the United States for seven years,
17 maintained stable housing and employment, and sustained a longstanding family relationship
18 with his U.S. citizen spouse. Despite these equities, ICE transferred him to the Winn
19 Correctional Center in Winnfield, Louisiana, where he remains detained without lawful
20 justification and without the bond hearing to which he is entitled under federal law.
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23 **IV. CLAIMS FOR RELIEF**

24 **Claim One: Unlawful Detention in Violation of the INA**

25 Petitioner incorporates all factual allegations as though fully set forth herein.
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1 Petitioner is detained pursuant to INA § 236(a), a discretionary detention provision under
2 which noncitizens charged solely as visa overstays under INA § 237(a)(1)(B) are statutorily
3 entitled to bond consideration. Nothing in the INA places such individuals in mandatory
4 detention under § 236(c), nor does any statute or regulation limit their right to seek a custody
5 redetermination before an Immigration Judge.
6

7
8 Despite this statutory framework, Immigration Judges on October 23, 2025, and
9 November 21, 2025, refused to adjudicate Petitioner's bond requests, asserting a lack of
10 jurisdiction. These refusals are contrary to law, exceed EOIR's authority, and render continued
11 detention ultra vires. Because neither DHS nor any IJ has ever lawfully found Petitioner to be a
12 danger to the community or a flight risk, no valid statutory basis exists for his ongoing
13 confinement. Detention not authorized by the INA is unlawful, and habeas relief is warranted.
14

15 **Claim Two: Violation of the Fifth Amendment — Procedural Due Process**

16
17 The Fifth Amendment requires that civil immigration detainees receive a meaningful,
18 individualized hearing to determine whether detention is justified. Immigration detention is civil
19 in nature; accordingly, due process prohibits prolonged detention without a neutral adjudicator
20 assessing the government's justification for confinement.
21

22 Petitioner has been detained since August 30, 2025, and has not received a lawful bond
23 hearing. One IJ simultaneously asserted lack of jurisdiction while purporting to find Petitioner "a
24 danger to the community," a legally incompatible conclusion that denied Petitioner the
25 fundamental procedural protection of a valid custody determination. By refusing jurisdiction, the
26 IJ extinguished the statutory mechanism through which Petitioner could seek release and
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1 deprived him of the process the Constitution guarantees. This unreviewed and indefinite
2 detention violates procedural due process.

3
4 **Claim Three: Violation of the Fifth Amendment — Substantive Due Process**

5 Civil immigration detention is constitutionally permissible only when reasonably related
6 to its purposes—ensuring appearance at proceedings and protecting the community. Because no
7 lawful finding of danger or flight risk has ever been made, Petitioner’s continued confinement
8 serves no legitimate governmental objective.

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11 Petitioner maintains longstanding ties to the United States, including a U.S. citizen
12 spouse, a stable residence, and pending I-130 and I-485 applications before USCIS. In the
13 absence of a lawful custody determination, detention has become punitive, arbitrary, and
14 excessive. Such confinement violates substantive due process, and the only adequate remedy is
15 release.

16
17 **Claim Four: Arbitrary and Capricious Agency Action (5 U.S.C. § 706)**

18 Should the Court view the challenged actions through the framework of administrative
19 review, the Immigration Judges’ refusals to exercise bond jurisdiction constitute final agency
20 action that is arbitrary, capricious, and contrary to law. Disclaiming jurisdiction while
21 simultaneously making substantive custody findings reflects legal error and irrational decision-
22 making.

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25 Furthermore, the refusal to continue proceedings to allow USCIS to adjudicate the
26 pending I-130—contrary to longstanding DHS and EOIR coordination policies—further
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1 emphasizes the arbitrary nature of the detention decisions. The Court should therefore vacate the
2 custody determinations and order a lawful bond proceeding.

3
4 **Claim Five: Unlawful Interference With Statutory Right to Pursue Adjustment of Status**

5 Petitioner has a pending I-130 filed by his U.S. citizen spouse and a concurrently filed I-
6 485, over which USCIS retains jurisdiction. By denying Petitioner a bond hearing and refusing to
7 grant a necessary continuance, EOIR has effectively prevented Petitioner from pursuing the sole
8 statutory pathway to lawful permanent residence available to him. This obstruction renders his
9 detention arbitrary, punitive, and unjustified. Accordingly, relief is necessary to restore
10 Petitioner's statutory rights.

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13 **VII. PRAYER FOR RELIEF**

14 A. Assume jurisdiction over this matter;

15 B. Order Respondents to Show Cause why this Petition should not be granted within
16 seventy-two hours;

17 C. Declare that Petitioner's detention violates the Due Process Clause of the Fifth
18 Amendment;

19 D. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner
20 immediately;

21 E. In the alternative to immediate release, order a constitutionally compliant custody
22 redetermination hearing within forty-eight (48) hours, before a different Immigration Judge, at
23 which the Government bears the burden of establishing danger or flight risk by clear and
24 convincing evidence, and requiring the IJ to issue a written decision;
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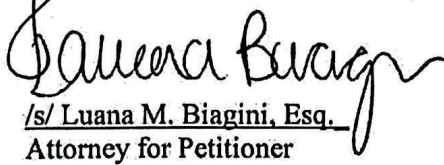
F. If Petitioner is released from ICE custody, order that ICE may not re-detain him absent lawful and articulable justification consistent with the INA and the Constitution;

G. Order that Respondents and EOIR shall not oppose a reasonable continuance of Petitioner's removal proceedings pending USCIS's adjudication of the pending I-130 application;

H. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

I. Grant any further relief this Court deems just and proper.

Dated this 10th day of December, 2025.


/s/ Luana M. Biagini, Esq.
Attorney for Petitioner

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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 10th day of December, 2025.

/s/ Luana M. Biagini, Esq.
Attorney for Petitioner
Guilherme Cavalcante Mol