

FILED
JAMES J. VILT JR,
CLERK
10/25/2025
U.S. DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF KENTUCKY**

Victor Manuel Alejandro Avalos Tamayo,)
)
 Petitioner,)
)
 v.)
)
 Adam Smith, Jailer, Christian County Detention)
 Center; Sam Olson, Director of Chicago Field)
 Office, U.S. Immigration and Customs)
 Enforcement; Kristi Noem, Secretary of the U.S.)
 Department of Homeland Security; and Pamela)
 Bondi, Attorney General of the United States,)
 in their official capacities,)
)
 Respondents.)
 _____)

Case No. 5:25CV-182-JHM

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Victor Manuel Alejandro Avalos Tamayo petitions this Court to issue a Writ of Habeas Corpus, ordering Respondents to show cause within three days, providing reasons, if any, as to why Petitioner’s detention is lawful. 28 U.S.C. § 2243. Petitioner was detained on October 8, 2025. Because Petitioner’s detention has been unconstitutionally prolonged, Petitioner urges the Court to grant his petition and order Respondent to release him from detention. 28 U.S.C. § 2241. Accordingly, to vindicate Petitioner's constitutional rights, this Court should grant the instant petition for a writ of habeas corpus.

JURISDICTION

2. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

3. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Under 8 U.S.C. § 1252(e)(2), this Court has habeas authority to determine whether Petitioner can prove by a preponderance of the evidence that he is an asylee under 8 U.S.C. § 1158.
4. 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.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

5. Venue is proper because Petitioner is detained at the Christian County Detention Center in Hopkinsville, Kentucky which is within the jurisdiction of this District.
6. Venue is proper in the Western District of Kentucky because that is where Petitioner is detained and where a substantial part of the events or omissions giving rise to his claims occurred. *See* 28 U.S.C. § 1391(b).

REQUIREMENTS OF 28 U.S.C. § 2243

7. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause 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.* (emphasis added).
8. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a

swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

9. Petitioner is a noncitizen. Petitioner is currently detained at the Christian County Detention Center in Hopkinsville, Kentucky. He is in the custody, and under the direct control of Respondent’s and their agents.
10. Adam Smith, is the Jailer of the Christian County Detention Center and has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Adam Smith is a legal custodian of Petitioner.
11. Respondent Sam Olson is sued in his official capacity as the Director of the Chicago Field Office of U.S. Immigration and Customs Enforcement. Respondent Olson is a legal custodian of Petitioner and has authority to release him.
12. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner’s detention. Respondent Noem is a legal custodian of Petitioner.
13. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive

Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

14. Petitioner is a citizen of Mexico. He is married and has two U.S. Citizen children, aged 7 and 3 years-old.
15. His family is financially dependent on him.
16. On information and belief, Petitioner has no prior criminal history. On information and belief, he has never been convicted of any crime and is not a security threat to the United States.
17. Petitioner entered the United States twenty five years ago. He has no prior immigration record or history of nonappearance at immigration court proceedings.
18. Petitioner was detained by ICE agents on October 8, 2026.
19. Petitioner was headed to work when Petitioner was approached by several ICE agents.
20. Petitioner was held at the Broadview Processing Center in Broadview, Illinois, until he was transferred to the Christian County Detention Center in Kentucky.
21. Petitioner has a VAWA case currently pending with USCIS.

LEGAL FRAMEWORK

22. Petitioner is detained under an immigration statute that mandates the detention of all “arriving aliens” without individualized bond hearings. *See* 8 U.S.C. § 1255(b)(1)(B)(ii).
23. The Fifth Amendment to the U.S. Constitution provides further limits on detention. As the Supreme Court has noted “[i]t is well-established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore*, 538 U.S. at 523 (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from

government custody, detention, or other forms of physical restraint—lies at the heart of liberty,” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This fundamental due process protection applies to all noncitizens, even if they are removable or inadmissible. See *id.* at 721 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible aliens are entitled to be free from detention that is arbitrary or capricious.”). Under these due process principles, detention must “bear [a] reasonable relation to the purpose for which the individual [was] committed.” *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

24. Due process therefore, requires “adequate procedural protections” to ensure that the government’s asserted justification for physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at 690 (internal quotations omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 538.

25. Following *Zadvydas and Demore*, every circuit court to confront the issue has protected the due process rights of people detained in civil immigration detention by requiring a custody hearing for noncitizens subject to unreasonably prolonged detention pending removal proceedings. See *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199 (11th Cir. 2016); *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015); *Rodriguez v. Robbins* (Rodriguez III), 804 F.3d 1060 (9th Cir. 2015); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011); *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003).

26. While the Seventh Circuit has not explicitly addressed the issue, the court has noted that “[i]t would be a considerable paradox to confer a constitutional or quasi-constitutional right to release on an alien ordered removed,” as required by *Zadvydas*, “but not on one who might have a good defense to removal.” *Hussain v. Mukasey*, 510 F.3d 739, 743 (7th Cir. 2007). Thus, a noncitizen subjected to prolonged detention “before he is subjected to a final order of removal” may be eligible for habeas relief if there is “[i]nordinate delay” in the proceedings. *Id.*

27. In addition to the amount of time in detention, courts weigh the following factors when assessing reasonableness of detention: (1) how long the detention will likely continue in the absence of judicial relief; (2) the nature and extent of removal proceedings, including whether any delays are attributable to the government or the immigrant; (3) the conditions of detention; and (4) the likelihood that the proceedings and judicial review will end with a removal order. *See Jamal v. Whitaker*, 358 F. Supp. 3d 853, 859-60 (S.D.N.Y. 2018).

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Administrative Procedure Act - 5 U.S.C. § 706(2)(A)

Abuse of Discretion

Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)

1. Petitioner restates and realleges all paragraphs as if fully set forth here.
2. Under the APA, a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).
3. An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a

difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

4. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).
5. By categorically detaining, denying Petitioner’s release, and seeking to transfer him away from the district without consideration of his individualized facts and circumstances, Respondents have violated the APA.
6. Respondents have not considered Petitioner’s facts and circumstances and determined that he is a flight risk or danger to the community.

COUNT TWO

**Violation of the Administrative Procedure Act - 5 U.S.C. § 706(2)(A)
Not in Accordance with Law and Excess of Statutory Authority
Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

1. Petitioner restates and realleges all paragraphs as if fully set forth here.
2. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction, authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).
3. It is a well-established administrative principle that “agency action taken without lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); see also *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by an unauthorized official).

4. On information and belief, Respondents have detained Petitioner without a warrant much less probable cause.
5. Because Petitioner's detention was made by government officials not authorized by law to make this detention, Respondents' detention of Petitioner is not in accordance with law and in excess of statutory authority.

COUNT THREE
Violation of Fifth Amendment Right to Due Process

28. The allegations in the above paragraphs are realleged and incorporated herein.
29. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty without due process of law." U.S. Const. amend. V.
30. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Declare the continued detention of the Petitioner to lack statutory authorization;
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
- (5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (6) Grant any further relief this Court deems just and proper.

Respectfully Submitted,

\S\ Victor Manuel Alejandro Avalos Tamayo
Victor Manuel Alejandro Avalos Tamayo, Pro Se Petitioner

Dated: October 25, 2025

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

I, Petitioner, Diego Hernandez-Balacaza, submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 23 day of October, 2025.

\S\ Victor Manuel Alejandro Avalos Tamayo
Victor Manuel Alejandro Avalos Tamayo, Pro Se Petitioner