

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS

ENGELL HERNANDEZ ORDONEZ,

Petitioner,

v.

Case No. **3:25-cv-727**

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the United States; TODD LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; MARY DE ANDA-YBARRA, in her official capacity as Field Office Director of the El Paso Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; and, in her official capacity as de facto Warden of the ERO EL PASO CAMP EAST MONTANA;

Respondents.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

1. Petitioner Engell Hernandez Ordonez is a 26-year-old man has lived in the United States since April 24, 2022. He is a native and citizen of Nicaragua. Prior to Petitioner's detention on or about November 22, 2025, he was residing in  in Camden, New Jersey. Petitioner is currently detained at ERO El Paso Camp East Montana.

2. This case challenges the unlawful detention of the Petitioner who is neither a flight risk nor a danger to the community. The Petitioner is being detained by ICE without notice or opportunity to be heard for bond, in violation of long establish law and due process.

3. U.S. Immigration and Customs Enforcement (“ICE) found that the Petitioner was neither a flight risk nor danger to the community when it previously released Petitioner from ICE detention on April 26, 2022 under reporting requirements. Since then, Petitioner, has fully abided by the order’s terms, including attending regularly scheduled check-ins with ICE. In addition, when ICE released the Petitioner he was issued parole pursuant to Section 212(d)(5) of the Immigration and Nationality Act.

4. On November 22, 2025 Respondents-Defendants revoked the Petitioner’s order of release and arrested him. Petitioner was first detained by ICE at Delaney Hall in New Jersey and is now currently detained at the ERO El Paso Camp East Montana.

5. Additional and important procedural history for this Court to consider is that the Petitioner entered the United States on April 24, 2022 and was detained by Customs and Border Protection (“CBP”). The Petitioner was not issued a Notice to Appear (“NTA”) at that time. In fact, he was released via parole. He wasn’t placed in removal proceedings until his recent detention following a routine ICE check-in on November 22, 2025 at the ICE office located in Mount Laurel, NJ. In these subsequent years, Petitioner’s ties to the community had only grown stronger given his timely filing of an application for political asylum and the birth of his US Citizen daughter. There has not been any criminal activity by the Petitioner since he was released. He was not detained because he violated the terms of his release. He has not become a flight risk nor a danger to the community. The only thing that has changed is the political climate. The determination to detain the Petitioner without the possibility of bail is not based on a legal analysis it is based on a political calculus, which is arbitrary and capricious.

6. For the reasons outlined below, Mr. Hernandez’s arrest and inability to contest his arbitrary detention violate his statutory and Fourth Amendment rights, Due Process protections

under the U.S. Constitution. As such, Mr. Hernandez respectfully petitions this Court for a Writ of Habeas Corpus to remedy his unlawful detention by Respondents, and for declaratory and injunctive relief to prevent such harms from recurring.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction under Art. I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause), 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. § 2201 (Declaratory Judgment Act).

8. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (same); *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) (“Challenges to immigration detention are properly brought directly through habeas.”).

9. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (e)(1) because Petitioner is detained within the District of New Mexico and his immediate physical custodian is located within this District. *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *see also United States v. Scott*, 803 F.2d 1095, 1096 (10th Cir. 1986) (“A § 2241 petition for a writ of habeas corpus must be addressed to the federal district court in the district where the prisoner is confined.”).

10. No petition for a writ of habeas corpus has previously been filed in any court regarding Petitioner.

PARTIES

11. **Engell Hernandez Ordonez**, named Petitioner, is a 26-year-old citizen of Nicaragua who has lived continuously in the United States since April 24, 2022. He had been residing in

Camden, New Jersey with his partner and their U.S. Citizen child and was gainfully employed in construction pursuant to a properly issued employment authorization card.

12. Respondent **Kristi Noem** is named in her official capacity as the Secretary of the U.S. Department of Homeland Security (“DHS”). In this capacity, she is responsible for overseeing ICE’s day-to-day operations, leading approximately 20,000 ICE employees, including Respondents Lyons and De Anda-Ybarra. Secretary Noem is the ultimate legal custodian of Mr. Hernandez.

13. Respondent **Pamela Bondi** is named in her official capacity as the Attorney General of the United States. As Attorney General, Respondent Bondi oversees the immigration court system, including the immigration judges who conduct removal proceedings and bond hearings as her designees, and is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g). She is legally responsible for administering Mr. Gamez Lira’s removal proceedings, and as such, she is a legal custodian of Mr. Hernandez.

14. Respondent **Todd Lyons** is named in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement and as such is a legal custodian of Mr. Hernandez.

15. Respondent **Mary De Anda-Ybarra** is named in her official capacity as the Field Office Director for the ICE El Paso Field Office. As Field Office Director, Respondent De Anda-Ybarra oversees ICE’s enforcement and removal operations in West Texas and New Mexico. As such, she is a legal custodian of Mr. Hernandez. In her capacity as the Field Office Director, she also serves as the de facto Warden of the ERO El Paso Camp East Montana.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. Mr. Hernandez has no administrative remedies to exhaust.

asylum after his release from CBP custody.

22. On November 22, 2025 he was detained by ICE at a regularly scheduled check in. This occurred at the ICE office in Mt. Laurel, NJ. There had be no criminal activity by Mr. Hernandez and his ties to the United States had only grown stronger since his original apprehension on the U.S. Southern Border. For unknown reasons, ICE suddenly revoked Mr. Hernandez's order of release of which he had been in full compliance. He was never given an opportunity to respond to those reasons.

23. Following Mr. Hernandez's apprehension, DHS issued a Notice to Appear. Mr. Hernandez's removal proceedings are ongoing before Immigration Judge Samuel G. Williams at the Otero Immigration Court.

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF THE SUBSTANTIVE DUE PROCESS PROTECTIONS OF THE FIFTH AMENDMENT OF THE CONSTITUTION

24. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

25. The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Freedom from physical restraint "lies at the heart of the liberty that the Due Process Clause protects." *Zadvydas*, 533 U.S. at 690.

26. First, immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore*, 538 U.S. at 527. (citing *Zadvydas*, 533 U.S. at 690). The Supreme Court has stated that the purpose or civil detention in this context is to "ensur[e]

the appearance of aliens at future proceedings,” *Zadvydas*, 533 U.S. at 690, and to prevent flight, thereby “increasing the chances that, if ordered removed, the [noncitizens] will be successfully removed.” *Demore*, 538 U.S. at 528. In the context of immigration detention, where, as here, the there is a showing regarding lack of flight risk or danger to the community, detention is not reasonably related to its purpose.

27. Second, basic due process doctrine provides that an individual must be afforded notice, appropriate hearings, bond review, opportunity to contest his detention, etc. *Mathews*, 424 U.S. at 333. Mr. Hernandez was deprived of each of these basic rights until this petition.

28. Mr. Hernandez’s continued detention is unrelated to the purposes justifying federal civil immigration detention as a constitutional matter, contravenes the fundamental Due Process protections in the Fifth Amendment of the Constitution, and is causing Mr. Hernandez’s ongoing, substantial, and irreparable harm.

COUNT II
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

29. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

30. The Administrative Procedure Act provides that courts “shall . . . hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

31. Detaining Mr. Hernandez despite his valid grant of employment authorization, pending asylum application; despite his ties to the United States; and despite no changed circumstances suggesting he presents any risk of flight or public safety concern is arbitrary, capricious, and an abuse of discretion.

32. For the reasons articulated above, this Court should find that any decision to detain Mr. Hernandez is arbitrary, capricious, and unsupported by substantial evidence. *See* 5 U.S.C. §§ 706(2)(A), (E) (The reviewing court “shall ... hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” or “unsupported by substantial evidence.”).

COUNT III
**VIOLATION OF PROCEDURAL DUE PROCESS PROTECTIONS OF THE FIFTH
AMENDMENT OF THE CONSTITUTION**

33. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

34. Procedural due process requires notice and an opportunity to be heard before being deprived of a liberty or property interest. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). One of the first inquiries in any case of violation of procedural due process is whether the plaintiff has a protected property or liberty interest and, if so, the extent or scope of that interest. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 569–70 (1972).

35. The Supreme Court has recognized that property interests arise where “rules or understandings” create “a legitimate claim of entitlement.” *Bd. of Regents*, 408 U.S. at 577. Similarly, reliance on government policies and assurances may give rise to protected expectations under the Due Process Clause. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972).

36. Here, Mr. Hernandez reasonably relied on government assurances—made explicit through innumerable public statements—that provides some protection from arrest, detention, and removal for those who follow the rules, and that the Nicaraguan Parole program and the affirmative asylum application and the government’s decision now to initiate removal proceedings when Mr.

Hernandez initially entered the United States and was detained allowed him to establish a stable life in the United States. This reliance has created a legally protectable liberty interest.

37. Under the familiar *Mathews v. Eldridge* due process test, then, the government's decision to apprehend Mr. Hernandez and continue to detain him clearly violates his procedural due process rights. First, Mr. Hernandez has substantial legally protectable interests, created by his reliance on the government's policies, asylum law and associated assurances, at stake. Second, the risk of erroneously depriving Mr. Hernandez of such interests is severe, as he is separated from his partner, child, and work, and thrown into sudden instability. He has been afforded absolutely no process, let alone constitutionally sufficient process, prior to this deprivation. *See Mathews*, 424 U.S. at 343. Third, the government's interest in detaining Mr. Hernandez is minimal. His detention is thus not rationally related to any purpose civil immigration detention may serve. *See Wong Wing v. United States*, 163 U.S. 228, 235–36 (1896); *Demore*, 538 U.S. at 523, 527–28. And additional process would entail little to no burden on the government, especially in light of the information Mr. Hernandez has already provided to the government regarding his asylum eligibility showing he poses no flight risk or danger to the community, per 8 C.F.R. § 236.22. *See Mathews*, 424 U.S. at 347.

38. Accordingly, Mr. Hernandez's continued detention without notice and an opportunity to be heard violates his procedural due process rights under the Fifth Amendment of the Constitution.

COUNT V
VIOLATION OF THE FOURTH AMENDMENT OF THE CONSTITUTION
AND 8 U.S.C. § 1357(a)(2)

39. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

40. The Fourth Amendment protects “[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures.” U.S. Const. amend. IV. The Supreme Court has consistently recognized that immigration arrests and detentions are “seizures” within the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the “seizure” of the person).

41. As a general matter, the Fourth Amendment requires that all arrests entail a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in the form of a prompt judicial probable cause determination. *See id.* Arrest and detention of a person, including of a noncitizen, absent a neutral judicial determination of probable cause violates the Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48 hours of detention, which includes weekends, unless there is a bona fide emergency or other extraordinary circumstances. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

42. Congress enacted a strong preference that immigration arrests be based on warrants. *See Arizona v. United States*, 567 U.S. 387, 407–08 (2012). The Immigration and Nationality Act thus provides immigration officers with only limited authority to conduct warrantless arrests. 8 U.S.C. § 1357(a)(2). Specifically, an officer must have “reason to believe” the person is violating the immigration laws and that the person “is likely to escape before a warrant can be obtained.” *Id.* Federal regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

43. Here, at the moment of seizure, Mr. Hernandez had a pending affirmative asylum application after being paroled into the United States by the defendants to pursue such application. He had lived at his address of record for years, is engaged to his partner, and is the father of a U.S. citizen child. There is no evidence, and no reason to believe, that he posed a flight risk at the time of his apprehension.

44. Therefore, no officer could hold a reasonable belief that Mr. Hernandez was likely to escape before a warrant could be obtained. *See* 8 U.S.C. § 1357(a)(2).

45. Without a statutory basis to arrest, the Government is required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding Mr. Hernandez. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. Mr. Hernandez received no such judicial determination, yet his detention has continued well beyond 48 hours, rendering his detention presumptively unconstitutional. He has been detained since November 22, 2025 and has yet to have an initial appearance before an Immigration Judge.

46. The Government cannot salvage this seizure by invoking generalized immigration enforcement interests. The Fourth Amendment’s reasonableness inquiry is fact-specific and demands individualized justification for both the arrest and the extended detention. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114. He committed no crime justifying his apprehension on November 22, 2025. He fled no authority. He posed no danger to any person or to the community at large.

47. Mr. Hernandez’s warrantless arrest occurred in violation of the clear, narrow circumstances permitted by statute. Therefore, his arrest and ensuing detention constitutes an unreasonable and unlawful seizure in violation of the Fourth Amendment.

COUNT VI
VIOLATION OF THE *ACCARDI* DOCTRINE

WITH RESPECT TO 8 C.F.R. § 287.8(c)(2)(i) and (ii)

48. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

49. The United States has also failed to follow immigration-specific arrest and processing regulations. Regulations governing immigration enforcement require that warrantless arrests conform to the standards in 8 C.F.R. § 287.8(c). Specifically, for any arrest, immigration officers must have reason to believe that an individual committed an offense against the United States or was present illegally. 8 C.F.R. § 287.8(c)(2)(i). And, for a warrantless arrest, officers must also have reason to believe that an individual is “likely to escape before a warrant can be obtained.” 8 C.F.R. § 287.8(c)(2)(ii).

50. At the time of the arrest and at all times since, Mr. Hernandez had a pending affirmative asylum application; he fled no authority; and he posed no danger to any person or to the community at large. Therefore, Mr. Hernandez’s arrest and continued detention contravene regulations governing immigration arrests in violation of the *Accardi* doctrine.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court grant the following relief:

- A. Assume jurisdiction over this matter;
- B. Pursuant to 28 U.S.C. § 2243, issue an order to show cause directing Respondents to file a return within three (3) days absent good cause for a short extension not exceeding twenty days, and set the matter for a prompt hearing;
- C. Prohibit Petitioner’s removal from the United States and transfer outside the Western District of Texas during the pendency of this action;
- D. Declare that Petitioner’s arrest and continued detention are unlawful;

- E. Grant the writ of habeas corpus and order Petitioner's immediate release from ICE custody;
- F. In the alternative, conduct an immediate, constitutionally adequate individualized custody determination at which the government bears the burden to justify continued detention and the Court considers release on bond or other reasonable conditions of supervision;
- G. Award Petitioner his costs and reasonable attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and
- H. Grant such other and further relief as law and justice require.

Dated: December 23, 2025

Respectfully Submitted,

/s/ Ronald P. Mondello

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Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. § 2242

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

/s/ Ronald P. Mondello
Ronald P. Mondello

Date: December 23, 2025

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2025, I filed the foregoing pleading electronically through the CM/ECF system which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/ Ronald P. Mondello
Ronald P. Mondello