

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

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|--|---|-------------------|
| Edison Toapaxi Zapata, |) | |
| Petitioner |) | |
| |) | PETITION FOR WRIT |
| v. |) | OF HABEAS CORPUS |
| |) | |
| WARDEN, Port Isabel Detention Center; |) | CASE No: 25-356 |
| KRISTI NOEM, Secretary of |) | |
| the Department of Homeland Security; U.S. |) | |
| Department of Homeland Security (DHS); |) | |
| PAMELA BONDI, Attorney General of |) | |
| the United States, and TODD LYONS, Director, |) | |
| Immigration and Customs Enforcement. |) | |
| |) | |
| Respondents |) | |

**PETITION FOR WRIT OF HABEAS CORPUS
INTRODUCTION**

Petitioner, Edison Toapaxi Zapata, is a citizen of Ecuador who Respondents have detained at the Port Isabel Texas Detention Center. He was denied a bond on the basis of being ineligible under the *Matter of Yajure Hurtado* because Respondents claim he entered the United States without inspection. Because he is likely to face many additional months in detention, he seeks relief from this Court that would allow him to challenge his continuing and unconstitutional detention.

JURISDICTION

1. Petitioner is in the physical custody of Respondents and Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security (DHS). He is detained at the Port Isabel Detention Center, Texas and is under the direct control of Respondents and their agents.

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 jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).
4. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
5. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(b)(9), (f)(1), or 1226(e). Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v Rodriguez*, 138 S. Ct. 830, 839-41 (2018) (holding that 8 U.S.C. §§ 1252(b)(9) and 1226(e) do not bar review of challenges to prolonged immigration detention).

VENUE

6. Pursuant to *Trump v J.G.G., et al*, 604 U. S. ____ (2025), venue lies in the United States District Court for the Southern District of Texas, the judicial district in which the Petitioner is currently in custody.
7. Venue is also properly vested in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies in the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of Texas.

Parties

8. Petitioner is a citizen of Ecuador who most recently arrived in the United States on or about 5 December, 2022. He has been in custody of the Department of Homeland Security (DHS) since November 2025.
9. Warden for the Port Isabel Detention Center of Texas is the Warden for the Port Isabel Detention Center, where the Petitioner is currently housed. As such, they have direct custody of the Petitioner. They are named in their official capacity.
10. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent Drew Bostock and ICE in general. Respondent Lyons is a legal custodian of Petitioner. He is named in his official capacity.
11. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Noem is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States. She is named in her official capacity.
12. Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States. She is named in her official capacity.

FACTUAL ALLEGATIONS

13. Petitioner, Edison Toapaxi Zapata (Mr. Toapaxi Zapata), is a native and citizen of Ecuador who entered the United States on December 5, 2022. Petitioner entered the United States and was later paroled on the interior of the United States.

14. After living in the United States without incident, he was detained by Immigration and Customs Enforcement (ICE) in November 2025. He had just left his house and was driving, was pulled over by the ICE agents who gave him two (2) names that were not his. The ICE agents told him they didn't care who he was and that if he didn't have his residency he was being arrested. ICE then detained him, held him in Minnesota and then subsequently transferred him to Port Isabel, Texas.
15. Shortly after his transfer to Texas, Petitioner was provided with an initial master calendar and bond hearing. At that hearing, the Immigration Judge found that the court lacked jurisdiction to set bond, citing provisions of immigration law related to Petitioner's manner of entry into the United States. *See* Exh. 1. Petitioner's request for release was therefore denied, and he remains detained.
16. Petitioner has no criminal history, has a large family including a wife who is currently pregnant and children who do well at school as a result of his support. He has been working lawfully, paying taxes, attending church and being an upstanding member of the community in general.
17. Petitioner submitted a lengthy bond packet in his case, demonstrating that he is not a risk to the community, not a flight risk, and not a national security risk.
18. Petitioner continues to be held without bond or meaningful custody review. His next master calendar hearing is scheduled for January 6, 2025, but this is not a final hearing.
19. Petitioner's continued confinement is causing him irreparable physical and psychological harm and violates his rights under the INA and the Due Process Clause of the Fifth Amendment.

LEGAL FRAMEWORK

Due Process Clause

20. The Due Process Clause of the Fifth Amendment provides Petitioner with important protections regarding his detention. As the Supreme Court has explained, “[f]reedom 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 v. Davis*, 533 U.S. 678, 690 (2001).
21. The INA envisions three basic forms of detention for noncitizens in removal proceedings. First is detention for noncitizens in regular, non-expedited removal proceedings. *See* 8 U.S.C. § 1226(a), (c). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, while noncitizens who have committed certain crimes are subject to mandatory detention. *See id.* § 1226(c).
22. The INA also provides for mandatory detention for noncitizens in expedited removal proceedings, 8 U.S.C. § 1225(b)(1), and detention for noncitizens whose immigration cases are completed, *id.* § 1231(a)(6). *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111-13 (W.D. Wash. 2019) (providing overview of INA’s detention authorities).
23. In *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), the Supreme Court held that as a matter of statutory interpretation, 8 U.S.C. § 1226(a) does not require the government to provide a detainee with more than an initial bond hearing. Significantly, the Court did not reach the constitutional question of whether the Due Process Clause requires an opportunity to test the government’s justification for detention once detention after that initial hearing becomes prolonged.
24. Since the Supreme Court’s *Jennings* decision, the Ninth Circuit has expressed “grave doubt” that “any statute that allows for arbitrary prolonged detention without any process

is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

25. To guarantee against such arbitrary detention and to guarantee the right to liberty, due process requires "adequate procedural protections" that ensure the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).
26. 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. 510, 522, 528 (2003). The government may not detain a noncitizen based on any other justification.
27. As a result, where the government detains a noncitizen for a prolonged period or where the noncitizen pursues a substantial defense to removal or claim to relief, due process requires an individualized hearing before a neutral decisionmaker to determine whether detention remains reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (stating that an "individualized determination as to [a noncitizen's] risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); cf. *Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249- 50 (1972) (noting that "lesser safeguards may be appropriate" for "short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing,

in Eighth Amendment context, that “the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards”).

28. Due process also requires certain minimal procedures at bond hearings. First, the government must bear the burden of proof by clear and convincing evidence to justify continued detention. Second, the decisionmaker must consider available alternatives to detention. Finally, if the government cannot meet its burden, a decisionmaker must assess a noncitizen’s ability to pay a bond when determining the appropriate conditions of release.
29. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
30. First, incarceration deprives noncitizens of a “profound” liberty interest—one that always requires some form of procedural protections. *Diouf*, 634 F.3d at 1091- 92; see also *Foucha*, 504 U.S. at 80 (“It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” (citation omitted)).
31. Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack English proficiency. See *Santosky v. Kramer*, 455 U.S. 745, 762-63 (1982) (requiring clear and convincing evidence at parental termination proceedings because “numerous factors combine to magnify the risk of erroneous factfinding” including that “parents subject to termination proceedings are often poor, uneducated, or members of minority groups” and “[t]he State’s attorney usually will be expert on the issues contested”). Moreover, Respondents detain noncitizens in prison-like conditions that severely hamper their

ability to obtain legal assistance, gather evidence, and prepare for a bond hearing. See *infra* ¶ 66.

32. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen's immigration records and other information that it can use to make its case for continued detention.
33. In light of these considerations, “[t]he overwhelming majority of courts to consider the question . . . have concluded that imposing a clear and convincing standard would be most consistent with due process.” *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted).
34. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. See *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision Appearance Program (ISAP)—has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. See *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). It follows that alternatives to detention must be considered in determining whether prolonged incarceration is warranted.
35. Due process likewise requires consideration of a noncitizen's ability to pay a bond. “Detention of an indigent ‘for inability to post money bail’ is impermissible if the individual's ‘appearance at trial could reasonably be assured by one of the alternate forms

of release.” *Id.* at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). As a result, in determining the appropriate conditions of release for immigration detainees, due process requires “consideration of financial circumstances and alternative conditions of release” to prevent against detention based on poverty. *Id.*

36. Evidence about immigration detention and the adjudication of removal cases provide further support for the due process right to a bond hearing in cases of prolonged detention.
37. Immigration detainees face severe hardships while incarcerated. Immigration detainees are held in lock-down facilities, with limited freedom of movement and access to their families: “the circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord Chavez-Alvarez*, 783 F.3d at 478; *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo*, 825 F.3d at 1218, 1221. “And in some cases[,] the conditions of their confinement are inappropriately poor.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector General (OIG), DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities (2017) (reporting instances of invasive procedures, substandard care, and mistreatment, e.g., indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case of one detainee, a multiday lock down for sharing a cup of coffee with another detainee)).
38. These conditions and obstacles only further underscore the serious due process concerns that prolonged immigration detention pose for noncitizens like the Petitioner and reflect the need for a decision before a neutral decisionmaker regarding continued detention.

Bond Authority

39. The Immigration Judge (IJ) incorrectly asserted that the Respondent was ineligible for a bond hearing pursuant to INA § 235 (8 U.S.C. § 1226) which has deprived him of his right to a bond hearing.
40. INA § 235 is the provision of law that regards the designation and treatment of arriving aliens.
41. The Petitioner is not an arriving alien, having been processed under the provisions of the INA with an internally issued parole document.

CLAIM FOR RELIEF

COUNT 1: Violation of Fifth Amendment Right to Due Process (Freedom from Arbitrary Detention)

42. Mr. Toapaxi Zapata re-alleges and incorporates by reference the paragraphs above.
43. 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.
44. Petitioner’s Due Process rights were violated when the IJ found a lack of jurisdiction on the bond case (thereby refusing to hear the actual case) by considering the Petitioner ineligible for bond, despite the evidence clearly establishing that the Respondent is to be treated under INA § 1226(a), having been issued a parole document.
45. Moreover, DHS has enforced Mr. Toapaxi Zapata’s detention without providing him an opportunity to test the continuing validity of his detention.
46. To justify Petitioner’s ongoing detention, due process requires that the government establish, at an individualized hearing before a neutral decisionmaker, that his detention

is justified by clear and convincing evidence of flight risk or danger, as well as whether alternatives to detention could sufficiently mitigate any risk that does exist.

47. For these reasons, Mr. Toapaxi Zapata's ongoing detention without a hearing violates the Due Process Clause of the Fifth Amendment.

COUNT 2: Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority Violation of 8 U.S.C. § 1225(b)

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

49. 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).

50. Both Congress and the evidence in the record make it clear that the arriving alien statute, and therefore mandatory detention, does not apply to those who are placed into INA § 240 removal proceedings.

51. Under the APA, an agency must provide “reasoned explanation for its action” and “may not depart from a prior policy *sub silentio* or simply disregard rules that are still on the books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

52. Because the IJ concluded that the Petitioner was bond ineligible, the continued detention of the Petitioner without a bond hearing is arbitrary, capricious, and without the Due Process of law.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

53. Assume jurisdiction over this matter;
54. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days;
55. Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
56. Issue a Writ of Habeas Corpus ordering the Respondents to release Petitioner from custody; hold a hearing if warranted; determine that Mr. Toapaxi Zapata's detention is not justified because the government has not established by clear and convincing evidence that Mr. Toapaxi Zapata presents a risk of flight or a danger to the community in light of the available alternatives;
57. Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;
58. Declare that Mr. Toapaxi Zapata's continued detention is unconstitutional and unlawful, as it is not reasonably related to any valid purpose of immigration detention and violates the Fifth Amendment guarantee of due process;
59. Declare that Respondents' conduct violates the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706, as arbitrary, capricious, and not in accordance with law;
60. In the alternative, should the Court determine that immediate release is not warranted, order Respondents to provide Mr. Toapaxi Zapata with an individualized bond hearing before an impartial immigration judge within 14 days, at which the government bears the burden to justify continued detention by clear and convincing evidence;
61. Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and

62. Grant such other and further relief as the Court deems just and proper.

DATED: December 23, 2025.

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